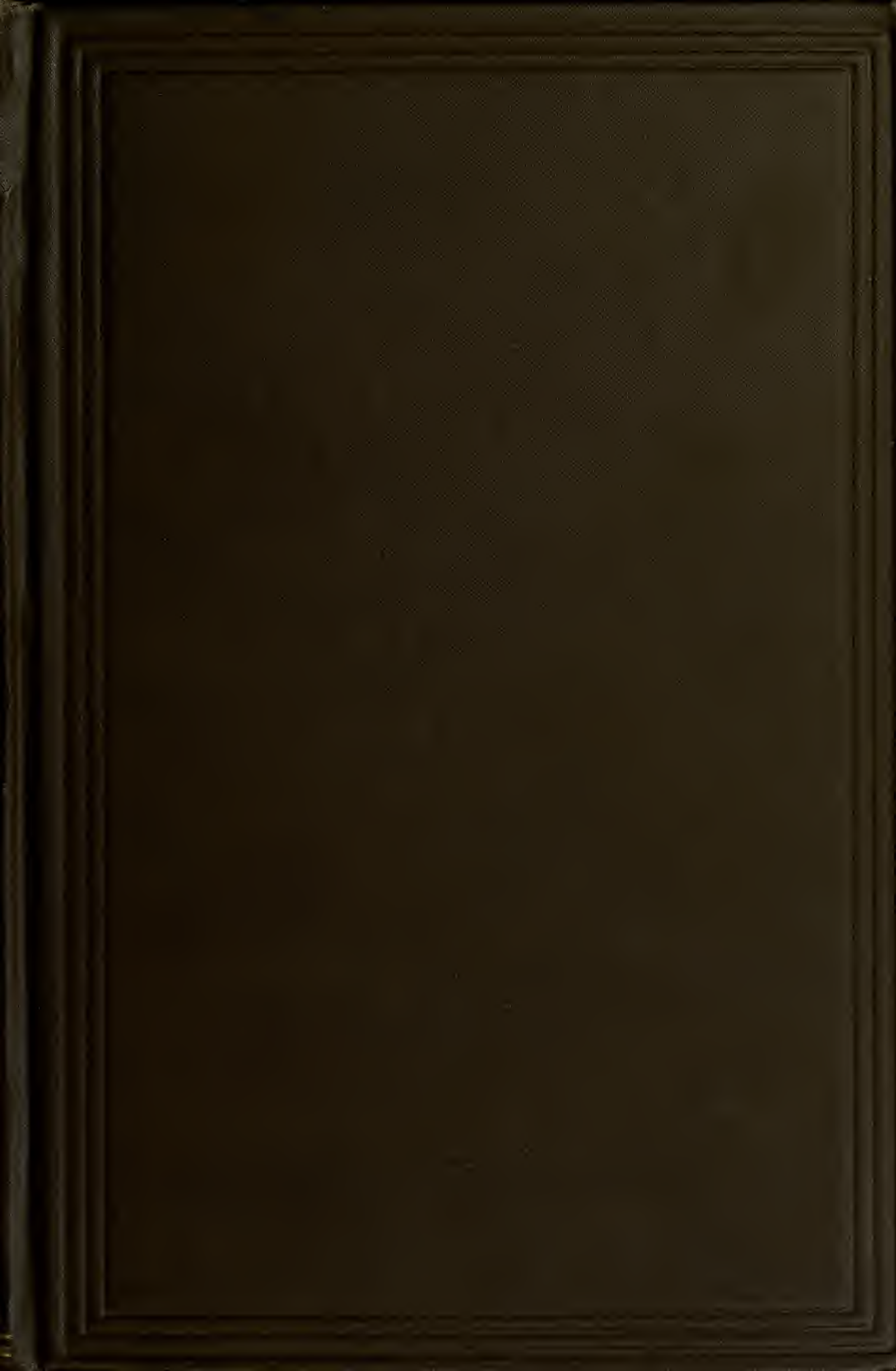

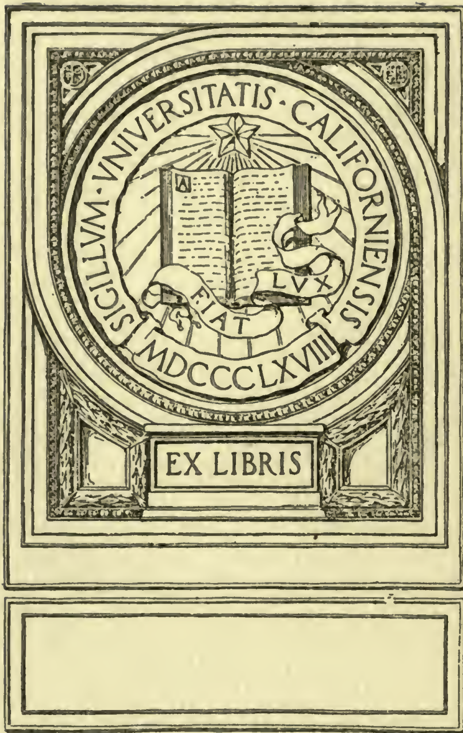
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1.

STATE TAXATION OF PERSONAL INCOMES

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

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OF COLUMBIA UNIVERSITY

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STATE TAXATION OF PERSONAL INCOMES

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PREFACE

BELIEVING that the fiscal aspects of state income taxes were in danger of being overlooked in the enthusiasm for progressive income taxation, the writer made a brief study of the yield and cost of these taxes early in 1920. The paper appeared as " Fiscal Aspects of State Income Taxes " in the *American Economic Review* for June, 1920. In the present study an attempt has been made to present more fully the facts which represent the financial standing of these taxes, together with a description of their background and of the manner in which they operate.

The writer wishes to acknowledge indebtedness to Mr. A. E. Holcomb of the National Tax Association for helpful suggestions and for permission to reprint the material in the appendices, to Mr. Nils P. Haugen, formerly chairman of the Wisconsin Tax Commission and to other state officials who have generously supplied information which was not available in published reports, and especially to Professor Edwin R. A. Seligman of Columbia University, under whose direction the study was carried on and whose constructive criticism made its accomplishment possible.

ALZADA COMSTOCK

MOUNT HOLYOKE COLLEGE, JUNE 20, 1921.

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CHAPTER I

The Evolution of the State Income Tax

In the second decade of the twentieth century personal incomes became an important source of public revenue. With the extraordinary demands upon government treasuries during the period of the European War and the enlarged financial needs in time of peace it became necessary to reach sources which were almost untouched before the present era of great expenditures. In modern industrial countries, in which the majority of incomes are in the form of money and instruments of credit, such resources may be found and utilized easily and quickly. The productivity and elasticity of taxes on individual incomes made possible the extension of existing systems of income taxation as well as successful experiments with new income taxes.

In the United States the state governments as well as the federal took advantage of the elasticity of income taxes in revising their tax systems to meet the changing needs of this period. The result, from a critical and historical point of view, is an aggregation of examples of possible income tax methods rather than the development of an American income tax policy, for no two state income taxes are alike, even in their essentials. Moreover, many of the precedents of method and of administrative devices have been drawn from European countries instead of the American experience of nearly three centuries of colonial and state taxation. In spite of the tendency of the states to abandon the older

legislation and to ignore its lessons, both constructive and negative, the influences of the traditional tax systems persist, playing an almost unrecognized part in shaping the revenue systems of today. The obvious and contemporary explanations of the present period of income tax development are satisfying only when they are illuminated by the long history of the successes and failures of the attempts of the states to tax income and property.

1. *Early faculty taxes* [1]

The earliest examples of taxes which may be said to be the forerunners of the state income taxes of today are the "ability" or "faculty" taxes used in the American colonies. The first reference to taxpaying ability appears in an act passed in the Massachusetts Bay Colony in 1634, providing for the assessment of each resident "according to his estate and with consideration of all other his abilityes whatsoever," but this provision appears to have been interpreted as applying to property only. Seven years later, in New Plymouth, "faculties and personal abilities" were distinguished from visible property for the purposes of taxation, a distinction which was apparently maintained in the actual assessment of the taxes. In 1646 a definition of faculty appeared for the first time, in the order of the Massachusetts Bay Company that artisans and tradesmen should be assessed for their "returns and gains" in the same proportion as property-holders were assessed for "the produce of their estates." From this time forward the principle of taxation according to faculty made steady headway in the New

[1] The principal sources of information used in summarizing the history of income taxes up to 1900 are Edwin R. A. Seligman, *The Income Tax* (Revised ed., New York, 1914), and Delos O. Kinsman, *The Income Tax in the Commonwealths of the United States* (New York, 1903).

England colonies. Connecticut followed in 1650, Rhode Island in 1673, New Hampshire in 1719, and Vermont in 1788. In Rhode Island alone the tax dropped out of existence before the outbreak of the Revolution. In Massachusetts, on the other hand, the faculty taxes were utilized during the Revolution for the purpose of reaching war profits as well as ordinary income.

Outside of New England the growth of faculty taxes was slower. In New York the tax failed to appear at all. The first indication of an attempt in the middle or southern colonies to apportion taxes according to faculty came in New Jersey in 1684, nearly half a century after the beginning in New England. In the course of the eighteenth century five other colonies, Pennsylvania, Delaware, Maryland, Virginia, and South Carolina, undertook taxation according to income or profits. Few of these taxes survived the economic changes of the early national era. The only tax which continued with an unbroken record down to the modern period was that of Massachusetts, which gave way to a new income tax in 1916.

Although the early statutes contain many references to "income," the colonial faculty taxes are not to be confused with the income taxes of the present day. The colonial taxes were rarely based on income actually received, but represented assessments of certain fixed amounts which were determined in most instances by the nature of the taxpayer's employment. For this reason the faculty taxes soon came to bear little relation to the earnings of the person assessed, and to become unequal and unjust in their burden. As taxes on property developed the faculty taxes appeared increasingly arbitrary, and they tended to give place to income taxes or to drop out of existence.

2. *State income taxes in the nineteenth century*

The financial troubles of 1837 and the following years brought about a fresh development in the taxation of incomes. It was not long before the effects of the great crisis made themseves felt in the revenues of the states, which soon set about the business of increasing their tax receipts. As a result the country entered upon a second phase of the state taxation of incomes, in which the taxes were levied upon income actually received instead of upon the assumed income or profits of certain classes of taxpayers. New England, which was less seriously affected by the financial disturbances of the time, had no share in the new income tax movement, but six middle and southern states, Pennsylvania, Maryland, Virginia, North Carolina. Florida, and Alabama, tried to raise funds through income taxes at this time.

If the Civil War had not brought new financial emergencies, particularly in the affairs of the southern states, the income taxes adopted during the forties would probably have been abandoned. Only six, the faculty taxes of Massachusetts and South Carolina, and the newer income taxes of Pennsylvania, Virginia, North Carolina, and Alabama, were in existence when the war broke out.

In the years of the war and the following period of reconstruction the states turned again to the income tax as a means of relief and a source of additional revenue in a time of great financial need. The tax was developed almost wholly in the southern states, where the demand for funds was most pressing. The Massachusetts and Pennsylvania laws were undisturbed. Four of the southern states, Virginia, North Carolina, South Carolina, and Alabama, made use of the income tax systems already in existence for the production of additional revenue. Several other states were induced to make the experiment. Georgia, Missouri,

Texas, Louisiana, West Virginia, and Kentucky tried income taxes in various forms, but all of the taxes soon disappeared with the exception of that of Louisiana, which was continued with negligible success until the end of the century. Meanwhile the northern states, which, in spite of their heavy burden, were in far less serious straits, neglected the tax. State income taxes seemed to bear the marks of a last resort for an over-burdened government.

The lowest ebb in the history of state income taxes was reached in the period 1884 to 1897. The only income taxes in force during this time were those of Massachusetts, Virginia, North Carolina, and Louisiana. In Massachusetts and Louisiana the assessment of personal incomes had almost disappeared, and in Virginia and North Carolina the yield was extremely small. In fact, the whole history of state income taxes from the close of the Civil War to the introduction of a new plan of taxation by Wisconsin in 1911 is almost entirely a record of failure. With almost no exceptions the administration of the laws was poor, the yield small, and the taxes generally unpopular. The reenactment of an income tax law by South Carolina in 1897 meant simply a repetition of the old story. In 1908 a sixth state, Oklahoma, inaugurated a tax along the old lines from which the yield proved to be less than $5,000 a year. Meanwhile the Louisiana tax had disappeared.

An almost unanswerable argument against an unwieldy and unpopular revenue measure is produced when it can be shown that it yields to the state treasury only a few thousands of dollars annually,—hardly more than the cost of its collection if administrative machinery of any importance is required. Such an amount becomes almost microscopic when it is placed on the ten- and hundred-million dollar scale to which state business has grown during the last few years. Students of taxation became extremely sceptical

of the success of state income taxes under any form of administration yet devised. The justice of the taxation of incomes was rarely questioned, but the practical difficulties of framing and administering a tax law which would apply equitably to income from various sources appeared insurmountable.

3. *Recent income tax legislation*

At the beginning of 1911 income tax laws were in force in only five states,—Massachusetts, North Carolina, South Carolina, Virginia, and Oklahoma. The Massachusetts tax was irregularly and unevenly enforced and was of no importance in the fiscal system of the state. In South Carolina and even in North Carolina the officials and the taxpayers resented the difficulties of collecting the taxes under the existing system and pointed to the small revenue as proof of the inadequacy of the tax. The Oklahoma measure was regarded as a failure by the state officials. In Virginia alone the income tax, which had risen to a yield of $130,000 by 1911, was regarded as a productive and valuable part of the state revenue system. The complete abandonment of this form of taxation by the states appeared to be only a matter of time.

Meanwhile an opposing tendency, for a long time unrecognized, was making itself felt in the continued efforts to reform the general property tax which were being made throughout the United States. The personal property tax in particular, because of its inadequacy and its increasingly unjust and pernicious results, was receiving more and more criticism. The states found themselves ready to experiment with classified property taxes, with inheritance, and even with income taxes, as possible avenues of relief from the unsatisfactory state of affairs in which the fiscal system of nearly every state was found.

As a result of the general and persistent attempts to improve state revenue systems the movement for the taxation of incomes spread until at the close of 1920 11 states had laws taxing personal incomes. The first indication of the changing point of view regarding state income taxes was given by the passage of an income tax law in Wisconsin in 1911. According to the terms of this law a heavy graduated tax was imposed upon the incomes of individuals and corporations from sources within the state. In 1912 Mississippi followed with a law modelled after the older type of state income-tax legislation. In 1915 Oklahoma made a fundamental revision of the law taxing incomes, following out some of the ideas which had proved workable in Wisconsin. Massachusetts passed an entirely new income tax law, of wide scope, in 1916, thereby abolishing the old income tax system which had survived from the period of colonial "faculty" taxes. Two experiments on a smaller scale were made in 1917 when Missouri and Delaware enacted personal income tax laws. Virginia revised the state income tax law in 1918, but without making important changes. The same year saw the only repeal of an income tax law of any permanence which occurred during the decade: South Carolina abolished the state income tax system and attempted to find no substitute for it. The year 1919 was one of unusual activity in the field of income taxes. New York, North Dakota, New Mexico, and Alabama passed laws taxing personal incomes, and North Carolina made important revisions in the existing law. The New York income tax, on account of the size of the incomes reached, appeared likely to prove the most significant in the history of income tax legislation. The New Mexico law was saved from repeal in 1920 only by the governor's veto. The Alabama law was declared unconstitutional early in 1920. At the close of 1920 the list

of states taxing personal incomes [1] stood as follows: Delaware, Massachusetts, Mississippi, Missouri, New Mexico, New York, North Carolina, North Dakota, Oklahoma. Virginia, and Wisconsin.

4. *The changed attitude towards the tax*

In the ten years which have passed since the income tax was adopted in Wisconsin the attitude of the best-known authorities has changed from scepticism to a tentative approval. Before 1911 the question of interest to students of taxation was not so much one of the possible success of state income taxes, for their elimination seemed only a question of time, but the underlying reasons for the consistency of the failures. In the light of our present knowledge it appears that the methods of administration of the tax, while seized upon by the more critical observers, were not sufficiently analyzed. In the first detailed study of state income taxes, made by Mr. Kinsman and published in 1903, the failure was laid at the door of administration, on four counts: [2]

The experience of the states with the income tax warrants the conclusion that the tax, as employed by them, has been unques-

[1] The plan of taxing the net income of corporations without correspondingly taxing the incomes of individuals had meanwhile been adopted by Connecticut (*Laws of 1915*, ch. 292), Montana (*Laws of 1917*, ch. 79), and West Virginia (*Laws of 1915*, ch. 3). In Connecticut the original tax was two per cent, in Montana one per cent, and in West Virginia one-half of one per cent. Before 1919 New York, with a three per cent tax on the net incomes of manufacturing and mercantile corporations, was included in this group. These states took advantage of the use of federal forms and the dates and machinery of the collection of the federal taxes, and found that the extremely low cost of collection was a distinct advantage of corporation taxes collected in this way. A number of other states taxed the incomes of certain specified classes of corporations.

[2] Kinsman, *op. cit.*, pp. 116, 117, 120, 121.

tionably a failure. It has satisfied neither the demands for justice nor the need of revenue. The question arises: Is this failure due to qualities inherent in the nature of the tax, or is it the result of conditions which may be removed? One of the fundamental principles of taxation is that the subjects of a state ought to contribute to the support of the government in proportion to their respective abilities, and it is generally agreed that these abilities are best measured by income. Therefore, theoretically at least, an income tax is unquestionably the fairest system yet proposed. . . .

While much of the legislation in the states relative to the income tax has been very unsatisfactory, often not appealing to the taxpayers' sense of justice and furnishing excuses for the concealment of property, nevertheless laws have been passed repeatedly which, if properly administered, would have distributed the burden with unusual justice. But these laws have failed quite as completely as those with provisions less satisfactory. The failure of the tax, therefore, can not have been due to the ill success of the laws in embodying the principle. . . .

As the result of our study we conclude that the state income tax has been a failure, due to the failure of administration, which, in turn, may be attributed to four causes—the method of self-assessment, the indifference of state officials, the persistent effort of the taxpayers to evade the tax, and the nature of the income. The tax can not be successful so long as taxpayers desirous of evading taxation are given the right of self-assessment. Since all attempts to change the method of self-assessment have failed and the nature of industry in the states is at present such as to make impossible the assessment of a general income tax at the source, we are forced to the conclusion that, even though no constitutional questions should arise, failure will continue to accompany the tax until our industrial system takes on such form as to make possible the use of some method other than self-assessment.

Writing six years later Mr. Kinsman noted a positive movement in the direction of the state taxation of personal incomes which escaped several of the students of that period. The movement was to have far-reaching effects in the next decade, but up to 1909 it had not shown itself in the passage of income tax legislation. The several reports

of state tax commissions and other interested agencies and individuals *against* the tax were signs of interest in the device which were not to be disregarded. Moreover, the amendment to the Wisconsin constitution permitting the passage of an income tax law had already been adopted. Mr. Kinsman restated his position as follows:[1]

A study of the present period of income tax activity . . . affords the author no occasion to modify conclusions previously expressed. The current movement is not due to the success of the tax in any state, but rather to the spirit of reform now sweeping the country. This movement would hardly leave untouched the subject of taxation, where injustice is so common. The people have turned to an income tax because they believe in the theory that individuals should contribute to the support of the government according to ability, and that income is the most just measure of that ability. They expect success because they are possessed of the characteristic American optimism, and know little of the difficulties of administering such a law.

Mr. K. K. Kennan,[2] writing in Wisconsin in 1910, quoted with evident approbation passages from Mr. Kinsman's description of the difficulties of administering state income taxes, and added the following comment:[3]

It is a common remark that income tax laws are all right, but that they do not work in practice. Certainly the experiences of those states which have passed such laws are not encouraging, but is it not possible that the fault lies with the crude and imperfect administrative methods which have thus far been employed?

In the comprehensive volume on the income tax first

[1] D. O. Kinsman, "The Present Period of Income Tax Activity in the American States," *Quarterly Journal of Economics*, vol. xxiii (Feb., 1909), pp. 296-306.

[2] Mr. Kennan was later given the task of organizing and supervising the work of the income tax districts in Wisconsin.

[3] K. K. Kennan, *Income Taxation* (Milwaukee, 1910), pp. 235, 236, 323.

published in 1911 Professor E. R. A. Seligman characterized Mr. Kinsman's statements concerning the defects of the administration of the state income tax laws as "unquestionably true" and enumerated other difficulties, such as that of the localization of income, which must always be met in working out a state income tax law.[1] Together with several other tax experts, Professor Seligman was engaged at this time in working out the terms of a possible federal income tax law, and he was undoubtedly influenced both by the realization of the impracticability of efforts to install successful state systems at a time when the federal system was still undetermined and by a conviction of the prime importance of a workable federal system. In 1914 Professor Seligman commented on the success of the "improved and centralized administrative methods" which had been so sucessfully used in the assessment and collection of the income tax in Wisconsin, but continued to express doubts as to the workability of income tax laws for all the states.[2] By 1915, when the federal tax was in operation and its successful working guaranteed, he was a supporter of the project of a state income tax for New York.

During the same period various criticisms and a general dissatisfaction with state income taxes had been expressed in various official reports. One of the most widely read of these was the Report of the Massachusetts Commission on Taxation of 1897, in which the existing law of Massachusetts was shown to be wholly unsatisfactory in its operation,[3] and the whole question of the administration of state income taxes was described as an exceedingly difficult one.

[1] Seligman, *op. cit.*, pp. 426-429.

[2] Seligman, *op. cit.*, p. 429.

[3] Massachusetts Commission Appointed to Inquire into the Expediency of Revising and Amending the Laws of the Commonwealth Relating to Taxation, *Report*, 1897.

In New York in 1907 the report of the Special Tax Commission expressed criticism of the tax on four counts:[1] first, the tax had always been a dismal failure; second, it involved interstate complications; third, it would work spasmodically and produce injustice and inquality; and, fourth, it would lead to corruption. A third widely read report in which state income taxes were severely criticised was that of the California tax commission of 1906.[2]

A survey of the objections raised against the taxation of personal incomes by the states, as these objections were formulated before the change of sentiment manifested itself in 1911, shows that the opposition was based largely on the ground that all of the available evidence showed that such taxes were extremely difficult to administer. The theoretical virtues of the personal income tax as a means of compelling the individual to contribute to the support of the state government under which he lives in accordance with his ability to pay were generally accepted as almost ideal. The factors which had turned and kept public sentiment against the income tax were the petty yield, the inequalities in administration, the character of the local officials who had attempted to collect the taxes, and the low repute in which personal income taxes had come to be held in the states in which the experiment had been made.

The changing opinion as to the practicability of a levy on incomes by the states became evident before any state of importance fiscally speaking, with the exception of Wisconsin, had taken steps in the direction of new income taxes. Professor Seligman's description of the new situation, given in connection with his early advocacy of a state income tax for New York, was expressed as follows in his

[1] New York Special Tax Commission, *Report*, 1907, p. 46, *et seq.*

[2] Commission on Revenue and Taxation of the State of California, *Report*, 1906.

presidential address at the Ninth Annual Conference of the National Tax Association in 1915.[1]

Two events . . . have recently occurred to cause a reappraisement of the situation. In the first place, great progress has been made in the direction of a centralized state administration. In New York we now have under the law of 1915 at all events a distinct step in the direction of more efficient fiscal administration. Of greater significance is the fact that the situation has been entirely altered by the introduction of the federal income tax. We have now gotten people, and especially business people, accustomed to an income tax; and while there are still grave problems to be solved and improvements to be secured, it may, I think, be stated, without fear of contradiction, that the income tax has come to stay and that in principle it is not seriously opposed by the community. With the existence of this new tax, which is successful so far as it goes, there arises the hitherto entirely unsuspected prospect of a state income tax being able to lean up against the federal tax, so as to avail itself of the federal returns and to be able in this way to minimize a great part of the difficulties which would otherwise attach to an independent state income tax.

A year later Professor Bullock, whose efforts to bring about the passage of the income tax law in Massachusetts had reached a successful conclusion, expressed an opinion that state income taxes were to be increasingly used, but added a warning against too great a dependence upon them:[2]

If every citizen were taxable at his domicile upon his entire income without exception or deduction, except such as may be proper in the case of small incomes, and if then all tangible property were taxed, under a proper classification, at its situs, we should have the simplest, most logical, and most satisfactory of all solutions. Everybody would pay an income tax in the locality where he lives and enjoys the benefits of government, and all

[1] *Proceedings of the National Tax Association*, 1915, pp. 135, 136.

[2] *Proceedings of the National Tax Association*, 1916, pp. 383, 384.

property would contribute to the support of the jurisdiction where it receives the benefit of governmental services. . . .

But I am not greatly interested today in ultimate solutions. For good or ill, various states seem inclined to experiment with taxes on incomes, and it is important to understand the nature and the good or bad points of the income tax. It should not be regarded as a panacea, it is not going to replace all taxation of property, it must be carefully adjusted to existing taxes on tangible property and corporations, and it will certainly work badly if the rate is excessive or the administration decentralized. Finally, the state income tax should not be regarded as the rival, but rather as the complement or helpmate, of the classified property tax.

As the experience of the states with personal income taxes progressed, as administrative machinery was developed, and as lessons were learned and devices adapted from the federal government's use of the income tax, the workability of the state income taxes ceased to be a doubtful matter if administrative conditions were favorable. Many influences entered into the situation which are difficult of analysis. The effect upon the taxpayer's point of view of the continually increasing demands of the federal income tax as applied to individual incomes was undoubtedly a factor. This effect, although difficult to estimate, has probably been very great. The paths of the state officials responsible for the collection of state income taxes have almost certainly been smoothed by the annually recurring necessity of filling out the federal forms. The tendency towards evasion of the state taxes has probably been materially diminished by the publicity,—informal and unrecognized, but nevertheless existent—which has accompanied the payment of the federal tax, especially in the smaller cities and towns. The effects of increasing prosperity upon the willingness of the individual to pay an income tax are also exceedingly difficult of measurement, but the "good times" were certainly not without effect.

The helpful influence of the federal tax system and the improvements in the form and administrative methods employed by the states made possible in turn further advances towards workable tax systems. It soon became apparent, as Professor Bullock saw clearly, that other improvements must parallel those of state income taxes if satisfactory revenue systems were to result. Increasing emphasis was laid upon the classification of property taxes and upon the usefulness of business or corporation taxes levied in a form like that of state income taxes but with a uniform rate. Within three years (1915 to 1917) New York, Connecticut, West Virginia, and Montana had adopted the latter plan. Professor Seligman, who with Professor Bullock was influential in framing the personal income tax law passed in New York in 1919, described the advantages of such a combination of income and business taxes in the annual address before the state tax conference held at Albany, in January, 1919:[1]

> The advantages of this new system may be characterized as follows. The personal income tax coupled with an extension of the business tax is a far better measure of ability to pay taxes. . . . Second, the income tax is in conformity with modern economic conditions and is in this respect far preferable to the general property tax. Thirdly, the income tax reaches wealth that it would be impossible to reach by the property tax. . . . Fourthly, the income tax will bring about a more equitable adjustment as between classes and the State itself. An increase of the property tax which, as we know, necessarily implies a real estate tax, means an increase in the tax of the farmer; the adoption of the income tax will mean, as it ought to mean, primarily the taxation of the cities, where, as we have seen, most of the incomes are earned and received. . . .
>
> It is clear, therefore, that from every point of view, that of ade-

[1] Eighth (New York) State Conference on Taxation, *Proceedings*, 1919, pp. 21, 22.

quacy, that of efficiency, and that of equity, all indications point unerringly to the desirability of the combination of an income tax and a business tax as a way out of our fiscal difficulties, both State and local.

5. *The development of model income tax laws*

The growing popularity of state income tax laws and the inevitability of interstate complications and confusion on account of those laws was one of the influences behind the appointment of a committee by the National Tax Association in 1916 to consider the report upon a model tax system. This committee was carefully chosen, and consisted of men whose interest in improved legislation and administration was already demonstrated. Professor Bullock of Harvard was made chairman. The entrance of the United States into the world war seriously interfered with the work of the committee during the first two years of its life: Professor T. S. Adams of Yale, one of the members, entered the employ of the United States Treasury Departmtnt as a revenue expert; Mr. Ogden Mills of New York City was sent at once to France; and the other members undertook such heavy additional duties during the war that the work of the committee was forced almost to a standstill. Finally, in September, 1918, a preliminary report was published,[1] (Appendix I), with the signatures of all members of the committee except Professor Adams, whose work at Washington had excluded him from collaboration in the report, but who described it as "one of the wisest and most helpful statements ever published concerning the proper structure of the tax system in an American state." [2] The re-

[1] *Preliminary Report of the Committee Appointed by the National Tax Association to Prepare a Plan of a Model System of State and Local Taxation*, Sept., 1918.

[2] *Preliminary Report*, p. 45.

port met with "almost absolute approval" from the delegates present at the annual conference of the National Tax Association in June, 1919, and it may therefore confidently be said that the endorsement of the principle of state income taxes which it contains is subscribed to by many of the best-known tax administrators and tax critics in the United States,

The committee reached the conclusion that a diversified system of taxation was the only one which could be adapted to present conditions. It was recognized that the proposed system must yield large revenues, be practicable from an administrative standpoint, be adapted to a federal form of government, respect existing constitutional limitations, represent as nearly as possible a consensus of opinion, and exclude measures wholly foreign to American ideas and experience. The committee proposed three types of taxes: a *personal income tax*, levied consistently upon the principle of taxing every one at his place of domicile; a *property tax upon tangible property,* levied objectively where such property has its situs; and a *business tax* upon all business carried on within the jurisdiction of the authority levying such tax. The committee believed that in using a combination of these three taxes the states would be applying logically and consistently the principles which already underlay the greater part of their tax laws.

The recommendation of a personal income tax by this committee, as a part of the three-fold tax system suggested above, was the result of a choice among four possible forms of personal taxation. The committee rejected the poll tax as inadequate and unequal in its operation; a net property tax, as foreign to the revenue traditions of the United States; and a presumptive income tax, such as a tax on rentals, as an imperfect indication of the individual's ability to contribute to the support of the government under which

he lives. The committee considered that the fourth possible tax, the personal income tax, could be well administered, (as the experience of Wisconsin and Massachusetts had already proved at the time when the preliminary report was made) and offered the line of least resistance. The committee's conclusion on this point was tersely stated as follows:[1]

> The committee . . . is of the opinion that a personal income tax is the best method of enforcing the personal obligation of the citizen for the support of the government under which he lives, and recommends it as a constituent part of a model system of state and local taxation.

With the caution that the details of each tax should be adjusted in such a way as to enable it to effect the principle on which it is based, the committee suggested "the broad outlines" of the manner in which the personal income tax should be levied, as follows:

First, since the personal income tax is to enforce the obligation of every citizen to the government under which he is domiciled, *the tax must be levied only upon persons and in the states where they are domiciled.* It should not apply to business concerns. If the personal income tax is not limited in this way, it will not form the supplement to the other taxes advocated, but will perpetuate the old evil of double taxation.

Second, the personal income tax should be levied in respect of the citizen's entire income from all sources. The only necessary qualification is that which is necessitated by the constitutional limitations upon taxation of federal bonds and the salaries of federal officials by the states. The personal obligation of the citizen to contribute to the support of the government under which he lives should not be affected by the form his investments take.

[1] *Preliminary Report,* p. 12.

Third, The personal income tax should be levied upon net income defined substantially as an accountant would determine it. This implies the deduction of operating expenses and interest on indebtedness. The large amount of federal bonds exempt from local taxation introduces a complication. The interest deduction should therefore be limited to an amount proportional to the income which the taxpayer derives from taxable sources.

Fourth, the amount of income exempted from the personal income tax should not exceed $600 *for a single person and* $1,200 *for husband and wife, with* $200 *in addition for each dependent up to a number not to exceed three.* This would make the maximum possible exemption $1,800. This recommendation is made with the modifying admission that conditions differ in the various states, and for that reason it is limited to the statement of the maximum exemptions desirable and the observation that under a democratic form of government as few people as possible should be exempt from the necessity of making a direct personal contribution towards the support of the state.

Fifth, the rate of the income tax should not be differentiated according to the sources from which income is derived. The personal income tax is designed to be part of a system in which there is a tax upon tangible property. Under such a system there will be heavier taxation of the sources from which funded income is derived, and there will be little, if any ground for attempting to differentiate the rates of the personal income tax. Furthermore, such differentiation greatly complicates the administration of the tax.

Sixth, the rates of taxation should be progressive, with the lowest rate not less than one per cent and the highest rate probably not greater than six per cent. The classes of taxable income to which the various rates apply should pro-

bably include $1,000 each. In such a plan, the tax for a single person would start at one per cent on any amount of income from $600 to $1,600 and reach six per cent on all income in excess of $5,600. This recommendation is made only in a general way, to illustrate the underlying recommendation that the rates of the personal income tax should be moderate, and should be, as nearly as practicable, uniform throughout the United States.

Seventh, the administration of the personal income tax should be placed in the hands of state officials. This type of administration is regarded by the committee as an indispensable condition for the successful operation of any state income tax. Experience has proved that local administration of the tax cannot work well. The state tax commission or commissioner is the proper agent to adminster the tax.

Eighth, the personal income tax should be collected from taxpayers, on the basis of returns, without attempts to collect at the source. Experience has shown that this can be done satisfactorily. Collection at the source presents serious administrative difficulties, imposes undeserved burdens on third parties, and sometimes tends to shift the tax burden. Collection at the source is inconsistent with the purpose of bringing home to the taxpayer his personal obligation to the government under which he lives. *Information* at the source may, however, prove helpful.

Ninth, the proceeds of the tax should probably be divided between the state and local governments in most cases. The plan of distribution is immaterial in the general plan of taxation which the committee advises. Moreover, the same solution is probably not advisable in every state. If the revenue is divided, the suggestion is made that the state governments might retain a proportion corresponding to the proportion which state expenditures bear to the total

of the state and local expenditures, and that the same principle should apply in determining the share received by each of the subordinate political units. The entire question of distribution must necessarily be largely affected by local conditions, and the committee found it impossible to make other than general suggestions.

The business tax recommended by the committee was simply a moderate tax at a proportional rate (such as two per cent) upon the net income derived from business done in a particular locality.

The committee held that the combination of taxes recommended would give better results than any one tax. Inequalities which arise under the three separate taxes would not be concentrated at the same point, and there would almost certainly be a somewhat compensatory effect. The taxation of intangible property as property will be eliminated.

With regard to the amendment of state constitutions necessary for the introduction of these systems of taxation, the committee stated that " no more, and probably no less amendment of state constitutions " would be required than in the case of any other plan adequate to the needs of the case.

After the publication of the preliminary report of the committee on model taxation attention centered largely on the committee's conclusions concerning the personal income tax. Little adverse criticism was heard, but the immediate incorporation of such recommendations into law progressed slowly. In the New York personal income tax law of 1919 may be seen the expression of similar ideas concerning equitable rates and proper administrative procedure. To a lesser extent the laws passed in the same year in North Dakota and New Mexico show that the recommendations of the committee on model taxation have

been effective. In September, 1920, at the annual conference of the National Tax Association at Salt Lake City, it developed that actual drafts of "model" personal income tax and business income tax laws would be useful to state officials who desired to have such laws considered by the legislatures of 1921. The committee consented to undertake the work, obtained the assistance as counsel of Mr. Henry H. Bond, of the Boston bar, who was in charge of the administration of the Massachusetts income tax for the first two years of its existence, and of Mr. George E. Holmes, of the New York bar, author of a treatise on federal taxation, and published the drafts of the two laws early in 1921. These drafts were prepared with great care, and an attempt was made to word the text and to number the various articles and sections so that the corresponding laws might be adopted by any state and subsequently enlarged or modified with a minimum of change.

The draft of a personal income tax law (Appendix II) contains few changes from the plan suggested in the committee's preliminary report, although the details are necessarily presented much more fully. The exemptions suggested in the draft of the law are higher, and conform to those permitted under the federal income tax law. The final draft includes no suggestions for the distribution of the proceeds of the tax, other than the suggestion that the localities should be notified of their share in time to take the sum into account in determining the local tax for the year, and the suggestion that a reasonable amount should be withheld for refunds. In presenting the draft, the chairman of the committee called attention to the fact that in such matters of administration it was impossible to bring the necessary provisions for the various states into the form of one suggested law. The draft of the model income tax law is in other respects full, detailed, and based on the best

modern income tax practice. The opportunity for flexibility in administrative matters which it offers makes its adoption in substantially its present form a practical possibility for almost every state.

The wave of popularity upon which the income tax has ridden during the past decade may subside to some extent, as it has subsided in the case of certain other features with which the American states have attempted to improve their revenue systems. Professor Lutz, who has been active in working for the adoption of an income tax in Ohio, gives the following warning:[1]

> A few years ago separation of the sources of revenue was our revenue panacea. Today there is some danger of placing too great reliance upon the income tax as the chief agent of our fiscal salvation. Such expectations are doomed, and this failure will react unfavorably against the income tax in its proper place. It is more true today than ever that no one system will prove a cure-all. We must diversify our revenue system, combine property and income taxation, and strive toward a genuine and effective coördination of the widely diverse and different sources of revenue.

If such recommendations as these are followed, and if the personal income tax is fitted into its proper place in a diversified revenue system in the states in which it is adopted, we may expect only temporary reactions, and in the long run a permanent and stable place for the income tax in the state revenue systems.

[1] H. L. Lutz, *Report on the Operation of State Income Taxes*, in the *Report of the (Ohio) Special Joint Taxation Committee*, 1919, p. 125.

CHAPTER II

The Wisconsin Income Tax

1. *History of the legislation*

The new phase in the taxation of incomes which opened with the adoption of an income tax in Wisconsin in 1911 was one of the results of years of effort for the reform of taxation in that state. Wisconsin's progressive attitude towards tax matters had become evident when the state tax commission was created in 1899. From that time forward the state had the advantage of the experience and advice of an able administrative organization with specialized functions, as a consequence of which several far-reaching improvements were brought about.

Agitation for an income tax had preceded the appointment of the commission by several years.[1] A progressive income tax plan had appeared in the platform of the People's Party in the early nineties, but no legislation had resulted.[2] The movement which culminated in the passage of an income tax law in 1911 first manifested itself in 1903, as a result of a discussion of the taxation of intangibles. In that year two members of the state tax commission re-

[1] The writer is indebted to Mr. Nils P. Haugen, who became a member of the Wisconsin Tax Commission in 1901 and who was its chairman from 1911 to 1921, for valuable information on the history of the income tax movement in Wisconsin.

[2] T. S. Adams, "The Wisconsin Income Tax," *American Economic Review*, vol. i, no. 4 (Dec., 1911), p. 906.

commended the exemption of credits from taxation. The third member of the commission, Mr. Nils P. Haugen, opposed the flat exemption of credits without some substitute. In the discussion of possible alternatives Mr. Haugen suggested an income tax. At that time the Wisconsin constitution did not provide directly for an income tax and it was doubtful whether such a measure would be upheld; but the suggestion had been brought into the public attention as a live issue, and Mr. Haugen was requested by the assembly committee on the assessment and collection of taxes to draft a constitutional amendment permitting the imposition of a graduated income tax. With the assistance of Mr. Dahl, chairman of the committee on taxation, a draft was immediately made, and the legislature passed the amendment in the same year (1903). Through an error in advertising the amendment the next step was postponed for two years. The amendment was again approved by the legislatures of 1905 and 1907. It was voted upon by the people in the elections of November, 1908, and carried by an overwhelming majority. Two bills were introduced in the legislature of 1909,—one in the senate by Senator Paul Husting, later United States Senator, and the other in the assembly by Mr. Ingram. Both bills represented Mr. Haugen's income tax recommendations. Meanwhile a campaign of popular education had been proceeding; the subject was given wide publicity, and Mr. Haugen himself was a frequent contributor to the *Milwaukee Free Press,* writing in support of the proposed tax.

After a discussion of the two bills proposed in the legislature of 1909, the bills were referred to a special legislative committee which was instructed to report to the legislature of 1911. The committee presented a bill to the legislature of 1911, and after another prolonged discussion and the introduction of several amendments the bill became law in the

summer of 1911,[1]—eight years after the proposal was first made by Mr. Haugen.

In drafting the income tax law all of the available information concerning state income taxes and the income taxes of foreign countries was reviewed in great detail, and the Wisconsin law was painstakingly framed along the lines which history had shown to be most workable. Two Wisconsin men, Professor D. O. Kinsman and Mr. K. K. Kennan, had published historical studies of income taxes which were extensively used in the preparation of the Wisconsin bills.[2] Professor Kinsman regarded state income taxes as almost complete failures, but his account of low rates and local administration as possible causes of the failure was illuminating. The Prussian income tax was in operation at this time, and Norway was working on a proposal which was subsequently enacted into law. Although few of the particular provisions which were found in these measures were applicable to the situation in Wisconsin, the careful analysis of the various explanations of successes and failures which was made by the proponents of the Wisconsin tax must be held in part responsible for the seaworthiness of the Wisconsin law which was finally passed in 1911.

Professor T. S. Adams, one of the early supporters of the income tax in Wisconsin, notes as significant the fact that the ratification of the constitutional amendment was urged by all political parties and that in 1910 the passage of an income tax law called for in the various party platforms.[3] Professor Adams holds that this agreement on the income tax represented the fusion of two groups: those

[1] *Laws of Wisconsin*, 1911, ch. 658 (June 29, 1911).

[2] D. O. Kinsman, *The Income Tax in the Commonwealths of the United States* (New York, 1903); and K. K. Kennan, *Income Taxation* (Milwaukee, 1910).

[3] Adams, *op. cit.*, pp. 906, 907.

who believed income taxation to be a means of social reform, and those who regarded the tax merely as a practical substitute for personal property taxation.

By the time the income tax law was finally passed the situation with regard to the taxation of personal property had become serious. Governor McGovern, during whose administration the tax was put into operation, and to whom is due much of the credit for the success of the income tax in its critical first year, describes the old system of personal property taxation as follows:[1]

> The reason an income tax was demanded by the people of Wisconsin was that the old system of personal property taxation had broken down. . . . Irregularities in the assessment of property inevitably destroyed uniformity of taxation, but they did more. They introduced a vicious system of class legislation. A careful investigation of the assessments of 2,239 persons shows that if the assessment of the property of farmers be placed at 100 per cent, that of merchants would be only 64 per cent and that of manufacturers but 36 per cent. . . . Worse still, the poor were systematically discriminated against in favor of the rich. The plain fact is that under this system the poorer a man was the higher proportionately he was assessed, and the richer he was the lower he was assessed.

The income tax law passed in 1911 was unlike many of the state income tax laws which had been tried in this country in that it provided for the taxation of business as well as of personal incomes. The incomes of corporations and of individuals (resident and non-resident) arising from sources within the state of Wisconsin were subject to taxation. The law provided that the term "income" should include rent, interest, wages, profits, royalties, and "all other gains, profits or income of any kind derived from any source whatever" (except those specifically exempted).

[1] F. E. McGovern, "A State Income Tax," *Proceedings of the Governors' Conference*, 1912, pp. 80, 82.

Residents of the state were entitled to exemptions of $800 to the individual, $1,200 to husband and wife together, and $200 for each child and for each other dependent. Various kinds of income not properly subject to taxation in this way, such as pensions from the United States and dividends from corporations which paid the income tax, were also exempted. Deductions were allowed for the ordinary expenses of doing business and for similar items. The law included a provision that in the payment of income taxes it should be allowable to present personal property tax receipts. This provision, known as the "personal property tax offset" was to become a serious problem in later years.

Progressive rates were applied to both individual and corporate incomes. The tax on individual incomes, which reached a maximum at six per cent on amounts in excess of $12,000, was less steeply graduated. The following table, adapted from that published by the State Tax Commission as an aid to computation, shows the scheduled rates and true rates of the tax.[1]

Taxable Income of Individuals	*Rate (per cent)*	*Tax*	*Total tax*	*True rate (per cent) on whole amount*
1st $1,000..........	1	$10.00	$10.00	1.0
2nd 1,000..........	1¼	12.50	22.50	1.125
3rd 1,000..........	1½	15.00	37.50	1.25
4th 1,000..........	1¾	17.50	55.00	1.375
5th 1,000..........	2	20.00	75.00	1.5
6th 1,000..........	2½	25.00	100.00	1.6667
7th 1,000..........	3	30.00	130.00	1.8571
8th 1,000..........	3½	35.00	165.00	2.0625
9th 1,000..........	4	40.00	205.00	2.2778
10th 1,000..........	4½	45.00	250.00	2.5
11th 1,000..........	5	50.00	300.00	2.7273
12th 1,000..........	5½	55.00	355.00	2.9582
13th 1,000..........	6	60.00	415.00	3.1923
15th 1,000..........	6	60.00	535.00	3.5667
20th 1,000..........	6	60.00	835.00	4.175

[1] Wisconsin Tax Commission, *The Wisconsin Income Tax Law* (1919), p. 26.

The rates for the income of corporations, as originally adopted, were determined by the relation between the taxable income and the assessed value of the property used in the acquisition of the income. The scale was graduated, rising from one half of one per cent where the per cent of taxable income to value of property was one per cent or less, to six per cent where the per cent of taxable income to value of property was from 11 to 12 per cent.

This method proved to be unnecessarily unwieldy, and after two years the scheme was changed to correspond with that used for the calculation of taxes on individual incomes.[1] The initial rate was fixed at two per cent, and the maximum of six per cent was reached at a point just above $6,000.

Probably the most distinctive feature of the Wisconsin law was the centralized administration for which it provided. The state tax commission was required to assess the incomes of corporations and to provide the necessary rules for the assessment of the incomes of individuals and partnerships; to divide the state into assessment districts, and to appoint officials under the civil service rules to make the assessments within the respective districts. A state "supervisor of the income tax" was appointed to work out the details of the new system.

The collections were made through the local collectors of property taxes. The income taxes were certified to these collectors, and were entered for collection at the same time and in the same manner as other taxes, but on a separate roll. In this way the persons who might find the remission of the amount of their taxes to the state treasurer an unfamiliar and difficult process were enabled to pay the required amounts to the local collector through a simple transfer of cash.

[1] *Laws of Wisconsin*, 1913, ch. 720.

Several new problems of taxation were produced by the Wisconsin law. One of the most puzzling was that of the allocation of income derived from within and without the state. Income from rentals, royalties, and gains or profits from the operation of any farm, mine, or quarry was not apportionable for the reason that it followed the *situs* of the property from which it was derived. Income from personal services, land contracts, mortgages, stocks, bonds, and securities was not apportionable for the reason that it was considered to have its *situs* at the residence of the recipient. Business incomes of individuals derived from sources within and without the state were subject to tax only upon that portion received from sources within the state. In determining this amount the rule of apportionment for individuals followed that for corporations, which stood as follows after 1913:[1]

In determining the proportion of capital stock employed in the state, the same shall be computed by taking the gross business in dollars of the corporation in the state and add[ing] the same to the full value in dollars of the property of the corporation located in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of the total gross business in dollars of the corporation, both within and without the state, added to the full value in dollars of the entire property of the corporation, both within and without the state. The fraction so obtained shall represent the proportion of capital stock represented within the state.

Having obtained this figure (for example, .6), the corresponding part of the net income was taxable in Wisconsin.

A system of "information at the source" was developed into a smoothly working part of the machinery early in the history of the Wisconsin income tax. This system is

[1] *Laws of Wisconsin,* 1913, ch. 720 [section 1770b, subsection 7, subdivision (e)].

only partially provided for in the income tax law itself, but it has been worked out by the tax commission under the authority which it holds for making necessary regulations. The law provides that in order to deduct wages paid to employees from gross income, corporations must report "the name, address and amount paid each such employee or officer residing within this state to whom a compensation of seven hundred dollars or more shall have been paid during the assessment year." [1] In the same way the names and addresses of persons to whom interest on indebtedness is paid must be reported or the deduction of such interest will not be permitted to the taxpayer.[2] As the plans have been worked out, the forms distributed for the income tax returns are accompanied by blanks upon which salaries or wages to the amount of $700 or more are to be entered, and by other blanks for lists of stockholders of corporations and the dividends paid them. In the same way reports are made concerning interest payments. This system operates as a check upon the payment of excessive salaries by corporations, as a means of checking up corporate deductions for wages, salaries, and dividends, and as a check upon the returns made by individuals who receive wages, salaries, dividends, or interest. This method was at first regarded as highly inquisitorial, but with the passage of time the return of such information has come to be regarded as a matter of course and as one of the troublesome but necessary details in the efficient administration of an income tax.

The distribution of the proceeds of the income tax has proved to be one of the most vexing problems which the levy of income taxes by the states has produced. Up to the time of the passage of the Wisconsin law the matter had had little discussion, and the funds had gone into the various

[1] *Laws of Wisconsin*, 1913, ch. 720.

[2] *Laws of Wisconsin*, 1917, ch. 231.

state treasuries as a matter of course. Wisconsin, however, adopted a novel plan of distribution to the localities. It was hoped that the income tax would eventually supplant the more undesirable forms of personalty taxation, and in that case some recompense must be made to the local taxing units. The Wisconsin law accordingly provided that 70 per cent of the receipts from the income tax should go to the city, town, or village from which those receipts were derived; 20 per cent to the county, and the remaining 10 per cent to the state. It was assumed that the sum retained by the state would approximately cover the cost of collection. In practice, the state's share of the receipts have far exceeded the cost.

The two assumptions underlying this plan,—that of a large revenue from the tax and the belief that the tax would prove an effective substitute for the personal property tax—were subsequently justified. The distribution to the localities proved to be a workable arrangement and one which other and richer states were later to experiment with.

Further evidence that the Wisconsin income tax was intended as a substitute for the tax on personal property rather than as an addition to the general property tax is found in the fact that the original bill provided for the entire exemption of personal property. The legislators feared that the proceeds of the income tax would not compensate for the losses which would result, and it was decided that the taxation of tangible personal property should be continued, but that the taxes paid should be allowed as "offsets" against the income tax, in the manner described above. Intangibles were exempted, however, together with certain classes of property which had proved to be particularly difficult of assessment, such as household goods and furnishings, farm machinery, implements and tools, and certain other minor classes of tangible personal property.

The gloomy predictions of the early failure of the Wisconsin income tax came to nothing. The constitutionality of the law was soon attacked, but it was upheld.[1] In 1913 it became necessary to make the change in the method of taxing the income of corporations which has been described, but otherwise the law remained unchanged in its essentials until 1919. The so-called "inquisitorial" character of income tax legislation, which was made the basis of one of the arguments used against the tax, as a matter of fact was rarely resented. Little evidence has been found of attempts to defraud.[2]

From 1919 to the present a tendency to experiment with the income tax system has shown itself in Wisconsin. In 1919 the question of raising soldiers' bonuses was under consideration. The income tax, productive in the past, particularly in the later war years, seemed to offer a fruitful field, and it was agreed that the existing system could be utilized for raising a large sum of money in a very short time. During the regular session of the legislature a soldiers' bonus act was passed, containing the provision that the necessary funds were to be collected in part from income and in part from property.[3] In the case of the tax on individual incomes, the *soldiers' bonus surtax,* as it was called, was obtained by doubling the rates in each $1,000 of income with the exception of the first $3,000 of taxable income. At the same time the corporation income tax rates were doubled. This proposal came at a time when the high federal income tax rates were under a heavy fire of criticism, but the trend of popular opinion was such that a referendum brought an overwhelming majority for the tax.

[1] *Income Tax Cases,* 148 Wis. 456.

[2] K. K. Kennan, "The Wisconsin Income Tax," *Annals of the American Academy,* vol. lviii (March, 1915), pp. 75, 76.

[3] *Laws of Wisconsin,* 1919, ch. 667.

Later in 1919 a second increase was made. In a special session of the legislature an educational bonus act was passed, appropriating an amount equal to one-fifth of the original bonus to men and nurses who who served in the late war, to be used for purposes of education.[1] The second surtax was computed by adding one-fifth of the soldiers' bonus surtax to that tax in the case of both individuals and corporations. The tax was to be collected for five years.

In spite of the dangers of treating the income tax as a source of unlimited revenue to be drawn upon at will, particularly at a time when federal income taxes were under constant attack, proposals for increasing the Wisconsin income tax were put before the legislature of 1921. The place of the income tax in the state revenue system showed signs of becoming a political issue, with the conservative interests of the state aligned against the increases.

A change in the Wisconsin practice was made necessary when the United States Supreme Court rendered a decision, on March 1, 1920, to the effect that the provision of the New York income tax law which denied to nonresidents the exemptions permitted to residents was discriminatory and unconstitutional. Wisconsin had formerly permitted the individual exemptions only to residents, and although the Wisconsin Supreme Court had expressed grave doubts as to the constitutionality of the provision, action had been delayed until a concrete case should be brought. After the New York decision was rendered the tax commission considered that it was equally binding upon Wisconsin, and ruled that in computing taxable income non-residents should be allowed the same exemptions as those to which they would be entitled if they were residents of the state.

[1] Wisconsin Tax Commission, *The Wisconsin Income Tax Law* (1919), pp. 60-62.

2. *The financial history of the tax*

The Wisconsin income tax was a financial success from the first. When the law went into effect the opponents of the plan made gloomy predictions of the probable yield, and even the advocates of the tax could not guarantee that an untried revenue measure would prove its worth in the first year.[1]

> It was freely prophesied that Wisconsin would only duplicate the experiences of other states and that the amount collected would scarcely suffice to pay the cost of collection. Even the friends of the measure did not estimate the probable yield at over one million dollars, and it was realized that the administration of the tax would be attended by many peculiar difficulties in the first year of its operation. Under those circumstances there was no small surprise when it was found that the income tax levy of the first year . . . amounted to the very respectable sum of $3,591,161.46.

The record of succeeding years shows that this amount was a minimum which has been several times multiplied as changes have occurred in the taxable income of the state and as the administration of the tax has been improved. The figures for the "income tax levy" used by Mr. Kennan in estimating the productiveness of the tax must be pared down when the actual cash yield to the state is desired, for the personal property tax offset has been so extensively used in paying income taxes that the original income tax levy has sometimes been cut in half. The record of cash paid in (excluding the personal property tax offsets) during the period covered by the operation of the law is as follows:[2]

[1] Kennan, *op. cit.*, p. 73.

[2] Wisconsin Tax Commission, *Report*, 1920, p. 32.

Year of assessment (on incomes of previous year)	*Cash collections*
1912	$1,631,413
1913	1,935,847
1914	2,002,213
1915	1,906,442
1916	2,998,767
1917	6,037,719
1918	6,951,483
1919	6,243,376

The conspicuous increases which first became apparent in the collections for the assessment year 1917 were regarded by the state tax commission as "abnormal" and "due to abnormal business conditions." The commission's warning that "the permanent value of income taxation" could not be "judged by the returns for these abnormal years" [1] furnishes one of the instances of the scepticism of the possibilities of income taxation which still exists even on the part of those who support the tax.

Estimates of the financial success of the income tax in Wisconsin require the separation of the revenue from the tax on the incomes of individuals from the proceeds of the tax on the income of corporations, as the taxation of individual incomes is now regarded to be a distinct question and one which is believed to demand separate legislation. Figures furnished by the Wisconsin tax commission show that the levy on the income of individuals has formed from one-third to one-fourth of the total levy throughout the greater part of the period of the operation of the tax.[2] In the assessment of 1920 the levy on personal incomes represented almost exactly one-third of the total levy, exclusive of the amounts assessed as soldiers' bonus surtaxes. In the assessment of 1919 the corresponding fraction was one-fourth.

[1] *Report*, 1918, p. 5.

[2] *Report*, 1920, p. 61.

The real significance of the revenue from the income tax in Wisconsin can be appreciated only by means of a comparison with other income taxes, particularly the federal income tax, and with the other sources of state revenue. On the assumption that the actual cash collections in Wisconsin are derived from individuals and corporations in approximately the same ratio as the original levies, individuals paid in cash as taxes to the state of Wisconsin about $1,600,000 on incomes received in 1918. The federal government's collections on individual incomes in Wisconsin for that year amounted to $11,382,000 or about seven times as much as the state collections.[1]

A satisfactory comparison of the revenue from the Wisconsin income tax and the other sources of state revenue cannot be made, since Wisconsin distributes the major part of the proceeds of the tax to the local units instead of retaining them as a part of the state funds. If the state absorbed all the income tax receipts in addition to its ordinary revenue, the ratio of income tax collections to total state receipts would be (roughly) one to five. Even with the 10 per cent share of the proceeds which the law assigns to the state itself the surplus for the state is large. This percentage, originally intended to cover merely the cost of administration, has yielded in the last three years more than $600,000 annually, while the cost of collection was estimated at approximately $160,000 in 1919-1920.[2]

The low cost of collecting the income tax has been emphasized by the Wisconsin officials from the time when the results of the tax first became apparent. Within the first two or three years it was discovered that the 10 per cent of the proceeds which was assigned to the state not only

[1] United States Internal Revenue, *Statistics of Income for 1918*, p. 24.

[2] Wisconsin Tax Commission, *Report*, 1920, p. 65.

covered the cost of collection but defrayed the entire expense of all of the activities of the state tax commission.[1] On the basis of cash collections the cost has ranged from one to nearly three per cent.[2] On the basis of assessments this figure for the cost of collection appears very much lower. The presentation of personal property tax receipts as offsets, a practice which does away with nearly one-half of the tax payments which would otherwise be made, is a process which requires accounting and is represented by an administrative cost but which reduces the cash amounts on the basis of which the administrative costs are estimated in percentages. As a result the cost appears larger than it would otherwise be. A further difficulty in estimating the cost exactly is the fact that the local treasurers collect the income tax with practically no increase in compensation.

A second method of judging the cost of collection is that of estimating the cost of each return handled. In 1920, 206,626 individual returns and 12,000 corporation returns were filed. The cost of administration of this division of the tax commission's work, reported as approximately $160,000 for the year, means a cost per return of about $.75.

Throughout its operation the income tax in Wisconsin has been primarily an urban tax. Milwaukee alone contributes almost one-half of the revenue from the tax. Farmers paid only 13.6 per cent of the tax on 1919 incomes.[3] Probably less than one-half of the rural population is liable to the tax, for the small cash profits from farming operations and the numerous exemptions combine to exclude a large part of the agricultural population from the act. On

[1] T. E. Lyons, "The Wisconsin Income Tax," *Annals of the American Academy*, vol. lviii (March, 1915), p. 82.

[2] Wisconsin Tax Commission, *Reports*, 1914, p. 126; 1916, p. 69; 1920, p. 65.

[3] *Report*, 1920, pp. 34, 64.

the other hand, city workers with moderate incomes do not escape. The largest single number of the individuals assessed (one-fourth of the whole number) were mechanics and tradesmen. These individuals paid more than one-fifth of the total amount of taxes on personal incomes for 1919.

A comparison of the Wisconsin tax with the federal tax shows that the proportion of the income taxes paid by the poorer people is somewhat greater in Wisconsin than in the country as a whole,[1] a fact which is the natural consequence of the lower exemptions under the Wisconsin law and of the fact that Wisconsin is the state of residence of relatively few of the largest individual income taxpayers in the country.

Another anomaly which has been observed in Wisconsin has a wholly different origin. The provision of the Wisconsin law that 70 per cent of the income taxes derived from property or business in a given locality shall be paid to the district has resulted in curious situations in certain rural districts where few individuals are liable to the income tax.[2] Heavy income taxes were paid in certain small rural districts of this kind as the result of the operations of manufacturing establishments located within their borders. The local communities contributed little to the income of such establishments, but in a few cases they received extravagantly large sums when the proceeds of the tax were distributed, particularly during the war boom. The appropriation of a larger part of the proceeds of the income tax by the state and the limitation of the amount payable to a locality to a certain percentage of the assessed valuation are two of the remedies which have been suggested.

[1] *Cf.* United States Internal Revenue, *Statistics of Income for 1918*, p. 21, and Wisconsin Tax Commission, *Report*, 1920, p. 33.

[2] T. E. Lyons, "Distribution of Income Taxes to Localities," *Bulletin of the National Tax Association*, vol. v, no. 3 (Dec., 1919), pp. 73-75.

3. *The outlook for the income tax in Wisconsin*

After nearly a decade of operation the success of the income tax in Wisconsin seems to be beyond question. The statement of the state tax commission in 1918, made without foreknowledge of the extensions which the tax was to undergo in 1919, shows an appreciation of the productive power of this form of taxation.[1]

> Results have been satisfactory. . . . The increase in the tax is not confined to any particular locality or localities but is general throughout the state. The gradual and steady increase under normal conditions is doubtless due, first, to the fact that under such conditions there is a steady growth in business from year to year throughout the state and, second, because of the increased efficiency in administration. The conclusion from the foregoing is that a constant increase in revenue from income taxation may be confidently expected, subject of course to fluctuations due to occasional abnormal expansion or contraction of business.

The policy of utilizing the income tax to raise large sums of money for purposes other than the permanent needs of the state and the localities has already been questioned. Aside from the difficulties of assessing and collecting these taxes—difficulties which proved to be serious for the Wisconsin officials, owing largely to the haste in which the work was required to be done—the raising of such funds as temporary soldiers' bonuses through this means may tend to produce dissatisfaction with the tax. The separate reference to the Wisconsin tax as the "soldiers' bonus surtax" is a minor aspect of the matter which has undoubtedly made clear the purpose of the additions and prevented unthinking dissatisfaction on the part of the least informed of the taxpayers. Even with all possible care, however, it is dangerous to regard incomes as an unlimited source of revenue for all purposes.

[1] Wisconsin Tax Commission, *Report*, 1918, p. 5.

In order to reach the maximum efficiency the state tax commission held that the Wisconsin income tax law as it stood at the opening of the year 1921 must be amended in several important particulars. The most pressing necessity was believed to be that of the repeal of the provision allowing the personal property tax offset in the payment of income taxes. The tax commission urged the repeal of this provision in its biennial reports of 1916, 1918, and 1920. This provision, originally incorporated in the law "with the idea of accomplishing without too violent a shock to taxing machinery the substantial elimination of personal property taxation and the substitution therefor of ability taxation" came to be considered an incongruous feature of the tax system. The ninth biennial report of the state tax commission contained a description of the inequalities which resulted from the retention of the provision: [1]

> The absurdity of requiring taxpayers to make elaborate and complicated reports of their income and of maintaining an expensive organization to assess it, only to have the result nullified by the presentation of personal property tax receipts, is too plain to require argument. If it is the settled policy of the state to tax personal property, then no reason is apparent why the owner thereof should be favored as compared with the owner of real estate. To do so is to perpetuate discrimination between the owners of different classes of property.
>
> Aside from this inequality the offset provision offers constant inducement to false classification in making the assessment. It is to the interest of those having income taxes to pay to have as large a personal property offset as possible, and local assessors are constantly urged to assess fixed machinery, permanent buildings on leased land and other forms of real estate as personalty for the purpose of offset.

The urgent appeals of the commission were not without effect, and at the time of the 1919 session of the legisla-

[1] Wisconsin Tax Commission, *Report*, 1918, p. 7.

ture the taxation committee of the assembly held hearings on the question of repealing the offset provision. The business interests of the state appeared to be almost united in opposing the repeal. The principal argument against the repeal was that it would greatly increase the taxes of the persons with large incomes.

The report of the state tax commission for the year 1920 contained a detailed summary of the arguments for the repeal of the offset provision, reinforced by statistical summaries of the effect of the use of the offset upon cash collections from the income tax.[1] This summary shows that in the course of the eight years of the collection of the income tax $23,000,000 or more than 43 per cent of the collections on income taxes was paid by the presentation of personal property tax receipts. The provision was made use of more extensively in the cities than in the towns and villages.

The offset provision was acknowledged to have been introduced to facilitate the elimination of the personal property tax through the income tax. It was assumed that upon the passage of the income tax law the taxation of personal property in Wisconsin would be practically eliminated. Experience through a period of years showed, on the contrary, that the income tax with the adjunct of the offset was in no way displacing the personal property tax. The assessment of personal property steadily increased after the income tax law was adopted

The objections urged by the state tax commission in 1920 was summarized as follows:

> *First,* the offset provision is entirely foreign to any true conception of income taxation and tends to defeat rather than to promote that form of taxation.
>
> *Second,* it is wholly inconsistent with "ability taxation."

[1] Wisconsin Tax Commission, *Report*, 1920, pp. 31-43.

Third, it deprives the state and the municipalities therein of large revenue to which they are justly entitled.

Fourth, it favors those best able to pay and is discriminating between taxpayers.

Fifth, in administration it entails a waste of public funds.

Further changes in the Wisconsin income tax law recommended to the legislature of 1921 were as follows:

The incorporation in the Wisconsin law of a provision taxing all the incomes of residents whether earned at home or abroad.

A change in the section providing for family exemptions so that the Wisconsin law might be brought into harmony with the decision of the Supreme Court of the United States [1] declaring the denial of exemptions to non-residents discriminatory and the provision therefore null and void.

The taxation of bank dividends under the income tax law.

An increase in the rate of tax on individual incomes to correspond at least with the rate in force on corporation incomes.

In addition, the question of including under the income tax law the considerable number of groups of corporations whose income was wholly exempt from taxation by express statute—namely banks, public service corporations of all kinds, and several other groups—was submitted to the legislature for consideration.

The occasion for the reconsideration of the exclusion of certain large classes of corporations from the income tax is to be found in the fact that the period of declining incomes has arrived, according to the state tax commission. Since the original income tax law was adopted the character of succeeding income tax legislation has been progressively limiting to the scope of the law. New deductions have

[1] Travis *vs.* Yale & Towne Manufacturing Co., 252 U. S. 60.

been granted, old deductions have been enlarged, and the term "income" has been restricted so as to exclude receipts which were previously taxable. The tax commission does not criticise the individual amendments in particular, but emphatically calls attention to the fact that "almost any amendment offered which would in any way lighten the burdens of income taxpayers has been enacted, while amendments suggested that would tend to increase the revenue from income taxation have been rejected." It is plain, the report continues, that "if this process of elimination of taxable incomes goes on long enough and no substitute is adopted, the Wisconsin income tax law will become a mere shadow." [1] With the decline in incomes after the return to peace conditions there is liable to be a falling-off in the net returns from the income tax unless this trend of legislation is recognized in all its aspects and steps are taken to counterbalance it. For this reason several of the recommendations made to the legislature of 1921 are concerned with methods of expanding the revenue from the income tax.

The movement to include under the tax all income of residents wherever derived is one which, if successful, will bring Wisconsin into line with the states which have recently adopted income taxes. Even Massachusetts and North Carolina, which tax income of specified kinds only, apply those taxes to the income of residents whatever the source from which such income is derived.

The commission's recommendation that the rate of taxation on individual incomes should be increased to correspond with that on corporation incomes has little to support it at the present juncture. The commission "can see no reason why an income whether received by a corporation and individual should not bear the same rate just as the same rate

[1] *Report*, 1920, p. 46.

of taxation is applied to real and personal property whether owned by an individual or corporation."[1] The inapplicability of a comparison between income and property for purposes of taxation according to ability is generally admitted, however, and needs one exposition here. The objections to the commission's plan are two: first, the rates on individual incomes are already unusually high in Wisconsin, and their increase at a time when the federal rates are still high is of extremely doubtful expediency; second, the justice and desirability of the imposition of identical rates for individual and corporate incomes are not matters which can be so easily settled. The committee on model taxation is of the opinion that the "business tax" (in effect largely a corporation income tax) should be regarded as a mode of taxation quite distinct from the taxation of personal incomes, and that different scales of rates are justifiable. The committee's suggestions for the proposed business tax in almost no way correspond to the present corporation income tax in Wisconsin, a fact which suggests that using this tax as a kind of norm might be fraught with difficulty in the future.

Although the Wisconsin income tax is undoubtedly in need of certain amendments along the lines of some of those which have been suggested by the state commission, in order to be brought into adjustment with present income tax practice in this country and with financial affairs within the state, the success and the historical significance of the law can hardly be overestimated. The leaders of the income tax movement took a bold step at a time when the state income tax was in disrepute in this country among the men who had tried to administer it and among the students of taxation who had analyzed its history as a revenue-producer. With the use of great skill and a willingness to learn from the

[1] *Report, 1920*, p. 45.

experience of other states anad other countries, the first law was drafted in such a way that the principal pitfalls of American state income taxes of the past were avoided: the rates were made sufficiently high, the tax was made a general income tax, and a new type of centralized administration, safeguarded from political exploitation as far as possible, was devised. In view of the care with which the system was planned, it is not strange that Wisconsin was the first state to make the income tax a smoothly working fiscal measure and at the same time a source of great revenue.

The excellence of many of the provisions of the original Wisconsin law is now widely recognized. In the preparation of a draft of a model personal income tax law (Appendix II) the National Tax Association's committee on a model system of state and local taxation utilized many portions of the Wisconsin law, and followed fairly closely the outline of administration which has been perfected in Wisconsin, for it is this field that Wisconsin's contribution has been the greatest. The best modern opinion has now turned against rates as high as those used in Wisconsin, is opposed to limiting the incomes taxed to those derived within the state, and is unconditionally against the use of such devices as the personal property tax offset; but the superiority of Wisconsin's administrative machinery has never been questioned. It would hardly be an exaggeration to say that the success of state income taxes in the last few years of their history has been due largely to the adaptation and use of the plan of centralized and specialized administration of the state income tax which was first used by Wisconsin in 1911.

CHAPTER III

The Taxation of Incomes in Mississippi and Oklahoma

The adoption of the income tax by Wisconsin in 1911 had far-reaching consequences for other states as well as for Wisconsin itself, but these influences required time in which to make themselves felt. The law which was the immediate successor of the Wisconsin income tax law, that of Mississippi, showed no traces of the experiment which was going on in the north. Mississippi, unlike many of the southern states, had had no experience with the early faculty taxes or with Civil War income taxes. Property taxes and privilege taxes made up the greater part of the revenue. The latter proved unsatisfactory and unequal, as they have so generally become where they are extensively used, and in 1912 it was decided that the income tax should be tried out. Unfortunately the tax was modelled after that of the nearest neighbor with an income tax, Oklahoma, which had been trying to collect a tax of the older type, and the Wisconsin devices were ignored. Apparently the law was handicapped from the beginning. In addition to the defects of the Oklahoma type of law to which Mississippi fell heir, the Mississippi law of 1912 contained an error in phrasing which could not be remedied until 1914,[1] so that its operation was delayed.

[1] *Laws of Mississippi*, 1912, ch. 101; 1914, ch. 116.

1. *The present Mississippi tax*

By the terms of the act of 1912, which is still in force, a tax of one-half of one per cent is levied upon all individual incomes in excess of $2,500. Expenses of doing business and *ad valorem* taxes paid may be deducted from income. The proceeds go to the general state fund. The enforcement of the law and the other duties of administration are left to the state auditor and the regular county assessors.

The Mississippi income tax has never yielded a large revenue. Before 1918 the tax could never be counted upon to yield more than $25,000.[1] In later years, with the growth of money incomes in the country, the receipts have more than doubled, but they still form only a very small percentage[2] of the total tax receipts of the state.

Year	*Income tax receipts*[3]
1918	$31,123
1919	51,426
1920	68,877

The small return from the income tax in Mississippi is brought out even more clearly by a comparison with the amounts collected in Mississippi by the federal government in a corresponding period. The federal income tax receipts from the state for 1918 were $3,542,849,[4] or more than 100 times as great as the state collections.

The cost of administering the income tax in Mississippi is not separately calculated, for the matter is handled by officials who are elected for other duties. That part of the

[1] *Joint Report of the (Mississippi) Senate and House Committee to Consider the State's Revenue System and Fiscal Affairs, Submitted to the Regular Session of 1918*, p. 42.

[2] One per cent in 1918.

[3] *Statement of the Auditor of Public Accounts*, January 18, 1921.

[4] United States Internal Revenue, *Statistics of Income for 1918*, p. 24.

tax which is collected by the revenue agent costs 20 per cent of the amount collected (the revenue agent's commission) and the remaining 80 per cent is turned over to the state.

2. *Efforts to reform the Mississippi law*

The Mississippi income tax law was regarded as a failure almost from the first and repeated efforts have been made to substitute a more effective measure. The Senate and House Committee on Revenue which reported in 1918 recognized the fact that changes in income tax practice had come about since 1912, and recommended sweeping changes: [1]

> The present income tax law of Mississippi should be repealed outright. We recommend the passage of a law with progressive rates, taxing incomes of both individuals and corporations. . . . The law we submit is an adaptation of the Wisconsin and Federal income tax statutes to Mississippi conditions. . . . It is necessary that the State Tax Commission be given administration of the law, and that they should be provided with funds to administer it properly. Its success or failure is solely a matter of administration.

Meanwhile the state tax commission was exposing the defects of the existing tax system and advocating a net income tax to reach business incomes, with the necessary administrative provisions, as a substitute for privilege taxes.[2]

A bill embodying the recommendations of the Joint Committee was introduced in the legislature of 1918, and was passed in the house but defeated in the senate. The state tax commission at once resumed its persevering appeals for the abolition of the existing law, urging that the repeal was desirable even if a better law could not be substituted.[3]

[1] *Joint Report*, pp. 41, 42.

[2] Mississippi Tax Commission, *Report for 1917*, pp. 11, 20.

[3] Mississippi Tax Commission, *Report for 1919*, pp. 31, 32.

The Legislature would do well to substitute an income tax for the privilege tax. It might be well for this to be done by degrees in order that the State will not be denied any needed revenue. A tax on business should be measured by the net amount of the income of the business. . . . The imposition of an income tax along with the ad valorem tax will reach practically all who should contribute funds for the support of the State Government. With the offset of one against the other, there will not be double taxation.

At the same time the commission expressed its criticism of the state privilege taxes and of the methods of taxing personal property. The privilege taxes were described as imposed on business unequally and therefore unjustly. For example, "a lawyer who has a practice of one thousand dollars per annum pays as much as one who has a practice of twenty thousand dollars per annum." The personal property taxes in their turn are in a confused state. The method of taxing money penalizes the honest man; that of taxing deposits has driven large sums into other states, and the burden is borne by land and tangible property. "There are professional men, making enormous incomes, who pay nothing, practically, because they own no tangible property. Their deposits, cash on hand and customer's accounts cannot be found by the Assessor." [1]

In spite of the urgent recommendations of the state tax commission, repeated from year to year, the legislature of 1920 not only failed to change the income tax law of the state, but even increased the taxes on some privileges more than 100 per cent, with an average increase of 40 per cent.[2] The inadequate personal income tax law of 1912 still stands, therefore, along with the unsatisfactory system of privilege and property taxes.

[1] *Ibid.*, p. 32.

[2] *Bulletin of the National Tax Association*, vol. v, no. 9 (June, 1920), p. 271.

Assistance appeared from an unexpected quarter when the supreme court of the state, in a decision announced early in 1921, held that corporations were subject to the tax. Reference was made to a statute defining a "person" (the term used in the income tax law) as including a corporation. Little additional revenue could be expected in the immediate future, however, as the result of this decision. The question of ascertaining income derived within the state was left untouched, and complications seemed certain to arise. Moreover, the allowance of an offset for *ad valorem* taxes paid destroys much of the efficacy of the tax.

The future of the income tax in Mississippi is uncertain for another reason. It is true, as the state tax commission admits in advocating the adoption of a tax law along the newer lines,[1] that the state cannot expect to have the success with an income tax which manufacturing states have had. Mississippi is largely an agricultural state, and the farmer's inability to state his exact income is proverbial. If taxable incomes from agricultural sources are to be arrived at, a competent corps of accountants must be provided. On the other hand, the success of the federal government in taxing incomes of this kind is breaking down much of the scepticism which previously existed. Accounting methods have undoubtedly improved in Mississippi, as elsewhere. The federal government had nearly 20,000 returns from Mississippi in 1918, with a reported net income of more than $70,000,000.[2] If these returns were utilized by the state, as the tax commission has urged, the state income tax could be made far more effective.

[1] *Report for 1919*, p. 32.

[2] United States Internal Revenue, *Statistics of Income for 1918*, pp. 22, 23.

3. *The history of the Oklahoma tax*

The third state to enact important income tax legislation in this period was Oklahoma, which passed a new law in 1915. Oklahoma already had an income tax law of the older type, which had been provided for at the time of the organization of the state government. The constitution adopted in 1907 included a provision for graduated income taxes,[1] and a law imposing a professional income tax was passed almost immediately.[2] According to the terms of this law a graduated tax was laid on all incomes from salaries, fees, professions, and property in excess of $3,500 upon which a gross-receipts or excise tax had not been paid. The law applied to personal incomes only. The rates progressed from one-half of one per cent on incomes from $3,500 to $5,000 to three and one-third per cent on amounts in excess of $100,000.

The income tax law of 1907-1908 was unquestionably a failure. The law was unpopular with the taxpayers, the machinery for enforcement was lacking, and the returns were negligible. In the first four years of its operation the state received less than $5,000 annually in income taxes. After recording the insignificant amounts yielded by the tax during the whole period of its operation, the state auditor urged in 1912 that the law should be thoroughly revised or repealed.[3]

> The law has, in my opinion, proven a failure as a revenue producer for the State. . . . No uniformity prevails in making income tax returns — there were as many definitions for the term "gross income" as there were persons examined. . . . This is a

[1] *Constitution of the State of Oklahoma*, art. x, sec. 12.

[2] *Laws of Oklahoma*, 1907-08, ch. 81.

[3] *Third Biennial Report of the State Auditor of Oklahoma*, 1912, pp. 235, 236.

chaotic condition and unless the next Legislature deems it advisable to amend the law "in detail" I would recommend that the act be repealed.

After repeated recommendations of this kind had been made, the legislature of 1915 undertook a drastic revision of the whole income tax law.[1] The tax was applied to the entire net income of each and every person in the state and to income from property owned or business carried on in the state by persons residing elsewhere. Deductions for ordinary business expenses, taxes, losses, and bad debts were permitted. The exemptions were $3,000 for the individual $4,000 for husband and wife together, $300 for each child under 18, and $200 for each other dependent. The allowance for a child or dependent became $500 for each child or dependent engaged solely in acquiring an education. The proceeds were assigned to the current expenses of the state government. The administration remained in the hands of the state auditor.

The following schedule of rates was adopted:

Taxable income of individuals	*Rate (per cent)*
1st $10,000	1
Next $15,000	2
Next $25,000	3
Next $50,000	4
Additional amounts (*i. e.*, above $100,000)	5

In 1917 the rates were decreased and the following schedule was adopted:[2]

Taxable income of individuals	*Rate (per cent)*
1st $10,000	.75
Next $15,000	1.50
Additional amounts (*i. e.*, above $25,000)	2.00

[1] *Laws of Oklahoma*, 1915, ch. 164.

[2] *Laws of Oklahoma*, 1917, ch. 265.

The law remained in other important respects the same, and is still customarily referred to as the law of 1915.

Increased collections immediately resulted from the changes made in 1915. The tax yielded slightly more than $250,000 for the year 1915 and over $400,000 for the year 1916. The amount yielded for 1916 was greater than the combined collection of the preceding seven-year period. The collections in 1919 (on 1918 incomes) reached approximately $500,000,[1] or about seven per cent of the state's receipts from taxes for 1918.[2] The cost of collection is probably between two and three per cent of the amount collected.[3]

Oklahoma is obviously one of the poorer states, and large sums from income taxes cannot be expected. Judged only by *relative* standards, however, the state income tax is not a prime source of revenue. Oklahoma is collecting only about one-fifteenth as much as the federal government collects from income taxes in the state,[4] while Wisconsin collects one-seventh as much. The state has continued to exhibit a desire to improve its revenue system, however, and to experiment with new devices; so that the agitation for the revision of the income tax which sprang up again in 1921 may still result in a tax law of the modern type.

The right of the state of Oklahoma to tax the incomes of non-residents has been repeatedly questioned. A decision of the United States Supreme Court rendered March 1,

[1] Oklahoma State Auditor, *Statement*, April 3, 1920.

[2] United States Bureau of the Census, *Financial Statistics of States*, 1918, p. 70.

[3] Estimated from figures furnished by the Oklahoma State Auditor, April 3, 1920.

[4] $7,649,280 in 1918. (United States Internal Revenue, *Statistics of Income for 1918*, p. 24).

1920, established the validity of the Oklahoma law.[1] In the case under consideration, the right of the state to tax the income from the oil properties in Oklahoma of a resident of Illinois was questioned. It was stated by the court that in our system the states have general and except as limited by the federal constitution, complete dominion over all persons, property and business transactions, within their borders. They are not restricted to property taxes nor to any particular form of excises. To debar the state from exacting a share of the gains derived within its borders " is a proposition so wholly inconsistent with fundamental principles as to be refuted by its mere statement." Just as a state may impose general income taxes upon its own citizens and residents, it may levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the state, or their occupations carried on therein.

The failure of income taxes to become large revenue-producers in such states as Mississippi and Oklahoma is not to be explained wholly by the form of administration, important as that feature has been recognized to be since the inauguration of the Wisconsin system in 1911. In communities which are largely agricultural the collection of large sums will probably always be difficult, for two simple and widely known reasons: the farmer's income is largely in commodities, not money, and he is proverbially unsystematic in account-keeping. A third reason may perhaps be found in the fact that up to the present economic life has been so organized that it is in industry, commerce, and finance, not in the various forms of agriculture, that the

[1] Charles B. Shaffer *vs.* Frank C. Carter, State Auditor, and Abner Bruce, Sheriff of Creek County, Oklahoma, U. S. Supreme Court, March 1, 1920, summarized in *Bulletin of the National Tax Association* vol. v, no. 6 (March, 1920), pp. 180-183.

hugest fortunes are made, so that a community which derives its income from the soil is almost always a community of modest incomes.

Even with the necessary qualifications, however, an income tax may be the lesser of two tax evils. The tax on intangible personal property becomes "a penalty on honesty and a premium on dishonesty," in the words of the Mississippi tax commission, even in these non-manufacturing states. The southern states would do well to look more closely into the matter of income taxes suitable for local conditions, for dissatisfaction with the general property tax is increasing throughout the country and this dissatisfaction is no respecter of states.

CHAPTER IV

The Massachusetts Income Tax

The income tax law of Massachusetts was passed in 1916, five years after Wisconsin made its epoch-making experiment, and was the first measure which proved in any way comparable to that of the latter state.

1. *The earlier taxation of incomes*

Legislation providing in one form or another for the partial taxation of incomes has been continuously on the statute books of Massachusetts since colonial times, although the early faculty tax in Masssachusetts bore little relation to the modern income tax.[1]

In 1634 there was enacted in the Colony of Massachusetts Bay the first general tax law in any American colony, and included in this act was a provision for the assessment of each man "according to his estate and with the consideration of all other his abilityes whatsoever". . . . Gradually the faculty tax developed from its original form to an express provision for the taxation of income from a profession, trade, or employment in excess of a given sum. This exemption was fixed at $600 in the act of 1849, raised to $1,000 in 1866, and in 1873, as the result of a compromise with those who were then making an endeavor to have the tax entirely repealed, was changed to $2,000, at which figure it remained until the present income tax act.

In the latter part of the nineteenth century the tax situa-

[1] Massachusetts Tax Commissioner, *Report*, 1917, p. 5.

tion in Massachusetts became serious.[1] The general property tax was becoming less and less satsfactory. In the period from 1879 to 1900 the tax rates showed heavy increases, and real estate valuations were increased as a result. Tangible personal property was seriously affected, except where it could escape by incorporation. Intangible personal property escaped taxation in several ways. It showed a greater tendency to leave communities in which tax rates were high and to concentrate in certain residential towns in which the taxpayers had a high degree of control over the amount of their assessments. The wealthiest residential towns of the state became more and more favored in their revenue from personal property and from corporation and bank taxes. According to Professor Bullock "it is probable that the student of taxation would have difficulty in finding elsewhere such extreme concentration of taxable resources as was gradually brought about in Massachusetts after 1865."[2] In a variety of ways it was possible to evade the assessment of personal property without a change of domicile. As a result personal property paid a decreasing proportion of the local taxes. The percentage which the personal property assessment formed of the total local assessments declined from 36.0 in 1850 to 21.8 in 1907.

During this period of continually increasing complications in the tax system of Massachusetts the income tax was several times under consideration, but it was generally regarded as an isolated survival of an older order, whose usefulness had become questionable, rather than as an immediate and practical remedy for the disease with which personal property taxation was suffering. In 1870 the in-

[1] C. J. Bullock, "The Taxation of Property and Income in Massachusetts," *Quarterly Journal of Economics* vol. xxxi, no. 1 (Nov. 1916), pp. 24 *et seq.*

[2] Bullock, *op. cit.*, p. 28.

come tax was brought into the public attention by a court decision that the profits of merchants who employed taxable property in their business were not exempt from taxation as derived from property already taxed although for a number of years previous such property had been considered to be exempt.[1] This decision led to the movement noted above to repeal the tax, and to the resulting compromise of an exemption limit raised to $2,000. In 1875 a special commission on taxation reported that the income tax was assessed in only a few localities and that the revenue yielded was inconsiderable. Enough of a sentiment was found in its favor to prevent a recommendation for repeal, and it seems to have been recognized that even with its imperfections it was of some importance in reaching the ability of persons who were inadequately taxed under the general property tax. It is interesting to note that at this early date a discovery was made which did not reach fruition until another state began afresh more than a quarter of a century later: the Massachusetts committee of 1875 reported that the system suffered by local administration and recommended a "central supervising department of taxes." Unfortunately the recommendation was not followed, and the income tax fell into still greater disrepute. Severe criticism of the injustice and inequality with which the tax operated was expressed by a committee of Boston business men in 1889 and by a committee of the city of Boston in 1891.[2] In 1893 the subject was again taken up by a legislative committee, and the questions of taxing both income and the property from which it was derived and of the local inequalities in the assessment of the tax were again gone over. Once again, however, the committee reported against the repeal of the tax.

[1] Seligman, *op. cit.*, p. 391, *et seq.*

[2] *Ibid.*, pp. 393, 394.

In 1897 the income tax was again investigated by a taxation commission. Figures showing the inadequacy of the assessment of income in comparison with the assessment of personalty in the state were presented, and the possibility of substituting a new general state income tax for the increasingly unsatisfactory property tax was discussed. This commission was composed of able men in the tax field, and it was almost the first to recognize and to express clearly the relationship of the taxation of income to the taxation of property. Nevertheless the commission concluded that the traditions and habits of the country at the time were not such as would facilitate the administration of an income tax and reported against its adoption. For a number of years after this carefully-framed report was rendered the question of the abolition of the old tax and the introduction of a general state income tax received little attention in Massachusetts. The situation with regard to the taxation of personal property was growing steadily worse but interest was centered on minor reforms in the assessment of property taxes rather than on fundamental changes.

The requirements of the law as it stood at this time were briefly as follows: [1]

> [Personal estate for the purposes of taxation shall include:] . . . Fourth. The income from an annuity and the excess above $2,000 of the income from a profession, trade or employment accruing to the person to be taxed during the year ending on the first day of April of the year in which the tax is assessed. Income derived from property subject to taxation shall not be taxed.

As the terms of the law indicate, the rate of taxation upon income was not fixed, but was the same as that for other property taxed under the law. Moreover, great freedom of interpretation was given to the local taxing units,

[1] *Laws of Massachusetts*, 1909, ch. 490, part I, sec. 4, as amended.

and so long as the units made up their part of the total state tax there was no pressure upon them to enforce that particular part of the law under which personal incomes were subject to taxation. As a result the scope of the tax was narrow, the returns insignificant and irregular, and the operation of the law unfair and erratic. As late as 1914 a critic comments as follows:[1]

> The assessment of salaries and personal incomes has virtually disappeared, except in an occasional instance of a college professor or of a state official, and in the few cases where business incomes are assessed at all, the assessment is added to the personal property tax and does not figure separately on the tax books. What is therefore still called the income tax in Massachusetts is nothing but an equal and entirely arbitrary additional assessment upon a few members of the professional classes and a few large business men selected at haphazard in Boston and one or two other towns.

In 1911 the new point of view with regard to state income taxes which was making itself apparent in Wisconsin in the passage of an income tax law showed itself in Massachusetts in the governor's recommendation to the legislature of the adoption of an income tax. It was plain that opinion everywhere was changing. Such a proposal as that which was made in Massachusetts was probably made possible by the submission to the states of the 16th amendment (providing for a federal income tax). The governor's recommendation met with less opposition than was at first anticipated, but the difficulties of framing a satisfactory income tax law were advanced in many quarters as reasons for prolonging the old system of taxation of personal property. The question of a progressive rate and that of the exemption from taxation of property taxed under the income tax proved particularly troublesome. Meanwhile Wisconsin was furnishing an example of the

[1] Seligman, *op. cit.*, p. 397.

possible use of a state income tax and public opinion was being molded from within the state by the annual reports of the state tax commissioner and by various organizations representing special interests. In 1914 a constitutional amendment permitting the levy of a proportional income tax but not containing a requirement that property taxed upon its income must be exempted from other taxation passed both branches of the legislature. In 1915 the amendment was again passed by the legislature, and in November of that year it was ratified by the people.[1] The legislature of 1915 had appointed a special commission to draft an income tax law. This commission utilized a bill prepared by the Massachusetts Tax Association which was in large part the work of Professor Charles J. Bullock of Harvard University, and after introducing changes which it considered desirable presented it to the legislature of 1916. The bill became law in the spring of that year,[2] in so workable a form that in the succeeding years only minor amendments have been made.

The Massachusetts income tax law, unlike the Wisconsin law and the majority of the laws which were subsequently passed, is not a law applying to all kinds of income. It taxes only specified kinds of income, and in order to avoid double taxation, exempts the classes of income from real estate, dividends of Massachusetts corporations, income from savings bank deposits, and interest on mortgages secured by Massachusetts real estate for an amount equal to the mortgage. The tax on intangible personal property was abolished.

[1] *Laws of Massachusetts*, 1916, 44th Amendment to the Constitution, pp. 50, 53.

[2] *Laws of Massachusetts*, 1916, ch. 269. (An Act to impose a tax upon the income received from certain forms of intangible property and from trades and professions.)

The classification of the incomes taxable, together with the differing rates, produces a separation of earned and unearned income, with a higher rate of taxation upon the latter.

The four kinds of income taxed under the Massachusetts law are as follows:

I. *Income from intangibles,* taxed at *six per cent.* (For the years 1918 to 1921 inclusive, the rate is six and one-half per cent).[1] The only exemption is the provision that persons whose income from all sources is less than $600 may claim an exemption of $300.

2. *Income from annuities,* taxed at *one and one-half per cent.* There is a possible exemption of $300, as in the case of intangibles. (Annuities were formerly taxed locally at varying rates).

3. *Net gains from dealings in intangibles,* taxed at *three per cent.* This applies alike to professional dealers in securities and to speculators and private investors.

4. *Income from professions, employment, trade, or business,* taxed at *one and one-half per cent.* (For the yours 1918 and 1919 the rate is two and one-half per cent).[2] Exemptions are permitted of $2,000 for the individual, $2,500 for husband and wife, and $250 for each child under 18 or dependent parent, with a total aside from that of the original $2,000 for the individual, of not more than $1,000. In addition to the above taxes, a "war tax" of 10 per cent of the taxes paid was required for the years 1918 and 1919.[3]

The act applies to inhabitants of Massachusetts, to Massachusetts partnerships, to estates of deceased persons, and

[1] *Laws of Massachusetts,* 1919, ch. 342.

[2] *Laws of Massachusetts,* 1919, ch. 324.

[3] *Laws of Massachusetts,* 1918, ch. 252.

to estates held in trust. Taxes upon estates, partnerships, and trustees and other fiduciaries are imposed only to the extent that the income accrues for the benefit of an inhabitant of Massachusetts.

The act itself does not apply directly to corporations, but domestic corporations are subject to a tax of two and one-half per cent, similar to the tax on incomes from professions, employment, trade, or business described above.[1] This tax is called an excise tax on net income.

Massachusetts followed the example of the only state which up to 1916 had made a financial success of an income tax law,—Wisconsin—and centralized the administration. The tax commissioner, who was charged with the administration of the tax, was authorized to appoint an income tax deputy to have general charge of the taxation of incomes. The state was to be divided into districts, with an income tax assessor for each district. Professor Bullock comments as follows upon the type of administration decided upon:[2]

> It was not to be expected that the tax would work well if administered in approximately three hundred and fifty ways by approximately three hundred and fifty local boards of assessors; and Massachusetts acted wisely in turning the work over to the Commonwealth. During the fifty years of its existence the tax commissioner's department has been administered in a manner that has commanded general confidence, and all that needed to be done was to add to its equipment a new bureau charged with the assessment and collection of the income tax.

Massachusetts adopted a system of information at the source but which has worked fairly satisfactorily. Every employer was required to report concerning those persons

[1] *Laws of Massachusetts*, 1919, ch. 355.

[2] Bullock, *op. cit.*, p. 57.

to whom more than $1,800 had been paid during the previous calendar year. Corporations doing business in the state were also required to report the names of their shareholders, and others to whom they made payments.

At the time when the terms of the Massachusetts law were worked out the complications of the problem of distributing the yield of the income tax were not as clearly recognized as they are at the present time; but the local difficulties of assessing the personal property tax had been so great and so conspicuous that pressure from that direction resulted in a carefully made plan for the use and disposition of the revenue. During the first years of the operation of the law the local taxing units were reimbursed according to a carefully worked-out formula for the losses which they were assumed to have suffered by the elimination of the old tax on intangible personal property. The balance was then distributed to the cities and towns on the same basis as the assessment of the state tax. Expenses of administration were subtracted before the distribution was made. This scheme was admittedly only temporary, and in 1919 a scheme was adopted by which a gradually decreasing amount of the proceeds of the income tax should be distributed in reimbursement for losses from the personal property tax, and a correspondingly increasing amount should be distributed in proportion to the amount of the state tax.[1] After 1928 the whole amount of the revenue from the income tax was to be distributed according to the amount of the state tax assessed. This plan was interfered with by a law passed shortly after it was adopted,[2] as a part of the education act. According to the terms of this law a permanent plan of reimbursement to

[1] *Laws of Massachusetts*, 1919, ch. 314.

[2] *Laws of Massachusetts*, 1919, ch. 363.

the cities and towns for school expenditures was adopted. A scale of partial reimbursements for salaries according to the amounts received by teachers and other educational officials and a second scale of reimbursements graduated according to the ratio of the valuation of real and personal property to net average membership in public day schools, so that the towns with the smallest valuations in proportion to school attendance should receive the largest amount of assistance, were adopted at the same time. About $4,000,000 was distributed in this way, with excellent results as far as the raising of teachers' salaries was concerned. The distribution was regarded as inadequate by the state commissioner of education, and early in 1921 a movement for a distribution of an additional $3,000,000 of the proceeds of the income tax was gathering strength in Massachusetts. The movement was opposed by residents of Boston on the ground that in this way Boston was assessed for the benefit of cities and towns which should bear their own educational burdens, and defended by educational officials and farming interests, who urged that the burdens of the schools upon the cities and towns should be equalized and the work standardized. The difficulties of attaining fair and satisfactory distribution of income tax funds are brought out clearly by the argument in Massachusetts. In this state, as elsewhere, the advantages of a distribution to the localities and the consequent obviousness of the lightening of the tax burden seem in part to be outweighed by the local controversies as to the justice with which the distributon is effected in practice.

The elasticity of the income tax is recognized in Massachusetts as it is in Wisconsin. The legislature of 1919 turned to it for resources with which to meet a temporary financial emergency,—the obligations assumed by the commonwealth towards ex-soldiers—and increased the rate on

business incomes by one per cent, and the rate on income from intangibles by one and one-half per cent, as noted above. The legislature of the previous year had ordered an increase of 10 per cent of the taxes paid for the year, thus increasing the yield by $1,237,057.[1] These experiments are not as radical as those made by Wisconsin, which doubled the greater part of the scale of rates, but they are important enough to render the tax unnecessarily unpopular. The purpose of an addition to an existing tax is readily lost sight of, and the tax appears unduly burdensome; while a special tax imposed for such a purpose as that of raising funds to pay a soldier's bonus operates to keep the particular emergency clearly in mind. Changes in the rate of the income tax in order to make the final adjustment between estimates of expenses and receipts ordinarily arise from a situation of another kind,[2] and might prove more satisfactory. Such a policy has been used in Great Britain in determining the rates of the income tax, and might, with a satisfactory budget system, prove feasible in this country.

2. *Financial results in Massachusetts*

The income tax in Massachusetts has been a conspicuous success from a financial point of view. The rates are moderate, except for the income from intangibles, and they include no progressive feature; but the administration is centralized, like that of Wisconsin, and efficiency in collecting the tax was therefore to be expected from the beginning. Moreover, the annual flow of wealth in Massachu-

[1] Massachusetts Tax Commissioner, *Report*, 1918, p. 32.

[2] Lutz, in a *Report on the Operation of State Income Taxes*, presented to the Ohio Special Joint Taxation Committee, September 18, 1919, p. 102, of the Taxation Committee's report, suggests that the Massachusetts experiments prove the feasibility of a flexible adjustment of this kind.

setts is great. Massachusetts ranks as the fourth state in the order of the amount of personal income taxes paid to the federal government, and is outranked only by New York, Pennsylvania, and Illinois.[1] A carefully devised tax law, efficiently administered, should therefore be a productive and reliable revenue measure.

The income taxes collected in Massachusetts stand as follows for the first four years of the operation of the law:[2]

Year of collection (on incomes of previous year)	*Amount collected*	*Amount distributed*
1917	$12,535,630	$12,207,769
1918	14,882,545	14,463,644
1919	15,646,872	15,019,937
1920	16,233,544	15,230,712

Owing to the fact that almost all of the proceeds of the Massachusetts tax are distributed to the local units, the fraction which they form of the total state tax receipts has no particular significance. An idea of the remarkable success of the Massachusetts income tax may be gained, however, by noting the fact that if income tax receipts were added to the total state tax receipts, the income tax receipts would form roughly one-third of the whole sum.

The Massachusetts tax is preëminently successful when judged by a second standard. The federal taxes on personal incomes collected in Massachusetts in 1918 were $81,307,340.[3] Massachusets is obtaining from one-fifth to one-sixth as much from the state income tax as the federal government is obtaining, thus outranking even Wisconsin.

[1] United States Internal Revenue, *Statistics of Income for 1918*, p. 24.

[2] Massachusetts Commissioner of Corporations and Taxation, *Report for 1920*, p. 19.

[3] United States Internal Revenue, *Statistics of Income for 1918*, p. 24.

The cost of collection in Massachusetts is remarkably low. It is reported as follows:[1]

Year	*Cost of collection (Per cent of total assessment)*
1917	1.86
1918	1.44
1919	2.00
1920	1.80

The rise in the cost for 1919 is partly accounted for by the occupation of new premises.

An analysis of the returns for 1920 shows that the greater part of the revenue is furnished by the tax on intangibles. The proportions furnished from the various sources are as follows:[2]

Source	*Per cent of total tax (including additional 1 and ½ per cent)*
Business income	40.69
Annuities	.14
Gains	5.66
Interest and dividends	53.51

3. *The success of the income tax*

The Massachusetts income tax has proved to be more productive and less disturbing to individual taxpayers than even its advocates expected. The *yield* has more than justified the anticipations of those who prophesied large additions to the tax revenues from this source. The tax is *elastic,* as is shown by the large income promptly obtained from the special "war taxes" and from the temporary taxes added soon afterwards. Its *cost of collection* is low.

[1] Massachusetts Tax Commissioner, *Report,* 1917, p. 15; 1918, p. 27; 1919, p. 40; 1920, p. 16.

[2] Massachusetts Commissioner of Corporations and Taxation, *Report for 1920,* p. 15.

The tax has produced a more *equitable* system by increasing the revenue from intangibles. It has effected a better *distribution* of the tax burden among the various communities of the state. The tax commissioner in 1917 emphasized the improvement in bookkeeping by individuals and associations engaged in business, and noted a slighter tendency than that which existed before the passage of the act for individuals to leave the state in order to escape taxation. A consideration which is fully as important as any of these is to be found (in the state of public opinion,) in the general impression that taxation in the state is less unjust and unequal than previously.[1]

There is a general feeling of satisfaction by the change to an income tax which we find expressed by all classes of people. The wealthier class, in most cases, are paying more than in the past; many who never paid in previous years are now bearing their share of the tax burden; and many of small means, by the exemption provided by the act, are now given proper relief.

The tax commissioner in 1919 again noted an improvement in bookkeeping methods throughout the state. The improvement has been noticeable in each year, as modern bookkeeping and accounting systems are installed as a result of the division audits. The steady improvement not only facilitates the assessment and collection of the income tax, but has an effect upon the conduct of business generally. One of the necessary results is the elimination of the majority of the bankruptcy cases which are to be traced to an ignorance of the internal affairs of the business.

With regard to the general opinion as to the justice of taxing incomes, the commissioner reported in 1919 as follows:[2]

[1] Massachusetts Tax Commissioner, *Report,* 1917, p. 19.

[2] *Report,* 1919, pp. 42, 43.

There seems to be no abatement of the general satisfaction with this method of taxation, not a single taxpayer having been met with who wishes to return to the general property tax system. The burden of governmental maintenance is more equitably distributed than ever before. There is a noticeable reaction from abnormal centralization of wealth in favored localities—a condition alarmingly prevalent before the Income Tax Law came into operation.

After having observed the effects of the increased rates voted in 1919 for the purpose of raising funds for a soldiers' bonus, the tax commissioner gave warning against the further extension of the rates. In his opinion additional increases in the rates would inevitably result in loss of revenue through the disturbing effect on the investor. In the course of the year (1919) several cases of change of domicile had occurred, in sufficiently important instances to have come to the attention of the income tax divisions, which had been attributed to the constantly increasing rates. At the close of the year the situation did not appear serious, but it gave a significant warning for the future.

The classification of the various kinds of income, a matter which seemed very simple when the income tax law was devised, is now proving troublesome. The tax commissioner comments on this situation as follows: [1]

Possibly the one criticism of our income tax system which can be made with some semblance of justification lies in the complications incident to the various classifications of taxable and exempt income. While, fundamentally, these classifications, or most of them, rest upon perfectly sound foundations, yet it is still an undeniable fact that the complexities incident to the four classifications as established are somewhat of a handicap both to the administration of the law and to the tax-paying public, who find it quite difficult properly to allocate the various kinds of income in their returns. In the course of approximately 8,000 verifications

[1] *Report*, 1919, pp. 13, 14.

of returns made within the past two years, nearly half that number were found to be in error, either in favor of or against the interests of the taxpayer.

The first step towards simplifying the classification is suggested by the tax commissioner as that of abolishing the group of "net gains from dealing in intangibles," taxed at three per cent, and including this income in the business classification. This part of the tax formed only 1.38 per cent of the total taxes on income returned in 1919, while business income formed 35.03 per cent of the total, and its inclusion with the latter tax seems a simplification through which little administrative or financial value would be lost.

The Massachusetts law provides for the exemptions for minor children only up to the age of 18. This age is below that at which young persons in the colleges and universities can become self-supporting, and frequent complaints as to its injustice are heard:[1]

Is the present age limit a just and fair one to the average taxpayer? When it is considered that as time goes on more and more of our young men and women are seeking higher education, not alone from the homes of the wealthy but from the homes of mechanics and the great middle classes (so called) as well as those of moderately circumstanced merchants and relatively low-salaried professional men; when it is realized that many a parent of moderate though taxable income is financing one or more boys or girls through a college course; and, particularly, when it is acknowledged that between the ages of eighteen and twenty-one years the expense of maintenance of dependent children, especially the child in college, is more than double the expense of any prior year,—there seems to be much equity in the frequent complaint that the age-limit of eighteen years is too low and that this limit may well be raised to twenty-one years, the legal and generally recognized age of independence.

In addition to changes in the classification of incomes,

[1] *Report*, 1919, p. 15.

and an extension of the age of dependent children for which an exemption is allowed, the Massachusetts authorities are urging reforms which will effect the personnel of the income tax administration. It is urged that the Massachusetts employees should be placed under a suitable competitive civil-service rating, and that the salaries offered should be made more nearly commensurate with those offered for similar degrees of ability in private enterprises.

4. *Present income tax problems in Massachusetts*

If it is carefully handled and if the legislature refrains from tampering with it on occasions of temporary financial pressure, the Massachusetts income tax will probably prove to be a stable, reliable, and productive source of revenue, collected with as little dissatisfaction as any tax is likely to be collected with. The dangers of utilizing the income tax to meet sudden financial emergencies have already been discussed. The reports of the Massachusetts tax commissioner indicate that in some quarters at least they are realized in Massachusetts, and it is probable that after the period of collecting the funds for soldier's bonuses has passed the state will not again rely upon such extensions of the tax, at least for some time to come.

As far as the form of the law is concerned, the chief differences of the Massachusetts income tax law from the income tax laws of the two other states which are most important in this field, Wisconsin and New York, are those of its selection of four types of income for taxation and of the imposition of a proportional rate. It is inevitable that a change of plan in Massachusetts should come up for discussion soon, particularly if the New York law proves to work smoothly. The actual effect of the Massachusetts plan is that of *differentiating* four different kinds of personal income, imposing different rates upon the different

classes, and so fixing these rates that investment or "unearned" income is taxed at an unusually high rate, proportional in character. The proportional rate itself is probably not one of the most serious parts of the problem. The best of modern expert tax opinion is in favor of state income tax rates which, if progressive, reach only a low maximum; and it is an open question whether the arguments for such a scale, such as the one-two-three-per cent scale employed in New York, are more convincing than the arguments for a simple proportional tax, possibly a two per cent tax, upon personal incomes. With the federal income tax scale as an ever-present background for the state taxes on personal incomes, the scope of the state rates must always be limited. Differentiation of types of income is a more involved problem. A plan of differentiation adopted later than the Massachusetts plan, that of North Dakota's income tax system of 1919, proved to be unworkable. Meanwhile Massachusetts, a much richer state, found this sources of income the most productive of the four sources tapped by the income tax act, and relied upon it for more than one-half of the state income tax receipts. Surprisingly, this heavy tax upon funded incomes failed to arouse any unusual dissatisfaction. With the development of the personal income tax in the adjacent state of New York, and the imposition of a more moderate rate upon investment income, this state of affairs in Massachusetts may become less placid.

Another unusual factor in Massachusetts is the exemption from taxation under the personal income tax of income from real estate. Historically this is easily explicable, and the traditional aversion to taxing both income and the source from which it is derived is well known. In the course of the present period of development of state income taxes, however, there has come to be less and less dis-

cussion of means in which double taxation of this kind may be avoided, and more of an effort to devise simple plans by which tax burdens may be adjusted equitably among the individuals affected. The exemption of the income from investment in Massachusetts corporations is another illustration of the complicated arrangement into which Massachusetts entered, working under the older idea that double taxation of income must be avoided at any cost. The extension of the Massachusetts taxes on occupational income and on investments to income *from whatever source and wherever derived* would simplify the law, diminish popular confusion as to the reasons for the various exemptions, and (if accompanied by a corresponding reduction in the rate of tax on investment income) results simply in heavier taxation of the sources from which funded incomes are derived.

CHAPTER V

Income Taxes in Missouri and Delaware

1. *The Missouri income tax*

In 1917, the year following the passage of the new Massachusetts law, the states of Missouri and Delaware, both relatively inexperienced in this form of taxation, undertook to tax personal incomes.

Missouri had had an income tax of short duration as a Civil War measure, but had given it up almost immediately after the close of the war, and had tried no tax of the kind since that time. The law passed in 1917 therefore marked a new and important step in the fiscal history of the state.[1]

The new law imposed a tax of one-half of one per cent on incomes from all sources derived within the state. It applied to individuals and corporations. Incomes of single persons to the amount of $3,000 and of heads of families to the amount of $4,000 were exempt. Deductions for business expenses, interest, taxes, losses, bad debts, and depreciation were permitted. Receipts for state taxes on property were acceptable in payment of income taxes. The state auditor was given supervision of the tax, and the regular assessors and collectors of the counties became also assessors and collectors of the income tax. The proceeds apparently were intended to go to the state. This tax was first collected in 1918, on incomes received in the latter half

[1] *Laws of Missouri*, 1917, pp. 524-538.

of 1917. In the same year the law was declared constitutional by the Missouri Supreme Court.[1]

An income tax on this modest scale was inadequate for the financial needs of the state, a fact which was recognized by the legislators of the following year. In 1919 a consistent attempt was made to increase the state revenue from various sources. The income tax law was amended, and the rate increased from one-half of one per cent to one and one-half per cent.[2] The exemptions were reduced from $4,000 for heads of families and $3,000 for others to $2,000 and $1,000 respectively. Provision was made for an additional exemption of $200 for each dependent child. An important change was contained in the repeal of the section of the law of 1917 which permitted the presentation of receipts for state property taxes in payment of income taxes. As a result the Missouri income tax became an addition to the tax system of the state rather than a substitute for the property tax. In 1921 the rate was reduced to one per cent.

The amounts collected on incomes are as follows:[3]

Year of collection	*Amount collected*
1918 } 1919 }	$686,785
1920	2,762,171

The tax collected in 1920 had been expected to yield nearly double the amount recorded, as the total amount of taxes charged under the assessment was $4,623,374. The diminished collections were caused by a decision of the Supreme Court sustaining the contention that the increased taxes must be paid only on the income of that part of the

[1] Glasgow *vs.* Rowse, 43 Mo. l. c, 489, 490, 491.

[2] *Laws of Missouri*, 1919, Act of May 6th.

[3] Missouri State Auditor, *Statements*, March 19, 1920, Dec. 21, 1920.

year succeeding the passage of the new (1919) law. The incomes of 1920 are expected to yield from $4,000,000 to $4,500,000 in income taxes.

The assessments of individuals on 1919 incomes formed almost one-half of the total assessment. On the asumption that collections are divided in the same way, individual incomes contributed $1,203,000, or about one-seventeenth of the amount collected by the federal government on 1918 incomes.

The receipts from the income tax for the year 1918 formed slightly more than eight per cent of the total tax receipts of the state. For the year 1919 the income tax receipts formed twenty-six per cent of the total tax receipts.[1] The costs are not separated from those for making the general assessment of property.

In spite of the efforts of the legislature of 1919 to reform the law, it remains inadequate. An act which imposes so low a rate, lacks the feature of graduation, and provides for no separate central or local administration, has not reached its maximum of productiveness. Comparisons with the Wisconsin income tax are hardly valid, however; for although Missouri is the richer state, as the returns to the federal government for the personal net incomes of the last three years show,[2] its governmental expenses are considerably less,[3] and it is unnecessary to attempt to raise as large amounts by taxation. Moreover, the number of individual returns in Missouri in 1919 (95,956) [4] is not far

[1] United States Bureau of the Census, *Financial Statistics of States*, 1918, p. 70; 1919, p. 64.

[2] United States Internal Revenue, *Statistics of Income for 1918*, pp. 32, 33.

[3] United States Bureau of the Census, *Financial Statistics of States*, 1918, p. 80; 1919, p. 74.

[4] Missouri State Auditor, *Statement*, Dec. 21, 1920.

behind the federal government's number from Missouri for 1918, (110,890) when the personal exemptions stood at the same figures. As Missouri's governmental expenses rise, it may be necessary to revise the law along the lines of the Wisconsin legislation.

2. *The Delaware income tax*

Before 1917 Delaware had levied taxes for only two brief periods. A faculty tax was adopted in 1796, to be assessed proportionately to the "gains and profits" of merchants, tradesmen, mechanics, and manufacturers, but it soon feel into disuse. Just after the close of the Civil war a tax was imposed on salaries and fees, but it was succeeded by a license tax in 1871.[1]

The personal income tax law passed in Delaware in 1917 was more promising than that of Missouri, passed in the same year, in that it imposed a higher rate (one per cent) and allowed smaller deductions.[2] On the other hand, the tax was not applied to corporations or to non-residents. Persons with incomes of not more than $1,000 were exempt. Business expenses, interest on indebtedness, taxes, losses, bad debts, and depreciation allowances were to be deducted. A striking feature was the exclusion of gains from agricultural operations. The state treasurer, assisted by an income tax clerk and a special collector of state revenue, was charged with the administration of the law. It was assumed that the state treasury was to receive the proceeds of the tax.

In 1919 the law received important amendments.[3] Agricultural gains were brought under the law. The personal exemptions were changed to correspond with those

[1] Seligman, *op. cit.*, pp. 378, 379; Kennan, *op. cit.*, p. 212.

[2] *Laws of Delaware*, 1917, ch. 26.

[3] *Laws of Delaware*, 1919, ch. 30.

permitted under the federal law. Two special collectors of state revenue were authorized instead of one, and these collectors were given more extensive power and authority over the methods of collecting the income tax. Proposals for further amendments along the lines of the model income tax law were placed before the legislature of 1921.

The Delaware law has been attacked on the ground that it is in violation of provisions of both federal and state constitutions, but it has successfully withstood the attacks.[1]

The yield of the Delaware income tax stands as follows for the first two years:[2]

Year of collection	*Yield*
1918	$400,000
1919	317,004

The proceeds of the income tax in Delaware are treated as an addition to the total revenue rather than as a substitute for the revenues formerly derived from unsatisfactory tax measures, as has been so often the case in other states. The greater part of the revenue, $250,000, in each year has been placed to the credit of the school fund. The balance is transferred to the state highway department. The sums available in each year have enabled the schools to have a decided increase and have greatly facilitated the work of the state highway department.

Only that part of the proceeds which are transferred to the state highway department appear as receipts included in the general fund of the state. If that part which is assigned to the state school department is added, the share of the income tax in the receipts of the state treasurer for the two years is as follows:

[1] *Bulletin of the National Tax Association*, vol. v, no. 3 (Dec., 1919), pp. 86, 87.

[2] Delaware State Treasurer, *Report*, 1918, p. 6; *Report*, 1919, p. 6.

Year of collection	Cash receipts of the general fund plus income taxes[1]	Income tax receipts (per cent of total receipts)
1918	$1,678,849	23.8
1919	3,509,722	9.0

The tax collected on incomes received in 1918 was about one-twenty-third of the amount collected by the federal government on personal incomes in Delaware for that year.[2] The cost of collection for the state government was about three per cent.

The system of distribution adopted in Delaware has been commended as one which has the advantages of reasonableness, popularity, and attractiveness to the general public.[3] The use of the whole or a major part of the proceeds of the state income tax for educational purposes readily absorbs the yield of the income tax. A measure for the distribution is available in the school enrollment, and the definite reflection in the individual's tax bill of a reduction in the largest item is calculated to affect the taxpayer's attitude towards the tax.

In Delaware the distribution of the amount of $250,000 which is annually set aside for the use of the schools is made as state aid to elementary schools. The funds are distributed by the trustee of the school fund upon certificate of the state board of education. The schools which conform to the regulations of the board of education are certified by districts, and the trustee of the school fund apportions the amount available to the various districts on the basis of the total elementary school enrollment during

[1] Delaware State Treasurer, *Report*, 1918, p. 5; 1919, p. 5.

[2] United States Internal Revenue, *Statistics of Income for 1918*, p. 24.

[3] A. E. Holcomb, "State Income Taxes . . . Methods Employed in Delaware," *Bulletin of the National Tax Association*, vol. vi, no. 4 (Jan. 1921), pp. 126-128.

the preceding year. The enrollment of high schools is left out of account.

A chapter of local political history has an unforeseen effect upon the distribution of the income tax to the schools.[1] The city of Wilmington, which elected not to come under the new school code adopted in 1917, is thereby excluded from the districts which receive state aid, although the city contributes 95 per cent of the income taxes collected.

Neither the decreased collections from the state income tax in the second year of its operation nor the small ratio which the state receipts from the tax bear to the federal collections appear to be considered grounds for expanding the scope of the state income tax. From the beginning the tax has been treated as a means a meant of supplementing the state revenues with a high degree of facility. The yield of the first year established the fact that the tax was adequate for the purposes for which it was used, and the changes made subsequently were for the purpose of rendering the act more equitable in its operation rather than with a view of expanding the revenue from that source.

[1] Holcomb, *op. cit.*, p. 127.

CHAPTER VI

INCOME TAXES IN VIRGINIA, SOUTH CAROLINA, AND NORTH CAROLINA

1. *History of the Virginia income tax*

THE income tax law of Virginia, which has been revised by nearly every legislature of recent years, was given the principal outlines of its present form in 1918.[1] Virginia had made use of the income tax in one or another of its various forms for a longer period than any other state in which the tax is now in force, with the single exception of Massachusetts. Up to 1911 Virginia was regarded as exceptionally successful in its use of this source of revenue, in that the annual proceeds had come to exceed $100,000. The recent revisions in Virginia, with the exception of the inclusion of corporations in 1916, have failed to make essential changes in the law or to bring it in line with the income taxes of the last decade which are so framed as to produce revenues running into the millions.

Virginia maintained the early faculty taxes for only a brief period (1777-1782; 1786-1790).[2] The real beginning of income taxation in the state is to be found in 1843. Since that year an income tax law has remained continuously on the statute books. The law of 1843 laid a tax upon salaries and professional incomes. It was several

[1] *Laws of Virginia*, 1918, ch. 219.

[2] D. O. Kinsman, *The Income Tax in the Commonwealths of the United States* (New York, 1903), pp. 13, 14.

times modified, but it underwent no radical revision until the Civil War period, when thes rates were increased and the classifications changed. After the close of the Civil War the rates were greatly reduced. In 1874 the rate was fixed at one per cent, at which point it remained, up to 1919, and the exemption at $600, where it remained until 1908 when it was raised to $1,000.[1] In 1910 the exemption was raised to $2,000, and in 1916 lowered to $1,200. In 1916 the law was extended to include the income of corporations.[2] In 1919 the rate for incomes in excess of $3,000 was made two per cent.[3]

According to the law now in force[4] a tax of one per cent is imposed on the income of every person or corporation residing or doing business in Virginia up to $3,000, and two per cent on income in excess of that amount. The customary deductions are provided for. The exemptions stand at $1,200 for the individual income, $1,800 for husband and wife together, and $200 for each person entirely dependent and actually supported by the taxpayer. The administration is in the hands of the auditor of public accounts and the county commissioners of the revenue .The receipts are applied to the expenses of the state government.

2. *The yield of the tax in Virginia*

Until corporations were brought under the tax in 1916 the income tax in Virginia produced only a small amount of revenue. Beginning in that year the receipts have

[1] E. Sydenstricker, *A Brief History of Taxation in Virginia* (Richmond, 1915), p. 52.

[2] *Laws of Virginia*, 1916, ch. 472.

[3] *Laws of Virginia*, 1919, ch. 43.

[4] *Laws of Virginia*, 1918, ch. 219, as amended.

greatly increased. A summary for recent years is as follows:[1]

Year of collection	*Receipts from income taxes*
1908	$122,058
1909	102,810
1910	106,909
1911	129,429
1912	102,678
—	—
1917	353,756
1918	660,745
1919	906,733
1920	1,811,786

The cost of collection ordinarily constitutes slightly less than four per cent of the amount collected.

Although Virginia is still receiving only a comparatively small sum from the income tax on individuals and corporations, the state's whole scale of expenditure is lower than that of the other states previously discussed, with the exception of Delaware and Mississippi.[2] In 1919 about seven per cent of the total treasury receipts were made up of income taxes. This percentage was expected to be somewhat larger for the fiscal year ending September 30, 1920. It is not possible to separate personal from corporate income taxes in the Virginia accounts, so that the exact place of the personal income tax in the Virginia tax system cannot be estimated.

For a number of years preceding the entrance of the United States into the war and the consequent readjustment of financial affairs, public as well as private, the revenue system of Virginia was considered to be in an excep-

[1] Sydenstricker, *op. cit.*, p. 53; Virginia Auditor of Public Accounts, *Report*, 1919, p. 6; *statements.*

[2] United States Bureau of the Census, *Financial Statistics of States*, 1919, p. 29.

tionally satisfactory condition. In 1917 the auditor of public accounts stated that in his opinion the financial condition of the state was so fortunate that the rates of taxation on intangible personalty could be reduced and the taxes on tangible personalty entirely removed.[1] These recommendations were made solely on the grounds noted above, namely the presence of a surplus; for the usual dissatisfaction with the operation of the tax on intangibles was conspicuously absent in Virginia at that time.

The recommendations for reductions in the rate of taxation were not followed, and the situation changed so rapidly that in 1919 it was decided that it was necessary to extend the income tax for the purpose of raising additional revenue. Even with the additional rate the income from the tax is still moderate. It should be borne in mind in estimating Virginia's success with the tax that the financial needs of the state are also moderate. On the whole it umust now be granted that Virginia has used the tax satisfactorily, in spite of the absence of centralized administration and other modern provisions.

3. *The repeal of the South Carolina income tax law*

The only recent example of the failure of an income tax law in such a way that the abandonment of the whole system became necessary was given in South Carolina in 1918.[2] In so far as the failure of the law can be ascribed to any one cause, it appears to lie in the fact that the administration was left in the hands of the local assessors, and accordingly the law was never fully enforced.

[1] Virginia Auditor of Public Accounts, *Report*, 1917, pp. xiii, xiv.

[2] *Laws of South Carolina*, 1918. no. 433. An Act to Repeal Sections 354 and 360, Inclusive, of the Code of Laws of 1912, Volume I, Relative to Tax on Incomes and All Acts Amendatory Thereof. Approved Feb. 14, 1918.

The forerunner of the recent income tax law in South Carolina is to be found in colonial times. A law imposing a "faculty tax," passed in 1701, continued in force, with modifications, until the Civil War brought the necessity for additional revenue.[1] During the Civil War a one per cent tax was laid on incomes and certain profits, but this method of taxation proved unpopular and soon after the war it was abandoned. The revival of the tax occurred in 1897, when an income tax on a progressive scale was introduced.[2] It was this law which with few changes remained in operation until the repeal in 1918.

The tax introduced in 1897 was a general income tax, imposed at the following rates:

Income	*Rate (per cent)*
$2,500 but less than $5,000	1
5,000 " " " 7,500	1½
7,500 " " " 15,000	2
15,000 and over	3

The tax applied to the income of persons living outside the state who owned property or conducted business within the state. The word income was to mean " gross profits," and from this amount business expenses were allowed to be deducted in computing net income. The tax was assessed and collected by the same officials and at the same time as other taxes. The proceeds of the tax were to be distributed among the counties according to an apportionment made by the legislature.

The yield of the tax throughout its history was as follows:[3]

[1] Seligman, *op. cit.*, pp. 379, 398.

[2] *Laws of South Carolina*, 1897, ch. 22.

[3] Kennan, *op. cit.*, p. 230; Seligman, *op. cit.*, p. 417; South Carolina Tax Commission, *Report*, 1917, p. 105.

Year	*Yield of income tax*
1898	$689
1899	4,829
1900	975
1901	609
1902	292
1903	1,476
1904	1,281
1905	2,130
1906	12,201
1907	10,687
1908	8,431
1909	16,236
1911	14,387
1913	17,400
1914	15,303
1915	31,126
1916	27,690
1917	34,050

The tax officials of the state, realizing the impossibility of enforcing the law, have argued its repeal from the beginning. The comptroller general repeatedly described the difficulties of enforcement and concurred in an appeal for the abolition of the law.[1] The state tax commission from the time of its organization expressed great dissatisfaction with the working of the income tax.[2]

This tax, which is most equitable and fair, . . . is unevenly enforced throughout the State. In some counties its enforcement is but partial. . . . We ask the members and other taxpayers to examine the lists in their own counties, and note the absence of names of those whom they know to be liable. . . . The auditors refusing to enforce the law should be removed by the Governor.

In later years the commission became even more explicit in its denunciation of continual lack of enforcement.[3]

[1] Seligman, *op. cit.*, p. 417.

[2] South Carolina Tax Commission, *First Annual Report*, 1915, p. 26.

[3] *Report*, 1916, p. 20.

In some counties but little is done to enforce the law, notably in Darlington, Saluda, and Marlboro. No one appears to pay the tax in these counties. One taxpayer paid in Saluda last year and he quit this year.

With the type of local administration referred to the failure of the law was inevitable. It was a matter of general information throughout the state, almost from the beginning, that there was insufficient provision for the enforcement of the law with the result that a few persons paid an income tax while the vast majority escaped. The repeal of the law in 1918 cleared the revenue code of a tax law the returns of which in recent years had hardly paid for the trouble and expense of collection, and which probably had a demoralizing effect both upon the taxpayers and the assessors.

The income tax in South Carolina was not yet dead, however. The Special Joint Taxation Committee which reported to the legislature in 1921 devoted a considerable amount of attention to the inequitable operation of the general property tax, and the resulting heavy burdens on the farmer. In the same report the argument that taxation of income from property already taxed constitutes double taxation was attacked. The Committee stated that in its opinion the state taxation of incomes relieves property taxed upon an *ad valorem* basis from a part of the double burden of state and local taxation, and leaves the major part of the property tax to one taxing jurisdiction, that of the locality. This, in the opinion of the Committee, "is the place, object, and function of an income tax in a system of state taxation." [1] Although an income tax bill and a business tax bill failed of passage in the legislature of 1921, the determined advocacy of an income tax as a

[1] Quoted in *Bulletin of the National Tax Association*, vol. vi, no. 6 (March, 1921), p. 180.

source of state revenue indicates that the tax is still to be heard from in South Carolina.

4. *The taxation of incomes in North Carolina*

In 1921 the state of North Carolina completed 72 continuous years of income taxation, and demonstrated its reliance upon this form of tax by the passage of a new law along modern lines.

An income tax was first introduced in North Carolina in 1849, when a three per cent tax was laid upon profits from financial dealings, and a three-dollar tax upon salaries and fees.[1] The law underwent frequent changes, one of the most important of which was an extension during the Civil War period, when rates were increased and progressive scales introduced. In 1870 the rate of taxation was greatly reduced. In succeeding years changes have been made repeatedly. Another trial of progressive rates was made from 1893 to 1901, but the proportional plan of taxation was reintroduced in the latter year, to be succeeded by a graduated tax in 1919.

According to the law in force in the early years of the present century, a tax of one per cent was imposed upon the excess over $1,000 of gross incomes from all property not otherwise taxed, salaries and fees, annuities, and trades and professions. The amount yielded by the tax in this form was insignificant, although the receipts had improved over those of earlier years. In the decade 1890-1900 the revenue from the income tax had ranged from about $2,000 to $4,500 a year. In the next decade the receipts increased, and furnished from $20,000 to $40,000 a year. In succeeding years the proceeds expanded as follows:[2]

[1] Seligman, *op. cit.*, p. 403, *et seq.*

[2] North Carolina Tax Commission, *Report*, 1918, p. 20.

Year of collection	*Revenue receipts from income taxes*
1912	$36,497
1913	42,657
1914	50,798
1915	58,606
1916	61,386
1917	64,152
1918	109,285

Although the receipts were steadily expanding during these years, the one per cent rate on personal incomes from specified sources came to be considered inadequate. In 1918 the state tax commission and the corporation commission strongly advocated a constitutional amendment permitting the extension of the law to income from all sources. The program carried through by the General Assembly of 1919 was, however, merely a revision of the rates, by which they were increased and made progressive.

According to the law of 1919 $1,000 of the individual's income, $1,500 for husband and wife together, and an equal amount to widowed persons with minor children, were exempted. The rates of taxation were as follows:

Income	*Rate (per cent)*
Excess above exemption up to $2,500	1
Excess above $2,500 up to $5,000	1½
Excess above $5,000 up to $10,000	2
Excess above $10,000	2½

The changes made in the law of 1919 were far less sweeping than those advocated by the tax officials of the state. Except for the introduction of the progressive scale given above, the new law included no provisions calculated to put the state into line with those which tax incomes from all sources and secure the enforcement of the law through specially appointed income tax officials controlled through a central administrative bureau. The result of adhering

to the principle of refusing to tax incomes from property already taxed was great injustice among different classes and occupations. For example, members of the professions were heavily taxed while richer men are almost untouched by the general property tax. It also became apparent that in the period of war expansion "prosperity went untaxed."

An amendment to the constitution was repeatedly and almost continuously urged in North Carolina, and in 1920, in an extra session of the legislature, the amendment was taken under consideration. It was first necessary to remove the constitutional requirement that no income should be taxed when the property from which it is derived is taxed. This was done, and a provision authorizing a maximum rate of six per cent and specified exemptions of $1,000 and $2,000 was favorably acted upon.[1] The amendment was adopted by the people in the election of November, 1920, and preparation was immediately made for the introduction of a new and carefully framed measure in the legislature of 1921.

In estimating the significance of income taxes in this group of states the types of incomes derived within the states should be taken into consideration. In American fiscal history of recent years it seems to be an axiom that income taxation cannot reach a high state of development until intangible personal property has accumulated to such an extent that attempts to evade its taxation have become serious. Obviously this change takes place more slowly in the states in which corporate enterprise—which is often nearly synonymous with manufacturing enterprise—is late in developing. It is not necessarily true that the difficulties with intangibles mean the speedy introduction of taxes on

[1] *Laws of North Carolina* (Special Session), 1920, ch. 5.

personal incomes, as the late entrance of the state of New York into the income tax field proves; but up to the present, at least, the generalization holds good,—that without a dissatisfaction with the taxation of intangible personal property income taxes are neglected or only half-heartedly utilized. The growth of manufacturing in the South and the persevering efforts of each of this group of states to reshape the income tax to suit changing needs have an intricate relationship.

CHAPTER VII

The New York Income Tax

1. *The history of the movement*

The fiscal system of the state of New York has undoubtedly had a more careful scrutiny than that of any other state, on account of the magnitude of the state's business and the availability of financial experts of varied interests and of all shades of political opinion. Nevertheless it was not until 1919 that a personal income tax law was passed, and then only after a most detailed and careful study of the possibilities of this form of taxation and of the methods by which it could be adapted to the needs of the state of New York. As the history of taxation in New York state is reviewed, it becomes apparent that all signposts were pointing towards the personal income tax long before public opinion was completely ready for the new measure and before the minor details of the system could be fully worked out.

New York had no share in the early efforts to reach taxpaying ability through the imposition of faculty taxes and no share in the revivals of income taxes in the forties and during the Civil War. For years the mainstay of the state, like that of many of the American states, was the general property tax. As in the neighboring state of Massachusetts, it was not until the country began to taste the post-Civil-War prosperity, and the forms of personal property began to develop, that the evidence of the unworkability of

the general property tax began to accumulate.[1] The taxation of personal property became increasingly difficult at a time when state expenditures were rapidly increasing in amount. A commission was appointed to investigate the subject of taxation, but the resulting suggestion of the abolition of the tax on personal property, made in 1871 and 1872, was two generations ahead of its time, and it was not adopted. Action was necessary, however. From 1880 until the present the tax system of New York has been changed and changed again, in the effort to adapt it to the changing industrial and commercial situation of the state. Hardly more than two or three years have passed, from that date to this, without an experimental change in the state revenue system. In 1880 a corporation tax, based in part upon gross receipts, made its appearance. From 1885 the influence of an effort to obtain separation of source is seen in the tax measures adopted. In that year a collateral inheritance tax was adopted. In the following year a new corporation tax, the "organization" tax, was added. In 1890 the collateral inheritance tax became a direct inheritance tax. In the nineties the movement to aboish or to minimize the state direct tax gained additional strength. Various new taxes were added in that and the next decade, with so great an increase of revenue from other sources that the state direct tax played almost no part in the state revenue system from that year until 1912. In the course of these years of experimentation many admirable changes were made and fruitful sources of revenue were tapped, but the old prime difficulty, that of the underassessment and the inequality of assessment of personal property was hardly touched. Professor Seligman, who followed the situation from the early eighties and who

[1] E. R. A. Seligman, "The New York Income Tax," *Political Science Quarterly*, vol. xxxiv, no. 4 (Dec. 1919), p. 521.

was influential in bringing about the passage of several of the new measures, describes the situation after 1912 as follows:[1]

> Personal property had almost entirely disappeared from the assessment lists, so that the local tax had become virtually a tax on real estate. As the local expenses increased by leaps and bounds and as the base of taxation was gradually narrowed instead of broadened, the tax rate began to climb to alarming figures. The real-estate interests now clamored for relief; and the public at large, which realized that the tax on buildings at least was shifted to them in the shape of increased rent, seconded the effort of the real-estate owners.

In 1915 two committees were at work on the problem of taxation in the state of New York: the Joint Legislative Committee on Taxation, known as the " Mills Committee " on account of the fact that Senator Mills was at its head, and the Committee on Taxation of the City of New York, appointed by Mayor Mitchel and known as the " Mayor's Committee." Two main problems were handled,—the raising of new and additional revenue for the state, and the just and equitable distribution of the tax burden. The two committees worked in close coöperation, realizing the necessity for the most effective action in view of the seriousness of the tax situation. The Mayor's Committee, upon which Professor Seligman was serving as chairman of its executive committee, studied extensively a single-tax plan of taxation and a classified property tax, but came to the conclusion that neither was adapted to the needs of New York, and turned to the income tax. In the meantime the Mills Committee had obtained the assistance of Professor H. A. E. Chandler of Columbia University, who took a large part in the drafting of its final report, and another drift

[1] Seligman, *op. cit.*, p. 525.

of opinion in the direction of a state income tax was incorporated in this committee's report. The situation with regard to the state income tax was manifestly changing with great rapidity from year to year. The federal income tax of 1913 had demonstrated the feasibility of the use of the income tax principle itself and had familiarized the public with the machinery of its administration. The device was already being extended. In 1914, when the tax situation in Connecticut was serious and revision became necessary, Professor Seligman suggested to the state legislature and to the tax commissioner of Connecticut the adoption of a state corporate income tax and the utilization of duplicates of the returns made to the federal government. The suggestion resulted in the adoption of the plan, with the result that a movement for state income taxes based on the federal tax was inaugurated.

The Mayor's Committee reported in January, 1916, and the Mills Committee reported to the legislature in the following month. In both reports the adoption of a state income tax with a division of the yield between the state and the localities was recommended. In the report of the Mills Committee the defects of the tax system of the state of New York as it stood at the time the report was made were set forth in an uncompromising fashion:[1]

> Were the people of New York once aroused to the full extent of evasions under the present law, another year could not pass without an important tax reform. . . . Our present law is based upon the theory that earning power is fairly represented by property and especially real property. However, a superficial knowledge of business of today discloses the fact that quite the contrary is true. As a result of this inconsistency between the law and the fact, we have permitted an important part of our well-to-do citizens

[1] (New York) Joint Legislative Committee on Taxation, *Report*, 1916, p. 28, *et seq.*

to grow up and enjoy large incomes, and therefore large taxpaying ability, without actually requiring them to bear their share of the burden.

In this report the injustices brought about by the operation of the law are pointed out in detail: the burden of the tax upon real estate owners; the "crushing force" of the taxes upon those least able to pay, and the unfairness of the system in its effect upon various classes of persons and enterprises.

The committee answered the question submitted to it by the legislature, namely, "how can the state most equitably and effectively reach all property which should be subjected to taxation and avoid conflict and duplication of taxation on the same property?" in the following concise summary:[1]

> . . . All of the evidence presented and all our investigations tend to show that the end sought for will be accomplished best by: (1) the abolition of the present tax on personal property; (2) the withdrawal of general business incomes from the provisions of section 182 of the tax laws; and (3) the imposition of an income tax on individuals and general business corporations, including manufacturing corporations.

The first step was taken with the passage of a corporation income tax law, known as the "Emerson law," in 1917.[2] According to the terms of this law a franchise tax of three per cent was imposed on the net income of manufacturing and mercantile corporations. Two-thirds of the yield of the tax was allotted to the state and one-third to the localities. This law was successful as a revenue-producer, for it yielded $18,000,000 in the first year of its operation, but it was far from being a perfect piece of tax

[1] *Ibid.*, p. 206.

[2] *Laws of New York*, 1917, ch. 726.

legislation. It was soon found that the larger cities of the state were not deriving a sufficient amount of revenue from the new law to make up for the loss of personal taxes, and protests were soon heard from that quarter.[1] The nomenclature of the act was confusing in its application of the tax to "manufacturing and mercantile" corporations only. Moreover, in the light of the additional information about the operation of state income taxes which was accumulating with each passing year, it became clear that a tax of this kind, imposed on the net income of corporations, was only remotely connected with the taxation of personal incomes, and that it was not a tax which could reach the roots of the trouble with the taxation of intangibles. Such a tax as the New York corporation income tax was coming to be regarded as a *business tax,* closely related to a tax on real property. This fact was recognized in recommendations made in 1918 by the committee of the National Tax Association which was appointed to devise a model system of state and local taxation. In the system recommended by that committee a proportional tax on the net income derived from business as a tax or excise with respect to carrying on or doing business is included, but this tax is but one of the constituent parts of a three-fold system, of which the other two members are a *personal income tax* and a *property tax.*

Meanwhile other committees were still working on the question of the personal income tax. A committee on individuals and partnerships reported at the seventh state conference on taxation in January, 1917, recommending the adoption of a state income tax. The Advisory Council of Real Estate Interests obtained the assistance of Professor H. A. E. Chandler and proceeded to continue the investi-

[1] Powell, "State Income Tax on Corporations," *Proceedings of the Eighth State Tax Conference,* 1919, p. 327.

gations begun under Professor Chandler for the Mills Committee. As a result this committee also reported in favor of a personal income tax law. In the annual report for 1918 the state tax commission urgently recommended the adoption of a state income tax law at a low rate and with small deductions. Finally, in 1919, a legislative committee, the "Davenport Committee," was again set to work on the income tax. This committee obtained the services of experts, and made Professor Seligman of Columbia the chairman of one of the sub-committees and Professor Bullock of Harvard the chairman of another. Mr. Laurence A. Tanzer of New York City was counsel for the committee. The various possibilities and alternatives to a personal income tax were thoroughly worked out. Finally a report in favor of a personal income tax was accepted, and early in 1919 the committee presented a bill for the imposition of an income tax. The bill was framed with the greatest possible care and with the advice tnd help of the tax experts whose assistance the committee had enlisted. The bill bore the traces of the same skill and consideration of details which are to be seen in the proposals of the committee on model taxation. It was passed without substantial changes, except for the fact that the administration of the tax was put in the hands of the state comptroller rather than the state tax commission. Thus after years of consideration, the greatest industrial state was enabled to begin the utilization of a personal income tax in the following year, 1920. The adoption of the tax in New York is the result of impartial and far-sighted effort on the part of many interested citizens, but probably most of all to Professor Seligman, who labored indefatigably for the tax from the time of the successful culmination of the efforts for a federal tax to the final passage of the New York income tax law in 1919.

2. *The present income tax law*

According to the personal income tax law passed in New York in 1919 [1] a moderately progressive tax is imposed on the incomes of residents and on the incomes of non-residents from sources within the state. The rates of taxation and the corresponding classes of income are as follows:

Net income	*Rate (per cent)*
First $10,000	1
Next $40,000	2
Above $50,000	3

In the matter of rates and the degree of progression adopted the New York law failed to follow the federal law or the recommendations of the committee on model taxation. The decision was a wise one with respect to both examples. Such a scale of rates as that used in the imposition of the federal income tax was manifestly absurd if applied to state purposes and taken in conjunction with the decision to include in net income sums paid as income taxes to any jurisdiction. The confiscation of the entire income would be the result in the case of some of the very large incomes the recipients of which are known to be domiciled in New York. Even if such a scale were possible, the result would be so great a revenue to the state that extravagant and wasteful dispositions of the surplus would become the order of the day. The contrast of the scale actually adopted by New York and the scale recommended by the Committee on Model Taxation and illustrated in the draft of a model personal income tax law prepared by that committee is more significant. The progressive scale recommended ranged from one per cent on the first $1,000 of net income to six per cent on net income

[1] *Laws of New York*, 1919, ch. 627.

above $5,000. In view of the careful consideration given by the framers of the New York law to the point of view expressed by the committee on model taxation, the introduction of a more moderate scale in the New York law illustrates the trend of the times. The high federal rates must be the background, never to be ignored, of all income taxes of the present. Only the most moderate state rates can operate without injustice as long as the present policy of the federal government is continued. It is an open question as to whether a simple proportional rate, as for example, two per cent on net income, might not be equally satisfactory and accomplish all necessary results, under the present circumstances. Moreover, the states are not in need of such great amounts of revenue at the present time as to necessitate steeply graduated rates.

This tax applies to the incomes of individuals only, as the incomes of corporations are subject to a separate tax.[1] Personal exemptions were fixed at $1,000 for the individual, $2,000 for the head of a family or for husband and wife together, and $200 additional for each dependent.[2] In the definition of gross income and in enumerating the deductions which are to be made from gross income in the determination of net income the New York law follows the federal law fairly closely.

In addition to the specific personal exemptions, interest on obligations of the United States and its possessions, interest of obligations of the state of New York or of any

[1] In 1919 the tax on the net income of corporations was raised from three to four and one-half per cent and extended to apply to all corporations.

[2] In the law as passed in 1919 these exemptions were denied to nonresidents. The decision of the United States Supreme Court that such a provision was unconstitutional and the amendment for the New York law in conformance with this decision are described in subsequent pages.

municipal corporation or political subdivision thereof; compensation received from the United States; income received by an officer of a religious denomination or by an institution or trust for religious, charitable, philanthropic, educational, or other similar specified purposes and used for such purposes; proceeds of life-insurance policies or annuities; accident or health insurance; and property acquired by gift or bequest were also exempted. Dividends from corporations are included in the income of residents but excluded from the income of non-residents, except as they form part of the income derived by such non-residents from sources within the state. At the time of the passage of the law this provision was vigorously debated. The dividends received by non-residents could have been taxed only if received from domestic corporations, and it was held that New York institutions would have been unjustly discriminated against if this were done. In order to bring about a fair operation of this principle, not only dividends, but interest on bank deposits, bonds, notes, and sums received as annuities were also exempted in the case of non-residents.

The taxation of dividends received by residents of New York is in itself a departure from the federal law, which allows a partial exemption from the income tax of dividends of corporations. It is becoming increasingly evident that a tax on the net income of corporations is a *business tax,* to be considered as a supplement to the personal income tax rather than as a substitute for it. From this point of view the taxation of the corporate income and the taxation of income received by individuals, even if a part of this latter income is from corporate sources, is no longer regarded as unjust double taxation, unless it operates unequally with respect to different classes of business or different classes of individuals. The real effect of the use

of a corporate income tax and an individual income tax in the same jurisdiction is not so much to bring about any unfairness in the tax burden as it is to effect a heavier rate of taxation upon funded incomes than upon unfunded incomes, a policy which is in accordance with the best modern tax theory. Such a policy is particularly adapted to the needs of New York, where the question of a differentiation of the kinds of income and the imposition of a higher rate of tax upon "unearned" incomes was decided in the negative. With regard to differentiation produced in the latter way, it was decided that in the interests of simplicity, and in view of the fact that the graduated rates of the federal tax imposed a heavier burden upon those funded incomes which are in fact found among the larger incomes, no discrimination should be made. The discrimination which is actually produced by the system of taxation now employed is probably slighter than that introduced in the ordinary differentiation plans, less irritating to the taxpayer, and less difficult from the administrative point of view.

The deductions which are permitted in the determination of net income are business expenses, taxes other than income taxes paid to the United States or to any state, losses, worthless debts, interest on indebtedness, and gifts (to the amount of not more than 15 per cent of net income) to religious, charitable, scientific or educational corporations or associations organized under the laws of New York. The law as passed in 1919 contained a provision for the deduction of interest on indebtedness which differed from that contained in the federal law. The state law allowed the deduction of only such a proportion of interest paid as the net taxable income bore to the total income. This provision corresponds to a provision in the preliminary report of the Committee on Model Taxation. That committee called

attention to the fact that the issue by the federal government of large amounts of tax-exempt bonds complicated the question of the taxation of incomes by the states, and in suggesting the above plan for limiting interest deducted, stated its opinion that "any other procedure will tend to make the personal income tax a farce in many cases and will give occasion for legitimate complaint."[1] This provision has little to recommend it except its intentions, however, for the calculation is impossible to make, since net income cannot be produced until the amount of deductions has been determined. It proved unpopular in New York and the law repealing it was made retroactive to January 1, 1920.[2]

Income taxes were omitted from the list of taxes deductible from gross income. It was felt that the taxable base ought not to be affected by the taxes paid to other jurisdictions. A provision was adopted which was counted upon to prevent burdensome double taxation in a wholly different way. A non-resident subject to the income tax of another state or country is allowed to be credited with such a proportion of the income tax payable to New York as his income taxable by New York bears to his entire income taxed by the other state or country, provided the laws of the latter grant a substantially similar credit to residents of New York.

At the time of the passage of the personal income tax law the taxation of intangible personal property as property was abolished, but the taxation of tangible personal property was allowed to continue.

In matters of administration the New York income tax law is in most respects in accord with the best modern procedure. The weakness of the older method of local as-

[1] *Preliminary Report*, etc., p. 15.

[2] *Laws of New York*, 1920, ch. 693.

sessment of income taxes had become a matter of universal knowledge by 1919. No other course was open but to provide central administration. The natural disposition of the state income tax was in the hands of the state tax commission, which has charge of the assessment of the franchise tax on corporations. Collection would naturally have gone to the state comptroller. The passage of the income tax law was urged by the state tax commission and opposed by the state comptroller. In the end, and as the result of political considerations, the entire administration of the law, including assessment as well as collection, was left to the state comptroller. The comptroller was empowered to divide the state into income tax districts and to establish branch offices in these districts. In actually working out the system advances were made over the simple directions contained in the law. A state income tax bureau was established as a separate branch of the comptroller's office and Mr. Mark Graves was appointed income tax director, to have entire charge of the administration. It became the practice of the bureau to issue frequent statements, reports, and instructions, and to make the details of the operation of the state income tax matters of common knowledge. In 1921 a new tax commission was organized and the administration of the income tax was put into the hands of the new organization.

With regard to collection and information at the source, New York has undertaken an experiment the outcome of which is still in doubt, although the operation of the law during its first year has been regarded as almost unqualifiedly successful. Collection at the source was adopted for the incomes of non-residents in the law as it was passed in 1919. In order that the employer should not act as judge on a question of residence, it was required that the tax should be deducted in every case in which the salary

amounted to $1,000 or more, unless the employee filed a certificate that he was a resident of the state. This withholding at the source was required only in the case of salaries and other compensation for personal services. Owing to an oversight an unexpected difficulty developed. The income tax bill in the original form in which it was presented to the legislature provided for a tax on individual incomes at a uniform rate of two per cent, and the rate of withholding stood at two per cent to correspond with the tax rate. In the course of the discussion of the bill in the legislature the income tax rates were changed to one, two, and three per cent on different amounts of income, but the corresponding change in the amount to be withheld at the source was neglected. While the first collections were being made the attorney-general and the comptroller ruled that an employer need not withhold more than one per cent on salaries not exceeding $10,000. In May, 1920, the law was changed so as to provide for withholding for compensation for personal services of non-residents at the rates of one, two, and three per cent.[1] The provision that residents might be excluded from the withholding by filing certificates of residence was continued.

The usefulness of such a provision for collection at the source remains to be demonstrated. At the time when collection at the source was tried under the federal income tax act dissatisfaction was almost universal. The Committee on Model Taxation regards collection at the source as undesirable for the reason that the trouble of taxpaying and possibly even a part of the tax burden itself is passed on from the person upon whom taxpaying should devolve. These experimental results concerning collection at the source are not exactly applicable to New York, however, as the

[1] *Laws of New York*, 1920, ch. 691. Effective May 10, 1920.

withholding in New York applies only to the incomes of non-residents, and only to salaries and the compensation for personal services received by such non-residents. Several other states tax the income of non-residents derived from sources within the state levying the income tax, but aside from New York no state attempts to collect the tax on such incomes at the source. The arguments for collection at the source for incomes of non-residents are good, particularly with respect to the prevention of evasion. It remains to be seen whether the burden imposed upon the persons or corporations paying the compensation for personal services is so heavy that dissatisfaction becomes general.

Information at the source is required very much as under the federal law. Such information is required concerning all payments of $1,000 or more. For failure to make a return, or for fraud, a fine of not more than $1,000 may be imposed and a double tax paid on the tax not originally paid. Lighter penalties are provided for delinquent returns made voluntarily and for delayed tax payments.

Like Wisconsin and Massachusetts, New York distributes a part of the proceeds of the income tax to the localities. At the time when the New York income tax act was passed the needs of the state and the localities for additional revenue were ever-increasing. The income tax promised to satisfy this demand as well as to remedy some of the most conspicuous defects in the existing property tax system. Accordingly the principle of division of yield was adopted. After the retention of a fund of $250,000 for the payment of refunds and abatements, the comptroller was instructed to pay 50 per cent of the remainder into the state treasury and to distribute the equivalent sum among the counties in proportion to the assessed valuations

of real estate in the counties. The county treasurers were required to apportion the amount received among the cities and towns in proportion to the assessed valuations of real property. Each city's share goes into the city's general funds, and each town's share is credited against the amount of the county tax payable against it. These provisions bring about a tendency in the assessment of real estate which counteracts the ordinary effects of the assessment machinery. Under the present income tax law, the higher the assessments in any locality the greater the share of the proceeeds of the income tax which that locality is entitled to receive; while the old system encouraged the undervaluation of real estate so that the localities might lighten their shares of the general tax.

This requirement of a distribution to the localities of one-half of the proceeds of the income tax resulted in the early support for the tax from individuals and localities which might ordinarily have been sceptical of the effects upon business of a progressive tax on personal incomes. In fact, a committee appointed by the Conference of Mayors came promptly to the assistance of the state comptroller when the constitutionality of the income tax act was questioned.[1]

The question of the proper distribution of the proceeds of the income tax is not one which may be answered simply by pointing to the probable efficacy of the particular plan adopted in New York in bringing about a better assessment of real property. The New York plan has been severely criticized, principally on the ground that since the income tax is supposed to tap sources of revenue which were untouched by the general property tax, a distribution according to the assessed value of real estate has little per-

[1] *New York Times*, Dec. 14, 1919.

tinence or meaning.[1] This was acknowledged in a discussion at the annual meeting of the National Tax Association in 1919, when a well-known Wisconsin expert referred to the New York plan as "less logical but more practical" than the Wisconsin plan of distribution according to the derivation of the tax. The "practical" aspects of the New York plan are apparently conceived to be the appearances of relief with which the local body of taxpayers receive the funds distributed by the state comptroller. On the other hand, distribution according to source is regarded in Massachusetts as conducive to great injustice, and distribution according to the apportionment of the state tax as a fairer method.[2] It is plain that income tax method has not yet progressed far enough to yield as definite results with regard to proper distribution as with administration, and the New York plan is neither to be criticized or approved until it has been tried out over a longer period.

The career of the New York provision for the taxation of non-residents was destined to be eventful. The question of the constitutionality of taxing the incomes of non-residents had been recognized as one which was likely to become pressing since the first application of the Wisconsin law to such incomes. When this form of taxation was finally determined upon in New York the question took on a new aspect, for New York is unique not only in its tax-paying ability in comparison with the rest of the country but also in the extent to which incomes are earned within its borders by non-residents. The situation was described by Professor Seligman as follows:[3]

[1] A. E. Holcomb, "State Income Taxes," *Bulletin of the National Tax Association*, vol. vi, no. 4 (Jan. 1921), p. 127.

[2] *Report of the (Massachusetts) Joint Special Committee on Taxation*, 1919, pp. 50, 51.

[3] E. R. A. Seligman, "The Taxation of Non-Residents in the New York Income Tax," *Bulletin of the National Tax Association*, vol. v, no. 2 (Nov. 1919), p. 41.

In many of the less advanced states of the union the great majority of incomes within the state are earned by residents of the state; that is to say, there are comparatively few non-residents who sojourn for a protracted period within the state. And, on the other hand, most of the residents of the state secure all or a very large part of their revenue from property situated or business conducted within the state. In New York, however, the situation is very different. In the first place, New York City, as the great metropolitan center, attracts people from all over the country. Not only do they swarm to New York for weeks or months at a time, but a large number of wealthy individuals, who still retain their legal residence in other states, erect princely mansions in New York and live there most of the year. On the other hand, New York is the financial center of the country: we know that more than one-third of the individual income tax of the entire country is paid in New York. This means that the wealthy residents of New York own a large part of the property of the nation and that the incomes received in New York are to a considerable extent received from sources outside the state. Finally, New York as the industrial center of the country is crowded with hundreds of thousands of members of the professional classes and of wage-earners who get their living in the city but who commute to the suburbs. Northern New Jersey and, to a less extent, southwestern Connecticut, are nothing but suburbs of New York.

Thus from both points of view the question of double taxation, *i. e.*, the taxation of non-residents on income received within the state and of residents on incomes received without the state, assumes in New York a significance which in practice far transcends that in any other part of the country.

In working out the plan which was finally adopted in New York, namely, that of the taxation of non-residents on income derived from sources within the state of New York and the taxation of residents on all income, these facts were carefully taken into consideration. It was plain that the taxation of incomes from within the state only, while practicable in a debtor state like Wisconsin, would mean the exclusion of the high proportion of income re-

ceived by residents of New York from outside the state. The revenue that New York would receive from its taxpayers would be insignificant compared with the expenditures which it would be called upon to incur because of their presence in the state. The second possibility, that of allowing exemption from taxation to non-residents, would mean that New Yorkers, working side by side with New Jerseyites, would be subject to taxation and the New Jerseyities would go free. The third possible solution, that of taxing residents on total income and non-residents on income derived within the state seemed to the framers of the law the least of the three evils. Injustice to non-residents who were or became subject to personal income taxes was guarded against by a provision suggested by Professor Seligman, by which credit was allowed for income taxes paid in other states provided the other jurisdiction granted similar credits.[1] It was held that this solution of the problem marked an advance in the development of state income taxes, in line with that of the United States and of other important countries. The New York law went one step ahead by allowing credit for taxes paid to other jurisdictions. The sections of the law allowing to *resident* taxpayers personal exemptions of $1,000 and $2,000 was framed on the assumption that neighboring states would soon adopt income tax laws.

Shortly after the passage of the law the fight against it was begun by non-residents. The litigation was begun by the Yale and Towne Manufacturing Company, a Connecticut corporation doing business in New York, which contended that the provision requiring it to pay to the state of New York a portion of the salaries of its employees who were non-residents of the state of New York was uncon-

[1] E. R. A. Seligman, "The New York Income Tax," *Political Science Quarterly*, vol. xxxiv, no. 4 (Dec. 1919), pp. 536, 537.

stitutional and inconsistent with the "due process of law" clause of the Fourteenth Amendment. Eventually all allegations but one were disregarded, and the litigation revolved around the question as to whether the New York law was unconstitutional in depriving non-residents of the $1,000 and $2,000 exemptions allowed to unmarried and married residents of New York. The case was eventually carried to the Supreme Court of the United States. On March 1, 1920, that court upheld the right of the states to tax the incomes of non-residents, but held unconstitutional as discriminatory the provision of the New York law which denied the personal exemptions of $1,000 and $2,000 to non-residents while granting such exemptions to residents.[1] Justice Pitney, in delivering the opinion, declared the law discriminatory in the following terms:

In the concrete the particular incident of the discrimination is upon citizens of Connecticut and New Jersey, neither of which has an income tax law. Whether they must pay a tax upon the first $1,000 to $2,000 of income, while their [New York] associates do not, makes a substantial difference. We are unable to find ground for the discrimination, and are constrained to hold that it is an unwarranted denial to the citizens of Connecticut and New Jersey of the privileges and immunities enjoyed by the citizens of New York.

The suggestion made by the counsel for New York that the states affected might make counter discriminations against residents of New York was dismissed with the declaration that "discrimination cannot be cured by retaliation."

The adverse decision was anticipated by the New York officials, and an amendment was at once introduced in the legislature granting non-residents the same exemptions as

[1] Eugene M. Travis, Comptroller, *v.* The Yale & Towne Mfg. Co., U. S. Supreme Court, March 1, 1920.

those previously granted to residents.[1] In the same legislative session the deductions allowed to non-residents were made to correspond with those allowed to residents.[2] The New York law is now safeguarded from further attacks along this line, but the taxation of non-residents is still a source of active dissatisfaction in the "commuting" class.

3. *The revenue from the tax*

The proceeds of the tax on personal incomes were counted upon to make good the deficit in the state's revenues which would otherwise have resulted from the enforcement of prohibition, and at the same time to supplement the revenues of the state and the localities from other sources. The tax has fulfilled the expectations of its proponents in this respect. The rates as finally adopted, reaching a maximum of three per cent on amounts above $50,000, were expected to produce a tax yield of $45,000,000.[3] The yield of the tax for the first year, approximately $37,000,000, was below the most optimisic of the estimates made at the time of the passage of the act, but it exceeded by many millions any sum ever produced by the personal income tax in any other state, and was regarded as a satisfactory yield by the state officials. More than $22,000,000 was received from New York City alone. In all, nearly 600,000 residents of the state paid taxes on their incomes, and more than 25,000 non-residents paid income taxes.

In accordance with the legal requirement, one-half of the proceeds of the income tax were distributed to the various counties of the state. More than $18.250,000 was

[1] *Laws of New York*, 1920, ch. 191.

[2] *Laws of New York*, 1920, ch. 693.

[3] *Bulletin of the National Tax Association*, vol. v, no. 8 (May, 1919), p. 204.

distributed in this way, according to the valuation of real property. New York City's share was $12,469,255. In this instance New York City profited by its 100 per cent valuation of real property, and the taxpayers who were accustomed to protest against their heavy assessments were to some extent recompensed by the receipts from the new source of revenue.

An analysis of the federal income tax returns for New York shows that the receipts from the New York state income tax for the year 1919 were about 10 per cent of the personal income taxes collected by the federal government in New York in the preceding year.[1] New York is by far the richest state in the union, and is counted upon by the federal government to furnish about one-third of the total yield of the country's personal income tax. The net incomes upon which the taxes are paid in New York formed only about one-sixth of the total net incomes for the whole country, however. A comparison of these two ratios indicates that a number of very large incomes must be received in New York state, and that the very high graduated rates of the federal scheme produce a disproportionately high tax yield when applied to these extremely large incomes. An income tax with low rates and a slight degree of progression, like the state income tax, is not expected to produce such amounts. The state tax, which is applied at the uniform rate of three per cent to all amounts of income above $50,000, hardly taps the funds reached by the high federal tax. New York ranks behind Wisconsin and Massachusetts in the ratio of state income tax receipts to federal income tax receipts, but an attempt to gain larger amounts from the New York state tax is regarded by tax experts as inadvisable on almost every count. New

[1] United States Internal Revenue, *Statistics of Income for 1918*, p. 24.

York had 40 resident individuals with incomes of $1,000,000 and over in 1918,[1] subject to a federal tax of 73 per cent on that part of the income in excess of $1,000,000; such incomes, and even those of smaller amounts, could hardly bear a heavy state tax without confiscation, an effect which is not contemplated or desired under the present system.

The New York income tax has already come to play an important part in the state revenue. The total revenue receipts of the state for the year ending June 30, 1920 were $115,591,607,[2] of which sum the income tax payments made into the state treasury were $16,500,000, or approximately one-seventh. If the entire proceeds of the income tax had been assigned to the state about one-fourth of the state revenues would have come from taxes on personal incomes. The income tax proved to be unexpectedly productive, and at the close of the fiscal year the income tax bureau held undistributed the sum of $1,700,000. An unfortunate tendency has developed to regard the state's share of the income tax as a surplus, for the proceeds are not assigned to any particular purpose.

The cost of administration of the New York tax for the first year was approximately $1,000,000, or between two and three per cent of the amount collected. The cost of organizing and installing an administrative bureau must of course be unusually large during the first year, and this figure may be expected to show an appreciable decrease. During 1920 the income tax office handled 826,000 returns, so that the cost of collection as related to the number of returns was a little more than a dollar for each return. The work of an income tax office is divided into two parts.

[1] United States Internal Revenue, *Statistics of Income for 1918*, p. 67.

[2] New York Comptroller, *Report*, 1920, p. xiii.

During the first part of the year the office handles the voluntary payments, and during the remaining months delinquent payments and understatements are cared for. Viewed in this way, the New York income tax bureau may be said to have collected $36,250,000 in voluntary payments at a cost to the state of only $250,000, and to have sustained itself, approximately, during the rest of the year.[1] The voluntary collections were made at a cost of less than one per cent.

4. *Unsettled questions*

The adoption of a personal income tax law by the state of New York is an event hardly to be overestimated in the history of state income taxes. The experiment begun in Wisconsin eight years before, significant as it was, could not settle the question of the suitability of the income tax to a highly organized industrial and commercial area, for Wisconsin stands far down on the list of manufacturing states. The experience of Massachusetts was more significant in pointing out the way in which the income tax can be adapted to an increasingly complex economic organization, but the Massachusetts tax was not a general income tax, and, in the second place, Massachusetts, rich as it is, holds only one-third of the taxable income contained in New York. When New York itself, the richest state in the union on almost all counts, and the source of a third of the federal income taxes, succeeds in installing a workable income tax system and in obtaining a sum equivalent to more than one-fourth of the state revenues from taxes on personal incomes, the revenue-yielding capacity of income taxes can no longer be called into question. Improvements in the plan of taxation itself and in the administrative

[1] Information furnished by New York Income Tax Director Jan. 14, 1921.

machinery involved will undoubtedly be made; the tax itself may give way to other forms of taxes as revenue needs change and the social structure is modified; but the one almost universal count against the personal income tax as affairs stood in 1911, that of a failure to produce revenue, has ceased to exist. Curiously enough, one of the income tax problems which seems likely to be serious is its *over-productiveness,* and the consequent temptation to extravagance which surplus revenues always produce.

The dimensions of the income tax system in New York intensify the problems which have arisen in connection with other state income taxes but which have sometimes been overlooked. The New York plan of tax rates, for example, (that of a graduated tax which reaches a maximum at three per cent on taxable incomes of more than $50,000) remains to be tested. During the first year of its operation, when the federal tax rates reached a maximum of 73 per cent, it appeared to be well suited to the whole tax situation. If the projected reduction of the federal surtax rates is brought about, should the New York tax rates be raised? Or should they be *lowered* for the same reasons which are urged for the reduction of the federal rates, and such a flat rate as that of the two per cent originally planned for New York be substituted? The productiveness of the tax in a few given years is not the only factor to be considered; the effect of the tax payments upon the status of large incomes and the domiciles of their recipients, together with many less definable social effects, must also be taken into account. Should a distinction be made between earned and unearned income for the purposes of taxation? Unearned or "investment" incomes are probably received in larger amounts in New York than in any other state. One of the early advocates of the New York tax believes that such a distinction should have been made, at least for the

lower stages of income, since the heavier rates which in practice apply principally to incomes derived in considerable part from property do not affect these incomes.[1] Should the exemption of intangible property have been accompanied by the exemption of tangible property? The same authority holds that the present practice of exempting tangible property should have been made a legal practice.

The questions involved in the taxation of non-residents are only partially settled. Now that non-residents of New York are allowed exemptions similar to those of residents, the right of the state to apply the tax in its present form to the income of non-residents appears to be established. The United States Supreme Court decision in the case of the taxation of non-residents by Oklahoma[2] established the dominion of the states over the persons, property and business within their borders, the right of the states to levy taxes upon the incomes of non-residents from property or business within the state, and the right of the states to enforce the payment of such taxes by the exercise of their control over the property within their borders. This right of taxation has been constructed to apply to the income of non-resident exporters whose business offices are in the state of New York, on the ground that the tax is upon net income derived from conducting business in New York and not upon business itself.[3] The fact that such taxpayers' homes are outside New York bears directly upon the question of enforcing tax payment, but not upon the right of the state to assess the income tax in such cases.

Thus far, then, the state's *right* to tax the incomes of

[1] Seligman, *op. cit.*, p. 542.

[2] Charles B. Shaffer *v.* Frank C. Carter, State Auditor, and Abner Bruce, Sheriff of Creek County, Oklahoma, U. S. Supreme Court, March 1, 1920.

[3] *New York Times*, March 12, 1921.

non-residents, if no discrimination is involved, is clear as matters stand at present. The *wisdom* of making the attempt is more questionable. Mr. Holcomb, secretary of the National Tax Association, concludes a review of the Oklahoma and New York decisions with the following words:[1]

> The reviewer looks with no little concern upon the whole problem of non-resident income taxation, not only because of its doubtful expediency, but more because of his inability to see how a fair, thorough and effective system of collection is to be obtained. The difficulties of enforcing tax warrants for personal taxes against non-residents have long been recognized by the New York courts. . . . If we are to have a repetition of the farce with respect to non-resident income taxes which has obtained with respect to property taxes, it would appear altogether better to resort to some other form of business taxes. . . .

The Committee on Model Taxation also advocates the taxation of residents only, on the ground that the income tax is properly a tax upon persons only, to be collected at places where they are domiciled, and not upon business; and that a well-constructed system of taxation involves taxing business and property located within a state by other means, so that such business and property can in no wise be regarded as escaping taxation. Professor Bullock, the chairman of the Committee on Model Taxation, stated that "from the theoretical point of view the New York law as it stands, is bad, except for this saving clause by which it recognizes the right of other states to step in and levy personal income taxes without doubly taxing." In spite of the opposition on theoretical grounds, the taxation of non-residents still has warm support from within the

[1] *Bulletin of the National Tax Association,* vol. v, no. 6 (March, 1920), p. 183.

[2] *Proceedings of the National Tax Association,* 1919, p. 406.

state, and the final solution of the problem waits for further evidence.

Still another question which is yet to be worked out in New York is that of collection at the source of taxes on the incomes of non-residents. The main argument for the use of the method is the incontrovertible one that it is the only really effective means of obtaining taxes due from persons resident outside of the state. In the Yale and Towne case, whch had its origin in the refusal of a withholding agent to withhold the percentage of payments made to its employees which the New York income tax law specified, it was held that the right of the state to impose a tax upon the incomes of non-residents arising from business or occupations carried on within its borders carried with it the right to enforce payment " so far as it can by the exercise of a just control over persons and property within the state, as by garnishment of credits (of which the withholding provision of the New York law is the practical equivalent)." [1] It was held that in the case of non-residents the state merely adopted a convenient substitute for the personal liability which it could not impose. It was also held that the burden imposed upon the withholding agent was not an unjust one and not an unreasonable regulation of the conduct of business within the state.

The question of collection at the source is linked up with the taxation of non-residents so closely that if the latter goes the former goes with it. The experience of the state of New York ought to furnish a conclusive demonstration of the practicability of the method. Meanwhile many critics remain as sceptical of the ultimate success of the means as of the permanent value of the non-resident taxation itself.

[1] *Bulletin of the National Tax Association*, vol. v, no. 6 (March, 1920), p. 183.

In the collection of a tax of the dimensions of the New York income tax, questions which are in the last analysis questions of the accounting methods sanctioned by the state loom up in great importance. In March, 1921, such a question presented itself, at the very time when income tax computations were being made. The question arose in connection with the assessment of federal income taxes. When Solicitor General Frierson announced that excess realized on the sale of stocks was no longer to be considered as constituting taxable income under the federal law, —a decision which was announced to the United States Supreme Court in connection with the case of *Goodrich* vs. *Edwards*,—taxpayers under the New York income tax law were thrown into confusion. The New York income tax bureau, which had followed the policy of levying against payers of the income tax on any excess realized on the sale of stocks and bonds, at once announced that it would continue its former policy, and would not interpret section 353 of the state law in the way in which the federal law was to be interpreted according to the new decision. The difficulty which was immediately emphasized by the opponents of the state's policy was the fact that when a tax is levied on the excess realized from the sale of stocks above the market value on January 1, 1919, when the state income tax law became effective, the taxpayer may have incurred an actual loss in the transaction, on account of the price paid in purchase before January 1, 1919. At the time the above decision was announced the case of the People ex rel. Edward Klauber, a New York lace manufacturer, against Comptroller James A. Wendell, was being heard in the Appellate Division at Albany. The case was similar to that of the Goodrich case in the United State Supreme Court, and the position taken by the counsel for Mr. Klauber was that the state must confine its tax to income

and that it lacks the power to turn a loss into a theoretical profit. The decision was expected in May, 1921, and the case was to be taken before the Court of Appeals in the following month.

After the federal decision the state policy was attacked with increasing vigor, and the director of the income tax bureau announced that he had laid the matter before the senate and assembly tax committees with the suggestion that a change in the state income tax law should be considered. The provision had been condemned as "unduly harsh" by the committee on model taxation, with whom the director had conferred. The model tax committee suggested the use of a rule by which the taxpayer is given the benefit of the higher of two estimates at the date of the tax,—basis cost or market value. In the meantime, the director reminded the taxpayers, the income tax bureau had no choice but to administer the law is it stood.

Later in the same month the United States Supreme Court announced a decision establishing the rule that unless a given transaction which was completed prior to the basic date for computation prescribed in the federal law resulted in an actual gain, no "income" could result. It then became a more urgent question as to whether the state of New York could continue to maintain its stand with regard to January, 1919, values, for although the state is not hedged about by the same constitutional limitations, the aim and methods of the laws should be as consistent as possible.

In May, 1921, two events occurred which tended to clear up the matter. The Third Appellate Division handed down decisions denying the right of the state to tax stocks sold at a loss, and a bill was signed which changed the method of computing profit and loss, with the intention of doing away with the injustice which the older method had

produced. It was expected that the construction of the state law in the cases not covered by the ruling of the court would still present troublesome complications. The situation illustrates the difficulties of the administration of the income tax in highly developed financial communities.

The distribution of the proceeds of the income tax to the local units is not yet universally approved, and the particular scheme of distribution adopted by New York, that of dividing the proceeds of the income tax among the counties according to assessed valuation, has few supporters. Distribution according to educational needs seems to be coming ino favor, and if New York is not to lag behind the rest of the country in this matter it should give further consideration to the possibilities of such a plan. The possible over-productiveness of the income tax in New York has already been referrel to. Coupled with the program of economy undertaken early in 1921, the great productiveness of the tax may bring about unforeseen problems if a more careful plan of distribution is not made.

Finally, New York has not yet come to know its own mind with respect to the administration of the income tax. When the law was passed in 1919 the usual functions of the state tax commission were disregarded, and the work given to the state comptroller, although the state tax commission continued to administer the corporation taxes. In the following two years an extensive organization was built up and large sums collected with a fair degree of economy. Suddenly, in 1921, the state tax commission was organized and awarded the tax-collecting powers of the comptroller and the secretary of state. The type of organization of tax functions is in accord with the best modern opinion and with the recommendations of the committee on model taxation, but it is probable that the state will encounter temporary difficulties in making the change.

It was not to be expected, even with the wealth of expert assistance which was at hand while the New York income tax law was being worked out, that a perfect system could be evolved in the first year. It is in fact remarkable that a fiscal device which was in general disrepute as a state measure less than ten years before could have been made a uniquely productive source of revenue, and that it could have been employed without active opposition and other undesirable social and political consequences. The questions which remain in part unsettled,—the rates of the tax in relation to the federal rates, the various aspects of the taxation of non-residents and the collection of those taxes, the distribution of the yield, the best type of general and local administration of the tax as it is used in New York, and other more evanescent questions of the proper computation of the taxes,—are in fact, important as they are in bringing about justice and fairness in taxation, matters which are minor in importance when the great fact of the acceptance of the income tax by the public is given its proper place. If an increasingly skillful use is made of this means of taxation, New York will be enabled to occupy a place of as great significance in the field of tax laws and administration as it already does in the field of business finance.

CHAPTER VIII

The North Dakota Income Tax

1. *The income tax law of 1919*

North Dakota, one of the newer states, made few significant contributions to taxation history until recently. In 1919, however, largely as a result of the influence of the Non-Partisan League in the state, the legislature carried through an extensive program of changes in the tax and revenue code which included the inauguration of an income tax along unusual lines. At the same time provision was made for several state industrial undertakngs. The impelling motive for the adoption of an income tax law seemed to be not so much the usual accumulation of dissatisfaction with the operation of the personal property tax along particular lines as a conviction among the legislators that the existing scheme of taxation exacted contributions for the support of the state from the wrong people,—those not best able to contribute. As a result the effort was made to obtain more revenue from the richest individuals and those who were the recipients of "unearned" income.

The income tax law passed in 1919,[1] therefore, made a distinction between "earned" and "unearned" income and imposed a doubly heavy progressive rate on unearned income up to $12,000 at which point the two sets of rates begin to converge. The law applied the tax to the income of both residents and non-residents,[2] from all sources within

[1] *Laws of North Dakota,* 1919, ch. 23.

[2] Income of non-residents from personal services and intangibles was exempt.

the state. The personal exemptions were $1,000 for the individual, $2,000 for the head of a family, and $200 additional for each dependent person above the number of one. Deductions for ordinary business expenses, losses, bad debts, depreciation, interest on indebtedness, and taxes were allowed. Personal property tax receipts were allowed as offsets. Collection at the source of interest, dividends, profits, premiums, and annuities was provided for, but this provision was later repealed. The proceeds were to defray the general expenses of the state government.

The type of administration provided for was along the lines which have proved most successful in recent years. The tax commissioner was given the supervision of the system and was authorized to divide the state into income tax districts and to appoint special assessors of income, although he might " appoint an existing tax officer to act as such income tax assessor."

The scale of taxation of incomes was as follows:

Net income	*Rate (per cent)*	
	Earned income	*Unearned income*
1st $1,000	.25	.5
2nd 1,000	.5	1.
3rd 1,000	.75	1.5
4th 1,000	1.	2.
5th 1,000	1.25	2.5
6th 1,000	1.5	3.
7th 1,000	1.75	3.5
8th 1,000	2.	4.
9th 1,000	2.25	4.5
10th 1,000	2.5	5.
11th 1,000	2.75	6.
12th 1,000	3.	6.
13th 1,000	3.25	6.
14th 1,000	3.5	6.
15th 1,000	3.75	6.
16th 1,000	4.	6.

17th 1,000	4.25	6.
18th 1,000	4.5	6.
19th 1,000	4.75	6.
20th 1,000	5.	6.
In excess of $20,000 and not in excess of $30,000	6.	8.
In excess of $30,000 and not in excess of $40,000	8.	10.
In excess of $40,000	10.	10.

A corporation income tax imposed under the same law was levied at the rate of three per cent on net income, plus five per cent of any amount undistributed six months after the end of the fiscal year.

2. *Criticisms of the law of 1919*

Critical comment on the act of 1919 has been general. Not only was the discrimination between earned and unearned incomes by means of a graduated tax with doubled rates on the unearned income an innovation in this country, but the maximum rates of taxation (10 per cent) were unprecedented in state income taxation. Such a plan of taxation has been usually regarded as more suitable for a highly developed community, with large incomes and vested interests of long standing, than for a community in which industrial and commercial affairs are in an almost pioneer stage. The whole body of legislation enacted in the session of 1919 was apparently the work of a body of legislators determined to place so-called "capitalistic" activities at a disadvantage, and significantly, appears as *The New Day in North Dakota: Some of the Principal Laws enacted by the Sixteenth Legislative Assembly, 1919,* the compilation of laws of that year published by the state industrial commission. Much of the fiscal legislation bears the mark of this intention rather than of the results of a careful analysis of the financial situation of North Dakota.

Collection at the source involves many problems which have already hampered the authorities.[1]

This system of collection must involve tremendous administrative difficulties and complications, for the withholding agents are required to deduct from each payment of interest, dividends, or other form of taxable income, such part as will be required to pay the tax, and there are no less than twenty-three different rates any one of which may be the proper one in a given case.

Furthermore, double taxation, produced in this case by requiring the taxation of dividends as unearned income but permitting no deductions to the individual for taxes paid by corporations subject to the act frequently has undesirable results.

The defects in the act of 1919 which became apparent almost immediately had to do with the scale of rates and the differentiation between earned and unearned incomes. The income tax was apparently constructed with the intention of promoting social justice through the medium of compulsory contributions to the expenses of the state. The incomes of the wealthy were to be drawn upon for large amounts, in a proportion almost unparalleled in the history of the state taxation of incomes, while only nominal sums were to be exacted from the persons in receipt of small incomes. When the primary rates of the North Dakota act (one-fourth of one per cent on the first $1,000 of taxable earned income and one-half of one per cent on the corresponding category of unearned income) were devised, several signs of the times were already pointing out a safe course for state income taxes which should probably have been heeded in North Dakota. The committee on a model system of state and local taxation appointed by the National

[1] H. L. Lutz, "The Progress of State Taxation since 1911," *American Economic Review*, vol. x, no. 1 (March, 1920), p. 73.

Tax Association had already reported against a smaller initial rate than one per cent. The expense of collecting small tax bills due from persons with low incomes had already received attention in states where the income tax seemed a doubtful success, and changes were imminent. Furthermore, for the first time the actual status of individuals with respect to their incomes was becoming a matter of common knowledge, through the operation of the federal income tax and the publication of *Statistics of Income* by the United States Internal Revenue. A cursory examination of the published figures would have shown that the tax-paying capacity of North Dakota incomes was exceedingly small, both absolutely and relatively, and that such a tax as that provided for in 1919 might be expected to yield only a small amount and to be expensive to administer.

The federal income taxes received in 1917 from North Dakota incomes in 1916 amounted to only five-hundredths of one per cent of the personal income taxes collected in the country as a whole.[1] The tax itself amounted to $66,344, and the number of individuals making returns was 1,176. The federal tax for the year 1916 applied to incomen of $3,000 and over ($4,000 in the case of married persons) and was imposed at the normal rate of two per cent, with surtaxes reaching 13 per cent on the largest incomes. It should have been clear that little return was to be expected from the state tax on large incomes. For the incomes of the year 1917, when the federal tax reached down to incomes of $1,000, the number of returns from North Dakota increased by nearly 20,000. But earned incomes of $4,000 and less were taxed at less than one per cent in North Dakota. The majority, presumably, were

[1] United States Internal Revenue, *Statistics of Income for 1917*, pp. 8, 11.

taxed at one-fourth of one per cent, as the number in receipt of incomes of $1,000 but less than $2,000 has always proved to be larger than that contained in any other classification of similar size. The yield of the North Dakota tax was plainly destined to be small, as the large incomes were too scarce to produce much revenue and the small incomes were inadequately taxed.

A difficult aspect of the differentiation soon presented itself. The tax on unearned incomes failed to prove a productive source of revenue, not only because the large incomes were so few in number, but because the rates were so fixed that in many instances the tax yield of incomes was smaller than if a simple scale applicable to all incomes alike had been in force. The state tax department early recognized the difficulty, and made plans for recommending a change at the earliest possible time. The department describes the situation as follows: [1]

> Our experience with the earned and unearned feature of the law has shown us that, in this state at least, such classification is without value. . . . The purpose of taxing the unearned income at a higher rate is to make such classes of income bear a larger proportion of the burden of income taxation. Our law has not accomplished this result for the reason that we find in this state practically all individuals have as much, if not more, earned income than unearned income. Therefore, since our rates start at the primary rates in both instances, our present law results in less revenue than if we taxed the entire income of all individuals at the earned rate.

An example of the working of the law of 1919 in this respect is furnished by the return of an individual taxpayer with $20,000 earned income and $1,000 unearned income. Under the provisions of the law, the rate on the twentieth thousand of earned incomes is 5 per cent. The rate on the

[1] North Dakota Tax Department, *Statement*, July, 1920.

thousand of unearned income (classified as the first thousand of unearned income) is one-half of one per cent. But if the same individual had an income of $21,000 all earned, the rate on the additional thousand (the twenty-first thousand of earned income) would be six per cent. Consequently the state loses, by this classification, the difference between a tax of six per cent on the additional thousand and a tax of one-half of one per cent on that amount.

The individual who pays taxes on earned income is discriminated against in another way, in respect to increases in the rate of his tax. One critic described the situation as follows: [1]

> The rates applying to the two classes of income are elaborately and, in the writer's judgment, uselessly graduated. . . . The rates rise steadily for both classes of income, and the total tax burden on given amounts of the two classes of income presents the singular phenomenon of a heavier rate of increase on the earned incomes than on the unearned. . . . The increases of taxes for the third $10,000 of earned income over the second $10,000 is 54.8 per cent, while for the same amount of unearned income it is . . . 33⅓ per cent. This discrepancy was hardly intended and was produced by introducing, after $10,000, much larger income brackets for unearned income, while the minute graduation of rate for earned income was continued through $20,000 of income.

3. *The operation of the income tax law*

The amount of the income tax certified to the North Dakota state treasurer for collection up to October 1, 1920, was $53,887. During the same year the operation of the corporation income tax, which yielded approximately $460,000, was regarded as satisfactory. The explanation of the small amount of income assessed against individuals

[1] Lutz, *op. cit.*, p. 73.

is given as follows in the report of the state tax commissioner:[1]

1. Income from mortgages secured on North Dakota property and income from North Dakota bank deposits were exempt.
2. Dividends received in 1919 earned in 1918 were exempt.
3. Crop failures in 1919 reduced the incomes of both farmers and business men.
4. There are few large incomes in North Dakota, and the personal property tax offset operated to reduce the yield from that part of the tax.
5. The rates on individual incomes are "absurdly low."
6. A large proportion of the individuals with large incomes claimed deductions for taxes paid on national bank stock.
7. The classification of earned and unearned income has involved a loss of revenue.

The tax commissioner's comment on the failure of the present income tax system is as follows:[2]

> The personal income tax law has proven a failure as a revenue producer. The larger part of the cost of administration of our income tax law is chargeable to the administration of the personal income tax. More than eighteen thousand personal income tax reports were received from individuals, and over four thousand were received from corporations. The larger part of the corporations were taxable. A large majority of individuals making an income tax report paid only a very small tax or were exempt. It is very probable that if all of the reporting taxpayers had been thoroughly conversant with our income tax law and with the various exemptions and deductions allowable under said law, that we could not have secured nearly as large an amount of revenue as was secured. . . .

[1] North Dakota Tax Commissioner, *Report,* 1919 and 1920, pp. 38, 39.

[2] *Ibid.,* pp. 39, 40, 41.

. . . Sentiment in the state is almost unanimously in favor of an income tax law. There are certain features in our income tax law, however, which are generally considered objectionable. The law is complicated, and consequently the blanks are necessarily complicated and difficult for taxpayers to properly fill out. There is considerable objection to the discrimination shown in our present law in the taxation of small corporations in comparison with the taxation of competing businesses of individuals and partnerships. Corporations pay a tax of three per cent on their net income and no deduction is allowed for personal property taxes paid to the state or local government. The stockholders of the corporation pay a personal income tax on dividends received from the corporation. Dividends are considered unearned income and are subject to the rates provided for unearned income. A business conducted by an individual or partnership is not subject to the income tax. The individual owner or partner pays a tax on his share of the profits of the business, his profits being considered earned income, and consequently taxable at one-half the rate of unearned income. In addition to this, the individual owner or partner, in the case of a partnership, is allowed to deduct his personal property tax in this state, from the amount of his income tax. The result is that the individual owner of an ordinary business pays no tax on the earnings of the business and pays no individual income tax on account of the personal property tax offset.

Further evidence of the comparative failure of the state personal income tax in its present form is given in the fact that the receipts bear the approximate ratio of one to one hundred to the total state tax. They form slightly more than two per cent of the amount collected in North Dakota in 1918 incomes by the federal agents.

The cost of administration of the personal and corporation income taxes combined is stated by the tax commissioner to be 1.65 per cent of the collections.[1] The commissioner notes the fact, however, that the larger part of the cost of administration is chargeable to the personal income

[1] North Dakota Tax Commissioner, *Report,* 1919 and 1920, p. 39.

tax. More than 18,000 individual returns were handled, while only slightly more than 4,000 corporation reports were received. Furthermore, the cost of clerical assistance charged against the income tax does not include an amount representing the use of a considerable part of the office force of the tax commissioner's office for three months.

The following table shows the income tax of individuals classified according to the amount of tax assessed:[1]

Amount of tax assessed	*Number assessed*	*Amount of tax*	*Per cent of total tax*	*Average tax per taxpayer*
Total, all groups	6,431	$53,887.17	100.00	$8.49
Under $50	6,152	26,899.42	49.90	4.37
$50 and less than $100	104	6,950.83	12.90	66.83
$100 and less than $200	57	7,895.04	14.65	138.51
$200 and less than $500	22	6,246.04	11.59	283.91
$500 and less than $1,000	4	2,615.11	4.85	653.78
Over $1,000	2	3,280.73	6.09	1,640.36

The table given above illustrates the difficulties and expense of collecting the personal income tax in North Dakota under the system put in force in 1919. With 97 per cent of the taxpayers classified paying a total tax of less than $50, a tax which in fact averaged $4.37, the expenses of collection must have been proportionately very large for the small incomes. If it were feasible to calculate the expense of collecting taxes on the lower classifications of incomes, startling results might be obtained, results which might influence the construction of laws in the future, or might at least make clear the fact that the justification of such taxes lies in the moral effect on the taxpayer rather than in the resulting additions to the state revenue.

4. *The future of the income tax in North Dakota*

The urgent recommendations made to the legislature of 1921 by the state tax commissioner were principally con-

[1] North Dakota Tax Commissioner, *Report*, 1919 and 1920, p. 40.

cerned with the extension of the tax to various exempted classes of income, increases in the rates, and a change in the differentiation plan.

A scale of taxation on personal incomes starting at one per cent on the first $1,000 of taxable income was recommended. This tax was to reach six per cent at amounts in excess of $10,000. The suggested scale was modeled on the Wisconsin income tax rates for individuals, but it advanced slightly more rapidly, and reached its maximum at a point $2,000 below that at which the Wisconsin rate becomes six per cent. The recommended rates should be put in force, in the opinion of the tax commissioner, only if his recommendation for the repeal of the personal property tax was also followed. In that case, the income tax should be apportioned to the counties and local districts. If the repeal of the personal property tax laws of the state should not be carried through, at least farm machinery, tools, wearing apparel, and household furniture should be exempted.

The reasons given for the recommended substitution of the income tax for the personal property tax are these: [1]

1. Net income is a more accurate measure of ability to pay than the amount of personal property owned.
2. Persons with incomes can be equitably assessed through the income tax, while all persons who own personal property can not be equitably assessed under the personal property tax.

With regard to the revision of the income tax law of North Dakota, the tax commissioner further recommended to the legislature of 1921 that differentiation (that is, the application of different rates to earned and unearned income) should be abolished. Instead, a graduated surtax should be imposed on unearned incomes, in addition to the normal

[1] North Dakota Tax Commissioner, *Report,* 1919 and 1920, p. 41.

tax. In this way one of the fiscal anomalies of the 1919 law (the situation in which the state receives a smaller revenue from certain combinations of earned and unearned income than from incomes wholly earned) would be done away with.

Other recommendations for the improvement of the personal income tax system were as follows:

The repeal of the personal property tax credit.

The inclusion of income from mortgages secured on business transacted in North Dakota.

The inclusion of income from mortgages secured on North Dakota real property and income from North Dakota bank deposits. In this connection the principle repeatedly enunciated by the National Tax Association's committee on a model system of taxation is presented: "Every person domiciled in the state should make a direct personal contribution toward the support of the state if such person has any taxable ability."

The maintenance of the existing exemptions, largely because of the trouble and expense of levying income taxes on small incomes.

The extension of the three per cent tax imposed on the incomes of corporations to all business carried on within the state under whatever form conducted. Otherwise, dividends received from a corporation already taxed on its net income should be exempted from taxation. The double taxation involved in the taxation of dividends becomes objectionable only when all taxpayers are not given the same treatment.

The inclusion in the permitted deductions of all losses actually sustained during the year in transactions entered into for profit.

Since the above recommendations were made the entire

financial program of North Dakota has met serious opposition and the future of the Non-Partisan League's proposals has become very problematical. It is possible that the income tax, since it is not a form of taxation peculiar to North Dakota, may escape in any general upheaval which occurs. At the time of writing, however,[1] such questions as those of its particular form have been almost lost sight of. The legislature of 1921 failed to pass any constructive tax legislation. In spite of the fact that the personal income tax in North Dakota is a part of a program the whole course of which is doubtful, and has been handicapped by the unusually serious difficulties which its form brought upon it in the first year of its operation, the tax can still be so changed and adapted that it will form a valuable part of the state revenue system. Through the failures of the first year the tax-yielding capacity of the various classes of income has been shown up very clearly. If more extensive use were made of the federal statistics of income, in the way in which those figures have been used by the special revenue commission of New Mexico, for example, the taxpaying power of the state at various hypothetical income tax rates and the yield of any proposed measure might be foretold with a fair degree of accuracy. A number of well-informed agencies and individuals are already urging careful and constructive changes in the law. The chief danger seems to be that North Dakota will fail to recognize the very obvious fact that the state is an agricultural state, with few large fortunes and few unearned incomes, even though the tax commissioner's report presents statistical proof that such is the case. If the state's needs are carefully studied the future income tax can be far more effective than the tax of the first year.

[1] Early in 1921.

CHAPTER IX

The Income Tax Movement in New Mexico and Alabama

1. *The New Mexico income tax*

The state of New Mexico, admitted to the union in 1910, made its first experiment with the taxation of incomes in 1919. In that year the legislature passed an income tax law imposing a graduated tax on the net income of resident individuals and domestic partnerships and corporations and on the income from mines, oil wells and gas wells arising from sources within the state.[1] Deductions were permitted for interest on indebtedness, repairs and insurance, taxes, business expenses, losses, bad debts, and income from partnerships and corporations already taxed under the act. The personal exemptions were $1,000 for each single head of a family, $2,000 for each married head of a family, and $200 for each dependent. The rates of taxation were as follows:

Net income	*Rate (per cent)*
Above $5,000 and not exceeding $10,000	½ of 1
" 10,000 " " " 15,000	¾ of 1
" 15,000 " " " 20,000	1
" 20,000 " " " 30,000	1½
" 30,000 " " " 40,000	2
" 40,000 " " " 50,000	2½
" 50,000	3

Personal property tax receipts were to be accepted as off-

[1] *Laws of New Mexico,* 1919, ch. 123.

sets against income taxes. The state treasurer was to administer the act, but no special authorization was given for the appointment of income tax deputies or the defining of income tax districts. The taxes paid were assigned to the state treasury for use in connection with the educational and other state institutions.

The bill was apparently drawn hastily, and questions as to its constitutionality were soon brought up. As a result the governor's call to a special legislative session in February, 1920, including among the subjects for consideration an amendment of the income tax law " in such manner as to make the law non-discriminative, and otherwise to make it conformable to the constitutional limitations on that subject, or else to take such other legislative action in regard thereto as to the legislature may appear to be right and proper." [1]

A new income tax bill, substituting a more elaborate income tax, was introduced when the special session met. In general structure the bill followed the lines of the Wisconsin act. It provided for a higher progressive rate (one to five per cent) on all income of residents, both individuals and corporations, and on the income of non-residents " derived from property located or business transacted within the state." The legislature repealed the law already on the statute books, but declined to pass the new bill. Instead it established a special revenue commission and required it " to inquire into and make recommendations as to the policy or necessity of the adoption of appropriate legislation of a system of taxation of incomes and the relation of such a system of taxation to the present system of taxation of property." The latter bill was approved by the governor, but the repeal of the existing tax law was vetoed. As a result

[1] New Mexico Special Revenue Commission, *Report*, 1920, p. 37.

the special revenue commission was given the task of passing upon the desirability of the adoption of a tax which was already adopted, and on the other hand some of the advantages which were expected from the continuance of the operation of the law failed to materialize. It was hoped that some important constitutional questions concerning the law might be settled. It proved that the act was universally disregarded and treated as a dead letter. Practically no returns were filed (although the penalty for failure to file was fine and imprisonment) and nothing was paid into the state treasury. The state treasurer did not at first issue the blanks for making returns on the ground that the funds to pay for such forms were to be drawn from the proceeds of a tax which in all likelihood would never be collected.

The special commission's report dealt first with the question of constitutionality. The commission noted the fact that in no state with a constitution similar to that of New Mexico had a progressive income tax been upheld.[1] On the other hand, it reached the conclusion that a law imposing a tax on incomes at a flat rate would be reasonably safe from attack on constitutional grounds. It held also that the classification of corporations by exclusion would be a justifiable measure. The commission expressed its belief that income could not be correctly classified as property.

The commission recommended a strictly personal income tax applying to the net income of every person within the state. The exemptions should be made exactly the same as those under the federal income tax law, not only because the federal exemptions are believed to be "essentially reasonable and just" but also on account of the administrative advantage of an effective check on evasion. The determination of taxable income should also follow along the

[1] New Mexico Special Revenue Commission, *Report*, 1920, p. 38 *et seq.*

lines of the federal tax. With regard to the question of rates, the commission held that as long as the federal rates remained at the existing high level, New Mexico was precluded from establishing a heavily progressive state income tax. The soundest considerations were those indicating a low flat rate. This rate should not be more than four per cent, and during the first year of administration should not be more than two per cent. Using the statistics of income compiled by the federal government, the commission concluded that a two per cent rate on 1920 incomes would bring in about $300,000.[1]

The commission considered that the " simplest and most sensible " disposition of the yield would be to dedicate it to the state school fund. In states where the localities have been asked to surrender certain taxes as a condition to the establishment of the income tax, it has usually proved advisable to apportion a share of the income tax receipts directly to the local authorities. In New Mexico no considerable sacrifices would be made by the counties and a direct apportionment would be unnecessary. The commission recommended that the state tax commission should be given the administration of the income tax law.

In the opinion of the commission the establishment of a personal income tax should be accompanied by the passage of a law exempting intangible personal property from taxation. With an income tax, the owners of such intangibles would be contributing to the support of the state. The older system of personal property taxation has been a lamentable failure in New Mexico, as it has elsewhere.

The commission's report was presented in November, 1920, and it was believed that the legislature of 1921 would base legislation upon its recommendations. The commis-

[1] New Mexico Special Revenue Commission, *Report,* 1920, p. 50.

sion wisely took account of the fact that New Mexico is a state in which somewhat " primitive economic conditions " still prevail (the state paid only nine-hundredths of one per cent of the total federal income taxes paid for 1918) and framed its recommendations accordingly. However interesting the experiment in New Mexico may be, its experience cannot yet be of great value in guiding the wealthier industrial states in shaping their legislation.

2. *The attempt to introduce an income tax in Alabama*

In 1919-1920 the state of Alabama made its second experiment with an income tax law. The first income tax, which was levied from 1843 to 1884, began its existence as a tax on specified business incomes. In the course of its existence frequent revisions were made and the tax changed character almost completely. In 1844 the list of professions was enlarged, and in 1848 extended to include all professions and business except those of artisans and manual laborers. In 1850 the law was so modified that the professional income tax became partly a license tax. In 1862 the rates of the income tax were again increased and its application extended. Finally, in 1866 a general income tax of " one per cent . . . . upon the annual gains, profits, salaries, and income in excess of $500 received by any person within the state " was adopted.[1]

After the close of the Civil War the administration of the income tax degenerated rapidly. The yield decreased from about $11,000 out of a total state tax of $1,122,000 in 1870 to $8,100 in 1879.[2] At the same time the tax was becoming increasingly unpopular. As a result of the recommendations of the state auditor the provisions for levying

[1] D. O. Kinsman, *The Income Tax in the Commonwealths of the United States* (New York, 1903), p. 80.

[2] E. R. A. Seligman, *The Income Tax* (New York, 1914), p. 410.

the state tax were dropped, and after 41 years of existence the income tax of Alabama came to an end.

The law passed in 1919[1] represented one of a series of revenue reforms undertaken by the legislature of that year. A graduated tax was imposed upon the incomes of resident individuals and domestic corporations, and upon the income of non-resident individuals and foreign corporations arising within the state. The customary deductions were allowed. The sums of $1,000 for the individual, $2,000 for a married person or the head of a family, and $300 for each dependent, were allowed as exemptions. The income was was to be assessed at the following rates:

Net income	*Rate (per cent)*
In excess of $5,000	2
In excess of $5,000 but not in excess of $7,500........	2½
In excess of $7,500 but not in excess of $10,000.......	3
In excess of $10,000 but not in excess of $15,000......	3½
In excess of $15,000	4

The state tax commission, created under the terms of the same act, was given the duty of administering the law, and one of its members, to be known as the income tax supervisor, was to administer it. After deducting the commissions of the local collectors, 35 per cent of the proceeds of the tax were to go to the municipality of which the taxpayer was a resident, 25 per cent to the county, and the balance to the state. The form of the law, with its provision for graduated rates, central control, and the distribution of the proceeds, showed the influence of the successful measures of the few years preceding its enactment, and contained the promise of a far more effective income tax than that which Alabama abandoned in 1884.

The income tax law of 1919 was shortlived. On March

[1] *Laws of Alabama,* 1919, ch. 328.

20, 1920, its was held unconstitutional in the circuit court, on the ground that as a property tax it exceeded the constitutional limit of 65 cents per $100, and on the ground that it was discriminatory in character. This decision was affirmed by the state supreme court on April 24, 1920.[1]

Although New Mexico and Alabama are both relatively poor states with little modern industrial enterprise within their borders, the occasion for the experiments with the income tax is the same in each instance,—the omnipresent dissatisfaction with the property tax. The special commission in New Mexico called attention to the fact that even in that state where "the economic strength of the state is still largely implicit" personal property had almost entirely disappeared from the assessment rolls. The *amount* of such property which escapes taxation in such a state is small, relatively at least, but it is plainly the mark of prudence to recognize the situation as early as possible and to make the necessary changes in the revenue system. In these states the attempt has failed at first, for varying reasons, but in both cases there is evidence that the dissatisfaction with the old system has not been quieted and that fresh efforts for reform are to follow.

[1] *Bulletin of the National Tax Association*, vol. v, no. 8 (May, 1920), pp. 262, 263; vol. v, no. 9 (June, 1920), p. 292.

CHAPTER X

The Income Tax Movement in Other States

The present period of interest in the taxation of personal incomes as a means of remedying the inequities of the personal property tax and of bringing about contributions to the expenses of the state from those best able to pay has not beeen confined to the states whose income tax measures have been described in the preceding chapters. In a number of other states, particularly in Ohio, Georgia, and California, the movement has attained considerable prominence and at times the adoption of the income tax has seemed imminent. In other states preliminary steps have been taken. In the following pages the most significant of these movements are described.

1. *Proposals for an income tax in Ohio*

The constitution of the state of Ohio contains provision for the adoption of an income tax,[1] but no active steps were taken in that direction until the state revenue system was submitted to scrutiny by a special committee in 1919. The General Assembly of 1919, which convened early in January, recognized at once the pressing nature of the financial problems before it. Both state and municipal treasuries were facing serious shortages at that time. Emergency measures were promptly enacted, a committee was appointed to recommend legislative measures for increasing the revenue, and a recess was taken in order to allow the

[1] *Constitution of Ohio,* art. ii, sec. 8.

committee time in which to do its work. The committee, known as the Special Joint Taxation Committee of the 83rd Ohio General Assembly, rendered its report in December, 1919. The new revenue measures recommended by the committee were an income tax, an inheritance tax, and a tax on motor vehicles.

During the course of the preparation of its income tax bill the committee made a study of the experience of those states which had had the best results with income taxes, particularly Wisconsin, Massachusetts, and New York. Use was also made of the plan for a model system of state and local taxation prepared by a committee of the National Tax Association (See Appendix I). The bill provided that the tax should be imposed only upon the incomes of persons resident in the state, but that all income received by residents of the state, from whatever source derived, should be included in the return of income. Professor Harley L. Lutz, economic adviser to the committee, comments as follows on the taxation of non-residents:[1]

> The attempt to tax nonresidents upon the income from property owned and from business, trades, professions or occupations carried on in New York was inspired by a local situation which has no parallel in Ohio. A large number of persons do business or earn incomes in New York and reside in New Jersey, and the tax on nonresidents was confessedly aimed at this group. The taxation of nonresidents is not approved by the committee on a model tax system, and its argument against the practice is familiar to this committee.

The definition of gross income in the committee's bill followed closely that contained in the federal law. Stock dividends were excluded from taxable income. The deductions for the purpose of determining taxable net income

[1] H. L. Lutz, "The Operation of State Income Taxes," *Report of the (Ohio) Special Joint Taxation Committee,* p. 107 of the report.

followed those of the federal law. The exemptions were set at $500 for unmarried persons and $1,000 for married persons, with $200 additional for each dependent. The committee recognized the fact that these limits were unusually low:[1]

> We recognize that these figures mean an encroachment upon that subsistence minimum which all authorities agree should be exempted, but we have ventured thus far because of our desire to secure as wide a diffusion of the burden of the income tax as possible, and also because of the need of additional revenue from the tax.

The committee considered the possibility of requiring taxpayers to file a copy of their federal returns upon which the state income tax might be applied, but decided against it on several grounds. First, the conflict of tax jurisdictions would involve complications; second, there were other differences in the determination of gross and net income; and third, it seemed desirable from the administrative standpoint of the state to have a separate return made, so that the state authorities might have complete control over a set of returns.

The bill placed the state tax commission in general charge of the income tax, and enlarged the commission for that purpose. The county auditor was made local collector of incomes, ex-officio, and was to appoint deputies and other assistants. Returns were to be made to the county auditors. The county auditor was to make the assessment, and the tax was to be collected by the county treasurer "at the same time and in the same manner as other taxes." The tax commission was empowered to require information at the source.

[1] *Report*, p. 75.

The rates of taxation to be applied were as follows:

Taxable income	*Rate (per cent)*
First $4,000	1
Above $4,000	2

The committee took advantage of the material on the status of incomes in the various states through the publication of *Statistics of Income for 1917* by the United States income tax authorities, and prepared a careful statement of the yield of the tax on incomes above $2,000. Taken together with the estimates of the probable yield of the tax on incomes below that amount, the probable yield of the total tax was estimated at from $7,000,000 to $8,000,000.

The proposed distribution of the proceeds was in the ratio of three-fourths to the municipal corporations and townships in which the funds originated, and one-fourth to the state to become part of the general revenue. This provision gave recognition not only to the constitutional requirement in Ohio that 50 per cent of the collection of such taxes must be returned to the source, but also to the great needs of the cities. The well-known fact that the income tax has always proved to be an urban tax was noted, and it was anticipated that from the apportionment to the localities of about $6,000,000 of the estimated yield in the first year of the collection of the tax the cities would obtain some relief from the serious financial difficulties under which they were laboring at the time when the commission was doing its work, although the relief for the year 1920 would still be inadequate.

The income tax bill was promptly defeated by both branches of the legislature when it was introduced in December, 1919.[1] The basis of opposition was the argument

[1] *Bulletin of the National Tax Association,* vol. v, no. 5 (Feb., 1920), p. 133.

that such a law must necessarily contain inquisitorial provisions which would disclose intangible property to the taxing officials, with the result that it would thenceforward be subject to taxation, and the arguments of banks and other financial institutions that serious injuries to their business would follow the passage of such an act. Repeated attempts were made to pass the bill with amendments covering some of the points under objection, but all hope of its ultimate passage was finally abandoned late in December, 1919.

2. *The income tax movement in Georgia*

In Georgia a recent attempt to introduce a personal income tax has failed, although the evidence indicates that the movement had and probably still has the force of a considerable body of public opinion behind it. Georgia had had one rather unusual experience with the personal income tax at the time of the Civil War.[1] In 1863 a tax on profits was levied, with a progressive rate based on the ratio of income to capital, and so planned that—theoretically at least—if profits were ten time capital the entire income went as taxes. Evasion and fraud very naturally resulted, and the tax was dropped soon after the war.

The late attempt to introduce an income tax drew its support from a knowledge of the increasing use of the personal income tax in other states. In Georgia, as in other states, Civil War experiments are recognized to have little value in dealing with twentieth-century fiscal problems. In 1918 the legislature found the state's sources of revenue inadequate to provide funds for the ever-increasing government expenses and at the same time it realized the seriousness of the restrictions upon the taxing power found in the

[1] Seligman *op. cit.*, pp. 411, 412.

state constitution. A special tax commission was at once appointed to investigate the state's tax system and to compare it with that of other states and countries. This committee, reporting in 1919, suggested several important changes in the system, and included in its recommendations a proposal for a constitutional amendment permitting the imposition of income and inheritance taxes with graduated rates. The committee described its position as follows:[1]

> Recognizing, as we do, that an income tax is perhaps the fairest and most equitable method of raising revenue, particularly from those classes of property which are the most difficult to assess, we are pleased to note that Congress has enacted a law which gives those states having an income tax law, upon the request of the Governor of the State, access to the data upon which the federal income tax is now assessed, so far as it affects corporations, and we hope that a similar provision will soon be made in that affecting the income of individuals.
>
> The only reasonable objections to taxation by this method being the difficulty and expense attending its administration, and both of these having been entirely eliminated by the granting of the privilege mentioned above, we recommend that Georgia get in line by enacting, as soon as the Constitutional amendment hereinbefore provided for will permit, a law providing for taxation on an income basis, and at a very low rate.

The proposed legislation received a favorable report from the committee on constitutional amendments of the legislature of 1919, but action was deferred until the 1920 session. In the summer session of 1920 a bill providing for a constitutional amendment authorizing the levy and collection of an income tax was passed by the House of Representatives but failed of passage in the Senate. If passed, the proposal was to have been submitted to the voters at the election in November, 1920. The failure of the bill in the legislature of 1920 means that a considerable period

[1] (Georgia) Special Tax Commission, *Report*, 1919, p. 43.

must elapse before a personal income tax bill can again be passed by the legislature and the proposal ratified by the people.

3. *The income tax movement in California*

The agitation for an income tax in California was only temporarily quieted by the presentation of an unfavorable commission report in 1906. After the Wisconsin experience demonstrated the practicability of an income tax of a new kind the interest in the tax in California increased. Bills providing for a personal income tax have reached several legislatures but have failed of passage. In late years one of the most earnest advocates of the adoption of the tax has been Mr. Clifton E. Brooks, member of the legislature for Oakland. Mr. Brooks stated his position in the *California Taxpayers' Journal* in September, 1919:[1]

> The income tax for the state will not be an experiment. In Wisconsin it is producing annually a revenue of $2,000,000 and in Massachusetts $12,000,000 from sources that previously escaped taxation for the most part. In population and wealth, California ranks about half-way between Wisconsin and Massachusetts. It would not be a matter of too abundant optimism to estimate the revenue that California could develop from this source at $6,000,000. . . .
>
> The income tax is also desirable because it will provide an opportunity to abolish, at a later date, present crude, inefficient and unjust methods of taxing (1) Personal Property and (2) Corporation Franchises. All assessors regard the present method of taxing personal property as the "joke" tax. When the income tax is established, taxes paid upon personal property should be deducted for awhile, as the income tax would be used solely to hunt out the "personal property tax slacker" as before stated. When it could be demonstrated that the income tax was the most efficient method of raising public revenue from this source, then the

[1] C. E. Brooks, "Shall we have an Income Tax?", *California Taxpayers' Journal*, vol. iii, no. 7 (Sept., 1919), pp. 12, 13.

logical step would be to abolish the personal property tax. It should, perhaps, be mentioned at this point that rates in connection with a state income tax would be very low. The federal tax produces in California $76,000,000. Since the amount which it would be desirable to raise from this source would be only about a twelfth or thirteenth, the rate need be but a fraction of the federal rate.

Mr. Brooks introduced a bill embodying his opinions in the legislature of 1921, as the first bill presented. Every individual and corporation subject to the federal income tax was included under the terms of the proposed legislation. The net income arrived at in the federal return less the tax paid to the United States and income received from investments without the state would be the net income for the purposes of determining the amount of the tax due. The rates of the proposed tax were as follows:

Taxable income	*Rate (per cent)*
First $10,000	1
Next $40,000	2
Above $50,000	3

The proposed measure against the judgment of some of the persons interested in its passage, failed to provide for exempting intangible personal property from taxation. Income derived from sources within the state was exempted. Opposition to the bill developed at once, and the assumed high cost of collection received considerable emphasis. It was also urged that the tax would be inquisitorial in character.

4. *Other steps towards income taxes*

For a number of years New Hampshire has been included in the list of states in which the question of an income tax is under consideration. The constitutional convention assembled in June, 1918, took up the question of an in-

come tax amendment, but the convention found it necessary to postpone all of its business until after the close of the war. In January, 1920, the convention met again. It was recommended that the income tax amendment be referred to the people in the election of November, 1920.

At that time New Hampshire was greatly in need of increased revenue and the unprecedented increase in local assessments made it appear that the taxes on tangible property were nearing the "limit of endurance." [1] Nevertheless the income tax amendment, together with six others, was defeated in the election of November, 1920. It was believed by the supporters of the amendment that the consideration which these measures would ordinarily have received was lacking on account of the intense interest in the presidential election. The constitutional convention was expected to reconvene in 1921 and to submit the amendment to the voters again. The situation in New Hampshire appears to promise well for the introduction of the income tax if the matter is brought up a second time.

The proposal for an income tax in Minnesota has had an almost similar fate. The legislature of 1919 voted to submit an income tax to the people at the next election. The amendment provided that "taxes may be imposed on privileges and occupations, which taxes may be graduated and progressive and the exemption of a reasonable amount of income from taxation may be provided, and such taxes may be in lieu of taxes on any class or classes of personal property as the legislature may determine." The amendment failed of passage in the November elections.

A number of other states are taking up the question of income taxes. Indiana has adopted a constitutional amend-

[1] A. O. Brown, "The Taxation of Incomes under the New Hampshire Constitution," *Bulletin of the National Tax Association*, vol. iv, no. 5 (Feb., 1919), p. 121.

ment providing for the tax. In Maine and Oregon the matter has come up repeatedly, only to be defeated. New bills failed of passage in Kansas and in Utah in 1921. Most important of all, New Jersey has called for the presentation to the legislature of 1922 of a bill providing for a state income tax on a sliding scale. If a third great industrial state follows New York and Massachusetts, the spread of the movement throughout the eastern states is probable.

CHAPTER XI

Modern Income Tax Methods and Results

In the course of a decade of development of state taxation of incomes the characteristics of this type of tax in the United States have become fairly well-defined. On the whole the taxes on personal incomes have been introduced in the form and manner most immediately practicable, without the accompaniment of plans for a coherent tax system. The majority of the state income-tax laws and rulings which now appear so highly complex have "just growed" like the famous little negress of fiction. We look in vain for a debate on "graduation" of the type which occurred repeatedly in the English House of Commons from the middle of the nineteenth century until early in the twentieth when an extensively graduated scale of taxation for individual incomes was adopted. "Differentiation" between earned and unearned incomes, which has been produced in two states by employing different rates of taxation for funded and unfunded incomes, has been introduced with little realization of the complicated principles involved or of the possible perversity of state revenues under the plan. Systems of exemptions and deductions have grown up which bear a rough resemblance to those devised for the federal income tax law but which are still in a confused state. Double taxation, rapidly becoming a pressing problem, has been almost ignored except in a few instances. Administrative methods have been recognized as important from the beginning of

the decade, and although there are still backward states, several effective organizations have been built up.

1. *Income tax rates*

The policies of the American states with regard to progression are in a chaotic condition. Seven of the states imposed graduated rates upon personal incomes at the beginning of 1921. No two of these systems were alike. At one extreme was Virginia, with a rate of one per cent on the first $3,000 of taxable income and two per cent on the remainder, and at the other was North Dakota, with 23 separate rates. reaching a maximum of 10 per cent on earned incomes of more than $40,000. The degree of progression employed appears to have varied inversely with the desire of the state legislators to fit the personal income tax inconspicuously into the existing state and federal systems, and directly with the desire to extract a considerable portion of the state revenues from individuals in possession of large fortunes.

The arguments for and against progression are simple. Since the surplus over and above the amount required for the necessaries of life increases more rapidly than additions to total income, persons at the higher income levels are able to pay relatively large amounts towards the support of the government under which they live than those with smaller incomes. An ability theory of taxation consequently demands the progressive taxation of personal incomes. Only by adhering to a benefit theory of taxation can a progressive rate for this type of tax be opposed. The chief complicating factor in the United States is the existence of a federal income tax which reaches an extremely high rate on the largest incomes. When the richest individuals in the country are already paying into the federal treasury amounts corresponding to 73 per cent on a part of the income

received, even the most ardent advocate of contribution according to ability is satisfied. The absorption of any considerable part of the remainder by any government whatsoever might properly be regarded as approaching confiscation. The state governments, therefore, must take into account the fact that individuals taxed by them are already paying into the national exchequer amounts graded with the intention of exacting contributions in accordance with ability to pay, and must be on their guard lest the carefully devised federal plan be distorted through the operation of the state tax.

The weight of argument at the present time is on the side of a mildly progressive tax, not rising above six per cent, for the use of the states. A tax of this kind is plainly in accord with the principles of ability taxation, and at the same time the maximum is so low that the intentions of the federal tax framers are not seriously interfered with. If the state income tax is imposed at a proportional rate, even though this rate is fixed at a point which produces a large return, the burden of the tax upon the persons in receipt of small incomes is relatively so much heavier than upon the well-to-do that a general and merited dissatisfaction with the state income tax is likely to result.

Differentiation between earned and unearned incomes for purposes of taxation, with the imposition of a higher rate upon the latter, has received far less attention in this country than in England. In Massachusetts the taxation of income from intangibles at six per cent while business incomes are taxed at one and one-half per cent[1] is the result of an attempt to distinguish earned from unearned incomes. The rates employed in the taxation of income from intangibles are unusually heavy in comparison with those

[1] Exclusive of emergency additions to the rates.

on business incomes. In North Dakota the rates on the lower amounts of unearned income are only double those on similar amounts of earned income and the distinction disappears after $40,000 is reached. No other state accomplishes differentiation by direct means, and in the federal system the distinction between the two types of income is ignored. In England differentiation was recognized as a desirable principle and introduced to a minor extent in 1907. In subsequent years the scheme was elaborated until five different rates were applied to earned incomes below the point of £2,500, at which the full normal rate was put into effect. At the present time the trend of opinion in England is in the direction of diminishing the amount of differentiation employed. The Royal Commission on the Income Tax which reported in 1920 held that differentiation had been carried too far and that the devices employed operated unjustly with respect to certain classes of taxpayers. The Commission noted the general impression that small unearned income (or "investment" incomes, as the Commission preferred to call them) which were derived mainly from investment of savings out of earned income were harshly treated, and suggested as a remedy for this and other evils of the differentiation plan the simple device of diminishing earned incomes by one-tenth for purposes of taxation.[1]

Much of the sentiment in the United States is against differentiation, for the present at least. A strong argument for such a division of personal incomes may be framed from the point of view of abstract justice. If taxation is to be utilized as a means of administering rewards to the deserving, the individual actively engaged in a business or profession should be handled lightly as compared with

[1] Royal Commission on the Income Tax, *Report*, 1920, part ii, paragraphs 109, 110 (p. 25).

the unproductive member of society. Moreover, the recipient of a *large* investment income has, potentially or actually, a greater ability to pay than the recipient of an equivalent amount of earned income, since the productive powers of the recipient of investment income are presumably unemployed or employed in another direction. The possessors of *small* investment incomes are probably in many cases in quite another situation. The available evidence in England shows that this class is composed to so great an extent of "widow-and-orphan" members and their kind, incapable of becoming producers, that the payment of income taxes at any but a nominal rate is liable to result in real hardship.

A difficulty of another kind presented itself early in the history of the tax in North Dakota, where it was found that the amount of unearned income received in the state was unexpectedly small, and the revenue from the tax on that income correspondingly insignificant. It is in such communities as this, where agriculture is of prime importance and industries are relatively undeveloped, that the accumulation of capital is most in need of encouragement. From the point of view of obtaining funds for the extension of both agriculture and industry, the discovery of North Dakota that the unearned income derived within its borders was small in amount was a significant indication that one of the pressing needs of the state was the accumulation of its own capital, and that efforts to develop that capital should not be unduly discouraged.

If state income taxes are to form a part of such a system as that advocated by the Committee on Model Taxation, in which the personal income tax supplements a business tax and a tax upon tangible personal property, there is additional taxation upon the sources from which investment or funded incomes are derived, and attempts at further dif-

ferentiation may be unnecessary. Differentiation produced in this way seems easier of accomplishment at the present time, especially from the administrative point of view, than that brought about by applying two separate scales of rates. It is also probably less onerous in its effects upon the recipients of small unearned incomes than the methods now employed in Massachusetts and North Dakota. Possibly the time will come when such a plan as that which has been suggested in England, the diminishing of earned income by one-tenth for purposes of taxation, will seem both practicable and just; but before that step is taken the incidence of the tax upon tangible property as employed in the United States should be determined as accurately as possible and carefully described, so that the amount of differentiation effected through that means alone may be clearly understood.

2. *Exemptions and deductions*

State income taxes, like the federal income tax, are ordinarily computed with reference to a number of exemptions and deductions. These two terms are used with little strictness in some of the less carefully framed state laws, but it is usually understood that the word " exemptions " should be applied to those parts of *income* which are not subject to taxation on account of individual and family responsibilities and to other kinds of income, such as the proceeds of life insurance policies and interest on bonds of the United States, which for a variety of reasons should be left out of account in ascertaining the gross income of the taxpayer; while the term " deductions " should be applied to those subtractions from the gross income received which are permitted on account of *expenditures* incurred for such purposes as carrying on business and the payment of taxes. The term " offset " is used merely to indicate the credit given on the taxpayer's bill, in a few states only, for other

taxes paid. This credit has been limited almost without exception to one for personal property tax payments.

The *amounts* of personal income exempted from taxation under the various state laws show a great lack of uniformity, and the *nature* of the exemptions permitted exemplifies in another way the chaotic condition of income tax principles in this country. Attempts to follow the federal scheme of exemptions have been made in every state in which general income tax laws have been passed since 1913, the date of the first federal income-tax law, but on account of later changes in the federal law the results have been confusing. The first federal law provided for the exemption of $3,000 for the individual or $4,000 if the taxpayer was a married person and living with the spouse. In 1916 a further allowance of $200 for each child was granted to the head of a family. When the law was amended in 1917 for the purpose of providing additional war revenue the exemptions were lowered to $1,000 for single and $2,000 for married persons. In 1918 the credit of $200 for each child was extended to cover other dependents.

The income tax laws of Wisconsin and Mississippi, which were adopted before the enactment of a federal income tax law, illustrate the differences of terms which are in part responsible for the varying degrees of success with which state income tax laws have met. In Wisconsin the personal exemptions were fixed at $800 for single and $1,200 for married persons, with $200 for each dependent. These amounts are now considered remarkably low, particularly in view of the price changes which have since some about, but they were originally fixed with great care and with a view of obtaining direct personal contributions toward the expenses of state and local government from every citizen of taxpaying ability. The Mississippi exemption limit

was fixed at $2,500, without regard to the marital status of the taxpayer, showing a lack of consideration for taxpaying ability which was certain to create dissatisfaction. By 1915 the federal law was in operation, and Oklahoma naturally adopted its plan of exemptions in the essentials, although Oklahoma increased the child exemption to $500 in the case of persons engaged solely in acquiring an education. According to the Massachusetts law, passed in 1916, business incomes were distinguished from three other types of income and taxed separately. Possibly for this reason a new set of exemptions, $2,000, $2,500, and $250 additional for children under 18, was chosen in that state. Missouri's first law, in 1917, followed along the federal lines, necessitating a change to lower exemptions when the federal law was revised, a change which Missouri made in 1919. The second state which passed a personal income tax law in 1917, Delaware, at first specified merely $1,000 as the individual exemption, without regard to the marital condition of the taxpayer, but the state law was changed to correspond to the federal law in 1919. In the relatively unimportant revisions which were made by Virginia in 1918 and North Carolina in 1919, it was apparently not considered necessary to change the exemptions to correspond with those of the federal law. The new laws passed in 1919, which uniformly follow the federal system of personal exemptions, reflect the spread of the realization that the federal exemptions are reasonable and workable and that a failure to conform to them introduces an unnecessary complication in the administration of the various laws. These new laws were those of New York, North Dakota, and New Mexico. The Alabama law which was passed in the same year but was subsequently declared unconstitutional was constructed along the same lines with the exception of the fact that $300 instead of $200 was allowed for each dependent.

The differences in the amounts of personal income exempted in the various states result in a variation of the tax burden which in its effect is like that of an actual difference in rates of taxation upon small incomes. Two steps which are immediately desirable are the lowering of the limits in several of the states and a movement in the direction of greater uniformity. The Committee on a Model System of State and Local Taxation, which is working for uniformity along with an adaptation of state and local systems of taxation to present-day economic conditions, embodied in its preliminary report the suggestion that $600 for single persons and $1,200 for married persons, with $200 for each dependent, with a possible total limited to $1,800, were the maximum exemptions which should be granted (September, 1918). The principal reasons for suggesting the taxation of incomes smaller than those taxed by any of the states at the time when the report was made was the committee's conviction that under a democratic form of government as few people as possible should be exempted from the necessity of making a direct personal contribution towards the support of the state. In the draft of a personal income tax law which the same committee published two and one-half years later [1] the exemptions were set at $1,000 and $2,000, with $200 additional for each dependent, like those of the federal income tax law. In view of the condition of affairs in the United States with regard to state and federal income taxes, the later decision of the committee contains the more workable exemptions. It is true, as the committee urged in its preliminary report, that a democratic form of government implies direct personal responsibility for support on the part of all who

[1] *Bulletin of the National Tax Association,* vol, vi, no. 4 (Jan., 1921), pp. 102-112.

are able to contribute. It as also true, as the British Royal Commission which investigated the subject of a low exemption limit in Great Britain in 1919 was forcefully informed, that a low exemption limit for personal income taxes makes possible light taxes in other forms which affect the same class of people. Moreover, a high exemption of personal incomes operates so that many sections and localities pay almost no income tax, and sectional and class antagonisms are correspondingly intensified. At the same time the effort to make the exemptions so low that all persons with taxpaying ability contribute to the government under which they live should not be carried so far that the result is the taxation of persons who are already at the minimum-of-subsistence level.

It is plain that the exemptions permitted by the federal law are not high, especially in view of the recent changes in the price levels for necessities. The individual exemption of $1,000 corresponds to $500 or $600 before the outbreak of the European War. The imposition of an income tax on amounts less than $1,000 would almost certainly arouse dissatisfaction with the tax which would more than cancel the rather vague benefits of forcing persons with low incomes to make direct contributions to the support of the government under which they live. Whatever tax burden is carried by the poorest people in the various cities and states is carried almost unconsciously, and no theoretical justification of direct taxpaying would be acceptable. The vote of the South Wales miners against the low exemption limit retained in Great Britain through 1919, a time of rapidly rising costs, is a case in point.

The cost of collection of the taxes on small incomes, taxes which are actually nominal in character, is another point which should be taken into consideration. Figures for the cost of collection on the various classes of income

are not available in this country, for either federal or state taxes; but an estimate to the effect that one-half of the collections on the incomes just above $1,000 are eaten up by administrative expenses might prove to be correct.

Although a large proportion of the federal income tax receipts come from the Middle Atlantic and New England states, the federal exemptions are so low that little actual regional immunity from the operation of the income tax exists. It is difficult and unsatisfactory to attempt to fix a point on the scale of incomes which means the avoidance of the irritation and expense of very low exemptions and at the same time freedom from the sectional and class distinctions of high exemptions, but in view of all the issues, $1,000 and $2,000, as permitted under the federal law, seem fairly satisfactory. From the point of view of administration the advantages of uniformity are great. If the same individuals are taxable under state and federal laws, the returns are made with less confusion to the taxpayer, and greater opportunity for getting accurate results and detecting evasion on the part of the state administration.

If the tendency towards uniformity in exemptions which showed itself in the state income tax legislation of 1919 continues, many of the inequalities of tax burden on those with small incomes will be wiped out. These inequalities are most conspicious when the three states which have made the greatest financial success of the income tax are compared. New York, with its similarity to the federal system, Massachusetts with the separate taxation of four kinds of income and a high exemption limit for business incomes, and Wisconsin with an unusually low exemption limit, illustrate the haphazard manner in which the state taxes have developed. In Wisconsin, where the general payment of the income tax by all classes of citizens has been accepted with a fair degree of equanimity, there is already talk of a change.

The tax commission of that state reports that "there is warrant for an increase in the family exemptions under present economic conditions," [1] but refrains from urging it or recommending it to the legislature.

A tendency on the part of the states to recognize an obligation to encourage education is beginning to show itself in the terms of the exemption provisions. Oklahoma, which ordinarily allows $200 to the taxpayer for each person dependent upon him, increases the sum to $500 in cases in which "such dependent is engaged solely in acquiring an education." The Massachusetts tax commissioner, in his report for 1919, called attention to the fact that the age limit of 18 for children for whom exemption might be claimed, while desirable from an administrative point of view, operated harshly against moderately circumstanced merchants and relatively low-salaried professional men who were financing one or more boys or girls through a college course. The commissioner suggested the consideration of an age limit of 21 for this reason, and promised the presentation of statistics showing the effect of such a change upon the revenue.

The question of greater flexibility in family exemption has received little attention in this country. In view of the thorough-going attempts which have been made to make due allowance for the various ways in which business expenses are incurred and the various forms in which they may appear, it is not unlikely that a corresponding attempt may soon be made to allow for the vicissitudes of family life. A beginning was made when the exemptions for dependents under the Wisconsin law were made contingent in each case upon the dependent's being "actually supported and entirely dependent" upon the taxpayer for his support.[2]

[1] *Report*, 1920, p. 42.

[2] *Laws of Wisconsin*, 1913, ch. 720.

That is, the state of affairs within the family with regard to actual support was taken into consideration in the computation of the tax. Oklahoma's enlargement of the exemption from $200 to $500 "while such dependent is engaged solely in acquiring an education" is a second step, marking as it does a legal recognition of the way in which the energies of the dependent are used and the expenses for which the taxpayer may be expected to become liable on his account, as well as the degree of dependency. Another step might conceivably be the extension of exemptions or, rather, the allowance of deductions for extraordinary expenses incurred for reasons other than acquiring an education, such as serious or prolonged illness. Another possibility is that of allowing exemptions for persons *partially* dependent for support upon the taxpayer. The general impression among the taxpayers with small incomes that taxpayers who *share* the burden of the support of aged parents, for example, are unjustly discriminated against in favor of those who bear the whole burden of dependents will almost certainly find some reflection in future legislation.

Several other classes of exemptions have been permitted under the various state income tax laws, but with even less uniformity than the family exemptions. Massachusets exemptions from the operation of the personal income tax dividends from Massachusetts corporations, income from real estate wherever situated, and interest on deposits in Massachusetts savings banks. Wisconsin and New Mexico accomplish the same result in a more limited way by exempting income from the securities of corporations which pay an income tax to the state. Inheritances proper are usually exempted, although the income from the property represented is ordinarily taxable. Life insurance payments and amounts received from workmen's compensation awards are also ordinarily exempt.

One of the most puzzling questions which has been involved in the determination of net income, and a question which is for that reason closely associated with that of proper exemptions, is concerned with the treatment of stock dividends. Beginning in 1916 the federal laws required the inclusion of stock dividends in gross income, an example which was followed by the states. Economists have generally agreed that the receipt for a stock dividend is not the receipt of an additional amount of income, but is merely a change in the form of the recipient's capital.[1]

According to a decision of the United States Supreme Court rendered on March 8, 1920,[2] a *bona fide* stock dividend is not " income " within the meaning of the Sixteenth Amendment. The definition of income adopted by the court, namely " income may be defined as the gain derived from capital, from labor or from both combined, provided it would be understood to include profit gained through the sale or conversion of assets " was interpreted by the court to exclude " a growth or increment of value in the investment." The decision was reached by a vote of five to four. Federal and state laws and administration were adjusted as rapidly as possible so as to conform to the decision, and as a result stock dividends are not now noted on income tax returns as a part of gross income.

All of the states allow numerous deductions from gross income in the determination of net taxable income. These deductions are coming more and more to conform to those permitted under the federal income tax legislation. The

[1] E. R. A. Seligman, "Are Stock Dividends Income?", *American Economic Review,* vol. ix, no. 3 (Sept., 1919), p. 517; F. R. Fairchild, "The Stock Dividends Decision," *Bulletin of the National Tax Association,* vol. v, no. 7 (April, 1920), p. 209.

[2] Eisner *v.* Macomber, United States Supreme Court, no. 318—October Term, 1919 (March 8, 1920), 40 Sup. Ct. 189.

most common items are those for the expenses of carrying on the taxpayer's business or profession. These expenses are ordinarily defined to include wages and salaries paid, repairs, depreciation allowances, and all other ordinary and necessary expenses for the maintenace of the taxpayer's business, as well as losses and worthless debts. Interest on indebtedness and all taxes paid to any taxing jurisdiction may be deducted in most states. In New York and Wisconsin gifts to educational, charitable, religious, and certain other non-commercial organizations, to the amount of not more than 15 per cent of the taxpayer's net income may also be deducted,—a provision which was patterned after one included in the federal income tax law.

The deduction permitted on account of gifts made during the year opens the way for further deductions with reference to the uses to which the taxpayer's income is put. There are gifts other than those to recognized charitable, educational, and religious institutions and organizations which may be made without intent to lighten the burden of the income tax. For example, contributions to the support of political parties may have a purpose somewhat similar to that of gifts to charitable organizations.

In recent years the desirability of limiting in some way the deductions allowable for interest on indebtedness has received a considerable amount of attention. The preliminary report of the Committee on Model Taxation shows a recognition of the change in the form of taxable income which results from the issue by the federal government of large amounts of tax-exempt bonds, and contains a suggestion for the limitation of the interest deduction to an amount proportional to the income derived from taxable sources. In the words of the report "if a person derives one-half of his income from taxable sources and one-half from tax-exempt federal bonds, he should be permitted to deduct only

one-half of the interest which he pays on his indebtedness." [1] This provision was omitted in the draft of a model personal income tax law which the same committee published in January, 1921. In the model law the deduction of "interest paid during the income year on indebtedness" is recommended without any qualifications whatsoever. In the original New York law a provision almost identical with that in the preliminary report appeared,[2] but this was amended in the following year so as to permit simply the deduction of "all interest paid or accrued during the taxable year on indebtedness.[3] While it may prove necessary and desirable to limit in some way the amount of interest on indebtedness which is deductible, it was to be expected that the provisions noted above which related the amount deductible to taxable income should prove unsatisfactory and unpopular. The proportion of income derived from tax-exempt sources obviously cannot be calculated until after all deductions are made.

The kinds and amounts of taxes deductible under the laws of the various states are very nearly the same. The ordinary procedure is to allow the deduction of all taxes (excluding special assessments) paid to any jurisdiction. Wisconsin does not allow the deduction of taxes on unproductive property, Mississippi allows the deduction of ad valorem taxes only, and Oklahoma and Virginia do not allow the deduction of taxes paid to the United States or to foreign governments. New York allows the deduction of all taxes except income taxes. With the deduction of taxes as with many other matters connected with the personal income tax, the simplest plan is at the same time the most

[1] *Preliminary Report*, p. 15.

[2] *Laws of New York*, 1919, ch. 627, sec. 360, par. 2.

[3] *Laws of New York*, 1920, ch. 693.

equitable. The allowance of deductions for all taxes paid to any jurisdiction is by far the best procedure. An attempt to tax amounts paid out as taxes may seriously affect the justice with which the whole scheme of taxation operates if the rates are as heavy as income tax rates of recent years have tended to become. For example, a tax upon amounts paid into the federal treasury as income taxes by an individual who receives an income of more than $1,000,000 annually has an effect not contemplated and probably not desired by the framers either of the federal or the state income tax laws. A point of view very close to this is taken by the Committee on Model Taxation, which incorporated in the draft of a model income tax law, a provision allowing the deduction of all taxes paid to the United States or to any state or foreign country, with the exception of inheritance taxes and income taxes paid in the state of residence.

The question of offsets is closely connected with the question of exemptions and deductions. The recent history of state income taxes furnishes only two kinds of examples of offsets, those for personal property taxes paid (permitted in Wisconsin, North Dakota, and New Mexico) and those for all property taxes paid (permitted for a short period in Missouri). The undesirability of allowing these offsets has been demonstrated. The Wisconsin tax commission has for a number of years earnestly besought the legislature to do away with the offset provision in that state and so to increase the revenue due from the income tax and abolish various uncontemplated inequities. The offset as it is used in Wisconsin subtracts nearly one-half of the income tax revenue and defeats the purpose of the income tax in principle. The Missouri provision was adapted from that used in Wisconsin and was apparently suggested by it, but it became unpopular early in its career and it was abolished

in 1919. The North Dakota law has been in operation for only a short time, in the course of which more serious defects have caught the public attention, but there is no doubt that the offset will prove to be out of place in that state in the same way in which it has proved to be unsatisfactory in other states. The New Mexico law is still to be tried out. In states in which such a provision is in operation the attempt of the framers of the personal income tax laws to reach taxpaying ability in a more accurate fashion than was possible under the older personal property tax laws is defeated, and the purposes which it was hoped to accomplish through the distribution of the proceeds of the personal income tax are hindered to an extent corresponding to that to which the offset is utilized.

A much more reasonable and workable provision is that contained in the New York income tax law which allows credit to non-residents of New York on the income tax bill payable to New York state for income taxes paid in the state or country of residence. The New York comptroller credits the amount of tax payable by such non-resident in New York state with such proportion of the income tax payable by him elsewhere as his income subject to taxation in New York state bears to his entire income upon which the tax payable to the other state or country is imposed.[1] This credit is allowed only if the state or country taxing the non-resident grants a substantially similar credit to residents of New York subject to income taxation under that laws of that state or country, or if the state or country taxes the income of its own residents but exempts from taxation the personal incomes of residents of New York state. This provision represents an attempt to install a scheme of reciprocity in crediting income taxes paid which will become

[1] *Laws of New York*, 1920, ch. 691.

more and more necessary as surrounding industrial states undertake the taxation of personal incomes. Such a plan should ultimately become unnecessary, however, if the state taxation of incomes becomes general and if the states follow the more equitable and reasonable method of taxing *residents only,* as recommended by the Committee on Model Taxation. The New York plan is merely an attempt to insure a fair distribution of the tax burden under present conditions and those of the immediate future.

3. *Double taxation*

The difficulties which arise from conflicts of tax jurisdiction are an old story in the United States, where the administration of the general property tax has been complicated by the fact that personal property is supposed to be taxed in the place of the taxpayer's domicile, but where the states in various instances have adopted conflicting procedures. The introduction of the taxation of personal incomes by the states has produced a new set of complications which are more troublesome than the old. In the words of Professor Seligman, "the possible combinations are almost terrifying in their complexity." [1]

> A man might reside in one state, his legal domicile might be in a second state, his income might be derived from railroad securities which may be in a safe deposit vault in a third state; the railway itself may have its chief office in a fourth state, and its track may traverse several other states. Where and how should this income be taxed?

The regulation of double taxation is not without precedent. By the terms of the Prussian law of 1909 [2] the disadvantages of double taxation were minimized by provid-

[1] E. R. A. Seligman, *The Income Tax* (New York, 1914), pp. 647, 648.

[2] Seligman, *op. cit.*, p. 270.

ing that when trade or industry was carried on in several states only a proportional part of the income could be taxed in any one state. Legislation of this kind on the part of the federal government in the United States is hardly conceivable, and the necessary adaptations will undoubtedly have to be brought about through state agreements as to uniformity and by following the suggestions of such organizations as the National Tax Association's committee on a model system of state and local taxation.

The provisions of the Massachusetts law under which income from Massachusetts corporations and from deposits in savings banks and all income from real estate wherever situated is exempt from taxation under the laws taxing personal incomes represent an attempt to clear the commonwealth of Massachusetts itself from the onus of taxing the same income twice. The result is an unsatisfactory state of affairs with regard to income derived from sources outside the state. The assumption is that since the income of corporations and savings-bank deposits are taxed separately by Massachusetts, such income need not be taxed again in the hands of the recipient. A tax known as a " franchise tax " or a " tax upon the corporate excess " (i. e., total value of the capital stock less deductions allowed by law) is levied upon Massachusetts corporations, with the addition of a tax of two and one-half per cent upon net income as returned to the federal government. In the case of Massachusetts savings banks the tax is assessed upon average deposits less certain specified investments at the rate of two and one-half mills on the dollar.

The intention of the state of Massachusetts to refrain from taxing such incomes twice over is justifiable, and the operation of the law as it applies to resident individuals with respect to their interests in domestic corporations is easily understood. The complications arise with reference

to the taxation of income derived from foreign corporations. It should be noted that income from real estate *wherever situated* is exempt from taxation in the hands of a resident of Massachusetts. That is, Massachusetts legislators recognize that real estate wherever situated is certain to be taxed on its value under the laws of the state in which it lies, and they consequently refrain from imposing a second tax. But while income from real estate situated in Connecticut or New York, for example, is accordingly exempt from taxation in the hands of residents of Massachusetts, under the Massachusetts income tax law, the income from corporations organized in those states is not similarly exempt. The assumption on the part of Massachusetts is, plainly, that such corporations are untaxed or are not taxed to an extent corresponding to the burden of the tax imposed upon Massachusetts corporations. The assumption is probably not a correct one, at least as far as it concerns the taxation of corporations in the adjacent states which are most important industrially. Before the Massachusetts income tax law was passed Connecticut had begun to tax the net incomes of corporations at two per cent, a tax from which the state derives a revenue of more than $2,000,000 a year.[1] New York taxes corporations by means of a levy of four and one-half per cent on net earnings, a tax which, together with other corporation taxes of less importance fiscally, yields over $30,000,000 annually.[2]

The actual effect of the Massachusetts legislation is to discriminate against investment in foreign corporations on the part of the residents of the state levying the income tax, although investments in real estate outside Massachusetts are not so discriminated against. Even though the number

[1] Connecticut Tax Commissioner, *Report*, 1918, p. 52.

[2] New York State Comptroller, *Report*, 1921, p. xvii.

and amount of actual transfers of holdings from foreign corporations to Massachusetts corporations which result may be small, the unfortunate effects of such discrimination upon interstate relations are not avoided. Furthermore, the real purpose of the taxation of income from foreign corporations paralleled by the exemption of Massachusetts corporations has been very generally misunderstood by the payer of the income tax in Massachusetts who has not followed the course of the law from the beginning. The impression has come to prevail far too generally in Massachusetts that the state adminstration is engaged in a consistent attempt to force a change in security holding which will benefit Massachusetts corporations, and even to suspect that the corporations themselves are behind the provision.

The income tax laws of Wisconsin and New Mexico, under which income derived from the securities of corporations which pay the state income tax is exempt from taxation as personal income, are slightly less discriminatory in that they do not include provisions for the exemption of income from real estate. At the same time they do, however, give ground for the popular misunderstanding which is found in Massachusetts namely, that the taxing states intend to force a withdrawal of funds from outside enterprises and reinvestment in domestic corporations.

An effort towards uniformity may take any one of three directions. States which levy taxes on personal incomes may continue to exempt income from sources already taxed within the state, while imposing taxes on all other income, in which case difficult questions of interstate relationships as well as dissatisfaction on the part of the taxpapers who are influenced to invest within the state of residence are sure to result. Second, exemptions of income may be extended by carrying the plan of Massachusetts' exemption of income from real estate wherever located to its logical con-

clusion, so that the result is the exemption of income the source of which is subject to any considerable amount of tax in any form and by any jurisdiction, a system which manifestly would be cumbersome, impracticable, and possibly entirely unworkable. The most practicable program is a simpler one. It rests upon the assumption that double taxation is harmful only when its burden is felt unequally by different individuals and different classes of taxpayers. With the universal operation of the federal income tax and the growing use of state taxes on personal incomes, double taxation is actually becoming increasingly prevalent. The only anxiety which need be felt is that the taxes should be fairly distributed. The taxation of corporate incomes by the federal government is accomplished together with the taxation of personal incomes without reference to the sources of those personal incomes. If the dates of taxation are carefully fixed, such a method probably accomplishes no appreciably unjust results. In the same way, the taxation by the individual states of all personal income, whether or not derived from corporate securities or from real estate, need arouse no opposition if the burden of taxation falls with uniformity upon taxpayers of equal ability. The state of affairs with regard to the taxation of corporations themselves is changing so rapidly that the legislators of any one state which is levying or contemplating the levy of a personal income tax need no longer assume that corporations in another state are not adequately taxed. Since that is true, interstate relations, the willingness of the taxpayer to contribute, and administrative efficiency may best be served by disregarding the source of the personal incomes of residents.

The taxation of the income of non-residents is quite another problem. The general trend of state personal income tax legislation seems to be in the direction of taxing

residents on their entire incomes and non-residents on that part of their incomes derived within the state levying the personal income tax. From a general point of view the result is a heavier rate of taxation upon persons of more than moderate incomes whose sources of income transcend state lines. For example, a resident of Virginia who derives his income entirely from sources within that state is taxed only once upon his income; but a resident of Virginia who renders professional services in New York is taxed in Virginia upon all of his income and in New York upon a part of it in addition. In case the income is of any considerable amount, the rates imposed are the maximum rates of the mildly graduated scales in use in the two states, and the income is subject to a higher rate of taxation than it would have been in Virginia alone. Under the present terms of the Virginia law the taxpayer would be deprived of credit from New York state for personal income taxes paid in Virginia; for although New York grants a credit of that kind in certain instances, it would deny it in this instance; for the credit is granted only in case the second state grants a similar credit to residents of New York or exempts from taxation the personal incomes of residents of New York.

By its decisions in regard to the non-resident sections of the Oklahoma and New York income tax laws the supreme Court of the United States has established the *right* of the states to tax the income of non-residents from sources within the state levying the personal income tax, provided that such non-residents are not discriminated against in the matter of exemptions and deductions. The question which now remains is this: with the extension of the use of state income taxes which seems probable with the next few years, is the taxation of the incomes of non-residents likely to bring about serious inequalities in the tax burden between

persons whose income-earning activities are confined to one state and persons who earn income in two or more states? If the levying of personal income taxes by the states should become general, the question can only be answered in the affirmative. In such a case the imposition of a tax upon the net income of *residents* only, as is now done in Massachusetts, would be the only way out of the difficulty; for in that way every person would be taxed upon his entire net income in his state of residence and no part of any taxpayer's income would escape. As long as state income taxes are used by only a few states it will be possible to continue the taxation of the incomes of non-residents, but questions of law and justice may be expected to accumulate and increase in difficulty as long as such taxation is attempted.

4. *The new type of administration*

Owing in large part to the fact that administrative defects were held responsible for the failure of state income tax laws before 1911, the organizations of the departments, commissions, or bureaus which are charged with the assessment and collection of the personal income tax have been built up anew in several of the states within the last few years. The chief defect of the older systems was the allotment of the work on the personal income tax to an existing office, in most cases that of the state treasurer or state auditor, with the expectation that the actual work of assessment and collection would be done by the local assessors of property taxes. This plan almost invariably proved unsatisfactory. The local assessors found that the personal income tax was quite a different piece of tax legislation from any with which they had been accustomed to deal; some of them objected to it on principle, believing the personal income tax to be a superfluous and unworkable sup-

erstructure on the system which they regarded as more reliable and trustworthy, that of the general property tax; and nearly all of them were accustomed to deal with a large amount of evasion of personal property taxes, and made ready for (and met) quite as much evasion of personal income taxes. Their new duties of collecting personal income taxes were added to heavy duties already undertaken in the assessment and collection of property taxes. The position of the supervisory officer was in too many cases somewhat similar, although the earlier income tax history furnishes several refreshing instances of state officials who labored with diligence and humor to overcome the inertia of their local representatives. Much of the opposition and criticism which was aimed at the Wisconsin income tax in its early days was actually caused, not by an opposition to the principle of the taxation of personal incomes by the states, but by a conviction that the administrative difficulties could never be overcome.

The innovation in administrative methods was probably the most important element in the Wisconsin income tax law of 1911. The state tax commission was given the administration of the tax, with power to divide the state into income tax districts and to appoint special assessors of incomes who should be subject to civil service requirements. The ordinary term of office was fixed at three years so that the local assessors might be given time in which to gain the good-will and respect of the communities in which their work was done.

Although the success of the Wisconsin plan was recognized almost from the beginning, it was several years before the same type of administration was adopted in another state. The Mississippi law of 1912 gave the administration into the hands of the state tax commission, but the regular local assessors had the assessment of income taxes in-

cluded with their duties. The Mississippi income tax was so badly planned from the beginning that its failure can hardly be laid at the door of the local assessors, a fact which the state tax commission has recognized in its frequent appeals for an entirely new income tax act. In Oklahoma the administration of the income tax law of 1915 was placed with the state auditor, with the assumption that the local work was to be done by the regular assessors. The plan of administration adopted in Massachusetts in 1916 shows the first real influence of the Wisconsin method, and again in Massachusetts, as in Wisconsin, the machinery of administration has been held in large part responsible for the success of the income tax. The state tax commissioner was made the nominal head of the income tax system, but it was suggested that he should appoint an income tax deputy who should have the actual supervision and control of the administration. The state was divided into income tax districts, with special assessors of income as in Wisconsin. It is noteworthy that this second state to adopt centralized administration was also the second state to make a financial success of the law.

From the point of view of improvement in administrative methods the history of the next few years is a repetition. The states which followed the old plan (Missouri and Delaware with new laws and Virginia and North Carolina with revisions) had only a moderate degree of success; while New York, with a plan much like that of Wisconsin, found the income tax a fruitful source of revenue. In New York the control was not given to the state tax commission, as the framers of the original bill had urged, but, for political reasons, to the state comptroller. The type of administration provided for was so nearly similar to that which would have been developed under the state tax commission that little anxiety was felt lest the results of the tax should be

less satisfactory. A special income-tax bureau was formed as one of the bureaus of the state comptroller's department, and the state was divided into income tax districts with branch offices, as required by law.

The North Dakota plan of administration was also modelled on lines similar to those of Wisconsin, but on account of the various difficulties which the unusual form of the law has produced the actual effects of the type of administration itself have been almost lost sight of. New Mexico, which adopted a law which showed many traces of the more successful of the state laws which preceded it, was backward in this particular respect, and give the administration to the state treasurer without the provision of new local officials. The new law recommended for New Mexico by the special revenue commission which reported in 1920 would give the central control to an enlarged state tax commission.

The success of Wisconsin, Massachusetts, and New York with the personal income tax is now widely known. Among tax experts it is an almost universal opinion that the single most nearly indispensable condition of this success has been centralized and specialized administration. The recommendations of the Committee on Model Taxation and the terms of the model law drafted by that committee are similar to those of the New York law, with the exception of the fact that the committee on model taxation is in favor of having the tax administered by the state tax commission.

5. *Assessment, collection, and review*

The state income tax laws show an increasing tendency to follow the federal income tax law in requiring the return of income by the taxpayer, a process usuall termed "self assessment." The New York law requires the filing of

returns similar to those made to the federal government, in the same month in which the federal returns are due, and accompanied by the amount of the tax due as computed on the face of the return. In Massachusetts returns are required to be made early in the calendar year but the tax is subsequently assessed and collected through the office of the state tax commissioner, or, more accurately, through the income tax deputy. In Wisconsin a third method is in use: returns are made by individuals to the local assessors of incomes and the taxes assessed are certified to the local assessors of property taxes. These taxes appear on the local tax rolls but are separately entered as income taxes. The income taxes are then paid at the same time and in the same manner as personal property taxes. Among the other states which tax personal incomes the only example of a procedure like that of New York and the federal government is that specified in the New Mexico law of 1919. In all of the other states the return of personal income by the taxpayer is required but the payment of the tax is made only after the tax has been assessed by designated officials.

In the states in which income taxes are paid at the same time and in the same manner as other taxes, it is argued that the taxpayers who do not have bank accounts and for whom the whole process of paying a personal income tax is a difficult and annoying one have the task facilitated by its combination with an old and familiar process, that of paying property taxes. There has been no necessity for installing this system in Massachusetts and New York, for in those states in which the income tax rates are not applied to incomes below the exemption limits of the federal law all of the individuals liable to the state income tax are familiar with the process of making out income tax returns and of remitting to the federal authorities the amount of the tax due. In Wisconsin, where individuals with incomes smal-

ler than those to which the federal rates apply are reached by the state income tax, individuals who for the most part are unfamiliar with ordinary banking procedure, the other method of collection has probably averted many inaccuracies of payment. It is probable that any state income taxes which may be imposed in the near future will not be applied to incomes below the federal exemption limits and it is therefore to be expected that the federal procedure of collection at the time of self-assessment will be followed by states which pass new laws for the taxation of personal incomes.

The extension of taxes on personal incomes and the elaboration of the rates of taxation to an unforeseen extent have produced the necessity for making careful provision for appeal, review, and abatement of taxes wrongfully assessed. Wisconsin has established county boards of review to deal with complaints with regard to the assessment of income and has designated the state tax commission as the body to which appeal from the decisions of the county board of review should be made. In Massachusetts any person aggrieved by his assessment may appeal directly to the tax commissioner, and may appeal from the decision of the tax commissioner to a board of appeal, whose decision is final. In New York the aggrieved taxpayer appeals directly to the comptroller, and if dissatisfied with the comptroller's decision he must appeal to the courts.

The method of applying directly to the tax commission or commissioner for revision of the tax assessed against the taxpayer, with the possibility of appeal to the courts if the decision is unsatisfactory to the taxpayer, is endorsed by the Committee on Model Taxation. The principal objection which may be raised against this method is the fact that the courts are not usually in possession of all of the details necessary for the fairest consideration of income tax mat-

ters to as great an extent as a board of appeal created for the express purpose of dealing with disputed tax questions. If the review is first made by the higher taxing officials, however, it is probable that the important details of the matter under dispute will have been adequately covered. The Massachusetts law appears to provide for the most equitable method of abatement of taxes assessed, but the period covered by the operation of state income taxes is still so short that no method has yet conclusively demonstrated its superiority.

6. *An assessment roll for the income tax*

A subject which was not taken up by the model tax committee but which has been given a considerable amount of space in the publications of the National Tax Association is that of an assessment roll for the income tax.[1] The use of the assessment roll for this type of tax has been most strongly urged by Professor Plehn, who regards it as one of the indispensable conditions of efficient collection. Ordinarily the process of assessment for a direct tax is very formal in character. With both federal and state income taxes the process has been conducted with scant ceremony. The lists which are made out are in most instances compiled *after* the income taxes are paid. A great deal of uncertainty as to the actual amounts of tax payable, on the part of the collectors as well as on the part of the taxpayers, is the result. In Wisconsin, where the income tax was introduced before the federal income tax was in existence, some of the present difficulties were avoided,—

[1] C. C. Plehn, "An Assessment Roll for the Income Tax," *Bulletin of the National Tax Association*, vol. v, no. 7 (April, 1920), pp. 231-220; "Assessment of Income Tax, Once More," *Bulletin*, etc., vol. vi, no. 6 (March, 1921), pp. 177-179; A. E. James, "An Assessment Roll for the Income Tax," *Bulletin*, etc., vol. vi, no. 2 (Nov., 1920), pp. 47-51.

possibly because no other alternative but a formal roll suggested itself to those who drafted the income tax law. Income tax assessments were required to be entered on the regular local assessment rolls, but to be separately classified. The result has been a more formal procedure than that with which the federal income taxpayer or other state income taxpayers have become familiar.

Few tax experts are inclined to dwell as pointedly upon the disadvantages of the absence of an assessment roll for the income tax as is Professor Plehn. A recent comment is as follows: [1]

> There is no good reason why the Wisconsin system should not work in the federal Government. If the question were a new one, no one would hesitate to choose between them. But the matter is a practical one vitally affected by the fact that in Wisconsin the state waits a year for the money, while under the federal system the money is paid in part with the return and all of it before the return is audited.

This comment is even more to the point when considered in connection with the matter of state collection, for in New York the whole amount of the tax due is remitted at the time when the personal return is submitted. The settlement of the taxpayer's exact liability before the tax is paid is undoubtedly an end which should be striven for, but in the generally confused condition of state income taxes at the present time the difficulties which follow from this lack are probably of minor significance.

7. *Collection and information at the source*

Collection (otherwise known as "stoppage" or "withholding") at the source means withholding a certain amount of the sum otherwise due to individuals by the cor-

[1] James, *op. cit.*, p. 50.

porations or other agencies paying wages, salaries, dividends, or amounts due in any other form, to facilitate the payment of income taxes by those individuals. The system has been used extensively in connection with the payment of the income tax in Great Britain, where it is believed that the method of stoppage at the source is effective in preventing evasions of the income tax and in producing accurate declarations of income, for the reason that the amount deducted at the source is in many cases larger than the amount which should ultimately be paid, and in order to get the exemption, abatement, or relief due him the taxpayer must declare his income in detail. The system of stoppage at the source is so important in this connection that it has been repeatedly said in Great Britain that it is indispensable to the success of the income tax, and any provision, however minor in appearance, which is liable to disturb its operation in any way is attacked by the officials of the inland revenue system.

Collection at the source was attempted on a large scale in this country for income taxes due under the federal revenue law of 1916. Individuals, corporations, or other agencies paying wages, salaries, interest, rent, dividends, or other sums of the kind were required to withhold an amount corresponding to the normal tax and to remit that amount to the federal income tax officials. The plan proved to be extremely unpopular, largely, it is believed, on account of the delays in refunding to the taxpayers the amounts due as abatements. In the federal law of 1918 withholding at the source was limited to amounts paid to non-resident aliens, and a system of *information* at the source somewhat like the plan already in use in Massachusetts [1] was substituted. Every person, corporation, or other agency pay-

[1] *Laws of Massachusetts,* 1916, ch. 269, sec. 25.

ing another $1,000 or more in interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed and determinable gains, profits and income must report such payments to the federal income tax authorities. This type of information at the source is strongly objected to by certain critics, who regard it as productive of "moral degradation,"[1] but it probably produces less dissatisfaction than the original effort to collect the normal tax itself at the source.

In Wisconsin a partial requirement of information at the source was made in the provision that in order to be allowed to make deductions from income for wages paid corporation must furnish information concerning employees paid $700 or more a year. The Massachusetts law passed in 1916 contained a more inclusive provision for information at the source: payments to all persons to whom more than $1,800 a year is paid in the previous calendar year must be reported, a provision which with minor changes is still in force. No other state followed this plan until 1919, when the New York personal income tax law was so framed as to require information at the source for all persons to whom $1,000 or more was paid in a calendar year. The New York law also included profisions for withholding at the source income for personal services of non-residents (salaries, wages, commissions, gratituties, emoluments, and perquisites). In the law in its original form the rate at which these taxes were to be withheld failed to correspond to the rates for the final payment of the tax, and the legislature was forced to amend the law so that the amounts wihheld should correspond to the tax rates of one, two, and three per cent on the various classes of taxable income.

The only other attempt to collect personal income taxes

[1] C. C. Plehn, *Introduction to Public Finance* (4th ed., New York, 1920), p. 283.

at the source has been made by North Dakota. The law passed in that state in 1919 provided for collection at the source of all income taxes on dividends, interest, profits, premiums, and annuities. This provision proved to be difficult to administer, and it was repealed later in the same year.

As the laws stood at the beginning of 1921, collection at the source had failed everywhere in the United States except in New York, where it still remained to be adequately tested. This almost universal failure in this country presents a curious problem, for it was assumed at the time when both federal and state income tax laws were developing rapidly that collection at the source would prove as great a bulwark of income taxation and as great a protection against fraud and evasion as in Great Britain. It was even argued that collection at the source was peculiarly adaptable to the condition of affairs with regard to incomes in the United States, since corporate securities were widely held in this country and wages and salaries paid largely through corporations. Possibly the root of the trouble lies in the rapidity with which the status of the recipients of taxable income changes in this country, or possibly in the diifficulty with which individuals and corporations adapt themselves to administrative methods which involve "red tape." The objections which are heard most frequently have to do, not with the status of incomes or with the roundabout nature of the process, but simply with the unfairness of shifting the burden of the taxpaying process to the wrong shoulders. The Committee on Model Taxation does not advocate collection at the source, for the reasons that in its opinion such a method "presents serious administrative difficulties, imposes unwarranted burdens upon third parties in respect of transactions which strictly concern only the taxpayers and the government, and not infrequently tends to shift the

burden of the tax to the wrong shoulders."[1] The committee does, however, advocate information at the source "as is now done under the Massachusetts and Wisconsin income taxes." The experience of the state of New York with collection at the source at a progressive rate for the taxes of non-residents will illuminate the whole problem, and, if successful, may yet influence other states to undertake it.

8. *The distribution of the proceeds of the income tax*

Only the three states which depend on the income tax for large sums, Wisconsin, Massachusetts, and New York, distribute the proceeds of the income tax direct to the localities. In two others, Delaware and New Mexico, the proceeds of the tax are devoted largely to educational purposes and distributed according to the needs of the educational institutions. The New Mexico law has been so delayed in its operation that Delaware furnishes the only example of the practical details of the latter type of distribution.

The Wisconsin plan, by which 70 per cent of the proceeds of the income tax goes to the local unit from which the revenue was derived, 20 per cent to the county, and 10 per cent to the state, has the advantage of great simplicity. During the period of rapid industrial change which followed the outbreak of the European War the surprising effects of distribution according to as simple a scheme as this were demonstrated. Unexpectedly large amounts of revenue were brought to localities which happened to have prosperous industrial concerns located within their borders but which were accustomed to only the most modest of revenues and which seemed unable to invent ways in which to make

[1] *Preliminary Report*, p. 17.

use of the amounts distributed to them by the state income tax offices.

New York has adopted an equally simple plan. The proceeds over and above the expenses of administration are divided equally between the state and the counties according to assessed valuation. The distribution in Massachusetts has been along different lines. When the law was first passed it was planned to distribute the proceeds of the income tax in such a way as to reimburse the local taxing units for the losses which they might be expected to meet through the abolition of the personal property tax and the substitution of a tax on intangibles as a part of the personal income tax. The amount to be paid to each city or town was to be "an amount equal to the difference between the amount of the tax levied upon personal property in such city or town in the year nineteen hundred and fifteen and the amount, computed by the tax commissioner, that would be produced by a tax on personal property actually assessed in such city or town for the year nineteen hundred and seventeen at the same rate of taxation as prevailed therein in the year nineteen hundred and fifteen."[1] Before the proceeds of the income tax were distributed the expenses of administration were to be subtracted. In 1919 a scheme was adopted for reducing by degrees the amounts paid to the local units as reimbursement for the losses through the removal of the personal property taxes, to expire after its completion in 1927, after which date the amount to be distributed and paid to the cities and towns was to be determined in proportion to the amount of the state tax imposed upon each of them in each year.[2] A little later in 1919 another change was made, and a scheme of reimbursement in relation

[1] *Laws of 1916*, ch. 269, sec. 23.

[2] *Laws of 1919*, ch. 314.

to the needs of the schools was adopted.[1] The plan included the payment of lump sums to teachers and other educational officials of various grades of salary, and supplementary reimbursements for those cities and towns in which the assessed valuation was below a certain ratio to the school attendance. This plan was opposed on the same grounds on which such a plan of expenditure is usually opposed in any locality,—namely, for the reason that it forces the urban districts to pay for the schools of the poorer and rural districts, but it was carried through.

The plan used in Delaware results in the distribution of the proceeds of the income tax to the various school districts on the basis of enrollment.

The distribution of the yield of state income taxes is one of the most important problems connected with the utilization of that form of taxation. The interest in the development of the income tax principle itself has been so great that this part of the question has been too much neglected, with the result that the purposes to which the product of the tax may be devoted have not been adequately safeguarded. The amusing excess of local income in certain places in Wisconsin during the recent industrial changes has already been noted. In New York, where the distribution to the localities is made according to assessed valuation, the results are "weird and meaningless" according to A. E. Holcomb, secretary of the National Tax Association.[2] In states in which the tax has been unexpectedly productive and in which no safeguards whatever have been put around the disposition of the proceeds of the tax there has undoubtedly been a temp-

[1] *Laws of 1919*, ch. 363.

[2] A. E. Holcomb, "State Income Taxes," *Bulletin of the National Tax Association*, vol. vi, no. 4 (Jan., 1921), p. 126.

tation to use the funds for purposes which are not immediately urgent.

Mr. Holcomb holds that a distribution for educational purposes is superior to the methods used in Wisconsin and New York:[1]

> A method of distribution, at once reasonable and having the added advantage of popularity and attractiveness to the general public seems to us to be educational purposes. This is so because of the preponderating amount of that expense, as compared with other governmental expenses. It would readily absorb the yield of the income tax, without a suggestion of "surplus". A measure for such distribution is available in the school enrollment, and finally, and most important, the definite reflection in each tax bill of a sharp reduction in the largest item, would have a marked effect in the attitude of the taxpayer towards the tax.
>
> The same results could in large measure be obtained by assigning the yield to the state educational department, to be distributed under its supervision as so-called "state aid." . . . .

The distribution of a large part of the proceeds of the income tax to the local units in some way is desirable under present conditions. The income tax is intended as a substitute for the unsatisfactory personal property tax in nearly all of the states in which it has recently been adopted or enlarged in scope, and as such a reimbursement is due to the local taxing units for those sums which, if they did not actually receive, they should have received under the old system. The Committee on Model Taxation regards this question of distribution as one to which a dogmatic answer cannot be given, since the local units are relieved from a part of their tax burden in either case,—that is, they are assisted if the revenue is distributed directly to them, but they are also assisted if the proceeds of the income tax are assigned to the state treasury and are used for general

[1] Holcomb, *op. cit.*, p, 127.

state purposes, for the direct state tax is correspondingly lightened. This is undeniably true, but in this matter, as in many other instances, the actual reliefs or burdens conferred through the operation of taxes are extremely likely to be assumed by the least intelligent of the taxpayers to remain where they first fall. Hence a better understanding on the part of the average taxpayer of the actual effect of the income tax is obtained if at least a part of the proceeds is distributed to the local unit in which the taxpayer resides. Furthermore, the distribution should be made with such a purpose and in such a way that the taxpayer is made conscious of the lightening of his tax burden. The effect of the actual process of this distribution was in fact felt clearly and with excellent effect upon the popular sentiment towards the income tax when at the close of 1920 the New York state comptroller made the refunds due the localities under the state income tax law. The method which the Committee on Model Taxation suggests in its preliminary report, that of a division of the proceeds of the income tax in the proportions which the state and local expenditures bear to the total state and local expenditure combined, is probably a workable and satisfactory one. If, further, this method is combined with one by which the details of distribution are worked out according to some educational factor, as is advised by Mr. Holcomb, the results should be more satisfactory than those now obtained in Wisconsin or New York.

9. *Financial results*

The productivity of the state income tax under modern conditions can be no more vividly described than by the citation of New York's $37,000,000 in receipts from the operation of the tax on individual incomes in the first year of collection. When the scale of incomes and of the state

budget is taken into consideration the financial results in Wisconsin and Massachusetts are hardly less impressive. It has been demonstrated that it is possible for a state to collect one-fifth as much as the federal government collects by means of the income tax, to reap a sum which is almost equal to one-third of the state's revenue, and to conduct the operations of assessment and collection at a cost of (approximately) two per cent on assessments,—the record of Massachusetts with the income tax. These facts are significant in any forward look over the financial affairs of the American states. The income tax is not now regarded as a cure-all for financial ills; it is recognized that it cannot properly occupy a position of sole importance in the taxing plan of a state, but must be fitted into a diversified tax scheme; but the question of its productiveness and economy is now answered, and in that respect the judgment of the nineteenth century has been reversed.

10. *Conclusion*

In concluding a study of the income tax in modern industrial countries in 1911, Professor Seligman emphasized three lessons which might be learned from the history of the income tax: first, the income tax was coming, in the United states as elsewhere; second, the tax worked better from year to year and from decade to decade; and, third, its success depended, almost more than in the case of any other modern institution, upon administrative machinery. A survey of the ten years of tax history which have passed since those words were written brings added proof of each of the three statements, for state income taxes in particular as well as for taxes of wider application. State income taxes are coming,—pushed to the front by the ever-increasing dissatisfaction with general property taxes, by the lure of a large yield, and by the willingness to experiment which

the financial changes of the war have brought about. From year to year improvements have been made and the tax has worked more effectively,—as Massachusetts has adapted and improved the income tax devices of Wisconsin and as New York has seized upon both, utilized them, and moved a step ahead. Finally, the realization of the prime importance of workable administrative machinery is now nation-wide. Under the financial conditions of the present the modern income tax must be regarded as one of the most productive and one of the most satisfactory sources of state revenue.

APPENDIX I

EXTRACT FROM THE "PRELIMINARY REPORT OF THE COMMITTEE APPOINTED BY THE NATIONAL TAX ASSOCIATION TO PREPARE A PLAN OF A MODEL SYSTEM OF STATE AND LOCAL TAXATION," SEPTEMBER, 1918

III. THE PROPOSED PERSONAL INCOME TAX

Section 11. The first decision reached by the committee was that in the proposed model system of state and local taxation there should be a personal tax levied with the exclusive view of carrying out the principle that every person having taxable ability should pay a direct tax to the government under which he is domiciled. There appeared to be four forms of personal taxation which have been employed for this purpose.

The first of these is the poll tax. It is evident, however, from the nature of the case that this tax would be utterly inadequate to accomplish the object in view, even if levied at graduated rates, as has sometimes been done in other countries. It would be so unequal and so far inferior to the other forms of personal taxation that it cannot be deemed worthy of serious consideration. Whether, as a supplement to an adequate system of personal taxation, it might be desirable to retain the poll tax as a means of insuring some contribution from people owning no property and having small incomes, the committee preferred not to consider in this report. It has been our desire to confine ourselves to main issues, and not to undertake to solve every minor problem of taxation. We, therefore, say nothing about the poll tax, except that it is inadequate for the purpose that we have in view, and cannot be recommended as an important element in any system of state and local taxation.

The second method of imposing the personal tax would be to levy a tax upon every man's net fortune, that is, upon the

total of his assets in excess of his liabilities, without exemption of any kind of asset or exclusion of any liability. This would not mean a general property tax, but a net property tax such as is found in some countries in Europe. It would be a tax levied not upon property as such, but upon net fortune as a measure of the citizen's personal liability to contribute to the government under which he is domiciled. It would be entirely distinct from any tax that might be levied objectively upon property, as property, at the place of its situs, and would have to be levied exclusively upon the property owner at his place of domicile. It would necessarily be levied at a moderate rate, perhaps $3 per $1000, which would correspond approximately to a six per cent income tax upon investments yielding five per cent. Although precedents may be found in other countries for such a personal tax levied upon net fortunes, the committee has concluded that it is not to be recommended for adoption in the United States. Such a tax would raise the difficult constitutional question of the right of a state to levy a tax even upon the *net* fortune of a citizen if that fortune included tangible property located in another commonwealth. It is, furthermore, foreign to American experience, and would certainly not lead us along the line of least resistance. Since the coming of the federal income tax, it is obvious that it is easier for the states, and more convenient for the taxpayers, to adopt income rather than net fortune as the measure of the obligation of the citizen to contribute to the government under which he lives.

The third method of personal taxation is what may be called a presumptive income tax, that is, a tax levied upon persons according to certain external indicia which are taken to be satisfactory measures of taxable ability. House rent is the index commonly used in such presumptive income taxes, and a tax on rentals has been proposed in times past by special commissions in Massachusetts and New York. Such a tax would be comparatively easy to administer, and would raise no difficult constitutional questions. It would undoubtedly be better than an income tax or a tax on net fortunes if those

taxes were badly administered. But the amount that a citizen pays for house rent is after all such a very imperfect and inadequate indication of his income or fortune that the committee is unwilling to recommend it to any state in which there is any reasonable expectation that conditions are, or may presently become, favorable for the introduction of a better form of personal tax. It appears that in France, where the tax on rentals has been in continuous operation since the Revolution, there is so little correspondence between house rents and taxable ability that in the greater part of the communes the taxing officials disregard to a greater or less extent the letter of the law, and assess people according to what they appear able to pay. The committee finds, therefore, that the tax on rentals is not to be recommended except, perhaps, as a last resort in states where administrative and other conditions are unfavorable to the introduction of any better form of personal taxation.

There remains a fourth form of personal taxation, the personal income tax. By this is meant a tax levied upon persons with respect to their incomes which are taxed not objectively as incomes but as elements determining the taxable ability of the persons who receive them. This tax is better fitted than any other to carry out the principle that every person having taxable ability shall make a reasonable contribution to the support of the government under which he lives. It is as fair in principle as any tax can be; under proper conditions, it can be well administered by an American state, as Wisconsin and Massachusetts have proved; it is a form of taxation which meets with popular favor at the present time, and therefore seems to offer the line of least resistance. The committee, therefore, is of the opinion that a personal income tax is the best method of enforcing the personal obligation of the citizen for the support of the government under which he lives, and recommends it as a constituent part of a model system of state and local taxation.

Section 12. While it is impossible in this report to describe the proposed taxes in every detail, it is essential that the

committee should explain at least in broad outlines the manner in which these taxes should be levied. In so doing it will be necessary to refer constantly to the general principles previously stated, and to adjust the details of each tax in such a manner as to enable it to carry into effect logically and consistently the principle upon which it is based.

Since the purpose of the personal income tax is to enforce the obligation of every citizen to the government under which he is domiciled, it is obvious that this tax must be levied only upon persons and in the states where they are domiciled. It is contrary to the theory of the tax that it should apply to the income from any business as such, or apply to the income of any property as such. The tax should be levied upon persons in respect of their entire net incomes, and should be collected only from persons and at places where they are domiciled. It should not be collected from business concerns, either incorporated or unincorporated, since such action would defeat the very purpose of the tax.

At first thought this proposal will doubtless seem objectionable to many, who will ask why a state should not tax all incomes derived from business or property located within its jurisdiction, irrespective of whether the recipients are residents or non-residents. And if the personal income tax were the only one proposed, the objection would be well grounded. The committee, however, is under the necessity of reconciling the conflicting claims of the states, and of doing so in a manner that will avoid unjust double and triple taxation of interstate business and investments. We, therefore, propose as the only practicable remedy a system which comprises three taxes, each of which is designed to satisfy fully and fairly the legitimate claims of our several states. We are elsewhere providing methods by which property will be taxed where located and business will be taxed where it is carried on. At this point, we are dealing exclusively with a personal tax designed to enforce the right of our states to tax all persons domiciled within their jurisdictions; and we are merely insisting that, in enforcing this claim, the states shall act consistently, and

shall confine personal taxation to persons and attempt to levy it only at the place of domicile. If the personal income tax is levied in any other way, it will simply reproduce and perpetuate the old evil of unjust double taxation of interstate property and interstate business.

The second detailed recommendation we have to make is that the personal income tax shall be levied in respect of the citizen's entire net income from all sources. Under existing constitutional limitations, of course, interest upon the bonds of the United States and the salaries of federal officials cannot be taxed by the states, but we recommend that all other sources of income be subject to the income tax without exception or qualification. We are aware that, under the unreasonable and unworkable requirements of the general property tax, it has appeared desirable in times past to exempt state and local bonds from taxation, to exempt real-estate mortgages, and to grant various other exemptions. All such exemptions are inconsistent with the theory of the tax we here propose, and should be discontinued as rapidly as the circumstances of each case permit. Against the policy which led to these exemptions under the general property tax we here offer no criticism. But we are now dealing with a tax which is designed to be a part of a new system of taxation, and it is evident that none of the considerations which led to the exemptions created under the general property tax are applicable to a personal income tax levied upon the principle we here advocate. The personal obligation of the citizen to contribute to the support of the government under which he lives should not be affected by the form his investments take, and to exempt any form of investment can only bring about an unequal, and therefore an unjust distribution of this tax. Our reasoning applies, of course, to the exemption which agencies of the federal government now enjoy. But that is a matter which is beyond the control of the states, and for the purposes of this report it will be considered a fixed datum which must be accepted.[1]

[1] We here follow the view that has long prevailed concerning existing

Our third specific recommendation is that the personal income tax should be levied upon net income defined substantially as a good accountant would determine it. We submit no formal definition at this time, and content ourselves with referring to the provisions of the Wisconsin and the Massachusetts income taxes. Our recommendation means that operating expenses and interest on indebtedness must be deducted, but we wish to call attention to the fact that the issue by the federal government of large amounts of bonds which are exempt from local taxation will make it necessary for the states to limit the interest deduction to an amount proportional to the income which the taxpayer derives from taxable sources. This would mean that if a person derives half of his income from taxable sources and one-half from tax-exempt federal bonds, he should be permitted to deduct but one-half of the interest that he pays upon his indebtedness. Any other procedure will tend to make the personal income tax a farce in many cases and will give occasion for legitimate complaint.

The fourth recommendation relates to the exemption of small incomes. The committee believes that the amount of income exempted from the personal income tax should not exceed $600 for a single person and $1200 for a husband and wife, with a further exemption of $200 for each dependent up to a number not to exceed three. This would give us a maximum exemption of $1,800 for a family consisting of husband, wife, and three children or other dependents. We recognize, however, that conditions may well differ in various states, and have decided to make no specific recommendations about the amount of the exemptions granted to persons having small incomes. We limit ourselves to the above statement of the maximum exemptions that should be granted and the further observation

restrictions on the taxing power of the states. In two recent cases (Peck *v.* Lowe and U. S. Glue Co. *v.* Oak Creek, 247 U. S.) the court has developed a doctrine which may justify the belief that a net income tax, levied upon state officials along with all other persons, with respect to their entire net incomes, might not be held to be a tax upon agencies of the federal government, and therefore forbidden by federal decisions.

that, under a democratic form of government, it is desirable to exempt as few people as possible from the necessity of making a direct personal contribution toward support of the state.[1]

Our fifth recommendation is that the rate of the income tax shall be the same for all kinds of income, that is, that it shall not be differentiated according to the sources from which income is derived. If the tax stood by itself, a strong argument could be made for imposing a higher rate upon funded than upon unfunded incomes. But the tax is, in fact, designed to be part of a system of taxation in which there will be a tax upon tangible property. Under this system there will be heavier taxation of the sources from which funded incomes are derived; and there will, therefore, be little if any ground for attempting to differentiate the rates of the personal income tax. Such differentiation, furthermore, would greatly complicate the administration of the tax, and would lead to numerous difficulties. Upon all accounts, therefore, we recommend that there shall be no differentiation of the rate.

In the sixth place we recommend that the rates of taxation shall be progressive, the progression depending upon the amount of the taxpayer's net income. Concerning the precise schedule of rates, we offer certain general recommendations. The lowest rate should not be less than one per cent, and under present conditions we regard it as inexpedient for any state to impose a rate higher than six per cent. The classes of taxable income to which the various rates apply need not be smaller than $1000, and probably should not be larger. It results from what has been said that if the exemption to a single person be placed at $600, we would recommend a tax of one per cent upon any amount of income between $600 and $1600; a tax of two per cent upon any amount of income betweeen $1600 and $2600; a tax of three per cent upon any amount of income

[1] For administrative convenience we recommend that, in order to minimize the number of very small tax bills, no person liable to pay an income tax shall be assessed for less than $1.00.

between $2600 and $3600; a tax of four per cent upon any amount of income between $3600 and $4600; a tax of five per cent upon any amount of income between $4600 and $5600; and a tax of six per cent upon all income in excess of $5600. We present these figures merely for the purpose of illustrating our preferences, and make no definite recommendation except that the rates of the personal income tax should be moderate, and should be, as nearly as practicable, uniform throughout the United States.

Our seventh suggestion concerns the administration of the proposed tax. No argument can be needed by the National Tax Association to support our recommendation that the administration of the personal income tax should be placed in the hands of state officials. This we regard as an indispensable condition for the successful operation of any state income tax, and we should be disinclined to recommend the adoption of an income tax by any commonwealth that is unwilling to turn over its administration to a well organized and properly equipped state tax department. Local administration of an income tax has never worked well, and in our opinion, never can operate satisfactorily. It is obvious, finally, that a state tax commission, or commissioner, is the proper agent to administer the proposed tax; and we desire to record our belief that satisfactory results are hardly to be expected if the administration is turned over to any other state officials. Upon this whole question of administration, which is of the most vital importance, we are fortunate in being able to rely upon the authority of the opinions repeatedly expressed by the conferences of the National Tax Association. We are glad also to point to the experience of Wisconsin and Massachusetts.

Our eighth recommendation is that the personal income tax be collected from taxpayers, upon the basis of strictly enforced and controlled returns, and without any attempt to collect it at the source. Upon this point there might have been doubt several years ago. But the experience of Wisconsin and Massachusetts shows conclusively that, with good administration, a reasonable tax upon incomes can be collected in

the manner we have recommended, with the general cooperation of the taxpayers and with the minimum amount of evasion. Collection at source presents serious administrative difficulties, imposes unwarranted burdens upon third parties in respect of transactions which strictly concern only the taxpayers and the government, and not infrequently tends to shift the burden of the tax to the wrong shoulders. What we seek is a personal income tax which shall not be shifted and shall bring home to the taxpayer, in the most direct possible form, his personal obligation for the support of the government under which he lives. Collection at the source is plainly inconsistent with the purpose of such a tax. We recommend, however, that in certain cases information at the source be required as is now done under the Massachusetts and Wisconsin income taxes. Such information is helpful to the administrative officials, and does not alter the incidence or otherwise affect injuriously the operation of a personal income tax.

Section 13. The only remaining point is that of the proper disposition of the proceeds of this tax. So far as our general plan of taxation is concerned, it is immaterial whether the revenue from the personal income tax is retained in the state treasury, distributed to the local political units, or divided between the state and local governments. It is probable, furthermore, that the same solution may not be advisable in every state. If the state should keep the entire revenue, then every section of the state would benefit to the extent that such revenue might reduce the direct state tax. Upon the other hand, if the revenue from the income tax is distributed wholly to the local units, as is now the case in Massachusetts, the lightening of local burdens tends to reduce the pressure of the direct state tax. It seems probable that in most cases a division of the revenue would be considered preferable; and in such cases we suggest that the state governments might well retain a proportion corresponding to the proportion which state expenditures bear to the total of the state and local expenditures, and that the same principle should apply in determining the share received by each of the subordinate political units.

Thus in case state expenditures amount to one-fifth of the total, county expenditures to two-fifths, and municipal expenditures to two-fifths, the state should receive one-fifth of the revenue from the income tax, the counties two-fifths, and the municipalities two-fifths. Whether distribution to the local units should be made upon the basis of the amount of the tax collected in each unit, or whether the tax should be distributed upon some other basis, is also immaterial to our general plan of taxation. In states where domiciliary changes occurring under the general property tax have not produced an unnatural concentration of wealth in certain localities, it will probably be best to distribute the revenue according to the domicile of the taxpayers. But where, as in Massachusetts, under the operation of the general property tax, wealth has been greatly concentrated in a few localities, such a method of distribution is obviously impossible and some other method must be found. In such a case, the income tax revenue might be utilized for a state school fund, or might be distributed among the localities according to the proportions in which they are required to contribute to the direct state tax. Since this entire question of distribution must be so largely affected by local conditions, the committee prefers to do no more than to offer these general suggestions.

APPENDIX II

Draft of a Personal Income Tax Act

Prepared for the National Tax Association by the Committee Appointed to Prepare a Plan for a Model System of State and Local Taxation. January, 1921

Personal Income Tax

AN ACT PROVIDING FOR THE LEVYING, COLLECTING AND PAYING OF AN INCOME TAX ON INDIVIDUALS

Be it Enacted by the Legislature of the State of ————

Article I

SHORT TITLE AND DEFINITIONS

Section 1. **Short title.** This Act shall be known and may be cited as The Personal Income Tax Act of 192—.

Sec. 2. **Definitions.** For the purposes of this act and unless otherwise required by the context:

1. The words " tax commission " mean the state tax commission.

2. The word " taxpayer " includes any individual or fiduciary subject to the tax imposed by this act.

3. The word " individual " means a natural person.

4. The word " fiduciary " means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, estate or trust.

5. The word " person " includes individuals, fiduciaries, partnerships and corporations.

6. The word " corporation " includes joint-stock companies or associations and insurance companies.

7. The words "tax year" mean the calendar year in which the tax is payable.

8. The words "income year" mean the calendar year or the fiscal year, upon the basis of which the net income is computed under this act; if no fiscal year has been established they mean the calendar year.

9. The words "fiscal year" mean an income year, ending on the last day of any month other than December.

10. The word "paid" for the purposes of the deductions under this act, means "paid or accrued" or "paid or incurred", and the words "paid or accrued", "paid or incurred" and "incurred" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act. The word "received" for the purpose of the computation of the net income under this act means "received or accrued", and the words "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

11. The word "resident" applies only to individuals and includes for the purpose of determining liability to the tax imposed by this act, with reference to the income of any income year, any individual who shall be a resident of the state on April 15 of the tax year.

12. The words "foreign country" mean any jurisdiction other than one embraced within the United States. The words "United States", when used in a geographical sense, include the states, the territories of Alaska and Hawaii, the District of Columbia and the possessions of the United States.

Article II

Imposition of Tax

Sec. 200. **Individuals.** 1. A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually, with respect to his entire net income as herein, computed at the following rates, after deducting the exemptions provided in this act:

On the first $1000 of net income or any part thereof, one per cent;

On the second $1000 of net income or any part thereof, two per cent;

On the third $1000 of net income or any part thereof, three per cent;

On the fourth $1000 of net income or any part thereof, four per cent;

On the fifth $1000 of net income or any part thereof, five per cent;

On all net income in excess of $5000, six per cent.

2. Such tax shall first be levied, collected and paid in the year 1921 and with respect to the net income received during the calendar dear 1920 or during any income year ending during the twelve months ending March 31, 1921.

Sec. 201. **Fiduciaries.** 1. The tax imposed by this act shall be imposed upon resident fiduciaries, which tax shall be levied, collected and paid annually with respect to:

(a) That part of the net income of estates or trusts which has not been distributed or become distributable to beneficiaries during the income year. In the case of two or more joint fiduciaries, part of whom are non-residents of the state, such part of the net income shall be treated as if each fiduciary had received an equal share;

(b) The net income received during the income year by deceased individuals who, at the time of death were residents and who have died on or after April 15 of the tax year without having made a return;

(c) The entire net income of resident insolvent or incompetent individuals, whether or not any portion thereof is held for the future use of the beneficiaries, where the fiduciary has complete charge of such net income.

2. The tax imposed upon a fiduciary by this act shall be a charge against the estate or trust.

Article III

COMPUTATION OF TAX

Sec. 300. **Net income defined.** The words " net income " means the gross income of a taxpayer less the deductions allowed by this act.

Sec. 301. **Gross income defined.** 1. The words " gross income " includes gains, profits and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income of the income year in which received by the taypayer, unless, under the methods of accounting permitted under this act, any such amounts are to be properly accounted for as of a different period.

2. The words " gross income," does not include the following items, which shall be exempt from taxation under this act:

(a) The proceeds of life-insurance policies and contracts paid upon the death of the insured to individual beneficiaries or to the estate of the insured;

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract;

(c) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income);

(d) Interest upon the obligations of the United States or its possessions;

(e) Salaries, wages and other compensation received from the United States by officials or employees thereof, including persons in the military or naval forces of the United States;

(f) Any amounts received through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness.

Sec. 302. **Basis of return of net income.** 1. Taxpayers who customarily estimate their income on a basis other than that of actual cash receipts and disbursements may, with the approval of the tax commission, return their net income under this act upon a similar basis. Taxpayers who customarily estimate their income on the basis of an established fiscal year instead of on that of the calendar year, may, with the approval of the tax commission, and subject to such rules and regulations as it may establish, return their net income under this act on the basis of such fiscal year, in lieu of that of the calendar year.

2. A taxpayer may, with the approval of the tax commission and under such regulations as it may prescribe, change his income year from fiscal year to calendar year or otherwise, in which case his net income shall be computed upon the basis of such new income year.

3. An individual carrying on business in partnership shall be liable for income tax only in his individual capacity and shall include in his gross income the distributive share of the net income of the partnership received by him or distributable to him during the income year.

4. Every individual, taxable under this act, who is a beneficiary of an estate or trust, shall include in his gross income the distributive share of the net income of the estate or trust, received by him or distributable to him during the income year. Unless otherwise provided in the law, the will, the deed or other instrument creating the estate, trust or fiduciary relation, the net income shall be deemed to be distributed or distributable to the beneficiaries (including the fiduciary as a beneficiary, in the case of income accumulated for future distribution) ratably, in proportion to their respective interests.

Sec. 303. **Determination of gain or loss.** For the purpose

of ascertaining the gain or loss from the sale or other disposition of property, real, personal or mixed, the basis shall be, in the case of property acquired before January 1, ———, the fair market price or value of such property as of that date, if such price or value exceeds the original cost, and in all other cases, the cost thereof; *Provided*, that in the case of property which was included in the last preceding annual inventory used in determining net income in a return under this act, such inventory value shall be taken in lieu of cost or market value. The final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him and the gain or loss shall be computed accordingly.

Sec. 304. **Exchanges of property.** 1. When property is exchanged for other property, the property received in exchange shall, for the purpose of determining gain or loss, be treated as the equivalent of cash to the amount of its fair market value, provided a market exists in which all the property so received can be disposed of at the time of exchange, for a reasonably certain and definite price in cash; otherwise such exchange shall be considered as a conversion of assets from one form to another, from which no gain or loss shall be deemed to arise.

2. In the case of the organization of a corporation, the stock or securities received shall be considered to take the place of property transferred therefor and no gain or loss shall be deemed to arise therefrom.

3. When, in connection with the reorganization, merger or consolidation of a corporation, a taxpayer receives, in place of stock or securities owned by him, new stock or securities, the basis of computing the gain or loss if any shall be, in case the stock or securities owned were acquired before January 1, ——, the fair market price or value thereof as of that date, if such price or value exceeds the original cost, and in all other cases the cost thereof.

Sec. 305. **Inventory.** Whenever in the opinion of the tax commission the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be

taken by such taxpayer, upon such basis as the tax commission may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income, and conforming so far as may be, to the forms and methods prescribed by the United States Commissioner of Internal Revenue, under the acts of Congress then providing for the taxation of incomes.

Sec. 306. **Deductions.** In computing net income there shall be allowed as deductions:

(a) All the ordinary and necessary expenses paid during the income year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession, for the purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;

(b) All interest paid during the income year on indebtedness;

(c) Taxes paid or accrued within the income year, imposed by the authority of the United States or of any of its possessions or of any state, territory or the District of Columbia or of any foreign country; except inheritance taxes, and except income taxes imposed by this act and taxes assessed for local benefits, of a kind tending to increase the value of the property assessed;

(d) Losses sustained during the income year and not compensated for by insurance or otherwise, if incurred in trade or business;

(e) Losses sustained during the income year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business;

(f) Losses sustained during the income year, of property not connected with the trade or business, if arising from fires, storms, shipwreck or other casualty, or from theft, and not compensated for by insurance or otherwise;

(g) Debts ascertained to be worthless and charged off with-

in the income year, if the amount has previously been included in gross income in a return under this act;

(h) A reasonable allowance for the depreciation and obsolescence of property used in the trade or business; and, in the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion; *Provided*, That in computing the deductions allowed under this paragraph, the basis shall be the cost (including in the case of mines, oil and gas wells and other natural deposits, the cost of development, not otherwise deducted), and in the case of property acquired prior to January 1, ——, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date. The reasonable allowances under this paragraph shall be made under rules and regulations to be prescribed by the tax commission. In the case of leases the deductions allowed may be equitably apportioned between the lessor and lessee;

(i) In the case of taxpayers who keep regular books of account, upon an accrual basis and in accordance with standard accounting practice, reserve for bad debts and for contingent liabilities, under such rules and restrictions as the tax commission may impose. If the tax commission shall at any time deem the reserve excessive in amount, it may restore such excess to income, either in a subsequent year or as a part of the income of the income year and assess it accordingly.

Sec. 307. **Items not deductible.** In computing net income no deduction shall in any case be allowed in respect of:

(a) Personal, living or family expenses;

(b) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate;

(c) Any amount expended in restoring property for which an allowance is or has been made;

(d) Premiums paid on any life-insurance policy covering the life of any officer or employee or of any individual financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

Sec. 308. **Exemptions.** 1. There shall be deducted from the net income the following exemptions:

(a) In the case of a single individual, a personal exemption of $1000;

(b) In the case of the head of a family, or a married individual living with husband or wife, a personal exemption of $2000. A husband and wife living together shall receive but one personal exemption of $2000 against their aggregate net income; and in case they make separate returns, the personal exemption of $2000 may be taken by either or divided between them;

(c) $200 for each individual (other than husband and wife) dependent upon and receiving his chief support from the taxpayer, if such dependent individual is under eighteen years of age or is incapable of self-support, because mentally or physically defective;

(d) In the case of a fiduciary; if taxable under clause (a) of paragraph 1 of section 201, a personal exemption of $1000; if taxable under clause (b) of said paragraph, the same exemption as would be allowed the deceased, if living; if taxable under clause (c) of said paragraph, the same exemptions to which the beneficiary would be entitled.

2. The status on the last day of the income year shall determine the right to the exemptions provided in this section; *Provided* that a taxpayer shall be entitled to such exemptions for husband or wife or dependent who has died during the income year.

Article IV

Returns

Sec. 400. **Individual returns.** 1. Every resident, having a net income during the income year of $1000 or over, if single, or if married and not living with husband or wife; or having a net income for the income year of $2000 or over, if married and living with husband or wife; shall make a return under oath, stating specifically the items of his gross income and the deductions and exemptions allowed by this act.

2. If a husband and wife living together have an aggregate net income of $2000 or over, each shall make such a return, unless the income of each is included in a single joint return.

3. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

Sec. 401. **Fiduciary returns.** 1. Every fiduciary subject to taxation under the provisions of this act, as provided in section 201 hereof, shall make a return under oath, for the individual, estate, or trust for whom or for which he acts, if the net income thereof amounts to $1000 or over.

2. The return made by a fiduciary shall state specifically the items of gross income, and the deductions and exemptions allowed by this act and such other facts as the tax commission may prescribe. Under such regulations as the tax commission may prescribe, a return may be made by one of two or more joint fiduciaries.

3. Fiduciaries required to make returns under this act shall be subject to all the provisions of this act which apply to individuals.

Sec. 402. **Information at source.** 1. Every individual, partnership, corporation, joint stock company or association or insurance company, being a resident or having a place of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits and income, amounting to $1000 or over, paid or payable during any year to any taxpayer, shall make complete return thereof under oath, to the tax commission, under such regulations and in such form and manner and to such extent as may be prescribed by it.

2. Every partnership, having a place of business in the state, shall make a return, stating specifically the items of its gross income and the deductions allowed by this act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

3. Every fiduciary shall make, under oath, a return for the individual, estate or trust for whom or for which he acts, if the net income thereof, distributed or distributable to beneficiaries during the year is $1000 or over, in which case the fiduciary shall set forth in such return the items of the gross income, the deductions allowed by this act, the net income, the names and addresses of the beneficiaries, the amounts distributed or distributable to each and the amount, if any, lawfully retained by him for future distribution. Such return may be made by one of two or more joint fiduciaries.

Sec. 403. **Time and place of filing returns.** Returns shall be in such form as the tax commission may from time to time prescribe and shall be filed with the tax commission, at its main office or at any branch office which it may establish, on or before the fifteenth day of the fourth month next after the preceding calendar year or any income year ending after such calendar year and on or before the thirty-first day of March. In case of sickness, absence or other disability, or whenever in its judgment good cause exists, the tax commission may allow further time for filing returns. There shall be annexed to the return the affidavit or affirmation of the taxpayer making the return, to the effect that the statements contained therein are true. The tax commission shall cause to be prepared blank forms for the said returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any return herein required.

Sec. 404. **Failure to file returns; supplementary returns.** If the tax commission shall be of the opinion that any taxpayer

has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, it may require from such taxpayer a return, or a supplementary return, under oath, in such form as it shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this act. If from a supplementary return, or otherwise, the tax commission finds that any items of income, taxable under this act, have been omitted from the original return it may require the items so omitted to be disclosed to it, under oath of the taxpayer, and to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this act. The tax commission may proceed under the provisions of section 502 of this act whether or not it requires a return or a supplementary return under this section.

Article V

COLLECTION AND ENFORCEMENT OF TAX

Sec. 500. **Time and place of payment of tax.** 1. The full amount of the tax payable, as the same shall appear from the face of the return, shall be paid to the tax commission at the office where the return is filed, at the time fixed by law for filing the return. If the time for filing the return shall be extended, interest at the rate of 6 per cent per annum, from the time when the return was originally required to be filed, to the time of payment, shall be added and paid.

2. The tax may be paid with uncertified check, during such time and under such regulations as the tax commission shall prescribe, but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties, the same as if such check had not been tendered.

Sec. 501. **Examination of returns.** 1. As soon as practicable after the return is filed, the tax commission shall examine

it and compute the tax, and the amount so computed by the tax commission shall be the tax. If the tax found due shall be greater than the amount theretofore paid, the excess shall be paid to the tax commission within ten days after notice of the amount shall be mailed by the tax commission.

2. If the return is made in good faith and the understatement of the tax is not due to any fault of the taxpayer, there shall be no penalty or additional tax added because of such understatement, but interest shall be added to the amount of the deficiency at the rate of 1 per cent for each month or fraction of a month.

3. If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added to the amount of the deficiency 5 per cent thereof, and in addition, interest at the rate of 1 per cent per month or fraction of a month.

4. If the understatement is false or fraudulent, with intent to evade the tax, the tax on the additional income discovered to be taxable shall be doubled and an additional 1 per cent per month or fraction of a month shall be added.

5. The interest provided for in this section shall in all cases be computed from the date the tax was originally due to the date of payment.

6. If the amount of tax found due as computed shall be less than the amount theretofore paid, the excess shall be refunded by the tax commission out of the proceeds of the tax retained by it as provided in this act.

Sec. 502. **Additional taxes.** If the tax commission discovers from the examination of the return or otherwise that the income of any taxpayer, or any portion thereof, has not been assessed, it may, at any time within two years after the time when the return was due, assess the same and give notice to the taxpayer of such assessment, and such taxpayer shall thereupon have an opportunity, within thirty days, to confer with the tax commission as to the proposed assessment. The limitation of two years to the assessment of such tax or additional tax shall not apply to the assessment of additional taxes

upon fraudulent returns. After the expiration of thirty days from such notification the tax commission shall assess the income of such taxpayer or any portion thereeof which it believes has not theretofore been assessed and shall give notice to the taxpayer so assessed, of the amount of the tax and interest and penalties if any, and the amount thereof shall be due and payable within ten days from the date of such notice. The provisions of this act with respect to revision and appeal shall apply to a tax so assessed. No additional tax amounting to less than one dollar shall be assessed.

Sec. 503. **Warrant for the collection of taxes.** If any tax imposed by this act or any portion of such tax be not paid within sixty days after the same becomes due, the tax commission shall issue a warrant under its hand and official seal directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the taxpayer, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant and to return such warrant to the tax commission and pay to it the money collected by virtue thereof by a time to be therein specified, not less than sixty days from the date of the warrant. The sheriff shall within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his ser-

vices in executing the warrant, to be collected in the same manner. If a warrant be returned not satisfied in full, the tax commission shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

Sec. 504. **Tax a debt.** Every tax imposed by this act, and all increases, interest and penalties thereon, shall become, from the time it is due and payable, a personal debt, from the person or persons liable to pay the same, to the state of ———.

Sec. 505. **Action for recovery of taxes.** Action may be brought at any time by the attorney general of the state, at the instance of the tax commission, in the name of the state, to recover the amount of any taxes, penalties and interest due under this act.

Sec. 506. **Tax upon settlement of fiduciary's account.** 1. No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this act upon said fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. The certificate of the tax commission and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax, to the extent of said certificate.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the tax commission, with the approval of the attorney general, may, on behalf of the state agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this act, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

ARTICLE VI

PENALTIES

Sec. 600. **Penalties.** 1. If any taxpayer, without intent to evade any tax imposed by this act shall fail to file a return

of income or pay a tax, if one is due, at the time required by or under the provisions of this act, but shall voluntarily file a correct return of income and pay the tax due within sixty days thereafter, there shall be added to the tax an additional amount equal to five per cent thereof, but such additional amount shall in no case be less than one dollar and an additional one per cent for each month or fraction of a month during which the tax remains unpaid.

2. If any taxpayer fails voluntarily to file a return of income or to pay a tax if one is due within sixty days of the time required by or under the provisions of this act, the tax shall be doubled, and such doubled tax shall be increased by one per cent for each month or fraction of a month from the time the tax was originally due to the date of payment.

3. The tax commission shall have power, upon making a record of its reasons therefor, to waive or reduce any of the additional taxes or interest provided in subdivisions 1 and 2 of this section or in subdivisions 2, 3 and 4 of section 501.

4. If any taxpayer fails to file a return within sixty days of the time prescribed by this act, any judge of the ——— court, upon petition of the tax commission, or any ten taxable residents of the state, shall issue a writ of mandamus requiring such person to file a return. The order of notice upon the petition shall be returnable not later than ten days after the filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. All writs and processes may be issued from the clerk's office in any county and, except as aforesaid, shall be returnable as the court shall order.

5. Any person who, without fraudulent intent, fails to pay any tax or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, shall be liable to a penalty of not more than $1000, to be recovered by the attorney general, in the

name of the people, by action in any court of competent jurisdistion.

6. Any person or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any requirement of this act or any lawful requirement of the tax commission thereunder, shall fail to pay any tax or to make, sign or verify any return or to supply any information required by or under the provisions of this act, or who, with like intent, shall make, render, sign or verify any false or fraudulent return or statement, or shall supply any false or fraudulent information, shall be liable to a penalty of not more than $1000, to be recovered by the attorney general in the name of the people, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed $1000 or be imprisoned not to exceed one year, or both, at the discretion of the court.

7. The attorney general shall have the power, with the consent of the tax commission, to compromise any penalty for which he is authorized to bring action under subdivisions 5 and 6 of this section. The penalties provided by such subdivisions shall be additional to all other penalties in this act provided.

8. The failure to do any act required by or under the provisions of this act shall be deemed an act committed in part at the office of the tax commission in ———. The certificate of the tax commission to the effect that a tax has not been paid, that a return has not been filed or that information has not been supplied, as required by or under the provisions of this act, shall be prima-facie evidence that such tax has not been paid, that such return has not been filed or that such information has not been supplied.

9. If any taxpayer, who has failed to file a return or has filed an incorrect or insufficient return and has been notified by the tax commission of his delinquency, refuses or neglects within twenty days after such notice to file a proper return, or files a fraudulent return, the tax commission shall determine the income of such taxpayer according to its best information

and belief and assess the same at not more than double the amount so determined. The tax commission may in its discretion allow further time for the filing of a return in such case.

Article VII

REVISION AND APPEAL

Sec. 700. **Revision by tax commission.** A taxpayer may apply to the tax commission for revision of the tax assessed against him, at any time within one year from the time of the filing of the return or from the date of the notice of the assessment of any additional tax. The tax commission shall grant a hearing thereon and if, upon such hearing, it shall determine that the tax is excessive or incorrect, it shall resettle the same according to the law and the facts and adjust the computation of tax accordingly. The tax commission shall notify the taxpayer of its determination and shall refund to the taxpayer the amount, if any, paid in excess of the tax found by it to be due. If the taxpayer has failed, without good cause, to file a return within the time prescribed by law, or has filed a fraudulent return or, having filed an incorrect return, has failed, after notice, to file a proper return, the tax commission shall not reduce the tax below double the amount for which the taxpayer is found to be properly assessed.

Sec. 701. **Appeal.** The determination of the tax commission upon any application made by a taxpayer for revision of any tax, may be reviewed in any court of competent jurisdiction by a complaint filed by the taxpayer against the tax commission in the county in which the taxpayer resides or has his principal place of business, within thirty days after notice by the tax commission of its determination, given as provided in section 700 of this act. Thereupon, appropriate proceedings shall be had and the relief, if any, to which the taxpayer may be found entitled may be granted and any taxes, interest or penalties paid, found by the court to be in excess of those legally assessed, shall be ordered refunded to the taxpayer, with interest from time of payment.

ARTICLE VIII

ADMINISTRATION

Sec. 800. **Tax commission to administer this act; districts.** The tax commission shall administer and enforce the tax herein imposed, for which purpose it may divide the state into districts, in each of which a branch office of the tax commission may be established. It may from time to time change the limits of such districts.

Sec. 801. **Powers of tax commission.** The tax commission, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any taxpayer, shall have power to examine or cause to be examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda, bearing upon the matters required to be included in the return, and may require the attendance of the taxpayer or of any other person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oath to such person or persons.

Sec. 802. **Officers, agents and employees.** 1. The tax commission may appoint and remove a person to be known as the income tax director who, under its direction shall have supervision and control of the assessment and collection of the income taxes provided in this act; the tax commission may also appoint such other officers, agents, deputies, clerks and employees as it may deem necessary, such persons to have such duties and powers as the tax commission may from time to time prescribe.

2. The salaries of all officers, agents and employees employed by the tax commission shall be such as it may prescribe, not to exceed such amounts as may be appropriated therefor by the legislature, and the members of the tax commission and such officers, agents and employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties, not to exceed the amounts appropriated therefor by the legislature.

3. The tax commission may require such of the officers, agents and employees as it may designate, to give bond for the faithful performance of their duties in such sum and with such sureties as it may determine, and all premiums on such bonds shall be paid by the tax commission out of monies appropriated for the purpose of this act.

Sec. 803. **Oaths and acknowledgments.** The members of the tax commission and such officers, as it may designate, shall have the power to administer an oath to any person or to take the acknowledgment of any person in respect of any return or report required by this act or the rules and regulations of the tax commission.

Sec. 804. **Publication of statistics.** The tax commission shall prepare and publish annually statistics reasonably available, with respect to the operation of this act, including amounts collected, classifications of taxpayers, income and exemptions, and such other facts as are deemed pertinent and valuable.

Sec. 805. **Secrecy required of officials; penalty for violation.** 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the members of the tax commission, any deputy, agent, clerk or other officer or employee, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this act. Reports and returns shall be preserved for three years and thereafter, until the tax commission orders them to be destroyed.

2. Any offense against subdivision one of this section shall be punished by a fine of not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the

discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

3. Notwithstanding the provisions of this section, the tax commission may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing an income tax upon the incomes of individuals, or the authorized representative of either such officer, to inspect the income tax returns of any individual, or may furnish to such officer or his authorized representative an abstract of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any taxpayer; but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of the personal income tax law thereof.

Sec. 806. **Regulations.** The tax commission may from time to time make such rules and regulations, not inconsistent with this act, as it may deem necessary to enforce its provisions.

Article IX

MISCELLANEOUS

Sec. 900. **Distribution of the income tax.**

[Provision should be made whereby the proper officials shall be notified concerning the amount each locality is to receive from the income tax, in time to enable them to take account of such receipts when determining the amount of the local tax levied in each year.

Care should be taken to provide that a reasonable amount be withheld from distribution to the state or to the localities, in order to enable the commission to promptly make refunds to which taxpayers are found to be entitled.

For purposes of reference, the following methods of distribution contained in the statutes of various states having income tax laws, may be useful:

Delaware, L. 1917, Ch. 8; 1919, Ch. 157, Art. 14, § 212.

Mass., L. 1917, Ch. 209, 317, 339; 1918, Ch. 107, 154, 219; 1919, Ch. 314, § 1; Ch. 363, Part I.

N. Y., L. 1920, Ch. 694.

Wisc., L. 1917, Ch. 485.]

Sec. 901. **Exemption of intangible personal property from taxation.**

[Provision should be made for exempting intangible personal property from taxation under the property tax, as recommended in the Preliminary Report of the committee. The wording of such a provision will necessarily have to depend upon the language employed in the tax law of each state, and no provision can possibly be drawn which will be applicable to all states. The importance of providing for such exemption is so great that the committee feels obliged to record here its belief that a personal income tax cannot be expected to operate satisfactorily in a state which continues to tax intangible personal property under the property tax.

For purposes of reference, the following exemption provisions, contained in the statutes of various states having income tax laws, may be useful:

Mass., L. 1918, Ch. 257, § 69.

N. Y., L. 1920, Ch. 120.

No. Dak., L. 1919, Spec. Sess., Ch. 62.

Wis., L. 1911, Ch. 658, Secs. 2 & 3 (p. 999).]

Sec. 902. **Contract to assume tax illegal.** It shall be unlawful for any person to agree or contract directly or indirectly to pay or assume or bear the burden of any tax payable by any taxpayer under the provisions of this act. Any such contract or agreement shall be null and void and shall not be enforced or given effect by any court.

Sec. 903. **Unconstitutionality or invalidity.** If any clause, sentence, paragraph, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to

be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered. No caption of any section or set of sections shall in any way affect the interpretation of this act or any part thereof.

Sec. 904. **Taking effect of the act.** This act shall take effect on ———.

[Since several months are required for the work preliminary to the assessment of an income tax, the date at which the law becomes effective ought to be such as to leave sufficient time for such work.]

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THE WHIG PARTY IN PENNSYLVANIA

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THE WHIG PARTY IN PENNSYLVANIA

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To

MY MOTHER

PREFACE

THE study was undertaken as the result of a suggestion from Professor William A. Dunning of Columbia University. The original intention of the author was to confine the investigation to the last decade of the existence of the Whig party in Pennsylvania. As the work proceeded, it became necessary to examine portions of the early period of the party. It was soon evident that for the sake of unity and continuity the history of the Whig party in Pennsylvania should be presented from the time of its formation until its disappearance. The late Charles McCarthy in his excellent *The Anti-Masonic Party* and Miss Marguerite G. Bartlett in *The Chief Phases of Pennsylvania Politics in the Jacksonian Period* have covered the period in which the Whig party was formed but not with the Whig party as the main interest. Consequently, despite the previous work in the field, the author felt justified in including this material.

Pennsylvania during the period of the Whig party was undergoing an extensive expansion in manufacturing and mining, which tended to draw her to the policy desired by the New England states. On the other hand, conditions similar to those existing on the frontier persisted in the mountain districts of the state until the close of the period. The relation of certain sections of the state to the South through the mercantile interest was close, causing the adoption of a kindly attitude toward the slave holder. As a result of these conditions, the state, in a measure at least, reflected the sentiments of the different sections of the

country. Consequently, the varied and varying political arguments all find expression in one or the other of the political groups within the state. During the period under study, as went Pennsylvania, so went the Union. In the majority of the elections, Pennsylvania was the determining factor.

Many kindnesses were shown the author in the prosecution of his work. A debt of especial gratitude is due to Professors William A. Dunning and D. R. Fox for numerous suggestions, which saved the author from many a pitfall. The author wishes gratefully to acknowledge the readiness with which the Historical Society of Pennsylvania and the Library of Congress placed the resources of their manuscript department at his disposal. Chief reliance for newspaper material was placed upon the excellent collection of the Pennsylvania State Library, where innumerable favors were extended by the librarians. The maps were prepared under the author's direction by Mr. Howard L. Weiss, one of his students.

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CHAPTER I

The Period of Subordination

1834-1838.

A marked characteristic of the American people has been their tendency to form combinations for the purpose of attaining a particular end. In no phase of their social activities has this tendency been more noticeable than in the conduct of political affairs. Political agitation never has failed to attract attention, but after the disappearance of the Federalist party interest in the maintenance of party organization waned. For a short period of time organized national political parties ceased to exist. Gradually in national politics new leaders with large personal followings appeared; from these groups new political parties were to come. Of these leaders Andrew Jackson appealed particularly to the untutored laboring man, mechanic and farmer. In the presidential election of 1824 opposition to him in Pennsylvania was hardly worth the name.[1] In the election of 1828 he carried the state by an overwhelming majority. Prior to the election of 1832 two political organizations opposed to Andrew Jackson had been formed with branches in the state. In 1829 the Anti-Masonic party developed strength in the counties of the interior. In Philadelphia

[1] In 1824 Jackson had been nominated by two conventions in Pennsylvania, the one said to be Federalist and the other Democratic; Sargent, *Public Men and Events*, vol. i, p. 41.

the commercial element, refusing to respond to the movement, supported Henry Clay for the next presidential election. In the rest of the state this movement for Clay, soon assuming the name of National Republican, made little headway. Unlike the situation elsewhere, no cooperation between these two parties existed; for the Anti-Masons were just as proscriptive of the National Republicans as they were of the Jackson party.

In preparation for the election of 1832 Clay urged his followers to assume an independent but conciliatory attitude towards the other elements of Jacksonian opposition.[1] So far as the state elections were concerned, they acquiesced, making no nominations of their own. The Anti-Masons, not being eager for this cooperation, viewed it with distrust. Amos Ellmaker, Anti-Masonic candidate for the vice-presidency, voiced it in a letter to Thaddeus Stevens, saying that "the remotest suspicion of Anti-Masons combining with any other party, or fragment of party, would be and ought to be injurious, if not fatal to the election of Ritner."[2] After the gubernatorial election, the electoral ticket for Clay and Sergeant was withdrawn; the National Republicans, in the main, voted for Wirt and Ellmaker, the Anti-Masonic nominees, who nevertheless, did not carry the

[1] Henry Clay to Thomas I. Wharton, July 25, 1831; Miscellaneous Mss. Collection of the New York Historical Society.

[2] Letter of August 16, 1832; *Publications of the Lancaster County Historical Society,* vol. viii, pp. 38-44. Ritner was the Anti-Masonic candidate for governor. For the presidential election the Clay supporters proposed a joint electoral ticket, allowing the voters to cast their ballot for either Clay or Wirt. General R. Rosebury, member of the Anti-Masonic state committee, on July 24, 1832, wrote the chairman, Joseph Wallace, "I should view defeat under present circumstances as less likely to prove prejudicial to the cause we are engaged in advocating than success that arises from a union with a party that has nothing in common with us." Wm. McPherson Mss.

state.[1] Although the Anti-Masons did not desire this support, yet they could not deny its existence; the way was thus open for future joint action, based on their consent.

Jackson's determination to ruin the Bank of the United States furnished the two opposition parties within the state the incentive and the opportunity for combining. The withdrawal of funds from the bank by the government caused the officers of the bank to curtail their loans and to draw bills of exchange for short periods only.[2] The financial flurry and business depression which followed were attributed by the bank to the policy of the government. Instructions came from Clay, showing how the indignation of the state, in which the bank had a fair degree of popularity, might be used to political advantage.[3] Following his instructions mass meetings at Philadelphia, Chambersburg, Pittsburgh, York, Easton, Huntingdon, Beaver, Williamsport, Gettysburg, and Chester adopted resolutions, sent committees to Washington to present them to Congress, and, much to his disgust and annoyance, to interview the President on the restoration of the deposits.[4]

The merchants of Philadelphia in openly directing the agitation acted in unison so that on the day of one of the mass meetings "nine-tenths of the mercantile houses were closed."[5] Pressure was brought to bear on the directors

[1] *Niles' Register*, vol. xlii, p. 273; vol. xliii, pp. 134, 136. Wirt had been unsuccessful in an endeavor to have the Anti-Masons endorse Clay; Kennedy, *Memoirs of the Life of William Wirt*, vol. ii, pp. 356, 359, 366, 380, 381.

[2] Catterall, *Second Bank of the United States*, pp. 314, *et seq.*

[3] Clay to Nicholas Biddle, December 21, 1833; McGrane, *Correspondence of Nicholas Biddle*, p. 218.

[4] *National Gazette*, January 3, February 4, 5, 6, 8, 10, 13, 24, March 10, 11; *United States Gazette*, January 4, 28, 29, February 4, 5, 26, March 5, 12, 1834. Some of the memorials and reports can be found in Hazard, *Register of Pennsylvania*, vol. xiii.

[5] *National Gazette*, March 21, 1834; *cf.* also Sargent, *op. cit.*, vol. i, p. 262.

of the Girard Bank of Philadelphia, one of the government depositories, because of their contract. A referendum to the stockholders voided the contract, which the directors had made with the government.[1] The agitation against the course pursued by Jackson was apparently so effective that the *National Gazette,* a bank organ, was led to exclaim, "The anti-Jackson sensation extends rapidly. The Stamp Act did not produce more excitement than the Dictatorship does now. President Jackson took a 'responsibility' much more weighty than he supposed."[2]

Within the state the bank supporters looked longingly on the strength of the Anti-Masons. A small anti-bank section of this party endeavored to throw its support to Jackson in his fight against the bank. Richard Rush, leader of this group, in an open letter claimed that

> if antimasons object to the *Lodge* that it makes the press *dumb,* if this be the cornerstone of their cause, can they look with other feelings than those of reprobation on the unwarrantable acts of another powerful institution for stimulating it to NOISE? I would fain persuade myself not.[3]

When his effort to have the Anti-Masonic party oppose the bank failed, Rush led his wing into the ranks of the Jackson supporters. From this failure it was evident that the bank partisans might, if they handled the situation astutely, win the support of the rest of the Anti-Masonic party. It was also evident that the bank question was too limited for any determined and continued agitation. Therefore opposition

[1] Hazard, *Register of Pennsylvania,* vol. xiii, pp. 108, 191, 304. The cancellation of this contract was revoked at a later referendum; the bank continued to act as a government depository, *ibid.,* vol. xiv, p. 143.

[2] March 15, 1834.

[3] *Pennsylvanian,* November 30, 1833.

to "executive usurpation" was stressed as the bond of union for all those unfriendly to the occupant of the White House. The cue for the politicians was again furnished by Clay.[1]

On February 22, 1834, a mass meeting at Philadelphia gave definiteness to the agitation when it resolved that all those opposed to the policy of the President should assemble in convention at Harrisburg. To clear up the confusion, resulting from the failure to select a date for the convention, "the Democratic members of the Legislature," on March 25, set May 27 as the time of meeting. At a later meeting they requested that double representation be sent in order to impress the public with the significance of the movement; it was thus possible to seat delegations from the two anti-Jackson parties, if they chanced to be sent from any one county.[2]

In the early part of April a portion of the Jackson opposition, adopting the name from the nearby states, began to call themselves Whigs.[3] They endeavored to have it accepted as a generic name for all the political opponents of Jackson, saying that "the great mass of the opponents of

[1] McGrane, *op. cit.*, p. 220, letter of February 2, 1834, to Nicholas Biddle.

[2] *United States Gazette*, February 26, April 2; *Pennsylvania Intelligencer*, April 10, 1834. The use of the term, "the Democratic members of the Legislature," by those who favored the Bank was declared to be deceitful by "the Democratic members of the Legislature" who opposed the bank; *Pennsylvania Reporter*, April 4, 1834.

[3] *Pennsylvania Intelligencer*, April 17; *United States Gazette*, April 5, 16; *National Gazette*, April 11, 16, 17, 24, 1834. Apparently the use of the word "Whig" was suggested by the editor of the *New York Courier;* it was immediately used to describe the anti-Jackson movement in New York, and a little later in Pennsylvania. *Pennsylvania Inquirer*, April 3, 5, 1834. Sargent, *op. cit.*, vol. i, p. 261, relying on his memory, incorrectly states that the term was used independently in Pennsylvania.

Federal usurpation, whether Masons or Anti-Masons, are Democratic Whigs; a man may be an Anti-Mason and at the same time a Whig."[1] They strove to identify the policy of the federal executive with the despised Federalism, and theirs with the policy of those who struggled for freedom. One of their county meetings

Resolved, that we recognize the Democratic doctrines of 1798 and the Democratic Whig principles of 1834, as the resuscitated Whig doctrines of 1776 having for their object the fixing of the boundaries of the various departments of the government, and the deliverance of the people from the usurpations of Royal and Federal power. . . . [2]

The National Republicans were not unwilling to accept the new descriptive title of Whig, but the Anti-Masons, although willing to have the National Republicans act with them, were not ready to abandon their own party name or organization. Inasmuch as the Anti-Masons were stronger than the National Republicans and had shown remarkable power in the interior counties of the state because of their sectarian appeal, the situation required careful handling. Therefore, when the convention assembled on May 27, precautions were taken not to offend the Anti-Masons, who were present in goodly numbers. It was "Resolved, that this Convention be styled a Convention of Delegates from the Citizens of Pennsylvania opposed to executive usurpation and abuse." [3] It is impossible to classify the delegates

[1] *Pennsylvania Intelligencer*, June 12, 1834.

[2] *Ibid.*, April 24, 1834, for Dauphin county mass convention of April 22. On May 25, at Doylestown, there was formed a "Jefferson Democratic Association" of those who opposed Jackson; *ibid.*, June 12, 1834.

[3] *National Gazette*, June 3, 1834. For the Anti-Masonic party in Pennsylvania, see McCarthy, "The Antimasonic Party," *Report of the American Historical Association*, 1902, vol. i, pp. 427-503.

according to previous political affiliation, but it was claimed that seventy-five of the two hundred and eight in attendance were former supporters of Jackson.[1] Thaddeus Stevens, Neville B. Craig, Ner Middleswarth, and Joseph Lawrence were prominent Anti-Masons in attendance, the last named being chosen president of the convention. Due to the opposition of this group no new political organization could be attempted, and therefore it was

Resolved, that it be earnestly recommended to our fellow-citizens, throughout this commonwealth, along with zeal and energy in the great and good cause, to cultivate a spirit of conciliation and mutual respect; and that it be further earnestly recommended to them, to distinguish with their high approbation and confidence, every member of Congress or of the Legislature, by whatever name he may have been chosen, who in his station has faithfully resisted Executive usurpation and abuse, and firmly maintained the rights of the people.[2]

Inasmuch as there were no general officers to be chosen, the question of joint action assumed only local importance. In the districts where the National Republicans had developed strength, particularly in Philadelphia and its environs, the Whigs directed the contest. In the balance of the state control rested with the Anti-Masons, excepting in a few counties, such as Allegheny, where cooperation was refused.[3]

The election failed to disclose any unusual movement away from the Democratic party despite the strenuous efforts, made in Philadelphia, to stir up enthusiasm for the new party. The Whig city convention had urged

the mechanics, manufacturers, merchants, and all others en-

[1] *Pennsylvania Intelligencer*, May 29, 1834.

[2] Proceedings of the convention in *Niles' Register*, vol. xlvi, p. 243.

[3] *Pennsylvanian*, May 22, 1834; Konkle, *Life and Speeches of Thomas Williams*, vol. i, p. 97.

gaged in trade, who are opposed to the odious tyranny of Andrew Jackson, to close their workshops, stores and places of business, on the days of the ward and general elections, at 12 o'clock noon, for the remainder of the day, so that all who are disposed may be enabled to lend their aid in support of the constitution and the law.[1]

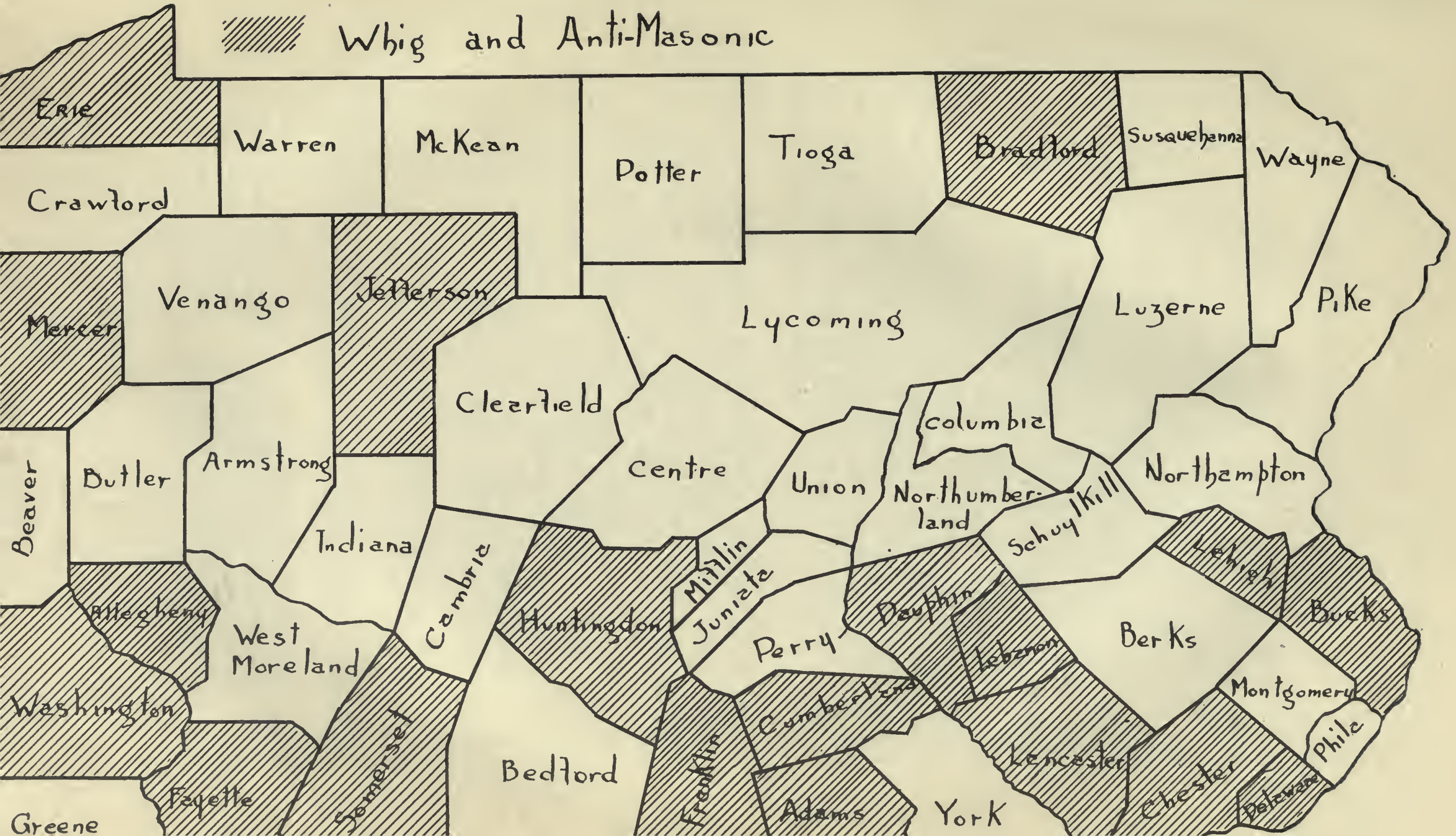
Despite these efforts the Democrats retained control of the legislature, although they carried several districts through the failure of their opponents to cooperate, and they likewise elected a majority of the Congressmen. The Whigs, in the main, attributed their defeat to the superior organization of the Democrats, but one Whig editor claimed, "The Jackson men succeeded in som parts of the State in making the question Bank or no Bank, instead of usurpation and Van Buren on the one side, and Democracy and the Constitution on the other." [2] Though thoroughgoing cooperation had not been attained in this election, yet a breach had been made in the isolating wall of Anti-Masonry.

The Anti-Masons were not yet, however, ready to join a fusion with the Whigs. This they made evident when "the Democratic Convention opposed to secret societies and political intrigue," meeting at Harrisburg on March 4, 1835, nominated Joseph Ritner for governor.[3] Ritner was the logical candidate; for, although defeated in the elections of 1829 and of 1832, he had shown remarkable strength. He was a Pennsylvania German, with all their characteristic traits and could count on the support of that group within the state. As a young man he had left his native county, Berks, had crossed the mountains, and settled as

[1] *National Gazette*, September 27, 1834.

[2] *Pennsylvania Intelligencer*, October 17, 1834. The situation in Philadelphia was tense. Biddle, in fear of personal violence, sent his family out of the city. Catterall, *op. cit.*, p. 356.

[3] *Pennsylvania Intelligencer*, March 5, 9, 13, 1835.


Whig and Anti-Masonic
Erie
Warren
McKean
Potter
Tioga
Bradford
Susquehanna
Wayne
Crawford
Venango
Jefferson
Lycoming
Luzerne
Pike
Mercer
Clearfield
Columbia
Beaver
Butler
Armstrong
Centre
Union
Northumber-
land
Northampton
Indiana
Cambria
Mifflin
Juniata
Schuylkill
Lehigh
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Allegheny
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Adams
York
Chester
Delaware
Greene

a farmer in Washington county. For six years, from 1820 to 1825, he had been returned in the annual elections to the house of representatives, over which he presided in 1824 and in 1825, being chosen without opposition in the latter year. Although his views on the bank question were not considered by the Anti-Masons when they nominated him, yet they were of such a nature as to prove attractive to the Whigs. During his campaign of 1832 he had written,

It is impossible to forget the deplorable condition of the Government, during the late war, for want of such a Bank, and the wretched state of the currency up to the time the Bank commenced operations was no less so. I can scarcely persuade myself, that the man *who can oppose re-chartering the Bank,* with all these facts staring him in the face, *possesses either a sound head, or a good heart.*[1]

With such an opinion on the value of the bank, he was in this respect well-nigh all the Whigs hoped for. Consequently demands for a Whig state convention were rebuffed by county conventions, which endorsed the candidacy of Ritner.[2] The Whigs were fully conscious of their numerical weakness, and one of them stated, "There are not five counties in the State, in which they can poll a larger vote than the Anti-Masons." [3] The Whigs were all the more willing to submit to this disdainful attitude of the

[1] *Democratic State Journal,* June 20, 1835, reprint of letter, dated July 7, 1832.

[2] *Pennsylvania Intelligencer,* March 13, 30, April 23, June 11, August 27; *United States Gazette,* March 14, 18, April 25, May 23, June 20, 24, 1835.

[3] *Carlisle Herald,* quoted in the *Pennsylvania Intelligencer,* March 13, 1835. The editor estimated the Whig strength to be 30,000, and the Anti-Masonic 60,0000. On the other hand, the *United States Gazette* claimed the Whig vote totaled 50,000; quoted in the *Pennsylvania Intelligencer,* March 5, 1835.

Anti-Masons, for the Democratic party had split into two factions, the one nominating George Wolf for reelection, and the other supporting Henry A. Muhlenberg. This factional fight boded well for the opposition.

The struggle in the Democratic ranks had been developing for some years. Fundamentally it was an effort to oust Governor Wolf and his supporters from the offices, which they had been holding for two terms, and to fill them with other Democrats. Involved with this were other issues. In December, 1833, Samuel McKean, a close friend of the governor, was chosen to represent the state in the United States Senate. Shortly after his election, the newspapers reported that he favored a presidential nominating convention to select the candidates for 1836. To clear up all doubts on this question, in an open letter of December 15, 1833, he stated,

> I am, and always have been, decidedly and unequivocally opposed to this singular innovation upon the established usages of the democratic party, and adverse to the consummation of the *single* and *especial* object intended to be accomplished by it.[1]

His friendship with Governor Wolf was so close that the opinion, expressed in the letter, was accepted as that of the governor. On December 16, before the letter was published, certain of the Democratic members of the legislature resolved in favor of a national nominating convention.[2] The issue was thus sharply drawn by the "Convention Democrats," who were inevitably led by their declaration into opposition to the governor. During 1834 the sentiment of the "Convention Democrats" concentrated on Henry A. Muhlenberg.

Muhlenberg came from a powerful family with traditions

[1] *Niles' Register*, vol. xlv, p. 295.

[2] *Ibid.*, vol. xlv, p. 295.

of leadership among the Pennsylvania Germans and with a penchant for the governorship.[1] For twenty-seven years he had been the pastor of a large church at Reading, and consequently had a strong following. Failing health made him resign his charge and retire to a farm. Immediately he was induced to stand for Congress. After his election, in 1829, he resigned from the ministry. In Congress Muhlenberg heartily endorsed the views of Jackson on the bank, declaring that he was " opposed to the present or any other National Bank." [2] On the other hand, although Wolf had not opposed Jackson in his struggle with the bank, yet his views and those of Jackson did not coincide, for Wolf, in 1831 and in 1832, had signed resolutions of the legislature favoring the rechartering of the Bank of the United States.[3] On the question of calling a convention to amend the state constitution, Muhlenberg took a positive, favorable stand, but Wolf was evasively non-committal. Both factions were forced to admit that they favored Van Buren for the presidency. On March 4, 1835, the Democratic convention of the state assembled at Harrisburg with the factions of equal strength and with a large number of contesting delegations. After a struggle of several days the Muhlenberg supporters won a tactical victory in having resolutions adopted, calling for the choice of new delegates to meet in state convention at Lewistown on May 6. Thereupon the Muhlenberg men returned home. The Wolf

[1] His uncle, the Rev. Frederick A. Muhlenberg, was the Federal candidate in 1793 and in 1796; his cousin, John A. Schulze, was elected governor in 1823 and in 1826; his father-in-law, Joseph Hiester, defeated in 1817, was elected in 1820.

[2] Letter of January 26, 1835; *Democratic State Journal,* April 11, 1835.

[3] Resolutions of April 2, 1831, *Session Laws,* 1830-31, p. 505; resolutions of February 10, 1832, *ibid.*, 1831-32, p. 625; resolutions of June 6, 1832, *ibid.*, 1831-32, p. 644.

supporters met the following day, filled up their body as well as they could, and placed Wolf in nomination. When the Lewistown convention assembled, there was no opposition to the nomination of Muhlenberg.[1]

Feeling between the Democratic factions ran high; the Muhlenberg supporters constantly sneered at Wolf as "the caucus nominee." As was to be expected, the election resulted in defeat for the Democrats with Ritner receiving a plurality of the votes cast.[2] "There has been not only a Ritner current but a Ritner flood," wrote the defeated governor.[3] Control of the legislature was also wrested from the Democrats. The lower house contained twenty-eight Whigs, forty-six Anti-Masons, and twenty-six Democrats; it chose Ner Middleswarth, an Anti-Mason, as its speaker.[4] The senate remained under the control of the Democrats, who were, however, divided by their factional fight. Taking advantage of this situation, the Whigs and Anti-Masons threw their support to Thomas S. Cunningham, a Muhlenberg man, and elected him speaker.[5] This proved to be an extremely wise move, for he and some of the other Muhlenberg men were later won away from the Democratic party.

[1] *Niles' Register,* vol. xlviii, pp. 21, 65, 190. Both the national convention and President Jackson carefully avoided acting as arbiters between the factions; *ibid.,* vol. xlviii, pp. 227-29, 344, 378; vol. xlix, p. 27.

[2] The vote was Ritner 94,023; Wolf 65,804; Muhlenberg 40,586; *Smull's Legislative Hand-Book,* 1919, p. 719. A Democratic editor estimated that the Anti-Masons cast between 40,000 and 50,000 of Ritner's vote; *The Keystone,* October 4, 1837.

[3] Governor George Wolf to Lewis S. Coryell, October 16, 1835; Coryell Papers, vol. iii.

[4] *National Gazette,* March 16, 1836.

[5] *Pennsylvania Intelligencer,* October 22, 1835, states the following as the constituency of the Senate: anti-Van Buren 14; Wolf-Van Buren 11; Muhlenberg-Van Buren 8. For the election of the speakers see *United States Gazette,* December 4, 1835.

Whether the Whigs were promised a state charter for the Bank of the United States in return for their support of Ritner is not clear, but such a measure was discussed immediately after the election.[1] Although the national charter of the bank was to expire on March 4, 1836, yet the bank did not proceed to wind up its affairs and the price of its stock rose considerably.[2] When the legislature assembled, the speaker of the house appointed committees favorable to the bank, notifying Nicholas Biddle, president of the bank, of their constituency before publicly announcing them.[3] John H. Walker, chairman of the Committee on Ways and Means, and E. F. Pennypacker, chairman of the Committee on Banks, sent Biddle a joint letter inquiring under what conditions he would accept a state charter.[4] The reply of Biddle on January 7, 1836, outlined the conditions which, with a few alterations, were later incorporated in the act. He urged that action be taken before February 17, on which date the stockholders were scheduled to take action on the expected charter.[5]

Absolute secrecy on the proposed action was maintained until January 19, 1836, when Thaddeus Stevens, a member of the Committee on Inland Navigation and Internal Improvements, introduced a bill, which amongst other things

[1] *National Gazette*, October 19, 20, 21, 1835. Biddle had been contemplating a state charter for over a year; McGrane, *op. cit.*, pp. 245, 257.

[2] *United States Gazette*, November 5, 1835. On January 4, 1836, the price quoted was $113½ and on February 19, 1836, it was $131½; *National Gazette*, January 4, February 19, 1836.

[3] McGrane, *op. cit.*, p. 257.

[4] *House Journal*, 1836-37, vol. ii, pp. 745, 757; an investigating committee established the fact of the correspondence but did not obtain the letter.

[5] McGrane, *op. cit.*, p. 246; the date of the letter is erroneously given as 1835.

provided for a charter for the bank.[1] The chairman of this committee, William B. Reed, a Philadelphia lawyer, acting as one of the agents of the bank, had written Biddle that to secure votes, " The temptation of a turnpike, or a few miles of canal and railroad, as a beginning on a favorite route is nearly irresistible." [2] Stevens claimed credit for evolving the scheme, whereby the state works might be extended and the state debt not increased, a policy to which he thought Ritner was pledged. This was to be accomplished by securing a bonus for the charter from the bank. This bonus could also be used to warrant the repeal of the tax laws. The sections of the act relating to the repeal of the tax laws were drafted by Stevens, while Reed framed the portions dealing with the extension of the public works and the charter of the bank.[3] On January 29, ten days after its introduction, this important measure passed the house.[4] Its passage in the senate was temporarily postponed until a committee investigated charges of bribery. The majority of the committee reported that they

believe that a deliberate plan was concocted beyond the limits of Pennsylvania, to control the deliberations of the legislature by the pressure of the people acting under an excitement created by incendiary falsehoods, sent forth upon responsible authority, charging the bank with bribery, and the senate with interested treachery.[5]

[1] *House Journal,* 1835-36, vol. i, p. 279.

[2] McGrane, *op. cit.,* p. 258, letter of December 12, 1835.

[3] *House Journal,* 1836-37, vol. ii, pp. 769, *et seq.*

[4] *Ibid.,* 1835-36, vol. i, p. 407; the vote was 57 to 30; the votes in the negative came from 26 Democrats, 3 Whigs and 1 Anti-Mason, *Pennsylvania Reporter,* February 12, 1836.

[5] *Senate Journal,* 1835-36, vol. ii, p. 650.

After this report had been made, the bill was again taken up, passed, and approved on February 18, 1836.[1]

The title of this measure was, "An act to repeal the state tax on real and personal property, and to continue and extend the improvements of the state by railroads and canals, and to charter a state bank, to be called the United States Bank." It repealed the law of March 25, 1831, which had levied a tax on certain classes of property for the use of the state.[2] This act, which was temporary in nature, would have expired on March 25, 1836, but taxation was to cease as of October 1, 1835.[3] Direct taxation was abominated in the state and its repeal was an effort to win support for the coalition.

For its charter of thirty years and exemption from taxation on its dividends, the bank was to pay a bonus of $2,000,000. It was also to pay $500,000 in 1837, and $100,000 annually thereafter for twenty years, to be used by the newly established public school system. The bank could be called on for a permanent loan up to $6,000,000 and for a temporary loan up to $1,000,000 in any one year, both loans to carry a low rate of interest. The bank was also required to subscribe $675,000 to various designated railroads and turnpike companies. Of the $2,000,000, which the state received, all but about $50,000 was immediately appropriated; $600,000 were to be devoted to the payment of the interest on the public debt; $139,000 were

[1] *Session Laws,* 1835-36, p. 36. At a meeting on February 20, 1836, the stockholders of the Bank of the United States, incorporated by the United States, transferred all its property and rights to the state chartered bank of the same name. There was no change in the stockholders, excepting the elimination of the United States. *National Gazette,* February 23, 1836; *Niles' Register,* vol. l, p. 23.

[2] *Session Laws,* 1830-31, p. 206.

[3] This was accomplished by a proclamation of the governor dated March 11, 1836; *Pennsylvania Intelligencer,* March 17, 1836.

granted to turnpike companies; extensions of the state works, including the notorious Gettysburg railroad on which work was ordered to be begun, were to receive $550,000; there were set aside for surveys $12,000, and for repairs and for new equipment on the old works a little over $650,000. These various "temptations" had proven "irresistible."

The bill had been supported in the senate by the anti-Van Buren members and by eight Van Buren men, chiefly Muhlenberg partisans. The support of the Muhlenberg men seems distinctly strange, for in the last campaign they had accused Governor Wolf of being anti-Jackson in signing the bank rechartering resolutions. The views of some of the eight had been decidedly anti-bank. Charles B. Penrose, one of them, had, on March 19, 1834, declared, "I can never lend my aid to a recharter of the present bank, under any circumstance." Another one of them, John Dickey, had, at the same time, stated that he was opposed to a recharter because the bank involved "a dangerous concentration of the monied power of the country." [1] After the passage of the bill, both Penrose and Dickey tried to justify their vote for the state charter by claiming that they had not changed their views, for the corporation was now not a national but a "new state bank," by no means having the power of the expired national institution.[2] Criticisms by the Washington organ of Van Buren led Penrose to declare that this is

> not a party question, it is a Pennsylvania question, and nothing but an interference in that question, which belongs exclusively

[1] *Pennsylvania Reporter,* February 4, 1836.

[2] *Ibid.,* February 16, for letters of Charles B. Penrose and Jesse R. Burden; letters of John Dickey, *Pennsylvania Intelligencer,* March 3, September 8, 1836.

to us as Pennsylvanians to consider, by the candidate of the National Convention for the Presidency, would induce me to believe that the large mass of Pennsylvania Democracy, which will be found in support of this great State measure, were absolved from their party obligation to support him.[1]

In a letter of February 22, 1836, addressed to followers in Cincinnati, Van Buren sharply criticized the state legislature for passing the act.[2] The letter more deeply offended the eight senators; they placed themselves in opposition to Van Buren and from this time forward identified themselves with the Whigs and Anti-Masons. On March 4 the eight were given a banquet by the opponents of Van Buren and welcomed into the ranks of those who saw "that the only safety for constitutional freedom, is a maintenance of the reserved rights of the states." [3]

The legislature, elated by this simple method of procuring funds, proceeded to deal with other banks in a similar manner. The Girard Bank desired to increase its capital from $1,500,000 to $5,000,000 in order that it might receive a larger portion of the deposits of the government. Despite a veto by the governor the measure became law; the bank was to have its charter for twenty years, pay a bonus of $250,000, but was not to be exempt from dividend taxation.[4] The veto by the governor of a measure to increase the capital stock of other banks was effective.[5] The bonuses, paid by the banks, coupled with the repeal of the tax laws, and the distribution of the surplus by the national

[1] *Pennsylvania Intelligencer,* February 22, 1836.

[2] *Niles' Register,* vol. l, p. 135.

[3] *Pennsylvania Intelligencer,* March 8, 1836.

[4] *United States Commercial and Statistical Register,* vol. i, p. 346; *Session Laws,* 1835-36, p. 133.

[5] *House Journal,* 1835-36, vol. i, p. 1443.

government, completely unbalanced the financial sense of the commonwealth. From its dementia the state was to recover only after a long and painful period of impotence.[1] The odium for this condition rests squarely upon the coalition.

In the meantime, agitation for the presidential nomination had been in progress. In Pennsylvania William H. Harrison seemed to be the favorite candidate of those in opposition to the Democrats. He had been suggested in the newspapers immediately after the election of 1834.[2] Newspaper agitation alone would accomplish nothing; so

[1] Bishop, "The State Works of Pennsylvania," in *Transactions of the Connecticut Academy of Arts and Sciences,* vol. xiii, pp. 214, *et seq.* The intimate connection of the state and the banks is shown by the following figures. From May, 1814, to May 1, 1837, the state received as premiums on bank charters $3,302,586.18 with $2,185,916.67 still receivable; the tax on bank dividends during the same period was $785,804.89; and the dividends, paid on state-owned bank stock, amounted to $5,684,067.00. *Proceedings and Debates of the Constitutional Convention,* 1837-38, vol. i, pp. 495-501. The following table shows how little reliance was placed on taxation:

	Tax on real and personal property	*Licenses and land fees; dividends on state-owned stock; tax on bank dividends*
1832	$94,592.34	$422,623.56
1833	226,043.15	540,211.63
1834	219,501.12	294,134.59
1835	208,400.96	299,831.85
1836	224,310.31	356,973.48
1837	54,310.00	395,119.58
1838	10,101.28	397,638.67
1839	18,283.29	397,089.79
1840	2,697.86	352,980.01

For the years listed the sums represent the income of the state, with the exception that the bonuses from the banks and the sums received from the national government through the distribution of the surplus are not included; *House Journal,* 1844, vol. ii, p. 420.

[2] *Pennsylvania Intelligencer,* December 14, 1834.

a call, signed by eleven men, who styled themselves the "Democratic Republican Committee," was issued. The call summoned those favoring General Harrison to meet at Harrisburg on December 14, 1835, in order to place him in nomination, to frame an electoral ticket, and to begin the work necessary to secure his election. It was stated that "the Democratic supporters of the present chief magistrate, the Democratic Whigs, and the Democratic Anti-Masons may, without losing their party names, or giving up their party organization, be cordially invited to participate." [1] This convention was not intended to interfere with the Anti-Masonic convention, which met at the same time and at the same place. In fact, when the two conventions met, the Harrison convention waited for the Anti-Masonic body to act; it adjourned from day to day, watched the proceedings of the other body, followed it in nominating Harrison and Granger, and adjourned *sine die* after adopting the electoral ticket formed by the Anti-Masons. It resolved against calling a national convention as "it is a powerful engine, not only in the hands of unprincipled demagogues, to defeat the will of the people, but to enable the Federal Executive to appoint his successor." [2]

In the resolution against the national convention the members of the Harrison body reflected the attitude of the majority of the Anti-Masons within the state with whom they wished to cooperate. When the Anti-Masonic convention decided to place a candidate for the presidency in nomination and not to choose delegates to a national convention, the organization was split. The presiding officer of the convention, Harmar Denny, along with Thaddeus Stevens and seven other delegates, left the convention.

[1] *Pennsylvania Intelligencer,* October 29, 1835.

[2] *Ibid.,* December 17, 21, 1835.

They saw the trend toward fusion with the newer organization and were endeavoring to prevent it.[1] In the address calling a national convention of the Anti-Masons, the seceders condemned the attempted amalgamation, in their hour of triumph, with the "Masonic Whiggery." [2] One of the

[1] There is much truth to the comment of the *Harrisburg Chronicle* (Van Buren paper), December 21, 1835, that it "was as much intended to put down Thaddeus S. and a few others, as it was to put up General Harrison." Ritner at this time did not fully trust Stevens, and was evidently bent on placing himself at the head of the Anti-Masonic organization. Stevens had opposed Ritner's nomination for the preceding gubernatorial election; Hood, "Thaddeus Stevens," in Harris, *Biographical History of Lancaster County,* p. 578. The struggle broke out in the convention over the seating of James Todd, Ritner's nominee for the attorney-generalship. Todd was applying for the seat of his son, who had resigned. The vote on the question of seating the elder Todd indicated clearly that the governor controlled the convention. Nor did close relations exist between the governor and Stevens over legislative matters, inasmuch as the bank bills favored by Stevens had received vetoes. In fact, Stevens had been so much disgusted with the nomination of Ritner that he had not intended to be a candidate for the legislature in the elections of 1835. His friends insisted that the party needed experienced guides and he yielded to this pressure; Thomas Elder to Joseph Wallace, August 3, 1835; Wm. McPherson Mss.

[2] *Pennsylvania Reporter,* January 5, 1836. Stevens' organ, the *Gettysburg Star,* April 11, 1836, quoted in the *Pennsylvania Intelligencer,* April 14, 1836, said that the national convention would "attempt to survive and sustain *pure unmixed* Anti-Masonry—not to daub over the foul treacherous doings of the 'base compound' Harrisburg Convention;" it would avoid "alike the insidious Masonic Van Buren and the unblushing Masonic Harrison." For their alleged distrust of Harrison's Anti-Masonry, *cf.* McCarthy, "The Anti-Masonic Party," in the *Annual Report of the American Historical Association* 1902, vol. i, pp. 480, *et seq.; Memoirs of John Quincy Adams,* vol. ix, p. 273. The seceders were supporters of Webster; for a portion of the correspondence with him, *cf., The Writings and Speeches of Daniel Webster,* vol. xvi, p. 259; vol. xviii, p. 12. After Harrison's election in 1840, this group of the Anti-Masons claimed that even in 1836 they had been working to secure his nomination by a national convention; Joseph Wallace to William H. Harrison, January —, 1841; Wm. McPherson Mss.

seceding nine editorially described the Anti-Masonic state convention as

> a set of political resurrectionists, having dug up the body of old Whiggism, as the devil wanted to get that of Moses; like vampires disturbing the habitations of the living with the odorous remains of the departed—as a last resort to draw a house for the benefit of Mr. Clay. White is to be the Punch of the puppets and Harrison to be Harlequin of the pantomine; and poor Antimasonry, unwilling to miss the show but excluded from all the rest of the house, begs for a ticket in the slips among the women of the town.[1]

The seceders and their supporters met in a so-called national convention in Philadelphia in May, passed strong condemnatory resolutions against the Whigs, but adjourned without endorsing Harrison and Granger or placing their own candidates in nomination.[2]

The Whigs were not a unit in endorsing the work of the Harrisburg convention. For a time the Clay supporters held aloof, declaring that it was not a Whig convention and that consequently they were not bound by its action.[3] The prospect of the state being carried by Harrison and the possiblity of the election then being thrown into the House of Representatives reconciled them. Stevens was, however, doing everything in his power to make cooperation between the two parties difficult, if not actually impossible. As chairman of the legislative committee to investigate

[1] *Pittsburgh Times,* quoted in the *Pennsylvania Intelligencer,* April 14, 1836.

[2] *National Gazette,* May 6, 1836.

[3] *United States Gazette,* December 30, 1835; the leaders in this group were Horace Binney, John Price Wetherill, Nathan Sargent, and David Paul Brown.

Masonry, he took keen delight in vexing the Whigs.[1] The result was that many of the Whigs, filled with disgust, absented themselves from the polls in the October election and thus helped encompass the defeat of some of the Anti-Masonic candidates for the legislature.[2]

Although the coalition was defeated in the state election of 1836, it entered the national campaign with increased determination to carry the state through cooperation.[3] Van Buren, who had never been a favorite in Pennsylvania, was attacked "as the correspondent of the Pope of Rome—as the fawning sycophantic flatterer of a foreign tyrant—for the base purpose of arraying one religious denomination against the other." [4] He was further attacked for having

> declared in the New York Convention, that a poor man ought not to have a vote. He despises the American mechanics [they

[1] McCarthy, *op. cit.*, p. 473; *cf.* also the debate on the resolutions instructing the United States Senators on the expunging resolution, *Pennsylvania Intelligencer*, March 8, 1836.

[2] *United States Gazette*, October 17, 1836, declared that "the proscriptive course of the Antimasons, particularly the unfortunate affair at Harrisburg," led to their defeat in Adams, Lebanon, Dauphin, Allegheny, and Union counties. It stated that a total of twenty-three seats in the house had been lost by only twelve hundred and fifty-four votes; *ibid.*, October 18, 1836. Stevens was defeated, but by only fourteen votes; *American Volunteer*, October 14, 1836. Joseph Lawrence, now state treasurer, on October 20, 1836, wrote Lewis S. Coryell, "The abuse heaped upon the Whigs last winter by Stevens cannot be easily swallowed by them." Coryell Papers.

[3] *United States Gazette*, October 22, 1836.

[4] *Pennsylvania Intelligencer*, September 15, 1836; the basis of this accusation was a letter of July 20, 1830, written by Van Buren when he was Secretary of State, in which our consul at Rome was authorized to congratulate the Pope on his recent elevation, and to assure him in reply to his inquiry that the Catholics in the United States had the same privileges which those citizens professing another religious belief had.

said] for he rides in a British coach, made in England, and is accompanied by British servants dressed in livery! What says the Democracy? Will they support the Federal Dandy of New York? Or the plain farmer—the veteran Harrison of Ohio? [1]

It was felt that the state held the balance in the national election; consequently the contest was keen.

In November, on the same day as the presidential election, members of a state constitutional convention were to be chosen. One of the Democratic candidates, George M. Dallas, thus outlined the powers of the convention.

It may re-organize our entire system of social existence, terminating and proscribing what is deemed injurious, and establishing what is preferred. It might restore the institution of slavery amongst us; it might make a penal code as bloody as that of Draco; it might withdraw the charters of the cities; it might supersede a standing judiciary, by a scheme of occasional arbitration and umpirage; it might prohibit particular professions or trades; it might permanently suspend the privilege of the writ of Habeas Corpus, and take from us (as our late General Assembly made the entering wedge to do) the trial by jury.[2]

In the western part of the state another Democratic candidate, Judge William Wilkins, declared that the power of the convention was "unlimited and illimitable." [3] These statements, used with telling effect against the Democrats as indicating their radicalism, led several of their nominees to the convention to abandon the party.[4]

[1] *Pennsylvania Intelligencer,* July 28, 1836,; *cf.* also *ibid.,* November 3, 1836.

[2] *United States Gazette,* November 2, 1836; letter to the Bradford county committee.

[3] *Pennsylvania Intelligencer,* November 3, 1836.

[4] Walter Forward came out openly against these contentions and was elected to the convention; *United States Gazette,* October 28, November 1, 1836. He worked with the Whigs until they broke with Tyler.

The election resulted in a victory for Van Buren and his supporters. Of the one hundred and thirty-three members of the constitutional convention, the Democrats secured a majority of only one. The Whigs derived comfort from this fact, as it was felt that with so small a majority the Democrats could do little towards putting their radical doctrines into effect.[1] The defeat of Harrison was attributed by the Whigs to the disorganized condition of the parties in the October election; they claimed that some of the leading Anti-Masons had openly opposed Harrison and Granger until after the state election.[2]

On May 2, 1837, the constitutional convention assembled at Harrisburg with the Whigs and Anti-Masons now having a majority of one because of a special election, necessitated by the death of a Democratic member-elect. An occupational analysis of the members shows little, if any, difference between the Democrats and their opponents.[3] Nor, on the other hand, did the Democrats possess any less wealth.[4] These facts had their effect on the work of the

[1] *Pennsylvania Intelligencer,* November 14, 1836.

[2] *Ibid.,* November 14; *United States Gazette,* November 15, 1836.

[3] *United States Gazette,* June 2, 1837, furnishes a list of the members from which the following was compiled.

	Dem.	*Opp.*		*Dem.*	*Opp.*
Farmers	27	29	Surveyors	4	0
Lawyers	16	24	Artisans	5	1
Physicians	6	4	Editor	0	1
Merchants	4	5	Gentlemen	1	0
Manufacturers	3	3	Total	66	67

It is well nigh impossible in some cases to discover whether an individual was an Anti-Mason or a Whig. As nearly as can be ascertained, there were fifty-two Anti-Masons and fifteen Whigs in the convention.

[4] C. J. Ingersoll, Democratic member from the county of Philadelphia, said on the floor of the convention, "Now, I will venture another guess, that, setting aside the large fortunes of two individual members of this

Harrison
Erie
Warren
McKean
Potter
Tioga
Bradford
Susquehanna
Wayne
Pike
Crawford
Venango
Jefferson
Lycoming
Luzerne
Mercer
Clearfield
Columbia
Monroe
Butler
Armstrong
Centre
Union
Northampton
Beaver
Indiana
Northumber-
land
Schuylkill
Lehigh
Cambria
Huntingdon
Mifflin
Juniata
Dauphin
Bucks
Allegheny
Berks
Westmoreland
Lebanon
Perry
Washington
Montgomery
Cumberland
Phila
Lancaster
Chester
Fayette
Somerset
Bedford
Franklin
Delaware
Greene
Adams
York

convention, and in the beginning of the sessions a Whig member wrote that little was heard "of radicalism, with reference to vested rights, the resumption of private charters and the violation of the compacts of the state with individuals."[1]

In organizing the convention the Whigs and the Anti-Masons closely cooperated, having previously gone into caucus together on the question of organization. John Sergeant, a prominent lawyer and politician of Philadelphia, was chosen president of the convention.[2] The refusal of the Whigs to follow Stevens in his proposition to adopt an amendment forbidding the existence of oath-bound societies irritated him.[3] Although, in the main, the Whigs and the Anti-Masons worked harmoniously together, yet Stevens at times took great pleasure in attacking the Whigs in order that the cooperation might not be too pronounced.[4] The small majority of the combined Whigs and Anti-Masons made their control of the convention pre-

body—one from the city of Philadelphia and one from Pittsburg—if, the property of the members of this convention were all to be valued, and divided according to the agrarian law, the greater part would be found among those who are called levellers. I am inclined to think, that if a fair valuation of property was made through this convention, the agrarians, as they are termed, would be found to possess more unencumbered real estate, than those who are in such terror lest there should be a division of property." *Proceedings and Debates of the Constitutional Convention*, 1837-38, vol. vii, pp. 84-85.

[1] *United States Gazette*, May 9, 1837. For a severe criticism of the Democratic members see *National Gazette*, February 26, 1838.

[2] *Proceedings and Debates of the Constitutional Convention*, 1837-38, vol. i, p. 12.

[3] *Journal of the Constitutional Convention*, 1837-38, vol. ii, pp. 489, 550.

[4] *Proceedings and Debates*, vol. ii, pp. 65, *et seq.*; a particularly acrimonious verbal clash occurred between Stevens and Wm. M. Meredith, in which the latter temporarily non-plussed Stevens by the sharpness of his attack. Stevens was amongst other things referred to as "the Great Unchained of Adams" county; *ibid*, pp. 108, *et seq.*

carious. Slight defections occurred from both wings. They were caused by personal predilections, professional pursuits, sectional interest, or previous political sympathy, but nevertheless, in the main, the policies of the opposing parties are shown by their votes in the convention.

The Democrats favored taking the power of appointing to the numerous state offices away from the governor, and making elevation to these offices depend on the will of the electorate. The Whigs and Anti-Masons did not oppose the election of justices of the peace, aldermen, coroners, prothonotaries, sheriffs and minor officials, but sternly opposed the proposition to make judges elective in the districts. The judges of the courts of record under the existing constitution were appointed by the governor and held office during good behavior. A compromise was eventually reached whereby the judges were to hold office for a term of years after appointment by the governor with the consent of the senate, which was to act on nominations in open executive session.[1]

The Democrats endeavored to have the restrictions on the suffrage decreased. They succeeded in having the residence requirement lowered, but failed to have the tax-paying qualification removed.[2] Their opponents inserted

[1] The vote in the committee of the whole was 63 in the affirmative, of which only 10 were Democrats, to 51 in the negative, 46 of which were Democrats; *Journal of the Committee of the Whole*, p. 181. The report of the committee of the whole was adopted by a vote of 60, of which 6 were Democrats, to 48, only 1 of which was Whig; *Proceedings and Debates*, vol. v, p. 138. The proposition to have the judges elected by the voters in the districts was defeated by a vote of 62 in the affirmative, in which number were found 12 Whigs and Anti-Masons (consisting of 8 farmers and 4 lawyers), to 64, in which were 13 Democrats (consisting of 4 farmers, 8 lawyers and 1 mechanic); *Journal of the Constitutional Convention*, vol. ii, p. 367.

[2] *Proceedings and Debates*, vol. ii, pp. 470, *et seq.*; vol. iii, pp. 159, *et seq.*

a clause requiring residence within the district for at least ten days preceding the election. To this provision the Democrats objected on the ground that it would bear heavily on the wandering mechanic; the delegates from the mountain districts feared that it would tend to check immigration to those sections.[1] The early efforts of the Democrats to insert the word "white" in the constitutional phrase "every freeman of the age of twenty-one," who had the other qualifications, should have the right to vote, failed through the efforts of the Whigs and the Anti-Masons, aided by a few Democrats.[2] In the closing days of the convention party lines were forgotten, prejudice was appealed to, and the clause was altered by the insertion of the word "white" by a large non-partisan vote.[3]

It was natural that the question of the banks should come to the fore, as the election in many of the districts had been fought exclusively on that issue.[4] The effort of the Democrats to have the constitution declare that the stockholders of a bank were individually and severally responsible for the obligations of the bank failed.[5] The passage of a resolution expressing the opinion that a charter is

[1] *Proceedings and Debates*, vol. ix, pp. 320, *et seq.* The vote was 64 in the affirmative, 6 of which were Democratic, to 60 in the negative, 5 of which were Whig.

[2] *Journal of the Committee of the Whole*, p. 85; 49 votes, 6 of which were not Democratic, were cast in the affirmative, and 61 in the negative, 12 of which came from Democratic members.

[3] *Journal of the Constitutional Convention*, vol. ii, p. 326; the vote on January 20, 1838, was 77 to 45; 19 Whigs and Anti-Masons voted aye and 3 Democrats no. For an excellent summary of the debates on negro suffrage, with no attention, however, paid to political alignment, *cf.* Olbrich, *The Development of Sentiment and Negro Suffrage to 1860*, pp. 51-70.

[4] *Harrisburg Chronicle*, November 9, 16, 1836.

[5] *Journal of the Committee of the Whole*, p. 217; the vote was 48 to 55; 1 Whig voted in the affirmative and 6 Democrats in the negative.

a "contract with the parties to whom the grant is made" led the *United States Gazette* to exclaim,

Agrarianism has this day been most signally rebuked, after one of the warmest contests that has yet been witnessed in this convention. The friends of order, good government and conservative principles, have nobly triumphed, Radicalism has been fairly beaten. It selected the battle ground—it commenced the conflict—it rallied for the fight, and it now lies bleeding and prostrate! [1]

After a lengthy debate and parliamentary struggle, in which the Whigs and Anti-Masons on one occasion were saved from defeat by a tie vote,[2] a compromise was made whereby six months' notice of application for renewal or extension of a charter was required, whereby the life of a charter was limited to twenty years, with power to revoke and to alter it resting with the legislature, provided that no injustice would be done thereby to the stockholders.[3] The Whigs and the Anti-Masons were more immediately concerned by this legislation than were the Democrats, for they controlled most of the banks within the state.[4]

[1] November 24, 1837. The vote on the resolution was 59 to 41, with 2 Democrats in the affirmative and no Whigs in the negative; *Journal of the Constitutional Convention*, vol. i, pp. 804, *et seq.*

[2] The debate on this proposition began in November, 1837, and continued into January, 1838. The contest was keen on January 12, 1838, when the balloting took place. The vote which saved the coalition was 62 to 62; 5 of the Whigs abandoned their party, while 2 of the Democrats did the same thing; *ibid.*, vol. ii, p. 254.

[3] The vote on the compromise was 86, of which 26 were Whig and Anti-Masonic, to 29; *Proceedings and Debates*, vol. ix, p. 218.

[4] *The Keystone* (Democratic), September 7, 13, 1837, maintained that the bankers were "Federalists," i. e. Whigs and Anti-Masons. From an analysis of the politics of the directors and of the employees of more than half of the banks in the commonwealth, it concluded that there were fourteen politically doubtful, forty-six Democrats, and two hundred and ninety "Federalists" connected with these institutions.

A mild contest developed over the question of the future amendment of the constitution. A proposed article of amendment was required to have a majority in two successive legislatures, and then to be confirmed by the electorate before it would be effective. Efforts to have the majority in the legislature raised to one of two thirds failed.[1] By a non-partisan vote, a provision prohibiting the submission of a particular proposed amendment more than once in any five-year period was inserted.[2]

The Whigs and Anti-Masons, though they had a small majority in the convention, had not been able to control its proceedings, but they had been able to check the more radical tendencies of their opponents. Incensed at the refusal of the convention to insert a clause in the constitution prohibiting the existence of oath-bound societies and at the provision limiting the suffrage to " white " males, Stevens and a few other members refused to sign the statement that "the foregoing is the amended Constitution of Pennsylvania, as agreed to in the Convention."[3] The Democratic members of the convention signed an appeal to the electorate, urging support of the amended constitution.[4] As an organization, neither the Whigs nor the Anti-Masons took action for or against the amended constitution; but they acted as individuals in condemning it. John Sergeant, president of the convention, stated in an open letter of

[1] *Journal of the Constitutional Convention*, vol. ii, p. 488. The first effort to require a two-third majority vote failed by 44 to 60, *ibid.*, vol. ii, p. 495; the second effort failed by a tie vote of 60 to 60, 2 Anti-Mason farmers voted in the negative and 2 Democratic lawyers in the affirmative, *ibid.*, vol. ii, p. 544.

[2] The vote was 76, composed of 55 Anti-Masons and Whigs and of 19 Democrats, to 45, all Democratic save 2 Anti-Masonic farmers, *ibid.*, vol. ii, p. 516.

[3] Harris, *Political Conflict*, p. 41.

[4] *Pennsylvania Intelligencer*, March 7, 1838.

September 10, 1838, that he would oppose its adoption by his vote, and that the same course would be pursued by the other six Whig members in the convention from Philadelphia.[1] Anti-Masonic members of the convention from the interior of the state came out in opposition to ratification.[2] Ex-Governor John A. Schulze, a former Democrat, declared that "the work of the good men of the Revolution will not be laid aside, to take up and adopt the piece of patch-work which was put together by the late generally condemned convention. The Germans of Pennsylvania will hold fast to what they know to be good."[3] Opposition was aimed at the provision limiting the tenure of the judiciary and at the process of amendment. The *National Gazette,* the organ of the Philadelphia merchants and financiers, was particularly sharp in its criticisms, saying,

If radicalism does not falter, but boldly marches on as it has done, we may all live to see every principal town in the State with its Tammany Hall, where the divine founder of the Christian dispensation will be represented as having been a living impostor, or at best an allegory; and where the tenets of pure agrarianism will be asserted, commanding that estates be cut up and parcelled out, according to the clearest definition of equal rights. Mr. Dallas's doctrines will be the text-book for every future attack against the Constitution. That instrument, amended, leaves itself open, to the consummation of any and every political atrocity on its face, and when the public mind is the better inured to the horrible doctrines of the Bradford County Letter, then let us look out for amendments. Amendments! Draughts according to Frances Wright. Legislative speeches on heads from Skidmore Parallels, in reports of com-

[1] *United States Gazette,* September 21, 1838.

[2] *Chambersburg Whig,* September 28, 1838.

[3] *United States Gazette,* September 7, 1838, letter of August 20, 1838.

mittees between the tottering condition of the duplicate curse "banks and Christianity." Once open a sluice in the Constitution and the very dregs of Radicalism will flow through it, and the embankment will be washed away.[1]

Despite this vigorous, unorganized opposition the constitution, as amended, was ratified in the fall election of 1838, but by a small majority.[2]

A portion of the Whigs were no less eager than Stevens to prevent their party from cooperating with the Anti-Masons. They claimed that the defeat of Harrison in the presidential election of 1836 had been due to the headstrong Stevens and his followers, who, they asserted, had worked openly for Van Buren.[3] Early in 1837 an effort was made to form an independent Whig organization in Chester county, where the Anti-Masons were particularly strong, and at the same time to start a movement for an independent state organization; but nothing came of this premature movement.[4]

The Democrats, who in 1837 controlled the lower house of the legislature, investigated the granting of the charter to the Bank of the United States. They could find no evidence of bribery, but they concluded that the bank had violated its charter in several instances. The investigating

[1] October 11, 1838.

[2] The governor proclaimed that the constitution had been ratified by a vote of 113,971 to 112,759; *Pennsylvania Archives*, series iv, vol. vi, p. 440. The corrected returns should be 119,228 for, and 116,076 against; *Senate Journal*, 1838-39, vol. i, p. 1012.

[3] *Pennsylvania Intelligencer*, January 26, February 13, March 2, 1837.

[4] *Ibid.*, February 13; *Pennsylvania Telegraph*, March 7, 1837. A considerable portion of the dissatisfaction arose over the question of appointment to office. The *Pennsylvania Intelligencer*, February 2, 1837, claimed, "To be a Ritner man would not do—to be a liberal Anti-Mason would not do—to be a warm Harrison man was heresy, but to bow the knee to Stevens, was the passport to office."

committee, however, made no recommendations on the ground that the constitutional convention was soon to assemble and that there the question of the banks and their charters would receive proper treatment. The minority of the committee contended that if the charter had been violated, such violations should be referred to the legal authorities of the state for action.[1]

During this session of the legislature an improvement bill received the veto of Governor Ritner, which proved to be effective. The governor regretted that he was forced to withhold "the Executive approbation from an act which involves no question of constitutional right." He claimed that the bill would squander the funds of the state among privately owned companies and would thus delay the completion of the state-owned improvements.[2] The legislature, incensed at the veto, refused to make provision for the continuation of the work on the public improvements. The Democrats declared that the veto message displayed "the consummate ignorance" of the governor.[3] Ritner's supporters, on the other hand, claimed that nothing saved the commonwealth

> from the sack and pillage by the plunder party—rescued it from bankruptcy, and preserved the means of completing the public improvements now progressing, but the bold and independent stand taken by the Executive. . . . The State would again, as it did a few years ago, truly represent the public goose, plucked as bare as an acorn; and the people would have the satisfaction of being ground down with taxes ten-fold more odious than before.[4]

[1] *Pennsylvania Telegraph*, March 17, April 3, 1837.

[2] *House Journal*, 1836-37, vol i, p. 1053.

[3] *The Keystone*, April 6, 1837.

[4] *Pennsylvania Telegraph*, April 5, 1837.

Financial pressure, due to the approaching panic of 1837, was causing commercial uneasiness and distress, which, it was asserted, the veto would prevent from being aggravated.[1] With the suspension of specie payment in May, pressure was brought to bear on the governor to have him call a special session of the legislature. In a proclamation of May 20, 1837, the governor called on the banks to do everything in their power to better financial conditions, warning them against violating their charters by increasing the volume of their notes. The governor, however, refused to call an extra session, declaring that the financial evils of the country were due to the acts of the federal authorities, and that nothing, which the state could do, would lessen the distress.[2] This proclamation was declared by one of his supporters to be "a state paper, which for manliness of tone and soundness of doctrine, is worthy the independent chief magistrate of this great commonwealth."[3]

The political campaign of 1837 was listless and colorless. Appeals were made to elect men to the legislature who would support the financial policy of the governor.[4] Endorsement of the veto of the "Mammoth Improvement Bill" was sought. Van Buren's motto was declared to be, "Gold for the office-holders—shinplasters for the people!"[5] The election left the upper house in the control of the Whigs and Anti-Masons, but the Democrats secured fifty-six of the one hundred members in the lower house.[6]

[1] *United States Gazette*, April 12, 1837.

[2] *Pennsylvania Archives*, series iv, vol. vi, p. 346.

[3] *National Gazette*, May 23, 1837; *cf.* also *ibid.*, May 24, 25, 26, 27, 29, 30; *Pennsylvania Telegraph*, May 23, June 1, 8; *Pennsylvania Intelligencer*, May 22, 1837.

[4] *National Gazette*, October 5, 7, 10; *United States Gazette*, September 20, October 2; *Pennsylvania Telegraph*, October 2, 1837.

[5] *Pennsylvania Intelligencer*, October 5, 1837.

[6] *Pennsylvania Telegraph*, October 19, 1837.

Despite this defeat, the Anti-Masons in the Stevens faction were determined to ignore the Whigs and to continue their independent state and national organization. On May 22, 1837, there had assembled at Harrisburg a state "Democratic Anti-Masonic Convention." It called a national convention to meet at Washington on the second Monday in September for the purpose of nominating candidates for the presidency and vice-presidency.[1] On November 7, 1837, the state committee, which had been appointed at this convention, called a state convention to meet on March 5, 1838, for the purpose of nominating a gubernatorial candidate.[2] At the time appointed the convention assembled, and, since Stevens and Ritner were reconciled, without difficulty nominated the governor for reelection.[3] Assertions that the Whigs of Philadelphia were hostile to the reelection of Ritner were vigorously denied by them.[4] The Whig convention of Philadelphia city and county, endorsing the nomination, asserted in the resolutions that

> his policy of retaining capital within the state, his resistance to schemes of improvident expenditure, and dangerous speculation, his statesmanlike admonition in an hour of panic neither to fear nor to hope too much, his spirited defense of the credit of the Commonwealth when assiduously assailed abroad and of the high character of her merchants when calumniated at home, give him a claim to which Philadelphia is not insensible.[5]

[1] *Pennsylvania Telegraph,* May 27, 1837.

[2] *Ibid.,* November 15, 1837.

[3] *Ibid.,* March 9, 1838.

[4] *United States Gazette,* February 10; *National Gazette,* March 9, 15, 22, 1838.

[5] *United States Gazette,* March 21, 1838.

Ritner was endorsed elsewhere by Whig county conventions, which pledged party support to him.[1]

With the approach of the election, the governor determined to win the support of the Whigs through a more conciliatory policy than heretofore pursued. Therefore, he appointed William B. Reed, a Mason and a Whig of Philadelphia, attorney-general of the state.[2] In the first years of his administration the governor had distrusted Thaddeus Stevens, hitherto the well-nigh undisputed leader of the Anti-Masonic forces within the state. The governor intended to break the control of the Gettysburg ironmaster and lawyer. The task of party leadership in the face of the opposition of Stevens was, however, beyond the capacity of the "Pennsylvania Dutch" farmer, who occupied the highest administrative office in the commonwealth. The elections in the fall of 1836 had been disastrous to the coalition, and the defeat in 1837 was a bad omen for Ritner's reelection. Fear of defeat made the governor place his political fortunes in the hands of Stevens. In May, 1838, Stevens was appointed a canal commissioner, and at the first meeting of the new board was elected its president. Immediately he extended the policy of using the public works as the basis of a powerful political machine. According to his political opponents, the "moral character or religious principles" of bidders for contracts on the public works were investigated before the bid was considered. "A missionary fund" was collected from the successful bidders "for the purpose of diffusing useful knowledge among the people." Colonization along the extensions of the public works, more thorough than anything previously attempted,

[1] *United States Gazette,* June 27, 1838.

[2] *Ibid.,* March 30, 1838.

was resorted to in order to carry doubtful districts in the coming election.[1]

The national question of the Sub-Treasury Bill was, in the meantime, attracting considerable attention in the state. A resolution, instructing the Senators and requesting the Representatives to oppose this measure and to "vote for such a mode of receiving, keeping, and disbursing the public moneys, as will separate, as far as practicable, the Banks from the Government," was adopted.[2] This resolution, introduced into the legislature by a Democrat, was supported by a number of them.[3] The two Senators from Pennsylvania, mindful of their pledge to obey instructions, voted against the bill.[4] When the bill was defeated in the House, the Democratic Representatives from Pennsylvania supported the measure.[5] Their vote gave point to the criticisms directed against David R. Porter, gubernatorial candidate of the reunited Democratic party.

He is a bitter politician of the Sub-Treasury school, with just such a fringe of Conservative pretension on his Radical garments as will enable dexterous friends and anxious relatives to try to cajole the credulous into the hope that he is not in heart as destructive as might be inferred from his acts and expressed opinions. The game by which at the last Governor's election some of our friends were imposed upon cannot succeed again.[6]

[1] *House Journal*, 1838-1839, vol. ii, pt. ii, pp. 1, *et seq.*, pp. 372, *et seq.*; *ibid.*, 1840, vol. ii, pp. 225, *et seq.*

[2] *Session Laws*, 1837-38, p. 674, resolutions of February 16, 1838.

[3] *National Gazette*, February 20, 1838.

[4] *Ibid.*, March 27, 1838.

[5] *United States Gazette*, July 4, 1838, for an analysis of the vote.

[6] *National Gazette*, March 8, 1838; *cf.* also *United States Gazette*, September 25, 29, 1838.

Due to the opposition of the Whigs and Anti-Masons, the attempt of the Democrats to pass a bill requiring the resumption of specie payment within the state by a fixed date failed.[1] In the meantime, the financial situation was improving. Representatives of the banks of Philadelphia city and county met on June 1, 1838, and, after declaring that the repeal of the specie circular by Congress made resumption possible, suggested August 1 as the date for full resumption of specie payment.[2] The defeat of the Sub-Treasury Bill on June 25 gave the governor his opportunity; so, on July 10, he issued a proclamation requiring the resumption of specie payment on August 13.[3] On July 23 delegates from banks in Massachusetts, Rhode Island, Delaware, Virginia, Connecticut, Maryland, Kentucky, and Pennsylvania were represented in a convention at Philadelphia. They selected the date set by the governor for the resumption of specie payment.[4] When the banks resumed on the day agreed upon, it was declared that this might "be considered as the victory of the people over the 'bars, bolts, and strong boxes' of the Sub-Treasuryites, and as the crowning sheaf of Whig triumphs." [5]

[1] *Chambersburg Whig,* March 9; *United States Gazette,* February 13, 1838.

[2] *National Gazette,* June 4, July 19, 1838.

[3] *Ibid.,* July 14, 1838. *The Democratic Press,* July 17, 1838, characterized the proclamation as "one of the most impudent pieces of political humbug, which even these times, so pregnant in charlatanism, have produced." *The Upland Union,* August 7, 1838, said the proclamation proved the governor to be "the poor dupe of Biddle, Stevens, and Co."

[4] *National Gazette,* July 26, 1838; the editorial comment was, "After all the jesuitical attacks made in New York on our banks, the grand difference between resumption there and here is, that with the one party it was forced on them to the injury of their debtors and the embarrassment of their mercantile community, and with the other it comes with comparative ease some few months later."

[5] *United States Gazette,* August 13, 1838.

Progress in bringing the two factions of the Democratic party together had been made. Ex-Governor Wolf was holding a lucrative federal office. Henry A. Muhlenberg had gone to Europe as the first American ambassador to Austria. With the leaders thus disposed of, their followers were willing to cooperate.. When the Democratic convention assembled at Harrisburg on March 5, 1838, without difficulty it nominated David R. Porter, of Huntingdon county, for governor. Porter came from an eminent family of Scotch-Irish descent. His political activities had been confined to the holding of appointive county offices, to two terms in the house and to one term in the state senate. At one time he had been engaged in the production of iron but the panic of 1819 had caused his firm to fail. As the result of his experience, he was distinctly favorable to the principles of a protective tariff. The campaign for governor proved to be one of the most virulent ever waged in the state. Ritner, nominated by the Anti-Masons for reelection, was assured of the support of the financial interests of Philadelphia. The struggle therefore developed into an effort to secure control of the interior counties of the state. Vicious attacks, buttressed with affidavits, were made against the personal morality of Porter.[1] The Democrats sneered at Ritner as "the old Dutch Farmer Governor," and this sneering was used by the Whigs and the Anti-Masons in an endeavor to capture the vote of the "Pennsylvania Dutch."[2] Ex-Governor Schulze, who had

[1] *Pennsylvania Telegraph,* August 1, September 5, 12, 19, October 3, 1838. A trial for libel in Lehigh county after the election, in which the affidavit makers were present as witnesses, vindicated Porter; *Pennsylvania Reporter,* May 10, 1839.

[2] *Pennsylvania Intelligencer,* June 1, 8, July 20, September 21; *Harrisburg Chronicle,* May 30, 1838, began printing at the head of its editorial column, "Der Joseph Ritner ist der Mann, Der unsern Staat regieren kann." *Die Harrisburg Morgenröthe,* not to be outdone, carried at its

been reelected as a Democrat in 1826 with practically no opposition, opposed Porter because he was supported by those favoring Van Buren.[1] The true issue, the Whigs and the Anti-Masons declared, was Ritner *versus* Van Burenism.[2]

It is not surprising that this campaign of bitter denunciation and vile calumniation should have its aftermath of disorder. In order to accomplish the election of C. J. Ingersoll in the third congressional district, consisting of a portion of Philadelphia county, the election judges by a vote of ten to six rejected the returns from the entire Incorporated Northern Liberties, although fraud was alleged to have been committed in only one of the seven wards. By rejecting the returns from all the wards of the Incorporated Northern Liberties, Ingersoll was assured of a majority. The Whig judges, incensed at this procedure, refused to sign the returns with the vote of the Incorporated Northern Liberties omitted. They met at a later hour, made out returns, which were based on the districts carried by the Whigs and which showed that the Whig candidates to the state senate and house had been elected.[3] The Whig re-

head, "Für Gouvernör David Rittenhaus Porter, der praktische Bauer von Huntingdon County." *The Harrisburg Chronicle*, July 23, 1838, declared, "The Germans are decidedly partial to Germans, and dislike the English particularly when known to be haughty, and aristocratic in feeling."

[1] *National Gazette*, September 5, 1838. The Democrats later claimed that Schulze had been influenced by the handsome award for damages he had received from the board of canal commissioners, of which Stevens was president; *House Journal*, 1838-39, vol. ii, part ii, pp. 12, 376. Schulze had, however, broken with the Jackson party on the bank question and had presided at a bank meeting which chose delegates to the Harrisburg convention of May 27, 1834; *Pennsylvania Inquirer*, April 9, 1834.

[2] *United States Gazette*, June 1, 1838.

[3] *House Journal*, 1838-39, vol. ii, part ii, pp. 96, *et seq.*

turns, hastened to Harrisburg by special courier, were filed in the office of the secretary of the commonwealth before those of the Democratic judges. When the returns of the Whig judges were delivered to the secretary, Thaddeus Stevens was present.[1]

Up to this point the struggle had been between the Whigs and the Democrats of Philadelphia county. The course of events, now directed by Stevens, resolved itself into a contest for control of the state. If the returns of the Whig judges were accepted, Ritner might have a majority, and thus be governor for another term. Furthermore, the amended constitution, hated by Stevens, might be defeated. In addition, although the senate would be controlled by the Whigs and Anti-Masons with or without the two senators from Philadelphia, yet the eight representatives from the county were needed to prevent the Democrats from having a majority in the house. These eight representatives were also needed in the joint session of the two houses when they met for the election of a state treasurer and a United States Senator.

Thomas H. Burrowes, secretary of the commonwealth, was also chairman of the "State Committee of Correspondence and Vigilance," which was responsible for the conduct of the governor's campaign. Over his signature, on October 15, there was issued an address to "The Friends of Joseph Ritner." Intimating that extensive frauds had been committed in the election, he urged an immediate investigation, and "until this investigation is fully made and fully determined, let us treat the election of the ninth inst. as if we had not been defeated and in that attitude abide the result." [2] Following the publication of this pronuncia-

[1] *House Journal*, 1838-39, vol. ii, part ii, pp. 143-44.

[2] *Niles' Register*, vol. lv, p. 205.

mento, denunciations and threats were loudly and violently made by both sides. Great fears were entertained by the Democrats of the determination of their opponents to deprive them of their victory.[1]

When the legislature assembled on December 4, the situation was tense. On the basis of either the Whig or Democratic returns, Ritner was defeated and the amended constitution adopted. The struggle, therefore, was resolved into one for control of the legislature. Large numbers of the partisans of both sides crowded to Harrisburg. In the lower house, which organized in the morning, two bodies each claiming to be legal were formed. The Cunningham house, named after its speaker, was composed of fifty-two Whigs and Anti-Masons, including the eight contestants from Philadelphia. The Hopkins house had fifty-six members, including the eight from Philadelphia. Neither house had uncontested seats sufficient to constitute a majority of the full house. The Democrats feared that the Cunningham house might be recognized by the Whig senate, which would make it the legal body. Therefore, when, in the afternoon, the senate proceeded to organize itself, the Democrats disturbed its sessions. Their threats of violence caused Charles B. Penrose, speaker of the senate, Thomas H. Burrowes, and Thaddeus Stevens, the last two being present as spectators, to make their escape through a window in a small room in the rear of the speaker's desk.[2] The three men made their way to the

[1] *Gettysburg Compiler,* quoted in *Pennsylvania Reporter,* November 9, 1838. The fears of the Democrats were well-founded, as Stevens later acknowledged that his group practically intended to do what the Democrats claimed they intended to do; *Senate Journal,* 1838-39, vol. ii, pp. 801-2, 813-15.

[2] *Public Ledger, United States Gazette, National Gazette, Pennsylvanian,* December 6, 7, 1838. Stevens' overdrawn account of the affair is in the *Pennsylvania Telegraph,* January 17, 1839, and in the *Senate*

residence of the governor, who was formally notified by Penrose of the disturbance in the senate chamber.[1] A proclamation was issued, which, amongst other things, called on the militia to hold itself "in instant readiness to repair to the seat of government."[2]

It is not necessary to go into the details of the disorder at the capital, but this disorder led the governor to call out the militia after he had been refused assistance by Captain E. V. Sumner, in command of the federal troops at Carlisle, who claimed that the disturbance appeared "to proceed from political differences alone."[3] The order of Major-General Robert Patterson of the Pennsylvania militia that the troops should "assemble in winter uniform, with knapsacks, provided with thirteen rounds of buckshot cartridges and seventeen rounds of ball cartridges" gave the entire episode the sobriquet of "The Buckshot War."[4] With the arrival of the troops on the ninth of December, the senate resumed its sessions. The question of the recognition of one or the other of the two houses pressed for attention. After the Hopkins house had once been refused recognition by the senate, it received it on December 25, after three members of the Cunningham house had gone over to the rival organization, which then had a majority of the full house consisting of undisputed seats.[5] For all prac-

Journal, 1838-1839, vol. ii, pp. 799-802. For the details of the disorder at Harrisburg see, McCarthy, *op. cit.*, pp. 495-501; McMaster, *History of the People of the United States*, vol. vi, pp. 501-508.

[1] The formal notification by Penrose is dated December 4, but internal evidence indicates that it was not written until the following day; *Niles' Register*, vol. lv, p. 295.

[2] *Ibid.*, vol. lv, p. 240.

[3] Correspondence in *ibid.*, vol. lv, pp. 295-97.

[4] The various orders are found in *House Journal*, 1838-39, vol. ii, part ii, pp. 245, *et seq.*

[5] *Senate Journal*, 1838-39, vol. i, pp. 123, 149.

tical purposes this ended the dispute for control of the state.[1]

The contest had its judicial phase. A number of the Democrats had been arrested and indicted for rioting, conspiracy, and treason. On April 18, 1839, these cases were on trial, but were withdrawn because of defective indictments.[2] When they came up again in the August term, the president judge, James M. Porter, brother of the governor, quashed the proceedings because of a defect in form.[3]

When the Twenty-sixth Congress assembled in December 1839, the last phase of the struggle was disposed of. Charles Naylor, relying on the proclamation of election issued on October 31, 1838, which was based on the Whig returns, was present as the Whig claimant. C. J. Ingersoll, armed with a proclamation of election, signed by Governor Porter on November 25, 1839, was also claiming the seat. The struggle for control of the House was sharp and keen, as the two parties were evenly balanced. In the preliminary organization, the claim of Naylor to the seat was recognized as valid. Later he was given an undisputed title to the seat.[4]

[1] Stevens for a long time refused to join the house. On May 4, 1839, he wrote, "I have (with great reluctance) determined to go into that den of thieves—the 'Hopkins House.'" Letter to Joseph Wallace, Wm. McPherson Mss. When he appeared in order to be sworn in, the house decided that he had resigned and it ordered a new election, which resulted in Stevens' favor. *House Journal*, 1838-39, vol. i, pp. 922, *et seq; National Gazette*, May 11, 14, 18, 28; *Harrisburg Chronicle*, June 19, 29, 1839; Harris, *Political Conflict*, pp. 59, *et seq.*

[2] *Pennsylvania Reporter*, April 19, 1839; Harris, *op. cit.*, p. 63.

[3] *Pennsylvania Reporter*, August 30; *National Gazette*, August 24, 29, 31, September 7, 1839.

[4] *National Gazette*, December 5, 7, 14, 17, 19, 1839; *House Journal*, 26th Cong. 1st sess, p. 1300; *Reports of the House of Representatives*, 26th Cong., 1st sess., no. 588. For the challenging of Naylor to a duel by Charles Ingersoll, son of C. J. Ingersoll, because of his statements in

The political effects of this struggle were long enduring. The consistent efforts, made by the Whigs and Anti-Masons to have the Democrats appear as rebels, had culminated in calling out the militia to quell "the insurrection." The outcome of these efforts had, however, been the reverse of what had been hoped for by Stevens and his followers, for their candidates had not been seated. This gave point to the contention of the Democrats that the militia had been called out to seat the Whig claimants at the point of the bayonet, but that only the stout and determined resistance of the Democrats, fortunately without bloodshed, had prevented the accomplishing of this unholy purpose. Thus it was quite possible to condemn the coalition as the party of disorder and violence, and the disappearance of the Anti-Masonic member of the coalition did not free the Whigs from odium. The immediate effect of the struggle on the Democrats was to make them more solidly united than they had been previously.[1] The effect on the coalition was that the Whigs were now no longer willing to entrust their political fortunes to the direction of the remnant of the Anti-Masonic party. In particular they shunned the extremist Stevens, who never rose to great influence in the

the press during the congressional hearing, and for the fight between Colonel Pleasonton, bearer of the challenge, and Naylor, and for the subsequent binding of all, by the police, to keep the peace, see *National Gazette*, March 21, 24, 26, 1840.

[1] There is much truth to the comment of John K. Kane, a leading Democrat of Philadelphia, who on December 27, 1838, wrote Lewis S. Coryell, "Whiggery is I presume an inmate of the tomb of the Capulets from this time forward in Pennsylvania. It has become *ridiculous,* a worse epithet for a party even than *wicked,* for men are more cheerfully accounted knaves than fools. Our party has been concentrated, harmonized, confirmed. We shall hear no more of our old domestic squabbles, and more than one excellent man too long estranged from his fellows, has resumed his natural position among our counsellors and guards."—Coryell Papers, vol. iii, p. 80.

Whig party. The Whigs did not hesitate to coalesce with the Anti-Masons, but control from this time rested in the hands of the Whigs. The result of the adoption of this policy was the creation of an independent Whig state organization and the ultimate absorption of the Anti-Masonic party.

CHAPTER II

Years of Triumph and Tribulation

1839-1843.

Even before the debacle of the bizarre "Buckshot War," the Whigs had become weary of Anti-Masonic leadership. Prior to the election of 1838 the Whigs in Chester county had resented the treatment received from the Anti-Masons in the distribution of the offices. Their mass meeting endorsed Ritner for governor, declared for Clay as the next presidential candidate, and determined to support the local coalition nominees for this election. The Whigs were, however, resolved

> to loose the chains which bind us to the fortunes of anti-masonry, asserting our rights as citizens and organizing as a political party. . . . It is too plain that the Whigs are used to give effect to principles which they do not recognize. If it could be conceded that there was, in truth, no difference in principle between the Whigs and Anti-Masons, then indeed we might with propriety rally under the Anti-Masonic banner.[1]

Circumstances, however, forbade the immediate execution of the desire for independent organization.

The Anti-Masons started their presidential campaign of 1840 early. On May 22, 1837, the state Anti-Masonic convention called a national convention to meet at Washington in September of the same year to make nominations for the presidency and vice-presidency.[2] An address of

[1] *United States Gazette*, September 17, 1838.

[2] *Pennsylvania Telegraph*, May 27, 1837.

the state convention urged the Anti-Masons of other states to send delegates.[1] When the convention assembled, it was poorly attended; twenty-seven of the fifty-three delegates came from Pennsylvania and the balance came from Ohio, New York, Massachusets, and Rhode Island. On account of the poor attendance it was decided not to make nominations, but to call another convention to meet at Philadelphia in November, 1838, with the stipulation that no one from an unrepresented state would be nominated.[2] When this nominating convention assembled on November 13, 1838, delegates from six states were in attendance. William H. Harrison and Daniel Webster were unanimously nominated.[3] A small portion of the Whig press gave these nominations a half-hearted endorsement.[4] The Clay supporters recommended that no action be taken by the Whigs, even as individuals, until after the Whig national convention had acted. The editor of the *United States Gazette*, a Mason, felt that the "Whigs will no longer consent to be mere hewers of wood and drawers of water for a party that turns all victories to its own advantage, and dictates with arrogance to those who number twenty in its ranks to one which the other can muster." [5] Harrison in acknowledging the notification of his nomination stated what he considered to be the principles of his candidacy.[6] His

[1] *Pennsylvania Telegraph*, June 20, 1837.

[2] *Ibid.*, September 21, 1837.

[3] *National Gazette*, November 14, 1838. After the nomination of Harrison and Tyler by the Whigs, Webster withdrew his name.

[4] *Ibid.*, November 15, 17, 1838.

[5] *United States Gazette*, November 30, 1838.

[6] *Niles' Register*, vol. lv, p. 360. Webster thought that the only chance of success for the Whigs, and that not a very good one, was in supporting Harrison; *The Writings and Speeches of Daniel Webster*, vol. xviii, p. 45. Clay claimed that "The mock nomination of the

nomination indicated that he, and he alone, would be acceptable to the Pennsylvania Anti-Masons, who had controlled the "national" convention.

A caucus of the Whig members of Congress had issued a call for a national nominating convention of Whigs to meet in Harrisburg in December, 1839.[1] The call for this convention met with a hearty response from those who were agitating for an independent Whig organization. Plans were made to perfect a state organization of the Whigs before the assembling of the national convention.[2] When the Whigs of Philadelphia city and county met in convention on November 30, 1838, they urged a "thorough Whig organization throughout this commonwealth" and recommended that a state convention assemble at Chambersburg on June 13, 1839.[3] When this convention assembled, it was soon evident that it was under the control of the supporters of Henry Clay. They advised the ubiquitous Anti-Masons to depart and perfect their own organization. The latter, seventeen in number, then withdrew and issued a call for a convention of all anti-Van Buren men to meet at Harrisburg on September 4, 1839.[4] The convention at Chambersburg claimed that the seceders had withdrawn because of a difference over candidates for the presidency. It stated that the delegates had been selected "to organize the Whig party of the state" which they had done. It asserted that the seceders, on the other hand, had

Anti-Masons has fallen still-born, and has produced no material effect even in the Anti-Masonic portion of the state" of New York; Colton (editor), *The Private Correspondence of Henry Clay*, p. 432.

[1] *Pennsylvania Intelligencer*, May 4, 1838, quoting the *Boston Atlas*.

[2] *National Gazette*, February 22, November 28, 1838.

[3] *United States Gazette*, December 1, 1838.

[4] *National Gazette*, June 18, 20, 27, 1839; in some places the calls for the preliminary conventions had been to Clay men; *Chambersburg Whig*, June 28, 1839.

desired to prevent this organization by having the convention adjourn *sine die,* without declaring a preference for any one for the presidency, and by having it issue a call for an anti-Van Buren convention for that special purpose.[1]

With a break in the opposition to Van Buren, the state would be carried by the Democrats. To prevent this, the anti-Van Buren members of the legislature, led by Charles B. Penrose, speaker of the senate and one of the seceders from the Chambersburg convention, endorsed the call for a convention to meet at Harrisburg on September 4, 1839. The call stated that "the interests of the country imperatively require that the two branches of the anti-Van Buren or Democratic Whig party in this state should be united to reestablish the ascendancy of the Constitution." Nothing was to be done to "interfere in any way with the distinct or independent organization of either of the two great divisions" into which the friends of the constitution were divided.[2] This movement was endorsed in various counties through "Union and Harmony" conventions.[3] In the meantime, the supporters of Harrison were stressing the statement that he was the only candidate who could secure the Anti-Masonic vote, thereby preventing the Democrats from carrying the state.[4] When the state Harrisburg convention met on September 4, it was composed of Harrison men. Clay was lauded as a great leader, but it was asserted that Harrison alone would satisfy all the political elements in the state opposed to the Democrats.[5] The same cry was

[1] Address in the *National Gazette,* August 3, 1839.

[2] *Harrisburg Chronicle,* June 26, 1839.

[3] *Chambersburg Whig,* August 2, 23; *National Gazette,* July 11, September 7, 10, 1839.

[4] *National Gazette,* April 25; *Chambersburg Whig,* June 14, 28, August 2, 23, 1839.

[5] *Niles' Register,* vol. lvii, p. 46; address in *ibid.,* vol. lvii, p. 190.

eagerly caught up in Ohio and Indiana, where Anti-Masonry had made some progress.[1]

When the Whig national convention assembled on December 4, 1839, at Harrisburg, Pennsylvania was represented by delegates from both of the state conventions. The compromise which was effected gave control of the state delegation to the Anti-Masons. Before the assembling of the convention, Penrose, who was working with the Anti-Masons in favoring Harrison, assured political leaders in other states that no one else could carry Pennsylvania.[2] On the floor of the convention Penrose was the capable and active leader of the Harrison men. Sprague of Massachusetts proposed a cumbersome method of balloting and reporting through committees. On the motion of Penrose the plan after being amended to provide for the unit rule of voting the state delegations was adopted. The scheme gave ample opportunity to exert pressure on the delegates. The result of the manipulation of the delegations was the nomination of William H. Harrison and John Tyler, without the formulation of any political principles.[3] The result, all the Anti-Masons had hoped for, had been attained largely through the clever leadership of Penrose.[4]

[1] Greeley, *Recollections of a Busy Life,* p. 130; Weed, *Autobiography and Memoirs,* vol. i, p. 480.

[2] Seward, *Life of Seward,* vol. i, p. 447.

[3] *Niles' Register,* vol. lvii, pp. 248-252, for the proceedings of the convention; Stanwood, *History of the Presidency,* vol. i, p. 194.

[4] Sargent, *Public Men and Events,* vol. ii, pp. 75-96. The Anti-Masons "were adroit enough to get a majority of the Pennsylvania delegation of the wolf-in-sheep's-clothing stripe, and thus cast the vote of the state for Harrison;" *ibid.*, p. 92. The method of voting he characterized as "an ingenious *contrivance*—unknown till then to the most skillful political engineers, and never resorted to since;" *ibid.,* p. 90. Penrose is called "the chief engineer"; *ibid.,* p. 75. Weed has claimed great credit for himself in securing the nomination of Harrison; Weed, *Autobiography and Memoirs,* vol. i, p. 480, vol. ii, p. 76. For an ac-

In the formation of the electoral ticket, which at this time was considered of great importance, the Anti-Masons of the state made another gain. Twenty-three of the thirty electoral candidates, as eventually selected through the county conventions, had been named in May by the Anti-Masons.[1]

In the meantime, the election of 1839, in which the effect of the "Buckshot War" was felt, had resulted favorably for the Democrats. In Philadelphia county, where the dispute had originated, the Democratic candidates were triumphantly elected by a large majority.[2] The same chastisement of the Whigs and Anti-Masons was administered in the rest of the state, with the result that the legislature was fully given into the control of their opponents.[3] Consequently during the sessions of the legislature the Whigs and Anti-Masons could do little save try to block some of the measures of their opponents and criticize those which were adopted.[4]

When the term of Governor Ritner expired in January 1839, the treasury of the state was empty. It had been the policy of the coalition to avoid taxation. The bonuses

count of the "triangular correspondence" in New York, *cf.* Wise, *Seven Decades of the Union*, pp. 165, *et seq.* For the activities of Thaddeus Stevens, who was not a delegate, in preventing the nomination of Scott, *cf.* McClure, *Our Presidents and How We Make Them* p. 68.

[1] The electoral tickets can be found in *Chambersburg Whig*, June 14, 1839, and in the *United States Gazette*, September 18, 1840. For the method of forming the electoral ticket see *National Gazette*, February 25; *Daily Telegraph*, January 29; *United States Gazette*, April 16, 1840.

[2] *National Gazette*, October 15, 1839.

[3] *Ibid.*, October 22, 1839, credits the Democrats with sixty-nine of the one hundred members in the lower house.

[4] *United States Gazette*, January 3, February 5, April 3, 18, 20, June 1, 3, 4, 10; *Daily Telegraph*, February 13, March 4, April 7; *National Gazette*, January 14, 18, March 12, 1840.

received from the Bank of the United States and from the Girard Bank and the share of the state in the surplus funds of the federal government had been expended on internal improvements and for current expenses. The incoming administration of Porter made no immediate effort to settle the financial problem; it resorted to borrowing to procure funds for the needs of the state.[1] The embarrassment of the Bank of the United States in 1839 led the governor, in his message of 1840, to recommend far-reaching legislation to control the banks, to free the state from its dependence on borrowing by returning to some system of taxation to procure funds for current expenses, and to dispose of the public works.[2] On his recommendation an act was passed which levied a tax on bank stocks, according to the dividend which was declared, on mortgages, on judgment notes, on household furniture above a certain value, on pleasure carriages, on watches, and finally a one per cent tax was placed on all salaries received from the commonwealth.[3] Drastic as this measure seemed at the time, it was entirely inadequate and loans were resorted to even in the year of the passage of the act.[4] Although the amount of money col-

[1] Worthington, *Finances of Pennsylvania*, p. 46.

[2] *Pennsylvania Archives*, series iv, vol. vi, pp. 600, *et seq.*

[3] *Session Laws*, 1840, p. 612; Act of June 11, 1840. The bill passed the house by 47 to 41, and the senate by 17 to 15; *House Journal*, 1840, vol. i, p. 1230; *Senate Journal*, 1840, vol. i, p. 817.

[4] Worthington, *op. cit.*, p. 54. For the amounts of money raised from 1832 to 1840, *cf. supra*, p. 28n. The following amounts were raised after the resort to taxation; *House Journal*, 1844, vol. ii, p. 420.

	Tax on real and personal property	*Receipts from all other sources*
1841	$35,224.69	$363,920.52
1842	487,536.56	355,276.63
1843	554,921.26	250,989.62

lected was inadequate, yet a return to taxation had been effected—a policy never again to be abandoned. By subsequent increases in the rates, the financial rehabilitation of the state was ultimately secured.

At the close of the sessions of the legislature the Whig and Anti-Masonic members, or as they chose to call themselves "The Democratic Republican members of the Legislature," issued an address in which they criticized the policy of their opponents, on whom they tried to fasten the opprobrious name of "Federalists." Their opponents, they declared, were

> breathing nothing but destruction to the banking and credit systems of the Commonwealth. . . . Men of no practical experience in the affairs of life—beardless enthusiasts, full of crude and chimerical notions of reform, and with no better idea of a banking institution than such as might be picked up in the various but unmeaning vocabulary of a village newspaper—tyros in political science whose whole knowledge was confined to the noisy inanities of a town meeting—such were the master spirits whom the fermentation of the political cauldron, and the chances and changes of political life had thrown upon the surface, and invested with the power of legislating upon the rights and property of their fellowmen.

The governor had intervened, they claimed, in the struggle over the banks and with him they had cooperated. The result was the adoption of resolutions whereby the suspension of specie payment, which had begun on October 9, 1839, was to be legal until January 15, 1841, but the suspending banks were to be called on for a loan to the state. They, as usual, charged extravagance and corruption in the administration of the public works. "Some potent and mysterious influence" was brought to bear on the question with the result that it "was supported by the natural enemies

of the system and opposed by many of its warmest friends." The value of the state stocks had decreased. Two remedies for this evil were available, but the Democrats had adopted the worse. They had refused to adopt resolutions asking for a distribution of the proceeds of the public lands to all the states, their rightful proprietors; by this plan of distribution the commonwealth would ultimately have received one hundred and twenty-five millions of dollars. They had, however, adopted a scheme of burdening the people with taxation, which they preferred to "the cheap declaration even of an *opinion* which might be considered offensive at Washington." Their refusal to consider resolutions on the tariff, was mentioned, but was not stressed.[1]

The national administration was held responsible by the Whigs and Anti-Masons for the business depression which had begun in 1837.[2] The continuance of the hard times and the low prices obtained for agricultural products was working for Harrison's success. The return of prosperity, it was proclaimed, would follow his election, but no hope was to be placed in the Democrats as was shown by a statement of Senator Buchanan, who because of the wage he was alleged to favor was dubbed "Ten-Cent Jimmie."[3] The passage of the Sub-Treasury Bill, it was stated, could not make business conditions worse, for it merely proposed to legalize a system already illegally applied.[4]

[1] For the address in full, *National Gazette*, July 2, 4, 1840.

[2] *Ibid.*, October 1, 1839, said, "Figures and facts fix upon the federal administration, beginning with Jackson's veto of the United States Bank, every calamity of the mercantile community. Before that event, the credit system, although obnoxious to certain exceptions, was comparatively sure and regular." *Cf.* also *ibid.*, October 5, 10, 1839; *United States Gazette*, March 19, October 10, 1840.

[3] *United States Gazette*, June 9; *Daily Telegraph*, February 20, 24, 25, 1840.

[4] *United States Gazette*, July 3, 9, 1840.

Inasmuch as Harrison had been nominated without a platform, reliance was placed on his letter of acceptance of the Anti-Masonic nomination in 1838 for a statement of his political principles.[1] The campaign, however, was primarily one of personalities and not one of principles.[2] The Whigs, endeavoring to fasten the term "Federalist" on their opponents,[3] claimed that they themselves were the true supporters of the Jeffersonian doctrines.[4] The sneer of the Democrats at Harrison's rusticity was eagerly seized and employed with telling effect against them by the Whigs. At the numerous meetings of the Whigs the "log cabin," the "barrel of hard cider," and the "same old 'coon" were constantly in evidence;[5] indeed, it was a Harrisburg politician who is said to have been the first to see the possibilities of the "log-cabin" cry.[6] The cry that the nomination

[1] *Niles' Register,* vol. lv, p. 360.

[2] Some felt that the bank question was still paramount. Francis R. Shunk, secretary of the commonwealth, on October 5, 1840, wrote Lewis S. Coryell, "Stripped of all its clothes the naked question for decision at the next Presidential election is whether the bank aristocracy partly American and partly British, or the people shall be sovereign in these States—Antimasons, abolitionists, hard-ciderites, democratic Whigs flourish upon the Stage but the Bank and Stock gamblers are the life of the opposition and if success could attend them they would rule. They care not for the offices. A splendid bank and national debt by assumption of state debt fill their imaginations, they are grasping for that power by which her Kings have ruled England since the Stuarts lost the right of governing by prerogative." Coryell Papers, vol. iii, p. 106.

[3] *Daily Telegraph,* January 30, February 20, March 12, July 2; *United States Gazette,* June 20, 1840.

[4] *National Gazette,* January 20, 30, July 4, September 1; *Daily Telegraph,* January 21, April 4, 1840.

[5] *United States Gazette,* March 18, May 8, June 16, 20, August 22, September 21, 30, 1840.

[6] R. S. Elliott, *Notes taken from Sixty Years,* p. 120.

of Harrison was the "appeal military" was declared to come with poor grace from the party of Andrew Jackson.[1] The use of bloodhounds to track Seminoles in the swamps of Florida was proclaimed a shocking military barbarity, authorized by the Van Buren administration.[2]

The state elections, held on October 13, did not indicate a political upheaval in the commonwealth. The official returns for Congressmen indicated a Democratic majority of forty-six hundred. Fifteen of the twenty-eight Congressmen-elect were Democrats. The Whigs, however, by small majorities secured control of the legislature.[3] Both sides after the election campaigned more vigorously than before in order to secure the choice of their electoral ticket. Van Buren, never popular in Pennsylvania, was held responsible for the accumulated financial ills of the country. The people of the interior were attracted more by the personality of the frontiersman Harrison than by that of the suave politician from New York. In the election Harrison carried the state by a small majority of about three hundred and fifty.[4]

With the election of Harrison to the presidency it was only natural that Pennsylvania, which had been so largely

[1] *National Gazette*, February 15, 1840.

[2] *Daily Telegraph*, January 30, April 3; *United States Gazette*, February 3, 1840.

[3] *National Gazette*, December 5, 1840. There had been no opposition to the Democrats in Berks county.

[4] *Smull's Legislative Hand-Book*, 1919, p. 715. For a time a split between the Anti-Masons and Whigs seemed imminent. The Anti-Masonic state committee of seven, which had been appointed at their convention of May 22, 1839, had been expanded at the Harrison State Convention of February 22, 1840, to a committee of fourteen. The question of the acceptance of Josiah Randall, a Mason, as an elector puzzled the expanded committee, for his name on the ticket threatened to drive Anti-Masonic votes away. Thomas H. Burrowes, July 19, 1840, to Joseph Wallace; Wm. McPherson Mss.

instrumental in securing this result, should be anxious for representation in his cabinet. Amongst the many claims advanced for consideration were those of John Sergeant for the Treasury, and Thaddeus Stevens for the Post-Office.[1] Intimations were made that pressure had been brought to bear by Stevens, Ritner, and Burrowes on the members of the electoral college to secure signatures to a recommendation of Stevens for the postmaster-generalship. The recommendation, it was alleged, had been signed by all the members of the college save ten, all the Whigs and a few Anti-Masons spurning it.[2] Opposition to Stevens was also manifested in the state senate, where, according to report, a statement condemning his appointment was prepared.[3] It was quite evident that Harrison could make no cabinet appointment from either of the two branches of his supporters within the state without giving offense to the other; consequently when his cabinet was announced no one from Pennsylvania was on the list. The Anti-Masons found what comfort they could in the presence of Francis

[1] The statement is made that Harrison had promised the postmaster-generalship to Stevens, but that he did not fulfill his promise because of the pressure exerted by Webster and Clay, who thereby incurred the undying hostility of Stevens; Hood, "Thaddeus Stevens," in Harris, *Biographical History of Lancaster County;* McClure, *Our Presidents and How We Make Them,* p. 68; Adams, *Memoirs of John Quincy Adams,* vol x, p. 388; Tyler, *Letters and Times of the Tylers* vol. iii, p. 87; *Daily Telegraph and Intelligencer,* January 20, 28, 30; *Lancaster Examiner,* quoted in *ibid.,* January 19; *Pennsylvania Telegraph,* January 20, 30; February 3, 6, 1841.

[2] *United States Gazette,* January 23; *Keystone,* January 12, quoting "Wyoming" in the *United States Gazette; Pennsylvania Telegraph,* March 6, 1841. Letter of December 28, 1840, from Samuel Parke to Joseph Wallace; Wm. McPherson Mss.

[3] *Daily Telegraph,* February 5, 8; *Pennsylvania Telegraph,* January 27, February 6, 17, 1841.

Granger of New York, and refrained from condemning Harrison.[1]

The attacks of the Whigs on Stevens, when his name was suggested for the cabinet, offended the Anti-Masons. The charge was made that the *Gettysburg Star and Banner*, the mouthpiece of Stevens, was "stirring up the old, stale, and offensive matter of anti-masonry, dead, effete, and turned out of all decent society long since. . . . *The Banner* will find itself just two years too late in its attempt to rake up such feelings." [2] Such insults led some of the Anti-Masons to consider the revival of an independent state organization for the gubernatorial contest, which was then impending.[3] Failing in this endeavor, they succeeded, however, in continuing the organization in some of the counties.[4] The joint

[1] *Pennsylvania Telegraph*, February 17, 20; *National Gazette*, February 16; *Daily Telegraph*, February 16, 1841. The Anti-Masons complained that they were being discriminated against in the distribution of the offices. Stevens, on March 27, 1841, wrote Webster urging the appointment of Ritner as collector of the port of Philadelphia. "What offence has the interior of Penna. committed against the administration; what crime have the anti-Masonic counties, every majority county of ours save one, perpetrated, that the rule is to be reversed to their prejudice? What high merit has the city and county of Philadelphia lately exhibited which is to command or to justify their elevation over all Penna., and their monopoly of the two great offices in the State, contrary to uniform usage? You may not know the fact, which is nevertheless true, that not a single office at Washington or elsewhere has been given to a Penna. Antimason. And yet intelligent honesty will not deny that they form 4/5ths of the Harrison party of the State. This neglect I cannot suppose to be intentional. But if we are to be denied the collectorship, the *accidents* adverse to our friends would seem to accumulate with all the certainty of design." Webster Mss., Lib. of Cong.

[2] *United States Gazette*, January 14, 1841. Joseph R. Chandler, editor and owner of this journal, had recently been elected grand-master of the state Masonic organization; *Keystone*, January 30, 1841.

[3] *Pennsylvania Telegraph*, January 20, 30, February 3, 6, 1841.

[4] Particularly in Lancaster, Adams, and Allegheny counties. *Ibid.*, June 9; *Daily Telegraph*, February 27, March 3; *Keystone*, January 30, 1841.

state organization was largely under their control, and they endeavored to use it to advantage. On January 6, 1841, there went forth from the "Democratic Harrison State Committee," of which Thomas H. Burrowes was chairman, a call to "the friends of General Harrison in Pennsylvania" to elect delegates to a state convention to meet in Harrisburg on March 10, 1841, "for the purpose of selecting a candidate for the office of Governor, to be supported by the Democratic party of the State, at the approaching general election." [1] When the convention assembled, it nominated John Banks, the competent, but little-known, president-judge of the Berks-Lehigh-Northampton district, and referred to itself as "the convention representing the great Democratic party which on the 30th of October last achieved a glorious victory in the election of Gen. William Henry Harrison." [2]

On January 15, 1841, the day set by the resolutions of April 3, 1840, the banks of the state resumed specie payment, which had been suspended since October 9, 1839. At the time it seemed quite possible that the banks might be able to continue meeting all demands for specie payment; but, on February 4, the Bank of the United States, after having paid out six million dollars in specie, was again forced to suspend, Most of the other banks were able to avoid taking this step.[3] The banking situation was thus again forced on the attention of the legislature.

The Whigs, who, as a result of the election of 1840, were in full control of the legislature, determined to handle the situation in their own way. Without a roll-call a bill, entitled "An act relating to State Street, in the borough of

[1] *National Gazette*, January 11, 1841.

[2] *United States Gazette*, March 12, 1841.

[3] *Ibid.*, March 12, 1841.

Harrisburg," had, on February 1, passed the senate.[1] For more than two months, while their opponents tried various measures to secure action on the banking situation, the Whigs allowed this bill to slumber in a committee of the house. On April 16, by a strict party vote of fifty-four to forty-four, the bill was so amended by the house that it provided for the raising of revenue, the increasing of taxation, the making of many appropriations, the authorizing of a loan to the state, the issuance of "relief notes" by the banks which participated in the loan, and the possible resuscitation of the Bank of the United States.[2] The Democrats failed in their effort to have adopted a section requiring Nicholas Biddle to turn over to the assignees of the Bank of the United States the service of sterling silver "presented to him by the directors or self-styled majority of stock-holders of said Bank, as a reward for his alleged meritorious service in conducting the financial operations of said Bank," and compelling the directors personally to pay the difference between the cost of the service and its value as bullion.[3] The senate refused to accept all the amendments of the house. Efforts to hold the bank for the unpaid portions of its pledge to the public school fund were readily defeated.[4] On April 30 the report of the conference committee was accepted by strict party voting, in the senate by 17 to 14, in the house by 50 to 42. The bill was now entitled "An act to provide revenue to meet the demands on the treasury and for other purposes." [5] On

[1] *Senate Journal,* 1841, vol. i, p. 172.

[2] *House Journal,* 1841, vol. i, pp. 229, 804, 859.

[3] *Ibid.,* 1841, vol. i, p. 810.

[4] *Senate Journal,* 1841, vol. i, p. 869; the vote was 7 to 20.

[5] *Ibid.,* 1841, vol. i, pp. 908, 933; *House Journal,* 1841, vol. i, pp. 952, 971.

the following day the governor returned the bill with his veto, declaring that "the boon extended to the banks is not only greater than is necessary, but greater than has been asked for by any of these institutions."[1] The day set for the adjournment of the legislature was rapidly approaching. The Whigs had declared their intention, in the event that they would be unable to override the governor's veto, to adjourn without taking any further action on the important measures which were involved in the bill. The contractors on the state works would then be left unpaid and disaster would descend on many counties. Immediately after the receipt of the vetoed bill, the senate passed the measure by a vote of 17 to 8; the refusal of six Democrats to vote assured success.[2] In the house victory for the Whigs did not come so easily. After two failures to override the veto, the Whigs, with the assistance of thirteen Democrats, passed the bill, on May 4, by a vote of 62 to 28. The thirteen Democrats asserted that they objected to the bill, but since the suggestions of the governor would not be followed by the existing legislature they had reluctantly voted for it rather than "behold our Commonwealth become a by-word and reproach among the nations of the earth."[3]

The act provided for a further loan to the state up to three million and one hundred thousand dollars, which, with certain exceptions, could be subscribed for by the banks of the state in bank-notes, authorized by the act and issued in denominations of five dollars and less. These "relief notes," redeemable in state stocks, were receivable for debts due to the state.[4] Because of the failure to provide

[1] *Senate Journal,* 1841, vol. i, p. 965.

[2] *Ibid.,* 1841, vol. i, p. 969.

[3] *House Journal,* 1841, vol. i, pp. 971, 1011, 1047, 1055, 1059.

[4] *Session Laws,* 1841, vol. i, p. 307. Thirty-three banks accepted, and

for the redemption of these "relief notes" through taxation, their depreciation followed.[1] The act also provided for the possible resuscitation of the Bank of the United State, or for its liquidation, if revival should prove to be impossible. Liquidation proved to be necessary; consequently on September 4, 1841, an assignment of the resources of the bank was made.[2] The bank had been a Whig organization, and within the state its notes had been an important medium of exchange Now that the notes were not accepted, the criticisms of the Whigs by the Democrats were convincing to the holders of the well-nigh worthless certificates.[3]

During the sessions of the legislature Governor Porter had vetoed a large number of bills. Following his nomination for reelection at the state Democratic convention of March 4, 1841, the "Harrison Democratic members of the State Legislature," adopting the plan of the year before, issued an address under date of May 5, in which they attacked the governor for his abuse of the veto power. They excoriated him for his veto of the bill to relieve the financial stringency, claiming that previous to the veto he had made no suggestions to them as to what would be acceptable. The passage of the bill over his veto had offered relief to a large number of men who would otherwise have been made destitute through the failure to provide funds for the

eighteen did not; "Report of the Auditor General," *House Journal*, 1842, vol. ii, p. 118. There were issued $2,220,264 in "relief notes." The auditor-general still annually reports the issues; for there are $40,806 of the old issue, and $55,287 of the new issue "in circulation"; *Report of the Auditor-General*, 1917, p. 12.

[1] Worthington, *Finances of Pennsylvania*, p. 56.

[2] *National Gazette*, November 30, 1841.

[3] *The Keystone*, May 18, June 2, 23, August 4, 11, September 8, 22, 27, 1841. The fact that "Ritner's and Stevens' Regulator" had eventually exploded was stressed.

continuance of construction and for the payment of labor already done on the public works of the state. They decried the use of the veto for other than constitutional reasons. Summing up their criticism, they said,

At least ten Executive vetoes disfigure the Journals of this session, and in but one of them has the Governor pretended to indicate other than considerations of local expediency, of which the Representatives of the people believed they were the best judges.[1]

Before election day national affairs attracted attention. The death of Harrison elevated Tyler, whose political views had not been fully ascertained when he was nominated for the vice-presidency. In accordance with the call of Harrison, Congress assembled in special session on May 31. Tyler's message, if not enthusiastically received, was considered at least favorably.[2] It seemed to indicate that he would not oppose the will of Congress, but his veto of the "Fiscal Bank Bill," followed by his veto of the "Fiscal Corporation Bill," disrupted the party, and the entire cabinet with the exception of Webster resigned. These vetoes by the Whig President took the edge off of the criticisms of the vetoes by the Democratic governor.

The governor was also subjected to criticism by the Whigs as the result of an incident growing out of the campaign of 1840. E. W. Hutter and John J. C. Cantine had been editors of a Democratic campaign paper called *The Magician.* During the heat of the campaign they had printed an article asserting that the Whigs engaged in sacrilegious and blasphemous rites at their political meetings. They stated that at the Gettysburg meetings Thaddeus Stevens, officiating as "High Priest," led the out-

[1] *Niles' Register*, vol. lx, p. 212.

[2] *United States Gazette*, June 3, 1841.

rageous ceremonies. After the election Stevens sued the editors for libel in his home county, Adams. When the case was on trial, the attorney for the defendants offered as a bar to the proceedings a proclamation, signed January 23, 1841, by the governor, pardoning the defendants from the charge of libel.[1] The issuance of a pardon before conviction was held by the Whigs to be a perversion of the pardoning power.

The virulent attacks on the personal morality of Porter, which had been so common in the election of 1838, were not revived for this election. Charges of maladministration were made instead. It was claimed that there had been an unwarranted increase in the amount of the state debt and that the public works were being mismanaged. Peculation and bribery in the passage of the Bank Act of 1840 were alleged. The sum of ninety-nine thousand dollars was mentioned as having been used by the Bank of the United States for some undeclared and unholy purpose.[2]

The returns showed the election of Porter by a large majority.[3] In the legislature the Democrats gained control of the house, but the senate, due to the large number of hold-overs, remained in the power of the Whigs.[4] In endeavoring to account for their defeat the Whig editors claimed that many who in 1840 had voted for Harrison had left the party because of unfulfilled expectations, which they had anticipated would be realized through a mere change

[1] The proclamation of pardon is in *Pennsylvania Telegraph,* February 3, 1841.

[2] *Ibid.,* September 18; *National Gazette,* September 21, 1841.

[3] *Smull's Legislative Hand-Book,* 1919, p. 720; David R. Porter (Dem.) 136,504; John Banks (Whig) 113,473; F. J. Lamoyne (Liberty) 763; scattering 23.

[4] *Pennsylvania Telegraph,* December 29, 1841. The senate contained 17 Whigs and 16 Democrats; the house had 37 Whigs and 63 Democrats.

of administrations. Neglect of the former Anti-Masons in the distribution of the patronage accounted for a great deal of coolness in certain sections of the state.[1] The former Anti-Masonic press attributed the defeat, which they had been expecting, to slurs which had been made against them. They claimed that their party had redeemed the state, and that of the 140,000 votes, cast for Harrison, 120,000 had been Anti-Masonic. Despite their numerical strength they had not been appointed to office.

> The anti-masons were represented as unpopular, vulgar, and inefficient. The *gentlemen* whigs and the 5 o'clock converts were the meritorious and able candidates for office. They found favor with the present administration; and were appointed to all offices from which locofocos could be spared.[2]

Both Whigs and Anti-Masons agreed in thus accounting for the heavy loss in the counties which had been strongholds of the latter.

The problem of the financial rehabilitation of the state was still unsolved. The governor therefore took up the question in his annual message recommending that in addition to disposing of the state-owned stocks the public works be sold, claiming that they could not be administered as economically under governmental as under private control.[3] Nothing came of his recommendation as attention was directed to other financial problems. Resolutions, from a mass meeting in Philadelphia, urging repudiation of the

[1] *National Gazette,* October 17; *United States Gazette,* October 15, 23, 1841.

[2] *Gettysburg Star* quoted in *Pennsylvania Telegraph,* November 3, 1841. Ex-Governor Ritner, one of the few Anti-Masons nominated, had been rejected by the Senate of the United States because of alleged "incurable blindness"; *Pennsylvania Telegraph,* September 22, 1841.

[3] *Pennsylvania Archives,* series iv, vol. vi, p. 831.

state debt met with immediate non-partisan condemnation.[1] The state was, however, on the verge of bankruptcy, and interest on the state debt was not met promptly when it fell due on February 1, 1842. Beginning on January 29, there had been a run on the Bank of Pennsylvania, the state depository and disbursing agent. The run on the bank had followed the closure of the Girard Bank a few days previously. The other banks of Philadelphia had refused to render either of them any assistance. The governor, who chanced to be in Philadelphia at the time, had an injunction issued against the Bank of Pennsylvania forbidding it to pay out further moneys. This action guaranteed the funds of the state, enabling the Bank of Pennsylvania to begin paying the interest on the public debt on February 14, a delay of two weeks.[2] Thus the banking question again assumed importance.

The Democrats brought in their bill to remedy the banking ills, which to their mind consisted in the participation of the state as a partner in various private corporations. They, therefore, called for a "total divorce between Bank and State." [3] The bill readily passed the house, although the section ordering immediate resumption under threat of forfeiture of charter received considerable opposition. The senate amended the bill slightly. A conference between the two houses adjusted the differences, and the measure received the signature of the governor on March 12, 1842.[4] Although the act was not strictly a party measure, yet it

[1] *North American,* January 7, 8; *The Keystone,* January 15, 1842.

[2] *North American,* January 31, February 1, 2, 3, 4, 7, 12, 14, 15; 1842. It was not until April 17, 1843, that resumption was effected; *ibid.,* April 18, 1843.

[3] *The Keystone,* February 5, 1842.

[4] *Session Laws,* 1842, p. 68.

received severe criticism from the Whigs, particularly from those in Philadelphia, one of whose editors exclaimed,

> Some think our resumption bill should be called a bill to relieve our country banks, break down those of our city, and help the New York brokers; others think it should be called a bill to establish a state currency, with relief notes as a basis; others insist it should be called a bill to postpone indefinitely specie payment. Were we called upon ourselves to christen it, we should call it a bill to lose all the benefits which it sought, and realize all the evils it would shun; or, if that won't do, then call it a bill, composed of party springs, to catch political wood cock.[1]

In the meantime, the charges that the Bank of the United States had resorted to bribery to secure the passage of the resolutions of April 3, 1840, were being investigated.[2] The Handy Investigation, as it was called because George Handy, one of the directors of the bank, had acted as its agent, began on February 14. In order to relieve Handy from the danger of a criminal prosecution, which might be based on his testimony before the committee, the legislature adopted a joint resolution authorizing the attorney-general to issue a *nolle prosequi*, if such suit were brought against Handy.[3] Handy claimed that Daniel M. Brodhead, "a constant borer at Harrisburg, for many years past, on behalf of Banks and other corporations," had acted as the intermediary between him and the governor. A letter from J. Solms, president of the Moyamensing Bank of Phila-

[1] *North American*, March 11, 1842; *cf.* also *ibid.*, March 15, 18, 19; *United States Gazette*, March 9, 1842.

[2] "Report of the joint committee of investigation, appointed by the legislature of Pennsylvania, to investigate whether corrupt means had been used to procure legislation favorable to the banks from 1836 to 1841." *Senate Journal*, 1842, vol. ii.

[3] *Session Laws*, 1842, p. 479.

delphia, to George Handy was produced, stating that Solms would again pay his respects to the governor and would "talk in the Indian language." Many letters in code were submitted at the investigation. In one to an undisclosed addressee, possibly Handy, Solms wrote,

To-morrow, I expect to hear from you respecting business in the lumber way, which is plenty, cheap now, and will sell. People will build in hopes of better times, however you are more sanguine than I am in that business way.—They may not sell as low as you think. Persons in desperate circumstances take care of themselves when they are pressed; in obtaining time they believe to weather the storm.[1]

The letters furnished the political opponents of the governor the opportunity of lampooning him as an Indian chief, particularly as a "Kickapoo," and of manifesting great interest in the lumber market.[2]

The incomplete investigation failed to establish the fact that either the governor or any member of the legislature had received any of the $131,175, placed at the disposal of Handy.[3] The committee, both in the majority and in the

[1] *House Journal*, 1842, Appendix, pp. 461, *et seq.*

[2] *Pennsylvania Telegraph*, April 20, 27, May 4; *North American*, April 6, 8, August 4, 6, 1842. A portion only of the Democratic press defended the governor; *The Keystone*, April 13, May 10, June 22, July 13, 18, 1842. When charges were made against the governor, he ordered the attorney-general to commence a criminal prosecution of Handy so that the entire matter might be investigated, claiming that the resolution ordering a *nolle prosequi* would not be violated thereby; *Pennsylvania Archives* series iv, vol. vi, p. 900. The anti-administration papers claimed that he was trying to stifle the investigation. The governor did not appear before the committee, although it had resolved that "if he were desirous of appearing before them to testify they would have no objections to hear him;" *The Keystone*, July 13, 1842.

[3] *Miners' Journal*, March 11, 1843, thought it "but proper to infer that he shared the proceeds."

minority reports exonerated them, claiming that the money had been lavishly spent on "borers." Attacks on the governor were continued in the next legislature; but the efforts to impeach him were easily defeated.[1] M. B. Lowry, one of the Democratic members of the investigating committee, took a view of the situation, which reflected the opinion of many members of the party.

> It is a striking fact, and one which strongly illustrates its enormous wickedness, that the very individuals who by fraud and corruption brought it [the Bank of the United States] into a Pennsylvania Institution after the Union had rejected it have turned abruptly round and charged their own high offences upon the Democratic Party which from principle and sound policy has uniformly contended in opposition to it. The undersigned however conceives this a fruitless task, and thinks that these men will have to share the responsibility of its rise and downfall among themselves, the verdict of an impartial posterity will say, the Whig party created it, its advocates and agents plundered its stockholders and creditors, and the Democratic party has had neither part nor lot therein.[2]

That the Whigs, in the main, were responsible for the evils in the banking system can not be denied. The final failure of the Bank of the United States and the passage of various bank acts by the Democrats during their long period of power removed the question from political strife. Furthermore, the tariff was rising to a position of great importance, directing attention away from state to national politics.

The question of the payment of the interest on the state debt required attention; for the legislature had adopted a

[1] *Public Ledger*, January 16; *United States Gazette*, January 9, 19; *North American*, March 8, 13, 1843.

[2] *House Journal*, 1842, Appendix, p. 187.

joint resolution to aid the contractors on the state works by appropriating for their benefit the money which had previously been set aside to pay the interest.[1] To preserve the remnant of the credit of the state, the act of July 27, 1842, was passed. The semi-annual payment of the interest was due on August 1, but no funds were available. The act authorized the payment of the interest in six per cent scrip due in one year. A certain percentage of the claims of the contractors, some of which were dated before May 11, 1841, was to be paid. The sale of the state-owned stock in private corporations was authorized. The governor was given authority to receive bids for the sale of the public works. Retirement of the scrip was provided for by the levy of a small tax on real and personal property.[2] It was hoped that this measure would prove to be a temporary expedient, but recourse had to be had to scrip on the interest dates in 1843 and in 1844.[3]

Another matter of state importance was the veto by the governor of the apportionment bill, which had been passed as a result of the districting act of Congress, based on the census of 1840. The governor claimed that the proportion in the districts was not equal and that the minority

[1] *Session Laws,* 1842, p. 486, resolutions of April 7, 1842.

[2] *Ibid.*, 1842, p. 441. *The Pennsylvania Telegraph,* August 17, 1842, said, "No one voted for the tax bill but loco focos, the city Whigs and a few western members, who were representing the interests of the 'domestic creditors'. The bill was so log-rolled, that these latter could not help voting as they did, although in every instance where a tax was proposed by itself, without the condition annexed of a disposal of the public works, they opposed it." The state-owned stock could not be sold because of restrictions in the act; no adequate bids for the state works were received.

[3] Worthington, *Sketch of the Finances of Pennsylvania*, p. 57. A total of $4,502,824.01 was issued in this scrip. Under the acts of April 29, 1844, and April 16, 1845, $4,360,494.39 were funded; *Report of the Auditor-General,* 1882, p. 233.

party was favored; he said, "I assure the world, that no apportionment will ever receive my sanction, which in any degree, is designed to steal power from the many, and confer it upon the few."[1] Due to the failure of the legislature to pass an act satisfactory to the governor, no election for Congressmen was held this year.

In December, 1841, interest was directed to national affairs by the assembling of Congress in its regular session. The reference by the President in his message to the banking question attracted slight attention.[2] More concern was felt in the state over the disposal of the tariff question. On March 25, 1842, the President submitted a message to Congress relative to the funds at the disposal of the Treasury.[3] His proposal to repeal the land-distribution act, passed at the recent extra session of Congress, and to apply the funds thus released to the payment of the interest and of the debt of the federal government was condemned. It was declared,

> The true question at issue is not whether the general government, or the States, shall have the avails of these lands, but whether the old States shall share them with the new; or whether the new shall have the whole; *that* is the question. For the old States to vote for a repeal of the Land Bill would be the most suicidal act that they could possibly commit.[4]

While the Whigs of the state condemned the proposal to repeal the distribution act, the proposal to increase the tariff

[1] *Pennsylvania Archives,* series iv, vol. vi, p. 944. In McClure, *Old Time Notes of Pennsylvania,* vol. i, p. 69, it is stated that Porter vetoed the bill because it made the election of two of his friends impossible.

[2] Richardson, *Messages and Papers of the Presidents,* vol. iv, p. 83.

[3] *Ibid.,* vol. iv, p. 106.

[4] *North American,* March 28, 1842.

rates was heralded gladly. "A tariff is sufficient, and *that* we must have, repeal or no repeal." [1]

A tariff bill, which proposed to raise the rates above twenty per cent and at the same time continue the provisions of the distribution act, was returned on June 29 with a presidential veto.[2] The President felt that a temporary revenue measure was overthrowing a permanent compromise. His use of the veto was condemned by the Whigs; for, although its exercise was constitutional, he had advanced no constitutional argument for its use.[3] It was pointed out that the President was now in full and complete harmony with the policy of the Democrats.[4] Another tariff bill, similar to the preceding one save in a few minor matters, was returned on August 9 with a veto message, which virtually repeated the previous arguments in its insistence on the non-inclusion of the distribution provisions in the tariff measure.[5] The veto was declared to be "an act of madness" on the part of "his Accidency," who cared little how much the country suffered.

> The manufacturers of the country are crushed, our commerce broken up, our shipping rotting in the docks, and ruin and consternation spread abroad upon the land: and all this done in the mad hope of retaining a station which would never have been accorded to him at the hands of the people.[6]

An analysis of the vote on the bill, in its passage through the

[1] *United States Gazette*, March 29, 1842.

[2] Richardson, *op. cit.*, vol. iv, p. 180.

[3] *United States Gazette*, July 1; *North American*, July 1, 1842.

[4] *North American*, July 2, 1842.

[5] Richardson, *op. cit.*, vol. iv, p. 183; reference of this message to a committee, which reported condemnatory resolutions, led to a protest from the President; *ibid.*, vol. iv, p. 190.

[6] *United States Gazette*, August 11, 1842.

House, which was to receive the signature of the President, shows that it was primarily a Whig measure, but that more Whigs voted in the negative than Democrats voted in the affirmative. It was not distinctively a sectional measure, for as many votes south of the Mason and Dixon line were cast for it, as votes north of the line were cast against it. Ten Whigs and ten Democrats from Pennsylvania voted for it, while three Whigs and five Democrats did not vote.[1] In Pennsylvania the question of the tariff was not yet a party issue although the Whigs were asserting that it was.[2] The act was generally received with favor although it was recognized that it lacked permanency. The tariff Whigs were urged to be conciliatory to the distribution Whigs, who were to be congratulated for yielding and sacrificing their provision.[3]

Before the adjournment of Congress, "Vetoes No. 5 and 6" were received. The former on the land-distribution bill had been expected, but the latter, coming unexpectedly, was condemned as an unwarranted interference in a matter which affected merely the organization of Congress.[4]

The supporters of Tyler, few in number though they were, were active in trying to get the aid of the Democrats for their leader. At Philadelphia, on the Fourth of July, 1842, a delegation was sent from the Tyler banqueters to carry a toast to Democratic banqueters. The Democrats replied in their toast that they "sought no alliance but look for the justice of our cause for success. Truth is mighty and will prevail."[5] At a Fourth of July dinner at the

[1] *North American*, August 26, 1842.

[2] *Pennsylvania Telegraph*, September 14, 1842.

[3] *Ibid.*, August 31; *North American*, August 25, 1842.

[4] *North American*, September 3, 1842.

[5] *Ibid.*, July 7; *United States Gazette*, July 6, 1842.

White House nearly forty Democrats were present. One of these, C. J. Ingersoll, a Philadelphia Congressman, was credited with the toast, "Veto and Ditto."[1] The Democrats were making it evident that they were willing to encourage disaffection in the Whig party, willing to profit by the resulting split, but unwilling to follow Tyler. The patronage was also, of course, being used for the purpose of developing a Tyler following. Secretary of the Treasury Walter Forward had in April asked Jonathan Roberts, collector of the custom duties at Philadelphia, to remove a certain number of employees. Roberts asked for and was granted a conference on the question of the removals. His refusal to comply with the request was followed in September by his own removal.[2]

Following these events came the election of 1842, at which only members of the state legislature were to be chosen, and which in consequence failed to attract much attention, although the next legislature was to choose a United States Senator to succeed James Buchanan. The Whigs had no one for whom to work up enthusiasm, while the Democrats sneered at the possibility of the state being represented by "Thaddeus Stevens, Joseph Ritner, Thomas H. Burrowes or some other of the back window heroes of the Buckshot War."[3] The tariff could not be used as an issue, for its effects were not yet felt and the state Democrats had supported the measure. The failure of the Democrats to support the distribution bill was condemned, as now the taxpayer would be forced to bear still heavier burdens.[4] The ensuing election gave control of both houses

[1] *United States Gazette*, July 8, 1842.

[2] Correspondence in the *North American*, September 13, 15, 17, 1842.

[3] *The Keystone*, September 28, 1842.

[4] *United States Gazette*, October 7, 1842.

by safe majorities to the Democrats.[1] The *United States Gazette* felt called upon gloomily to insist that the election indicated that the people of the state had declared against a tariff.[2]

Upon the assembling of the legislature the financial situation was reviewed by Governor Porter in his message. As previously, so now, he urged greater recourse to taxation in order that the state might have at its disposal adequate funds to be used for the reduction of the state debt. However, he now recommended a specific measure to consist of a levy of a few cents a ton on the iron ore and coal mined within the state, assuming that this would not be heavy enough to cause increased importations.[3] The Whigs directed their objections to this feature of the message. The *North American* contended that since the Pennsylvania delegation in Congress had exerted itself "to have a duty laid upon foreign Coal and Iron, it seems hardly consistent to tax these same articles so as to make foreign competition the more easy." [4] The whole proposition met with the hearty condemnation of the *Miners' Journal* which held that coal and iron were already highly taxed as land. Furthermore, the state debt was due to the construction of the internal improvements, which were of little value to the mining interests, for of the million tons of coal shipped in 1842 from the Schuylkill, Lehigh and Lackawanna regions only one fifth was carried on the state works.[5]

The efforts which were made to pass a bill laying a ton-

[1] *Ibid.*, January 4, 1843; the Democrats had nineteen of the thirty-three senators and sixty-one of the one hundred representatives.

[2] *Ibid.*, October 31, 1842.

[3] *Pennsylvania Archives*, series iv, vol. vi, pp. 920, *et seq.*

[4] January 5, 1843.

[5] January 14, 1843.

nage tax on coal and iron ore met with insurmountable opposition. Consequently scrip, as in 1842, had to be relied on to provide funds for the payment of the interest on the public debt.[1] The governor recommended that the state debt be decreased by the proceeds from the sale of the state-owned stocks in various corporations. Without much difficulty, an act authorizing their sale was passed. Purchasers were allowed to make payment with the certificates of debt, which had been issue by the auditor-general. The result was that little money found its way into the state treasury, although the debt was somewhat reduced by the redemption of the certificates.[2]

Within the state the Democratic party underwent the same experience that the Whig party had undergone nationally, in that the executive whom it had elected was not in harmony with the Democratic legislature. Early in January, the sheriff of Philadelphia died. Governor Porter appointed his own son to fill the vacancy, which appoint-

[1] Worthington, *Finances of Pennsylvania*, p. 57.

[2] In his message of 1842, Governor Porter stated that the par value of the state-owned stock was $6,134,074.45. The market value of it had been steadily decreasing. A share of stock in the Bank of Pennsylvania, par value $400, sold in 1839 for $496, in 1840 for $410, in 1841 for $412, and in 1842 for $160; in 1843 the state disposed of its shares, for prices ranging from $140 to $187.25. From June to October, 1843, sales of state-owned stocks were held. For the stocks, which proved saleable, $1,319,730.65 were received; stocks with a par value of $1,986,797.56 could not be sold. *Pennsylvania Archives*, series iv, vol. vi, pp. 821-839; *House Journal*, 1844, pp. 28-46. Under the authority of the act of June 12, 1878, the amount of state-owned stock was reduced to a par value of $501,454.62; *Report of the Auditor-General*, 1882, p. 238. The greater portion of this still remains unsold; the auditor-general today reports state-owned stock to a par value of $432,884.62; *ibid.*, 1917, 9. 31. The state-constructed and state-owned canals and railroads had cost $35,096,671.18. When they were sold, under authority of the acts of May 16, 1857, and April 21, 1858, only $10,981,500 were received for them; *ibid.*, 1860, p. 114.

ment openly started the breach between the governor and his party.[1] The rearrangement of his cabinet by President Tyler widened the breach when he appointed James M. Porter, a brother of the governor, *ad interim* Secretary of War. Of the sixty-nine Democratic papers in the state all save twelve, which were controlled either by his appointees or by his brother, abandoned the governor.[2] *The Pennsylvanian* was particularly sharp in its criticisms, saying,

Were the people to be purchased thus, they would sell themselves cheaply indeed. This junction of the two administrations, with all the influences they can bring to bear, will neither transfer the people on the one hand to sustain Mr. Tyler for the presidency nor governor Porter for the vice-presidency, nor will it serve to distract and divide the party in 1844. Such chaffering and peddling, first of the offices of the people themselves, for the benefit of *two families*, will create an emotion of just anger not easily to be tranquilized.[3]

Charges of an endeavor to establish Porterism as the equal and partner of Tylerism abounded.

A strong point of attack on Porter was his unabated use of the veto. An act dividing the state into congressional districts, which he approved, was secured after several vetoes.[4] His veto of the bill, providing for the election of the canal commissioners by the legislature, was effective

[1] *The Pennsylvanian*, which was attacking Porter, was answered by the *Spirit of the Times*, which on February 15, 1843, said "that this whole establishment with the Brokers, Auctioneers, Bullies, Pawnbrokers, Lawyers, Job Printers, and others who have control over it, are about to make one grand leap—to turn a complete somersault—and come down in the middle of the Whig Senate camp."

[2] *The Keystone*, May 10, 1843, quoted in *Niles' Register*, vol. lxiv, p. 179.

[3] Quoted in *Niles' Register*, vol. lxiv, p. 44.

[4] *Session Laws*, 1843, p. 115.

despite the fact that a number of the Democrats combined with the Whigs in an effort to overcome it. The governor maintained that "the election or appointment of the Canal Commissioners belongs only to the Executive or to the people, and cannot be vested in the Legislature without a gross usurpation of power."[1] A bill providing for their election by the people became effective despite the opposition of the governor.[2] Not only the governor but also the Democracy was condemned for beginning

> the experiment of arraying the nominally poor against the ostensibly rich. The former being a majority in the American, as in every other nation, it was prudently determined to win their affections. The hue and cry against aristocracy was successful, so far that the polity, stigmatized as aristocratic, was abandoned for a succession of schemes, all opposite in their nature, but all acceptable, under the name of democratic.[3]

The "temperate conservatism" of the Whigs was needed to save the country "when innovation is stalking so fiercely abroad."[4]

The elections to be held in the fall of 1843 were of unusual importance, for, in addition to members of the state legislature, Congressmen and, for the first time, canal commissioners were to be chosen. Into the election the Whigs made efforts to prevent the presidential question from entering. It was quite probable that Clay would be the choice of the Whig national convention, called for May 3, 1844. He had been endorsed as the preference of the state at a mass convention held at Harrisburg on February 22, 1843.[5]

[1] *Pennsylvania Archives,* series iv, vol. vi, p. 979.

[2] *Session Laws,* 1843, p. 337.

[3] *North American,* April 15, 1843.

[4] *Ibid.,* March 16, 1843.

[5] *Public Ledger,* February 24, 1843.

There existed some fear that McLean might be used "by the remnants of the New York clique, which made a stalking horse of the manly form of Scott" in 1839, and thus Clay might be defeated.[1] Tyler caused little concern, for his attempts to control the Whig party had failed dismally, and his advances to the Democrats were being scorned.[2] Tyler was declared to stand in such poor favor that the reception accorded him by the people in his journey to the dedication of the Bunker Hill monument was characterized as "cool and dignified." [3]

On the other hand, some of the former proscriptive leaders of the Anti-Masonic party, who had not been admitted to a position of influence in the Whig ranks, threatened trouble. They too had held a state mass convention and had declared themselves favorable to Scott. To use the committee, appointed at this convention, would discredit their movement. They therefore resorted to the committee, which in 1841 had had charge of the campaign of Banks for governor and which was subject to their influence. This committee on May 17, 1843, issued a call for a convention of the "Democratic Harrison Party" to assemble on September 6 to make nominations for canal commissioners.[4] This was an effort to block the endorsement of Clay by the Whigs and, at the same time, to disrupt the organization which had been perfected at the Clay convention of February 22.[5]

[1] *United States Gazette,* May 12, 1843.

[2] *North American,* May 12, 1843.

[3] *Ibid.,* June 14, 1843.

[4] *Pennsylvania Telegraph,* July 4, 1843.

[5] Egle, *Notes and Queries,* 1896, p. 146; in a letter, dated May 20, 1843, to John Strohm, John A. Fisher condemned the movement "*in toto,* and see in it, if assented to, or recognized by us, the virtual triumph of that clique of bold, bad men whose motto is rule or ruin."

The directing genius of this movement to block the endorsement of Clay was Thaddeus Stevens, who in 1842 had moved to Lancaster from Gettysburg. In Lancaster and Allegheny counties, the proscriptive Anti-Masons had been maintaining an independent organization. On August 30, 1843, the "Anti-Masonic and Whig" convention for the county met at Lancaster to choose delegates for the state convention of September 6. The delegates chosen at this county convention were instructed to withdraw, if the Stevens delegation, which had been chosen at an "Anti-Masonic" county convention, received any recognition at the state convention.[1] At the state convention the committee on contested delegations rejected Stevens and his associates.[2] This faction, however, ran its own ticket in Lancaster county. The same thing was done also in Allegheny county, from which no contesting delegation had, however, been sent to the state convention.[3] In the other counties of the state the former Anti-Masons gave the Whig party their undivided allegiance, and the effort to revive political Anti-Masonry for the elections of this year failed.

In the election campaign no distinctive issue was raised. The more effective organization of the Democrats gave them the three canal commissioners by a majority of over fourteen thousand in a total vote of two hundred and seven thousand.[4] The Democrats now held twenty-two of the thirty-three seats in the state senate, and fifty-eight of the one hundred in the house.[5] Sufficient importance had not

[1] *United States Gazette,* September 1; *Public Ledger,* September 2, 1843.

[2] *North American,* September 9, 1843.

[3] *Daily Forum,* quoted in *Niles' Register,* vol. lxv, p. 169, for the returns from these two counties.

[4] *North American,* October 24, 1843.

[5] *Public Ledger,* January 2, 1844.

been attached to the election by the Whigs, as was shown by the fact that in some districts of Schuylkill county ballots for the Whig candidates had not been printed.[1] The Democrats secured only twelve of the twenty-four Congressmen, inasmuch as the Whigs had combined with dissatisfied Democrats in some of the congressional districts and had elected volunteer Democrats, who expressly declared for a protective tariff.

[1] *Miners' Journal,* October 28, 1843.

CHAPTER III

Texas and the Tariff

1844-1846.

As soon as the elections of 1843 were past, plans were made for the ensuing presidential campaign. The Democrats of the state, under the control of Buchanan, pledged their support to him. But on December 19, 1843, before the meeting of the state convention, Buchanan in a letter, published in the *Lancaster Intelligencer,* withdrew his name as a candidate for the presidency.[1] He did this because he received no support in other states, the majority of which were already pledged to Van Buren.[2] The sentiment of the Democracy in the state was by no means strongly in favor of Van Buren, nevertheless the Democratic state convention, at Harrisburg on March 4, 1844, pledged its delegates to him for the presidency and to R. M. Johnson for the vice-presidency. After a sharp contest the convention nominated Henry A. Muhlenberg, the anti-Wolf Democratic candidate in 1835, for governor.[3] On August 10, before the election, Muhlenberg died suddenly at his home in Reading. The Democratic state central committee reconvoked the convention, which, on September 2, nominated Francis R. Shunk, who had been the opponent of Muhlenberg at the first convention.[4] Shunk was the inevitable choice of

[1] Moore, *The Works of James Buchanan,* vol. v, p. 437.

[2] *Ibid.,* vol. vi, p. 1.

[3] *Public Ledger,* March 6, 7, 8; *North American,* March 8, 1844.

[4] *Public Ledger,* August 15, September 4, 1844.

the Democrats at their second convention. His friendship with the Porters tended to hold that faction to the party. Furthermore, the party owed him a debt of gratitude for the firmness displayed during the Buckshot War, when as clerk of the house he had been the chief instrument in thwarting the machinations of the Whigs and Anti-Masons. He was strongly opposed to special grants, and consequently would continue the policy of his predecessor. A contemporary eulogist stated,

> The tendency of capital to accumulate in the hands of the few, the power which it always wields, the antagonism between it and labor, and the encroachment of the former on the just rights of the latter, even under the best administration of the most equitable laws, he regarded as one of the dangers of republics.[1]

Such views appealed particularly to the masses in the interior of the state. Shunk had, however, continuously held public office since early manhood. His opponents sharply contrasted his career with that of their non-office-holding candidate.

On December 8, 1843, there appeared a call, signed by the members of the Harrison state central committee, for a "Democratic Harrison Convention" to meet at Harrisburg on March 4, 1844.[2] The committee appointed in 1841 to conduct the election for governor was the only anti-Democratic state organization which had any regularity to its existence. Since that year, there had been no general state election save that for canal commissioners. The only other way in which a call for a state convention might come would be from the members of the legislature. As this

[1] DeWitt, *A Discourse on the Life and Character of Francis R. Shunk, late Governor of Pennsylvania, delivered August* 9, 1848, p. 23.

[2] *North American*, December 11, 1843.

body did not assemble until January, the call might have come too late for the convention to meet at the customary time. Furthermore, the name of Harrison still had an attraction for many former Anti-Masons. Some of them, led by Thomas H. Burrowes, were not reconciled to the disappearance of political Anti-Masonry, and were threatening trouble. In November, 1843, they questioned Clay about his views on Masonry and about his membership in that organization. Clay replied that he "became a mason in early life, from youthful curiosity and a social disposition," but that he never took any high degrees, that he was not a member at the time, and that he never voted for anyone because he was a Mason.[1] Nothing definite came from this agitation, but fear of the Anti-Masons led to the suggestion that inasmuch as "Harrisonism in Penna. . . . is *per se* strong" it would be well to identify the Whig cause in the state with it. Care should be taken to fill the Harrison counties with Whig almanacs and songs and to impress upon the voters "that if it is not for Harrison they are fighting, it is against Harrison's enemies. If we can even to a tolerable extent raise this feeling, and then add to it a personal enthusiasm for Mr. Clay, and tariff principles, our course is far from impropitious." It might be "expedient to take up the Harrison Electoral ticket defying our adversaries to do the same."[2] The Anti-Masonic irreconcilables made no headway with their movement, which practically marked the end of their efforts to form an independent party by breaking away from the Whigs.[3]

[1] *Niles' Register*, vol. lxv, p. 244.

[2] William B. Reed to John M. Clayton, December 18, 1843; Clayton Papers, Lib. of Cong.

[3] The decadence of the power of the Anti-Masons is illustrated in Allegheny county. In the congressional election of 1843, the straight Anti-Masonic candidate received over 2200 votes. In a special election

When the "Democratic Harrison State Convention," as some of the former Anti-Masons called it, or the "Whig" state convention, as the resolutions had it, met, no great opposition to the endorsement of Henry Clay as the next presidential candidate developed. It took twenty-two ballots, however, to select Joseph Markle, of Westmoreland

in March, 1844, the same individual received only 600 votes; *Niles' Register*, vol. lxvi, p. 80. Thomas H. Burrowes, who had been chairman of the Harrison state central committee in 1840 and who had been active in trying to keep Anti-Masonry alive, on March 1, 1844, wrote Joseph Wallace, "I never was—am not—and never will be a Whig. Ergo I must be and am a Locofoco, because antimasonry being now extinct even to the last spark, I have no other party to go to, and vote I will while possessed of strength to go to the polls." William McPherson Mss. Care was taken not to offend the former Anti-Masons. In the counties in which they had been strong, the conventions were called "Whig and Anti-Masonic" or "Anti-Masonic and Whig," at times with the word "Democratic" prefixed to the phrase; *Lancaster Union and Tribune*, January 19, 1847; *Butler Whig*, September 9, 1846; *Pittsburgh Gazette*, September 20, 1849. This nomenclature was continued in Allegheny county as late as 1852; *Daily Commercial Journal*, December 11, 1852. This was not merely the survival of a name, but represented a strong sentiment. On June 3, 1846, for example, the "Anti-Masonic and Whig" convention of Allegheny county "Resolved, That we are utterly opposed to all secret oath-bound societies, believing their existence in our midst contrary to the spirit of and fraught with danger to our free institutions, and that we highly approve of the resistance made by our members of the Legislature last winter, to the chartering of Odd Fellows Associations." *Daily Commercial Journal*, June 5, 1846. It was deemed worthy of mention that in a Masonic parade, held later in the same month, many Democrats but few Whigs were seen marching; *ibid.*, June 25, 1846. In 1850, the Democrats asserted that the Whig candidate for Congress from this district was a Mason. To this charge the Whigs replied, "Mr. Howe, we are pleased to state, is not now, and never has been, a member of any secret society whatsoever." *Pittsburgh Gazette*, July 4, 1850. In this same election, it was contended that membership in Odd Fellows Associations caused the defeat of candidates in Allegheny and Indiana counties; *ibid.*, October 18, 1850. As late as 1876, there were cast 83 votes for the "Anti-Masonic Ticket"; *Smull's Legislative Hand-Book*, 1879, p. 311.

county, as the gubernatorial candidate. As Markle had never held public office, little was known of his political views. This was held to be offset by the fact that he "was fresh from the ranks of the people" and was "earning his bread by the sweat of his brow." He had volunteered for one of the Indian wars and since then been elected a major-general in the Pennsylvania militia. What military glory could be derived from the fact that "at the battle of Mississinewa, and at the sortie of Fort Meigs, he led the fight, and slew the enemy with his own hand" was derived.[1] One of the Democratic journals asserted that Markle "was taken up for a sort of Tippecanoe rusher—his services in the wars being considered sufficient to raise a strong breeze of patriotism in his favor."[2]

Political events were so shaping themselves that more interest was to be displayed in national than in state issues. Tyler, abominated by all loyal party men, was moving to secure the annexation of Texas to the United States, a plan which met with the hostility of the Whigs within the state. The *North American* asserted that the Whigs were ready to abide by the compromises of the Constitution on slavery, but that they would prefer to sacrifice the integrity of the Union rather than extend the power of the South. Continuing, it said,

In any aspect, the annexation of Texas would be a monstrous folly and fraud. Any alternative would be preferable. Were slavery out of the question, there is reason enough to oppose the scheme upon the simple ground that the territory of the United States is already sufficiently large and unwieldy—sufficiently varied in climate and products to make common legislation for the equal benefit of its whole extent extremely difficult, if not wholly impossible.[3]

[1] *Pennsylvania Telegraph,* March 6, 1844.

[2] *Spirit of the Times,* March 7, 1844.

[3] November 24, 1843.

The *United States Gazette* declared its opposition to the proposal because the slave area would be increased. The proposed plan was declared to be not a national, nor a Whig, nor a Democratic measure, but a mere Tyler scheme.[1]

When a treaty of annexation was submitted to the senate, the administration forces attempted to create a favorable public sentiment. Secreary of War Wilkins, in an open letter to his former constituents in the Allegheny county congressional district, pointed out what the loss to the industries in and around Pittsburgh would be, if the treaty failed.[2] Through the efforts of the Democrats a resolution against annexation was defeated in the house of the Pennsylvania legislature.[3] Wider publicity to the question was given by the letters of Clay and Van Buren.[4] The projection of the Texas question into the pre-convention cam-

[1] April 1, 1844. This attitude was reflected in some of the 1844 campaign songs. One of the "Annexation War Songs", to the tune of "Yankee Doodle" printed in the *Pennsylvania Telegraph,* July 3, 1844, from the *Whig Standard,* opens as follows:

"Come one, come all! sound drum and fife—
The loud tin trumpet blowing;
For Texas, plunder, and all that
Our martial band is going.
Who cares for what the world may say?
John Tyler says we're right, sirs,
We'll grab the land of Mexico,
Or else we'll have a fight, sirs.

Cho. Then shoulder muskets, one and all,
Hurrah! for war and plunder,
We'll wave our bunting o'er their heads,
And give them Tyler thunder."

[2] Letter of April 13, 1844, *Niles' Register,* vol. lxvi, p. 118.

[3] *House Journal,* 1844, vol. i, pp. 536, *et seq.;* p. 869.

[4] Clay's letter of April 17, 1844; Van Buren's letter of April 20, 1844; *Niles' Register,* vol. lxvi, pp. 152-157.

paign resulted in the rejection of Van Buren and the nomination of Polk by the Democratic national convention at Baltimore, which assembled on May 27, 1844.[1] Polk, immediately declared for "the re-annexation of Texas to the territory and government of the United States." This position was strengthened by a letter from ex-President Jackson, whose opinion carried great weight in all parts of Pennsylvania.[2] The leader of the Pennsylvania Democrats in the lower House of Congress, C. J. Ingersoll, deemed "it most peaceable and safe to declare at once, beyond the Monroe and Adams position, not only that we shall not like, but that we will not suffer, European encroachment in, at any rate, the northern parts of the American hemisphere." [3]

The Whig convention, which assembled on May 1 at Baltimore, nominated Clay and Frelinghuysen.[4] Meeting at Baltimore at the same time as the regular Democratic convention was a body calling itself the "Tyler Democratic National Convention." This body had intended to await the action of the regular Democratic convention, in the hope that it might be induced to support Tyler. But as the sessions of the regular Democratic convention became protracted and no intention of nominating Tyler was evidenced, the "Tyler Democratic National Convention" performed its duty by placing Tyler in nomination, but adjourned without naming a running mate.[5] The *North American* sneered at this convention as the "Loaves' and Fishes' Con-

[1] *Niles' Register*, vol. lxvi, pp. 211-218.

[2] Polk's letter of April 23; Jackson's of May 13, 1844; *ibid.*, vol. lxvi, p. 228.

[3] Letter of September 4, 1844; *ibid.*, vol. lxvii, p. 167.

[4] *Ibid.*, vol. lxvi, p. 178.

[5] *Ibid.*, vol. lxvi, p. 221.

vention."[1] Tyler kept his name before the public until August 20, when it was withdrawn.[2]

The Whigs of Pennsylvania heartily endorsed the position of Clay on the annexation question. Before the treaty of annexation was defeated on June 8, 1844, their condemnation was reserved chiefly for Tyler, whose course was characterized as a plot. The *North American* said,

If impeachment will reach the presumptuous demagogue, who has dared, without consulting popular will, to place the country in a warlike attitude towards a neighboring Republic, with which we are or should be at peace, if impeachment will reach the author of this outrage, we trust the process may be instantly begun. What is this government coming to, if its accidental head may upon his own responsibility, order troops and vessels to be placed at the disposal of a foreign power, and for the purpose of sustaining a war with a third power, without the semblance of a rightful course![3]

The campaign in the state was not, however, to be fought on the question of the annexation of Texas, since the citizens of the state were more deeply concerned over the maintenance of the tariff rates established by the act of 1842.

The business depression of 1837, followed by the banking problems within the state, by the dispute on the proper method of liquidating the state debt and meeting the interest thereon, was largely spent when the Tariff Act of 1842 was passed. Following hard upon the passage of the act had

[1] June 4, 1844.

[2] *Niles' Register*, vol. lxvi, p. 416.

[3] May 17, 1844. Chancellor Kent of New York had "no doubt that the enormous abuses and stretch of power by President Tyler afford ample materials for the exercise of the power of impeachment, and an imperative duty in the House of Representatives to put it in practice." Letter of May 21, 1844, to H. J. Raymond; *North American*, May 29, 1844.

come a business revival, noticeable particularly in the iron industry. Old furnaces were again put into blast and new ones erected. The first successful anthracite furnace was constructed in 1840 in Lehigh county.[1] This was followed by the construction of other furnaces of the same type in the eastern part of the state, chiefly in Luzerne and Columbia counties, which were strongholds of the Democracy.[2]

The attitude of the citizens of the state, regardless of party affiliation, on the tariff question is clearly reflected in a letter of Hendrick B. Wright, who was later chosen permanent chairman of the national Democratic convention of 1844. From his home at Wilkes-Barre, under date of January 23, 1844, he wrote Buchanan that the only objection to Van Buren is that

> he is too ultra anti-tariff to suit the meridian of Penna. politicks. . . . There is, Sir, a revolution in Penna. on the question of protective & discriminating duties and the invasion of the doctrine on our old land marks of tariff for revenue—is signal—and our creed must be tempered to the times or we will find in the end our party in this State will be prostrated. It cannot be denied. And whether it be right or wrong—it is enough for us to know that such is the fact.[3]

Governor Porter, in his annual message of 1844, again

[1] Swank, *Progressive Pennsylvania,* p. 278. There had been constructed an anthracite furnace the year before at Pottsville; *United States Commercial and Statistical Register,* vol. i, pp. 335, 352.

[2] *Daily Chronicle,* May 14, 1844.

[3] Buchanan Mss. A state Democratic convention, favorable to R. M. Johnson, under the chairmanship of Simon Cameron had "Resolved, that the democratic party of Pennsylvania is in favor of a *Tariff*—that one of the cardinal principles of the democratic creed has been the protection of American industry, and that opposition to that principle of national policy will receive, as it merits, the unqualified condemnation of every Pennsylvania democrat." *Niles' Register,* vol. lxv, p. 371.

discussed the need of adequate protection to the industries of the state.

> If those entrusted with the guardianship of the public welfare, [are] but true to their trust, the day is not far distant, when Pennsylvania must become the great workshop of the American Union, for the production of coal and iron, and the fabrics constructed from these materials. If these great interests are surrendered to some imaginary, theoretic, Arcadian scheme of free trade, we may still continue to serve as hewers of wood and drawers of water to foreign capitalists and artizans, and our incalculable mineral deposites may lie useless for ages. I trust, however, the people of this Commonwealth will never be seduced into a sacrifice of their dearest rights.[1]

The legislature likewise reflected the same sentiment in favor of a protective tariff. By a vote of 81 to 0 in the house and 30 to 1 in the senate, a resolution, with the yeas and nays attached, instructed the United States Senators and requested the Representatives

> to oppose any change in the present tariff, which might prove injurious to the manufacturing and agricultural interests of this commonwealth, sternly to resist any reduction in the present duties on iron, coal and wool, and to omit no effort to sustain all the great interests of the Nation, calculated to foster and promote American industry.[2]

Practical unanimity existed in the state that the rates of the tariff of 1842 must be maintained.

Early in January, 1844, Congress made several attempts to alter the tariff rates. These attempts according to the *North American* were "strangled by a cord of which the

[1] *Pennsylvania Archives,* series iv, vol. vi, pp. 1012-1013. Porter both before and after his two terms was extensively interested in the iron industry, owning several furnaces.

[2] *Session Laws,* 1844, p. 601.

Whigs pull one end and Van Burenism the other." [1] The continuation of the movement for alteration of the rates led the "Executive Committee of the Clay Association of the City and County of Philadelphia" to call for March 25 a mass meeting, which declared that the tariff of 1842 was a Whig measure.[2] In the latter part of April, the national House of Representatives decided to go into the committee of the whole to take up the question of revising the tariff. Not a vote from Pennsylvania was cast in favor of the motion.[3] When in May a motion was adopted to table the tariff bill, the entire Pennsylvania delegation voted for the motion.[4]

No sooner had Polk been nominated by the Democrats than the Whigs in the state made the tariff the issue of the campaign. The alternative for the manufacturers, mechanics, and farmers of Pennsylvania, it was declared, was "Texas and No Tariff, or Tariff and No Texas." [5] Polk was immediately cautioned by Democratic leaders in the state to exercise great care in his utterances on the tariff.[6] Acting on this advice, Polk wrote his famous letter of June 19, 1844, to John K. Kane of Philadelphia. This letter received wide publicity during the campaign, particularly the statement that he was

in favor of a tariff for revenue, such a one as will yield a sufficient amount to the treasury to defray the expenses of the government, economically administered. In adjusting the

[1] January 6, 1844.

[2] *United States Gazette,* March 26, 1844.

[3] Analysis of vote, *ibid.,* April 24, 1844.

[4] Analysis of vote, *Niles' Register,* vol. lxvi, p. 177.

[5] *North American,* June 3, 1844.

[6] J. Miller to Polk, May 31; J. M. Porter to Polk, June 5, 1844; Polk Papers, Lib. of Cong.

details of a revenue tariff, I have heretofore sanctioned such moderate discriminating duties as would produce the amount of revenue needed, and at the same time afford reasonable incidental protection to our home industry. I am opposed to a tariff for protection merely, and not for revenue.[1]

This letter was relied upon by the Democrats to refute the Whig statements that Polk was a free trader and to prove that he was in favor of a stronger protective tariff than Clay. On August 8, 1844, Wilson McCandless, head of the Democratic electoral ticket, in order to stop defections from the Democratic ranks on account of the tariff issue, wrote a letter to a Clarion county mass meeting. In it he scored Clay for his vote on the Compromise Tariff Act, and contended that if Clay were elected, he would

carry out the principles of that bill, and afford you a horizontal duty, to enable you to contend with the pauper labor of Sweden and Russia. In doing so, he would give you and the *Tariff* the same *support* that the *rope* does the hanging man—instant death, and "without benefit of clergy." Support him if you can—for my own part, I shall go for POLK and DALLAS, who have at heart the true interests of Pennsylvania.[2]

In addition to these letters, which were used extensively, Buchanan was called upon to tour the northern counties of the state to refute the claim that the tariff of 1842 was a Whig measure.[3] In many parts of the state, the Democrats exhibited banners bearing the legend "Polk, Dallas, and the Tariff of 1842."[4]

[1] *Niles' Register,* vol. lxvi, p. 295.

[2] Republished in the *Pittsburgh Gazette,* March 23, 1850.

[3] Wm. B. Foster to Buchanan, July 18, 1844; Buchanan Mss.

[4] *United States Gazette,* May 14, 1845; *Pennsylvania Telegraph,* December 18, 1844; Sargent, *Public Men and Events,* vol. ii, pp. 236, 239.

The nomination of G. M. Dallas to be Polk's running mate caused some of the Democrats concern because of his unorthodox position on the bank question.[1] The Democratic national convention resolved "that Congress has no power to charter a National Bank." [2] *The Forum* of Philadelphia pointed out the variance existing between the course of Dallas in Congress and this resolution of the party.[3] When the campaign was under way, this issue was eagerly accepted by the Democrats, who were anxious to keep the tariff question in the background.[4] The real issue of the campaign, however, remained the tariff.

In the meantime, a third party movement was spreading in Philadelphia. On November 14, 1842, the Roman Catholic Bishop of Philadelphia requested the school board to allow the use of the Roman Catholic version of the Bible in the public schools to those of his parishioners, who were attending them. On January 10, 1843, the school board adopted a resolution allowing those conscientiously objecting to the reading from the Bible to be excused from joining in the opening devotional exercises.[5] Inasmuch as the majority of the Catholics in and about Philadelphia were Irish, the Catholic religion appeared to be a non-American belief. Encouraged by the success of the Native American party in New York city, supporters of the movement planned in 1843 for the organization of the party in Phila-

[1] J. W. Forney, June 11, 1844, to Buchanan, "His course on the U. S. Bank question is very questionable, to say the least, and in proper hands may operate vastly to our injury. Nothing can save him but the union and enthusiasm which now pervade the party." Buchanan Mss.

[2] Stanwood, *History of the Presidency*, vol. i, pp. 200, 215.

[3] Quoted in *Niles' Register*, vol. lxvi, p. 266.

[4] George Plitt to Buchanan, September 22, 1844; Buchanan Mss.

[5] Correspondence in *North American*, January 14, 1843.

delphia.[1] In the early part of December, the organization of the "American Republican Association of Second Ward, Spring Garden," was perfected.[2] This movement was so strong that in the municipal election in the following April this ward was carried by the new party. Organizations in other wards also made respectable showings. This year also a local officer was elected in Moyamensing by the Native Americans.[3]

These preliminary successes encouraged them to try for wider organization. On March 13, 1844, a large mass meeting was held in Independence Square.[4] The publication of several newspapers under Nativist support soon followed.[5] In order to complete their organization in Kensington, a mass meeting was held there on May 3, 1844, but this meeting was broken up by Irishmen of the neighborhood.[6] A call for another meeting for May 6 was made. The warning was, "Natives be punctual and resolve to sustain your rights as Americans, firmly but moderately."[7] The meeting led to rioting between the Natives and the Irish, which continuing for several days resulted in the destruction of several Catholic churches and other property

[1] The first Native American meeting in Philadelphia county had been held at Germantown as early as 1837; but this movement soon died. Scharf and Westcott, *History of Philadelphia,* vol. i, p. 663.

[2] *Native American,* May 25, 1844.

[3] *United States Gazette,* March 18, 1844.

[4] *North American,* March 14, 1844.

[5] *Native American, Daily Sun, American Advocate,* and *Native Eagle and Advocate* were all daily papers, sold for a penny to large numbers of workingmen.

[6] *Native American,* May 4, 1844. Kensington had been the scene of previous conflicts between the Irish and other members of the community. The first clash came in 1828, and another in 1843; Scharf and Westcott, *History of Piladelphia,* vol. i, pp. 623, 661.

[7] *Native American,* May 6, 1844.

and the loss of a number of lives. In the early part of July, rioting of several days' duration again occurred, but this time in Southwark. The animus of the rioters was directed against a Catholic church in which stored firearms were discovered.[1] The movement now became fully identified with anti-Catholicism, thus attracting support which it would not otherwise have secured.[2] The trials of the rioters, extending well into October, helped keep interest in Nativism alive. An organization in Philadelphia city and county was perfected; nominations for Congress, for the state legislature, and for county and city officers were made. It was deemed inexpedient to attempt the organization of the state this year for the election of governor and canal commissioner.[3]

Outside of Philadelphia, the only other county in the state in which the Native Americans perfected an organiza-

[1] An excellent account of the riots is given in Scharf and Westcott, *op. cit.*, vol. i, pp. 664, *et seq.; cf.* also *Public Ledger, Daily Chronicle, Spirit of the Times, North American, Native American, Daily Sun,* May 7-13, July 6-10, 1844. The various newspapers show their party affiliation as follows: the Native press exonerated their followers from all blame; the Democratic papers condemned the Natives for causing the riots; the Whig sheets attempted to distribute the onus for the disturbances but placed the greater portion of it on the Irish. After the Southwork riots, a large number of citizens, regardless of party affiliation, signed an address to the governor pledging their support to him in an endeavor to check all future disturbances; *Public Ledger,* July 12, 1844.

[2] "It will be seen that such a contest involves an issue purely *ROMAN CATHOLIC* on one side and *AMERICAN* on the other. . . . . There is no other question before the people. Let us decide it then, as becomes the descendants of George Washington," declared the *Daily Sun,* September 30, 1844.

[3] *Native American,* August 5, 16, 1844. The official title of the party was "The Native American Republican Party." The *American Advocate,* August 11, 1844, urged that the "half and half" principle be adopted in naming candidates from the old parties in order to attract voters from them.

tion, made nominations, and polled a respectable vote was Lancaster.[1] In this county, Anti-Masonry had been particularly strong because of its appeal to the numerous religious sectarians. Even after the abandoning of the state organization, Anti-Masonry had continued in this county. A new political movement with a religious appeal attracted some Anti-Masons who had not identified themselves with the "Anti-Masonic and Whig" party.[2] Little was accomplished in Allegheny county where an endeavor was also made to form a Native American party out of the unabsorbed Anti-Masons.[3] In the western portion of the state this element joined the newly formed Liberty party, which ran congressional candidates in the western districts.[4]

Although the Native Americans had no candidate of their own for governor, yet they did not fail to make themselves felt in the election. The Democratic candidate had written a letter, in which he intimated that he favored the

[1] *Native American,* June 10, July 18; *Daily Sun,* July 13, 1844. The Native vote polled in Lancaster county was 2,500 out of a total of more than 14,500; *North American,* October 28, 1844.

[2] The leaders in the movement in Lancaster county were E. C. Reigart, who in 1843 questioned Clay on his views on Masonry, and George Ford, one of the committee which called the "Democratic Harrison Convention" of 1844. Other Anti-Masons, Thomas H. Burrowes and his brothers, Samuel Parke, ex-member of the legislature, and John C. Van Camp, chairman of the county committee in 1840, joined the Democrats. Thaddeus Stevens for a time deliberated over the course he would pursue; the Anti-Masonic party had disappeared, the Democrats were impossible, the Natives at best problematical, and the newly formed Liberty party was considered temporarily too extreme, so he held aloof until September when he came out openly for Clay.

[3] *Native American,* August 10, 1844.

[4] No candidate was run in the 18th congressional district, composed of Fayette, Greene, and Somerset counties. Candidates were run in Philadelphia and Chester counties, where many Quakers lived, but the vote polled was not large. *Public Ledger,* September 26, October 2, 1844.

exclusion of the reading of the Bible from the public schools. His participation in the dedication of the Roman Catholic cathedral at Pittsburgh was also construed to his disadvantage. This agitation on the religious question was quickly adopted by the Whigs.[1]

The excitement displayed in this election, according to the *Public Ledger,* exceeded that in the election of 1840, when the Democrats had not been so active as the Whigs.[2] It was particularly evident in Philadelphia, where the October elections were based primarily on the Native American movement, but did not extend to other portions of the state. An address of the Whig state central committee declared that if the Democrats are successful,

> the odious sub-Treasury scheme, dividing the offices from the people—taking care of one and letting the others take care of themselves, will be revived. The war is to be renewed against the currency—against commerce—against a protective tariff—against the distribution amongst the States of the proceeds of the public lands—against commercial credit—against manufactories, etc. In Pennsylvania no favorable change is proposed.

The Whigs proposed to better the financial condition of the state: 1. by the sale of the public works on advantageous terms, thereby lowering the indebtedness of the state; 2. by a change of men and measures, thereby stopping the cry of bribery and corruption; 3. by the distribution of the money from the sale of the public lands; 4. by retaining the present tariff, which was giving protection to home industries; 5. by fewer changes in legislation affecting commerce; 6. by

[1] *Pittsburgh Daily Morning Post,* October 1; *American Advocate,* October 5; *North American,* September 20, 25, October 5, 1844.

[2] September 2, 1844.

an equitable mode of taxation.[1] These were the points which the Whigs stressed during the campaign.

The elections on October 8 demonstrated that the state was controlled by the Democrats and that the Natives had developed unexpected strength in Philadelphia county. Shunk defeated Markle, the Whig candidate for governor, by a majority of four thousand votes.[2] Of the twenty-four Congressmen from the state, twelve were returned by the Democrats, ten by the Whigs, and two by the Natives. Encroachment on the Democratic majority in the state legislature came through the Natives, who secured one senator and seven representatives at the expense of the Democrats, and one representative at the expense of the Whigs.[3] The vote for Congressmen in Philadelphia city and county was much greater than in 1843, with the returns indicating that the Native American party was built up largely from Whig material.[4] The *Spirit of the Times,* the leading Democratic paper in Philadelphia, asserted that more than two-thirds of the new party consisted of Whigs, and that it was nothing but the Whig party in disguise.[5] Some of the Whig papers openly gloried in the triumph of the Native Americans.[6]

[1] Printed in the *United States Gazette,* July 17, 1844.

[2] *Smull's Legislative Hand-Book,* 1919, p. 720; Francis R. Shunk (Dem.) 160,322; Joseph Markle (Whig) 156,040; F. J. Lamoyne (Liberty) 2,566. The fact that Markle was a "fast friend of Stevens" lost him votes from the Clay men; Hood, "Thaddeus Stevens" in Harris, *Biographical History of Lancaster County.*

[3] *North American,* October 28, 1844. Lewis C. Levin and John H. Campbell were returned respectively from the first and third congressional districts. The total vote polled by the Natives in the congressional districts is given as 19,192. For a characterization of Levin *cf.* McClure, *Old Time Notes,* vol. i, p. 89.

[4] *Public Ledger,* October 10, 11, 12, 1844.

[5] October 10, 1844.

[6] On November 11, 1844, the *North American* openly endorsed the

The Whigs were not greatly discouraged by the defeat of their gubernatorial candidate and entered the presidential campaign with zeal. They pointed out the fact that the majority which Shunk received was less than that received by Porter in 1841. In 1840 the adverse total against the Whigs in the congressional districts had been 11,000, yet they had carried the state for Harrison. These comparisons, unfavorable to the Democrats, were declared to be an "omen for November."[1] It was also stated that Markle did not develop the anticipated strength because he came from a strong opposition county and had been little heard of previously. The tariff, it was asserted, had not been the issue for it had not been shown that Shunk was opposed to the protective principle. Concerning the hostility of Polk to a protective tariff, however, there could be no doubt; consequently, the Whigs would carry the state.[2] Assuming the aggressive on the tariff dispute, the Whigs charged that large sums of gold were being raised in England, particularly in Manchester, to spread the doctrine of free trade in the United States.[3] The Democrats were accused of having called the tariff of 1842 "the Black Tariff," until they discovered that the object of their attack was held in high favor in Pennsylvania.[4] Indeed, the most difficult thing to believe was declared to be the report that some banners, flown in the interior of the state, bore the words "Polk, Dallas and the Tariff of 1842."[5]

Native American cause. After the lapse of several months it again supported the Whig party. The *Harrisburg Telegraph* advised "politicians who are looking to their own advancement to be cautious how they make themselves obnoxious to this growing party." Quoted in *Native American*, October 12, 1844.

[1] *North American*, October 14, 1844.

[2] *United States Gazette*, October 16, 1844.

[3] *Daily Forum*, October 9, 1844.

[4] *North American*, October 17, 1844.

[5] *Ibid.*, October 26, 1844.

The Democrats did not shrink now from the tariff as the campaign issue. They continued to use the letter from Polk to Kane contrasting, with telling effect, its statements with the utterances of Clay. The letter of McCandless to the Clarion county meeting was chiefly relied on in the western portion of the state. Since the contest would be close, efforts were made to capture the vote of abolitionists in the state. An alleged statement by Clay that he would not sign a bill abolishing slavery in the District of Columbia was used by the Democrats for this purpose. A letter from James G. Birney, the Liberty candidate, saying he preferred Polk to Clay was given due publicity.[1] This was soon followed by another letter, later proven to be a forgery, in which Birney stated that he had always been a Democrat.[2] The Catholics were held to the Democracy by a quotation from the *Tennessee Whig*, an authoritative Clay organ, to the effect that "There can be no peace until the Catholics are exterminated from this country." [3] Attacks on Frelinghuysen because of his prominent position in the Bible Society were frequently made.

The vote polled in the November election was much larger than the vote cast in October; both parties shared in the increase, but the Democrats retained their majority.[4] The Whigs carried Philadelphia county, normally a Democratic stronghold, through the addition of the Native American vote.[5] The only other county in which a change of political

[1] *Spirit of the Times*, October 16, 1844.

[2] *North American*, October 31, 1844.

[3] *Spirit of the Times*, October 26, 1844.

[4] *Smull's Legislative Hand-Book*, 1919, p. 715; James K. Polk (Dem.) 167,447; Henry Clay (Whig) 161,125; James G. Birney (Liberty) 3,100.

[5] Some felt that the Native Americans cost Clay the election. *Louisville Journal*, quoted in *Public Ledger*, October 20, 1845, "But for the

alignment took place was Mercer, which was carried by the Democrats because of the large number of votes cast for the Liberty party. The deciding issue in the campaign, however, had been the tariff. Governor Porter in his last annual message in 1845 put it:

I hazard nothing in asserting that neither of the presidential candidates could have hoped, for a moment, to get a majority of the votes in this state, had not his claims been based upon the assurance that he was friendly to the continuance of the present tariff laws, substantially as they stand.[1]

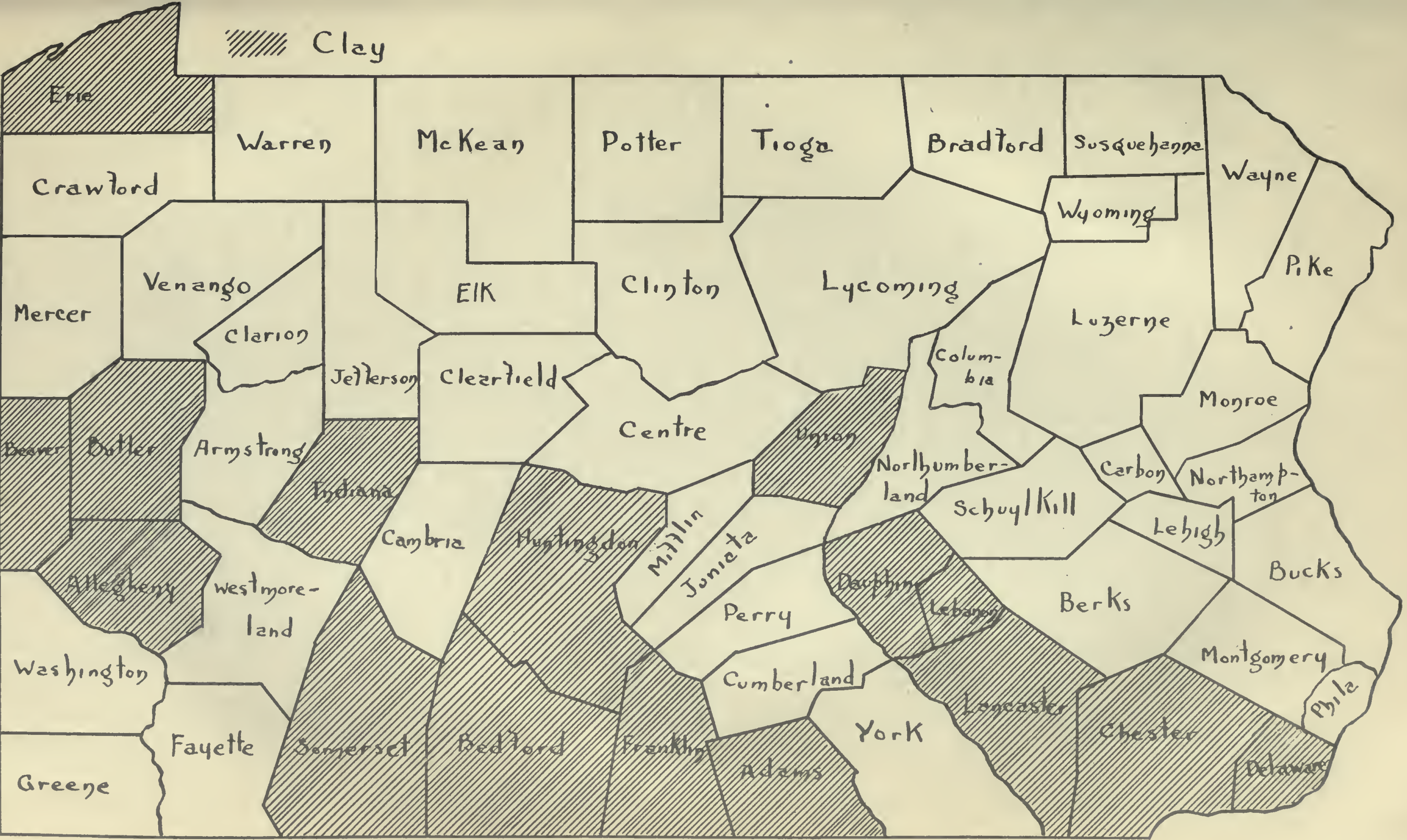
The Whigs had not proven to the electorate that Polk was opposed to the tariff of 1842.

On December 9, 1844, the "Committee on Organization of the Clay Club" issued an address on the recent elections. They charged that in the Whig counties the increase over 1840 was normal, but that in some of the Democratic counties, chiefly in the northern tier, there was an abnormal Democratic but only a normal Whig increase.

Is it by *accident* that the illegitimate increase in the vote of the State is ALL IN THE LOCOFOCO COUNTIES, and ALL ON THE LOCOFOCO SIDE? Is it by *accident* that the increase in the *Whig vote is the exact ratio of the increase of the population,* and that the *Locofoco vote* EXCEEDS THAT RATIO BY ALMOST TEN THOUSAND? Is it by *accident* that the Locofoco gain in the *Whig* counties is met by a corresponding loss in the Whig *vote,* and that a *Whig* gain in the *Locofoco* counties is answered by a STILL LARGER GAIN FOR THE LOCOFOCOS?

Native American movement, the Whigs would have been victorious in the Presidential elections of last fall." *Cf.* Barnes, *Memoir of Thurlow Weed,* p. 134; Colton, *Private Correspondence of Henry Clay,* pp. 495, 497.

[1] *Pennsylvania Archives,* series iv, vol. vi, p. 1072.


Clay
Erie
Warren
McKean
Potter
Tioga
Bradford
Susquehanna
Wayne
Crawford
Wyoming
Pike
Mercer
Venango
Clarion
Elk
Clinton
Lycoming
Luzerne
Columbia
Monroe
Jefferson
Clearfield
Centre
Union
Beaver
Butler
Armstrong
Indiana
Northumberland
Carbon
Northampton
Schuylkill
Lehigh
Cambria
Huntingdon
Mifflin
Juniata
Allegheny
Westmoreland
Dauphin
Lebanon
Berks
Bucks
Perry
Montgomery
Washington
Cumberland
Phila
Lancaster
Fayette
Somerset
Bedford
Franklin
York
Chester
Adams
Delaware
Greene

In Pike county, it was claimed, more votes were cast in 1844 than there had been male inhabitants of twenty-one years and over in 1840. The committee asserted that at least 10,000 illegal votes had been cast in the state. Clay was declared to have been elected President and Markle governor. The committee, however, departed from the precedent established in 1838 in not urging a course of action to secure the offices which they claimed.[1]

It is not difficult to account for the failure of Clay to carry the state. His personality, in the first place, did not appeal strongly to the rural voters, a thing which was necessary if the normal Democratic majority in the state was to be overcome. Furthermore, in the past he had been Jackson's opponent, and the name of Jackson was still one to conjure with in the commonwealth. In the Whig party itself, a large element, composed of former Anti-Masons, distrusted Clay. This element had controlled the opposition to the Democracy in 1836 and nominated Harrison as the candidate of the state. It had been particularly influential in 1839 in blocking the nomination of Clay by the Whig national convention. This element had, in large measure, opposed Masonry on religious grounds, and for the same reason it could well find cause for complaint in Clay's duelling and gambling. Politically organized, there was no such thing as Anti-Masonry, but the sentiment for the old principles still prevailed. The position of Clay on the tariff was not proven to be essentially different from that of Polk. In addition, the cooperation of the Whigs and Native Americans tended to repel whatever Catholic support the Whigs had previously had. Furthermore, Frelinghuysen, the Whig candidate for the vice-presidency, was especially distasteful to the Catholic voter. Due to this

[1] *Pennsylvania Telegraph*, December 18, 1844.

combination of circumstances, the Democrats, by a small majority, secured the electoral vote of the state.[1]

When the state legislature met in January, 1845, the senate contained twenty-one Democrats, eleven Whigs, and one Native, and the house consisted of fifty-two Democrats, forty Whigs, and eight Natives. On joint ballot the Democrats had seventy-three of the one hundred and thirty-three votes.[2] On January 14 the legislature reelected Daniel Sturgeon to the United States Senate. Each of the three parties strictly supported its caucus nominee, but some indication of Democratic disaffection was manifested, for of the seventy-one votes cast in the caucus Sturgeon received only forty-two.[3]

When the electoral college met in December to cast the vote of the state for Polk, all save one of its members united in an address to the President-elect recommending James Buchanan for Secretary of State.[4] To give added weight to their proceeding, no further solicitations for office were allowed, in the hope that if their recommendation were adopted, other offices would be more easily secured.[5] In due course of time, the secretaryship was offered to and accepted by Buchanan.[6] Buchanan, however, served during the balance

[1] B. W. Richards, November 18, 1844, to John McLean, Richard Peters, December 6, 1844, to McLean, McLean Papers, Lib. of Cong.; Wm. D. Lewis, November 30, 1844, to Henry Clay, Colton, *Private Correspondence of Henry Clay*, p. 511.

[2] *North American*, January 3, 1845.

[3] *Public Ledger*, January 13, 14, 15, 1845.

[4] Letter of the electors to Polk, December 5, 1844; Polk Papers, Lib. of Cong.

[5] Letters of J. W. Forney, E. W. Hutter, Henry Walsh, December 4, J. M. G. Lescure, December 5, 1844, to Buchanan, Buchanan Mss. These men though not members of the electoral college engineered the affair, cooperating with Dr. Geo. F. Lehman who was a member.

[6] Moore, *The Works of James Buchanan*, vol. vi, pp. 110, *et seq.*

of the Twenty-eighth Congress as United States Senator. On March, 5, 1845, he tendered his resignation to the governor, who on the eighth forwarded it to the legislature.[1] To fill the vacancy the senate made thirty nominations and the house fifty. The correspondent of the *Public Ledger* thought that the contest lay between C. J. Ingersoll and Simon Cameron.[2] It was evident that the election would be based on the tariff. On March 12, the Democrats held a caucus which only forty-eight of the seventy-three members attended. On the sixth ballot G. W. Woodward received twenty-five votes and was declared to be the nominee of the caucus. No votes at the caucus were cast for Cameron.[3]

In the meantime, the Whigs were pursuing a policy which had been urged upon them for filling the full-term senatorship. They were planning to throw their votes to a Democrat, who would pledge himself to support the Tariff Act of 1842 and who had enough Democratic votes to enable him to secure the election with Whig and Native American assistance. On March 12 eleven Whigs addressed a letter to Cameron, in which they pointed out the fact that although they were of the minority party yet they might be able, by proper combination with some Democrats, to elect the Senator. They, therefore, asked him the following questions:

Are you in favor of the tariff of 1842; and if elected to the United States senate, will you sustain it without change?

Are you in favor of the distribution of the proceeds of the sales of the public lands; and if elected will you support this measure?

To both of these questions Cameron on the same day re-

[1] *Public Ledger*, March 10, 1845.

[2] *Ibid.*, March 12, 13, 1845.

[3] *Ibid.*, March 14, 1845.

plied in the affirmative.[1] This occurred before the Democrats held their caucus and accounts for the absence of the Cameron supporters.

The following day Cameron was elected on the sixth ballot. The Whigs and Native Americans did not vote for Cameron on the first five ballots, insisting that his strength be revealed. On the final ballot the vote was for Cameron sixty-seven, Woodward fifty-five, and scattering six. The vote for Cameron came from forty-four Whigs, sixteen Democrats, seven from the senate and nine from the house, and from seven Natives. On the decisive ballot three Whigs and one Native did not vote.[2] The Whigs claimed that the pledges which had been secured from Cameron made the election their triumph. The policy of Woodward was declared to be favorable to "Free Trade, anti-Distribution, and opposed to any change of the laws which now virtually surrender our government to the mercy of foreign pauper immigrants, although at one time he had previously denounced the present system."[3] A leading Democratic paper declared that the defeat of Woodward was due to his hostility to a protective tariff.[4]

On March 14 the Woodward supporters in the legislature appointed a committee to prepare an address, which

[1] *Niles' Register*, vol. lxviii, pp. 262, *et seq.*, for the letters.

[2] *House Journal*, 1845, vol. ii, pp. 529, *et seq.* For a fantastic account of how religious prejudices were appealed to in order to secure votes for Cameron, *cf.* McClure, *Old Time Notes*, vol. i, p. 98. Cameron had evidently been laying his plans long ahead, for in a postscript to a letter of February 8, 1845, to Buchanan, he said, "I will tell you one of these days *in confidence* who will succeed you in the Senate." Buchanan Mss. Savidge, *Life of Benjamin Harris Brewster*, p. 71, gives an account of the disgust of Buchanan when he was told by Cameron that he intended to succeed him.

[3] *North American*, March 17, 1845.

[4] *Spirit of the Times*, July 16, 1846.

stated how Cameron violated party custom in securing his election. Furthermore, the suspicion of bribery was not absent; for, the activity of Cameron inevitably suggested corruption, just as the mention of corruption inevitably suggested Cameron. At an adjourned meeting on April 12, letters from Dallas and from Buchanan on the election of Cameron were read. After protracted debate on the address the meeting adjourned without taking any definite action. Due to the impending close of the legislature, no further meetings were held. Nevertheless, the officers of these meetings presented an address to the public, in which they condemned Cameron and his supporters, declaring that his election was a Whig victory. The letters of Dallas and Buchanan were also published. Dallas censured those who refused to support the caucus nominee, but he did not pass judgment on Cameron because he was elected a member of the body over which Dallas was to preside. Buchanan, between whom and Woodward an estrangement had been developing, hoped that a remedy might be found to prevent the occurrence of a similar election in the future. He, however, declined to join in the criticism of Cameron, whose election was an act of the state government, while he was now associated with the federal government.[1]

During the last session of the Twenty-eighth Congress attention was again directed to the question of the annexation of Texas. The plan to secure this by joint resolution was declared to be the abnegation of all the forms of the Constitution. The contemplated creation of five or six slave states from this region was regarded "as the perpetuity of the slave power of the South over the free institutions of the North." The Native Americans, in particular, it was urged, should oppose the making of thousands

[1] Procedure, address and letters in *Niles' Register*, vol. lxviii, p. 136.

of foreigners citizens by the stroke of the pen.[1] One Whig editor declared, "If the free States permit this stupendous fraud, they will discover, when too late, that they have forged fetters for themselves, and sacrificed the interests of northern industry to the *ignis fatuus* of free trade."[2] After the passage of the resolution, the *North American* declared that the bond of silence on slavery was now broken. "Put down by force, we shall not be expected to keep quiet from courtesy."[3] After stressing the illegality of the method pursued in securing annexation, the *Miners' Journal* continued,

There is no disguising it, the scheme of annexation originated in avarice and lust of dominion of power, and has been accomplished in direct contempt and violation of the Constitution, in disregard of the just claims of Mexico, and in utter disrespect of the wills and wishes of two-thirds of the people in half of the States. We have not only done a wrong to Mexico, by playing the part of a highway robber, towards her, but have encroached upon the common rights of the great Commonwealth of Nations.[4]

The Whigs of the state viewed the annexation with misgiving as they feared that the tariff might suffer as a result.

The Natives, who in 1844 had succeeded in organizing only for elections in a few counties, prepared for a wider extension of their movement. On February 22, 1845, a

[1] *North American*, January 28, 1845.

[2] *United States Gazette*, February 3, 1845.

[3] *North American*, March 3, 1845; analysis of the vote, *ibid.*, March 6, 1845.

[4] March 8, 1845. The *Public Ledger* (Ind.) viewed the whole affair with pleasure. Its circulation was by far the greatest of any paper in the state, and the workingmen were its chief readers. On October 1, 1845, its leading editorial was headed, "The Continent, the Whole Continent, and Nothing but the Continent."

state convention of Native Americans assembled at Harrisburg. Seventy-four delegates, who came from Philadelphia and twelve other counties, were in attendance, but nine of the counties were represented by only one or two delegates. The convention passed resolutions demanding a probationary period of twenty-one years for all foreigners before admitting them to citizenship, and condemned religious creeds which favored a union of church and state.[1] On August 7 a nominating convention assembled at Harrisburg and placed Robert H. Morton before the public as the candidate for canal commissioner.[2]

The Democrats nominated their candidate for canal commissioner in a regular convention. The Whigs, however, were in a great state of disorder, with strong indications that the organization might be discontinued, particularly in Philadelphia where the Native Americans had made such inroads on their party. They held no nominating convention this year, and it was not until the middle of September that the Whig state central committee of the year before selected Captain Samuel D. Karns as the candidate.[3] This action met with the approval of the Whigs. A fourth candidate for this office was furnished by the Liberty party.

There was no issue raised for the campaign, although the *Spirit of the Times,* a Democratic paper, declared that the election was based on the question of the disorders of the year before.[4] As a result of the election the Natives did not return a member to the legislature, thereby losing their

[1] *Public Ledger,* February 24, 26, 28, 1845.

[2] *North American,* August 9, 1845.

[3] *United States Gazette,* March 5, 19, April 23; *ibid.,* September 19, 1845, for the address of the committee on September 15.

[4] October 14, 1845.

eight men in the house. The next legislature would contain in the senate eighteen Democrats, fourteen Whigs, and one Native, and in the house sixty-seven Democrats and thirty-three Whigs.[1] The Natives charged that the Whigs had supported the successful Democratic ticket in Philadelphia city and county in return for the clerkships.[2] The Democratic candidate for canal commissioner received 4,500 more votes than his opponents.[3] This election in an off year clearly indicates the strength of the Democratic control of the state.

With the approach of the opening of Congress, the Democracy of the state feared that the national party might attempt to alter the tariff rates. Immediately, it took steps to prevent this alteration. The *Morning Ariel*, a Democratic paper of Philadelphia, said, " If such an attempt is made, we shall oppose it." [4] The movement to indicate in unmistakable terms the attitude of the state culminated in a call, by the Democratic leaders, for a state tariff convention.[5] The Whigs in general favored the convention, but some urged the Whigs not to attend the convention since " A locofoco convention will exert tenfold more influence on our locofoco president and his cabinet than a mixed convention." [6] On November 12 the convention assembled at Hollidaysburg with ex-Governor Porter in the chair.

[1] *North American*, October 28, 1845.

[2] *Daily Sun*, October 16, 1845.

[3] *North American*, October 31, 1845, gives the official returns as follows: Burns (Dem.) 119,510; Karns (Whig) 89,118; Morton (Nat. Am.) 22,434; Latimer (Liberty) 2,851.

[4] September 6, 1845.

[5] *Daily Commercial Journal*, October 21, 1845, for the preliminary meeting.

[6] *Pittsburgh Gazette*, October 23, 1845, quoted in *Niles' Register*, vol. lxix, p. 142.

The resolutions favored the tariff of 1842 because it was a revenue tariff.[1] The Whigs, however, were not satisfied with the resolutions. R. M. Riddle, one of the secretaries of the convention, wrote that the Democrats attempted to reconcile their wishes with the policy of the administration. Furthermore, "the Democrats were so strongly in the majority, that even moves to amend grammatical blunders were swept down—and the party lines inflexibly drawn, even against the crossing of a *t* or the dotting of an *i*." [2]

At the national capital the President was preparing his first message to Congress. As early as September 29, 1845, Buchanan had informed Polk that he could not control the Pennsylvania Democrats if Polk intended to ask for alterations in the tariff of 1842.[3] When on November 11 Secretary of the Treasury Walker read to the cabinet his report to Congress, Buchanan opposed his recommendation for the elimination of specific duties and for the substitution of *ad valorem* duties.[4] Nevertheless, the President embodied this recommendation of Walker in his message.[5] One of the Whig editors characterized the message as "a middling affair, ... excellent in nothing but its piety, and interesting only for the position of its author." [6] The *North American* in reiterating the Whig position said,

A tariff of revenue, a tariff of protection, a tariff with incidental protection, and a dozen other titles, have been mouthed so often by political orators, that most men shrink from the task of splitting the hairs which divide them. The real ques-

[1] Resolutions quoted in *Niles' Register*, vol. lxix, p. 181.

[2] *Daily Commercial Journal*, November 16, 1845.

[3] *Polk's Diary*, vol. i, p. 46.

[4] *Ibid.*, vol. i, p. 94.

[5] Richardson, *Messages and Papers of the Presidents*, vol. iv, p. 406.

[6] *Daily Commercial Journal*, December 8, 1845.

tion is—shall our domestic manufactures be protected by our revenue laws, or not? It is of little importance by what title the protection is given.[1]

The efforts made to impress Congress with the attitude of the state on the tariff question were continued. The legislature adopted resolutions instructing the Senators and requesting the Representatives to oppose all "attempts to alter or modify" the existing tariff act.[2] On the passage of these resolutions the Whigs refused to vote because there had been added clauses against a national bank, against the distribution of the proceeds from the sale of the public lands, and for the separation of the government from all banking institutions.[3] The fact that the legislature had adopted these resolutions with practically no opposition led one of the leading Democratic papers to exclaim that "in Pennsylvania the tariff has never been a party question."[4] Efforts to make the hostility of the state to tariff alteration impressive continued. The Pennsylvania Representatives at Washington, under the leadership of the Whigs, organized an exhibition of American manufactures "to be compared with the *British* manufactures sent from *Manchester*, and now being exhibited in the room of the 'committee on post office and postroads,' to influence the action of Congress in relation to the proposed modification of the tariff."[5]

[1] December 8, 1845.

[2] *Session Laws*, 1846, p. 511.

[3] *House Journal*, 1846, vol i, pp. 183, 227, 274, 520, 671; *Senate Journal*, 1846, vol. i, pp. 58, 186, 780. The questions involved in the second part of the resolutions did not come before Congress; consequently, there was no clash between Cameron's election pledge and the instructions of the legislature.

[4] *Democratic Union*, quoted in *Niles' Register*, vol. lxix, p. 336. The senate had just unanimously passed the tariff portion of the resolutions.

[5] Address of March 24, 1846, in *Niles' Register*, vol. lxx, p. 51.

The efforts of Pennsylvania to stay the passage of the tariff bill were of no avail, for on July 3, 1846, it was adopted by the House. The *North American* gave an analysis of the vote and said,

Sir Robert Walker's Free Trade Bill for reducing the revenue and destroying the industrial pursuits of our country passed the House of Representatives, by the aid of 113 Democratic and 1 Whig vote. It was resisted by 71 Whigs, 18 Democrats, and 6 Native Americans, in all 95. Either New York or Ohio could have saved the bill, but Party triumphed over Country. But 4 Democratic votes from New York were obtained, and none from Ohio, after all its blustering against the bill.[1]

That the bill was a Democratic measure was clearly shown by the vote. The Whigs maintained that the Democratic Representatives from Pennsylvania had been forced to follow their lead in opposing the bill.[2]

[1] July 7, 1846.

[2] *Daily Commercial Journal*, July 10, 1846. Of the twelve Democratic Representatives from Pennsylvania, David Wilmot alone voted for the bill. On December 2, 1845, Wilmot had endorsed the views of Polk, which were to be embodied in the message; *Polk's Diary*, vol. i, p. 110. Wilmot had been elected as a free-trade candidate from a district in the northern tier of counties. In defending his course, the leading Democratic paper of the district proposed "the Divorce of Pennsylvania from Massachusetts;" *Bradford Reporter*, August 26, 1846. It also claimed that "the 'cotton lords' have waxed rich upon the industry of the land; capital has accumulated capital, and bloated wealth has added to its riches. But we ask the Farmers of Bradford, has it added to your purse or your provisions?" *ibid.*, July 15, 1846. When Wilmot discovered the hostility of the other Democrats from Pennsylvania to alterations in the tariff schedules, he wrote John Laporte on December 15, 1845, "I learn by letter that Miller speaks unfavourably of the President's views upon the subject of the Tariff. This if so is disgraceful. I have no charity for those who knowing the right will not or dare not pursue it. If I am to stand entirely alone on that question, receiving no countenance or support or encouragement from any quarter, I shall look out sharply for myself." Ms. letter in the Society Collection, Hist. Soc. of Penna.

The fact that the bill had passed the House did not deter the Democrats of the state from declaring that it would be defeated in the Senate. They urged the people of the state to continue voicing their opposition to altering the law.[1] When it became evident that there might be a tie-vote in the Senate, necessitating a decision by the Vice-President, they assured the citizens of the state that the bill would be defeated. Defeat of the bill depended then on the capacity in which the Vice-President voted. It was argued that according to the Constitution he would vote as a Senator; consequently he would be bound to vote with Pennsylvania, from which state he came. If the Senate were equally divided, they argued, he could not urge that a majority was against Pennsylvania, which had spoken unanimously in adopting resolutions against the proposed bill. If the Vice-President voted for the bill, he would nullify one of the votes of Pennsylvania in the Senate and give her "a bill that will do her more harm than a short war with Great Britain. For the bill of Mr. McKay makes a long and blasting war upon the *workingmen* of our country." If the Vice-President did not vote as a Senator, he would vote as the "Representative of the People." The bill would then become law "*without* the vote of the Senate, but merely upon the *Representative* vote of Mr. Dallas, if he does not *vote as a Senator.*"[2] Other Democratic papers were not so certain that the interests of the state were secure merely because one of the citizens of the state chanced to be Vice-President.[3]

[1] *American Sentinel,* July 13, 1846; for summaries of the action taken by mass meetings in the state, *cf. Niles' Register,* vol. lxx, p. 309.

[2] *American Sentinel,* July 15, 1846.

[3] *Spirit of the Times,* July 22, 1846. In its issue of July 21 it warned the South of a rebellion at the ballot box if the bill passed. "There

The Whig Senators, much to his embarrassment, forced the Vice-President to cast a ballot for the engrossing of the bill, whereby he saved the measure from defeat.[1] The attack on Dallas by the majority of the Democratic papers of the state for his vote was terrific. One of his former supporters said,

Should Mr. Dallas live to the age of Mathuzalah, he will never be able to make ample atonement for his severe onslaught upon the home industry of Pennsylvania. Farewell to all vice-presidents for the future from Pennsylvania.—We have had enough of one to last us, while all who live now shall continue to breathe the breath of existence in our land.[2]

Another Democratic journal cried aloud, "The Old Keystone has been blasted by the ingrate hand of a treacherous son!" It shouted "*REPEAL* is the word! Take it up Democrats! echo it iron men! echo it miners and laborers; shout it mechanics! There shall be no rest, no reposing until the British Tariff Bill is repealed!" [3] Buchanan in two

are times when wrongs make rebellions sacred; there are occasions when submission is dishonorable. Think not because we have borne long and patiently we will bear the ass' load forever."

[1] For the method in which this was accomplished, although their other plans failed, *cf. The Writings and Speeches of Daniel Webster,* vol. xvi, p. 459. For Dallas' defense see his letter in the *Pennsylvanian,* August 5, 1846.

[2] *American Sentinel,* July 29, 1846. Hostility to Dallas was intense. He was burned in effigy in Philadelphia and elsewhere; *Pennsylvanian,* July 31; *United States Gazette,* August 7, 1846.

[3] *Spirit of the Times,* July 29, 30, 1846. Dallas of course had his supporters. A list of voters, in the *Pennsylvanian,* August 5, 1846, who congratulated him upon his vote, contains the name of Wm. D. Kelley, later because of his extreme views in favor of protection known as "Pig Iron" Kelley. At this time Kelley was a free-trader; Kelley, *Speeches, Addresses and Letters on Industrial and Financial Questions,* p. vi.

letters to John W. Forney, who had recently acquired the *Pennsylvanian,* indicating a plan to offset the disastrous effect of the passage of the act on the Democracy of the state, declared, "Repeal is not the word, but modification. A protective Tariff is not the word; but a revenue Tariff with sufficient discriminations to maintain our home industry."[1] The cry of "repeal" was, however, eagerly caught up and was written into the resolutions of Democratic mass meetings in all parts of the state.[2]

The Whigs did not, as did the Democrats, attribute the odium for the passage of the bill to the Vice-President. They criticized their political opponents, particularly those from the South, for the passage of the act. One editor complained,

The South enters into a political contest with the feelings engendered at the race course, and having wagered upon a chance, urges it to the uttermost, careless of consequences. The repeal of the Tariff may ruin the country, but what matter, if the gamesters of the South, who now stake negroes, and anon wager the rights of a people, win the game? The South itself will suffer from the derangement of our policy —but it will win the race. That the triumph is appreciated is manifest from the epileptic glee of the *Union.*[3]

The fact that many Democratic banners in the state had proclaimed for the tariff of 1842 was bitterly recalled.[4] The Whigs declared that all attempts to secure a com-

[1] Moore, *The Works of James Buchanan,* vol. vii, pp. 43, 46. This suggestion was followed by Forney, and adopted gradually by other Democratic editors; *Pennsylvanian,* August 4, 5, 8, 10, 1846.

[2] Some of the resolutions in the *North American,* August 21; *United States Gazette,* September 2, 1846; *Niles' Register,* vol. lxx, p. 405.

[3] *North American,* July 11, 1846.

[4] *Ibid.,* July 14, 15; *United States Gazette,* July 9, 30, 1846.

promise tariff should be rejected, as this plan involved a surrender of principle.[1] It was declared that the new tariff would bear most heavily on the small capitalist, who would soon be forced to abandon his business.[2] The act was characterized as being thoroughly British and as being of especial benefit to the Duke of York in the operation of his large coal mines in Nova Scotia, since the products of these mines could now be sold in New England to the exclusion of anthracite coal from the Pennsylvania mines unless the wages paid the miners were reduced.[3] In fact, it was noted that miners were leaving Pennsylvania, bound for the coal fields of Nova Scotia.[4]

In the act the Whigs saw the triumph of the South, and in the triumph of the South they saw the victory of slave over free labor. The *Daily Commercial Journal* asserted,

> The perpetuity of the slave institution depends upon its success in overthrowing and destroying free labor. With this view was the Tariff of 1846 framed, and no act was ever better fitted to accomplish its aim. From one end to the other, it is a bill, not alone to protect slave capital, but to war upon free labor.

If the act of 1842 was unconstitutional, as the people of the South claimed, because of its protective features, so was the act of 1846; "both acts are protective—but that of '42 encouraged free labor—this of '46 protects slave labor."[5] The *North American* in a series of editorials

[1] *North American*, July 25, 1846.

[2] *Daily Commercial Journal*, July 20, 1846.

[3] *North American*, August 3; *United States Gazette*, July 10, August 19, September 24, 26, 29, 1846.

[4] *United States Gazette*, September 30, 1846.

[5] August 6, 1846.

maintained that slave and free labor were antithetical in the same country.[1] In one of them it said,

Our duty is now a plain one—the North must take care of herself. She must become the unflinching advocate of freedom and—since Northern industry stinks in Southern nostrils —the hearty hater of *slave labor.* Pennsylvania has stood too long the champion of the South. She must now become the unceasing, sleepless sentinel of freedom. She is now spit upon and scorned, and in her hour of distress and dismay, let her learn that the hand that has wronged her can be extended in friendship no more.[2]

This triumph of the South over the North had come as the result of the annexation of Texas, it was felt, for "by the aid of Texas Senators," the South has "cursed us with Free Trade." [3] The fact that the act would have been defeated in the Senate without the votes of the two Senators from Texas, always remained to the protectionist

[1] August 1, 5, 6, 10, 1846.

[2] August 5, 1846.

[3] *Daily Commercial Journal,* August 6, 1846. A correspondent, "X", in the *United States Gazette,* July 31, ironically stated that Texas would be of great value since it had cost so much. "The coal and iron interests of Pennsylvania too may be prostrated by the repeal of that Tariff—and the *diminished* revenue arising from such repeal *may* and most certainly *will* render it necessary to lay a United States tax to meet the increased expenditures of the government.—But what of all this? 'Issachar is a strong ass crushing down between two burdens,' and we Pennsylvanians have always, as in duty bound, most *patiently* followed the *illustrious* example. 'Huzza for Polk, Dallas and the Tariff of '42.'" The *Pennsylvania Telegraph,* July 29, 1846, complained, "Pennsylvania gave her vote in favor of the annexation of Texas, which added two Free Trade Senators to the United States Senate, by whose votes the Tariff of 1842 has been repealed, and this free trade system introduced, prostrating her energy, destroying her manufactures, and her iron and coal interests. She built the gallows to hang herself, and her neck is now in the noose."

Whigs a reminder of the injustice caused by the admission of that state into the Union.[1]

The course of the administration in the peaceful settlement of the Oregon question met, in general, with the approval of the Whigs.[2] Some of them felt that the former enthusiasm for Oregon had been feigned. One of them said, "The Administration but *pretended* its zeal for the 'whole of Oregon,' to secure the assistance of its Northern friends in the cause of annexation and the crusade against the Tariff." [3] The veto of the River and Harbor Bill was declared to be another blow at the North, although it also seriously affected the West and the Southwest.[4]

The Whig nominee for canal commissioner in 1845 had been nominated by the Whig state central committee, which had kept itself in existence from the year before. After the election of 1845 this committee considered its labors as more than completed and made no arrangements for its successor. Therefore, on January 13, 1846, the Whig members of the state legislature met and appointed a committee of three to prepare a call for a convention to meet on March 11 for the purpose of nominating a candidate for canal commissioner.[5] According to call the convention assembled and on the third ballot nominated James M. Power of Mercer county.[6] On March 4 the Democratic convention renominated William B. Foster.[7] The Native

[1] *Cf.* the message of Governor Johnston in 1850 in reply to the resolutions of Georgia and Virginia on the compromises of 1850; *House Journal,* 1850, vol. ii, pp. 419, *et seq.*

[2] *North American,* June 12, 13, 1846.

[3] *Daily Commercial Journal,* June 18, 1846.

[4] *Ibid.,* August 6, 1846.

[5] *Ibid.,* January 20, 1846.

[6] *Public Ledger,* March 13, 1846.

[7] *Ibid.,* March 6, 1846.

American convention of February 24 placed Robert H. Morton before the people as its candidate.[1] William L. Elder received the nomination of the Liberty party.

The Whigs fought the campaign of 1846 on the question of the tariff and on that question alone. It was not necessary to argue the advisability of a protective tariff. It was necessary merely to state that the Tariff Act of 1842 had been repealed, and that too by the Democrats, who in 1844 had made loud protestations that their party would be the only one to preserve the act of 1842. A corollary to the statement that the act had been repealed was that the country was being ruined thereby. Although the Tariff Act of 1846 was not to go into effect until December, its effects, it was claimed, were already in evidence. Shortly after the passage of the act, pig iron had dropped four to five dollars a ton, and wool two cents a pound.[2] Factories began to curtail their production.[3] It was noted that furnaces in the Schuylkill district were closing and that the shipment of coal was decreasing.[4] The closing of a bale-rope factory in Philadelphia was referred to as "The Dallas Night Cap" and the decrease in the shipment of coal as "The Free Trade Blight."[5] The attempt of the Democrats to prove that the Whigs were endeavoring to create a panic met with little success.[6] The argument of the Democrats that the Tariff Act of 1846 protected the agriculturalist, while the act which had been repealed had

[1] *Public Ledger*, February 26, 1846.

[2] *Butler Whig*, August 5, 1846. The decline in prices was constantly stressed by the *United States Gazette*, August 3, 5, 22, 1846.

[3] *United States Gazette*, July 31, 1846.

[4] *Miners' Journal*, August 1; *North American*, September 18; *United States Gazette*, August 28, 1846.

[5] *North American*, September 28, 1846.

[6] *Pennsylvanian*, July 30, 31, August 1, 4, 7; *United States Gazette*, August 4, 5, 1846.

not done so, attracted slight attention.[1] Their effort to prove this because of the slight rise in the price of foodstuffs was, inconsistently, declared by the Whigs to be illogical inasmuch as the act had not yet gone into effect.[2] It was contended that on election day the American workingmen in Pennsylvania would demand "An American Protective System; the Repeal of Walker's British Bill; No Special Legislation for Cotton Growers; Protection of Free White Labor above that of Southern Slave Labor; No Sub-Treasury Rags; and a Currency the same for the Rich and Poor." [3]

In the early part of 1846 it seemed possible that the state might be divided politically into two sections because of the railroad question. The people of Pittsburgh wanted a charter granted to the Baltimore and Ohio Railroad for the construction of a branch line to Pittsburgh. The citizens of Philadelphia, fearing that some of the western trade might be diverted, opposed the grant. They favored the construction of a railroad from Harrisburg to Pittsburgh, which would then have an all-rail connection with Philadelphia. The citizens of western Pennsylvania were pacified by a charter to the Baltimore and Ohio Railroad Company, contingent, however, upon the failure of the new railroad, the Pennsylvania, to secure the required capital by a specified day. In the meantime, they secured a modification of an existing charter and under its provisions proceeded to construct the desired outlet for Pittsburgh.[4] One

[1] *Pennsylvanian,* July 30, August 1, 1846.

[2] *Daily Commercial Journal,* September 28, 1846.

[3] *North American,* October 10, 1846. On August 6 it called the act of 1846 "the late proclamation of war against the laborers of the North." On August 10 it claimed that the administration journals were raising "the banner of Slavery against Freedom—the South against the North—the whip and shackle against the loom and shuttle."

[4] *Public Ledger,* January 14, February 18, 25, 27, March 5, 6, April 13, May 6, July 8, 14; *Daily Commercial Journal,* March 1, 19, 20, 23, 25, 27, April 9, 24, 28, October 22, 1846.

of the Democratic journals of Philadelphia attempted to make this an issue in raising the cry, "Power and Pittsburgh! Foster and Philadelphia!"[1] In the election for municipal officers of Philadelphia city, the question arose whether the city as a corporation could subscribe to the stock of the Pennsylvania Railroad.[2] A "Railroad" and an "Anti-Railroad" ticket were formed from men of the three parties. The candidates were pledged for or against the subscription. Although only Whigs were elected to the select council, yet those whose names were on the "Railroad" ticket received a thousand more votes than the other Whig candidates.[3]

The Whigs made nominations in all the congressional districts, save in that represented by Wilmot, where they endorsed a tariff Democrat. The Natives ran candidates in eight of the eleven districts in the southeastern portion of the state and also a candidate in the Allegheny district. In five of the congressional districts of western Pennsylvania and in the four Philadelphia districts, the Liberty party had candidates.[4] The four Philadelphia Congressmen were all elected by minorities; the Natives and the Whigs secured one each and the Democrats the other two. Of the remaining twenty Congressmen of the state the Democrats secured only five. In the Twenty-ninth Congress the Democrats had controlled twelve of the twenty-four members from the state, in the coming Congress they would have only seven.[5] David Wilmot, who alone of the Penn-

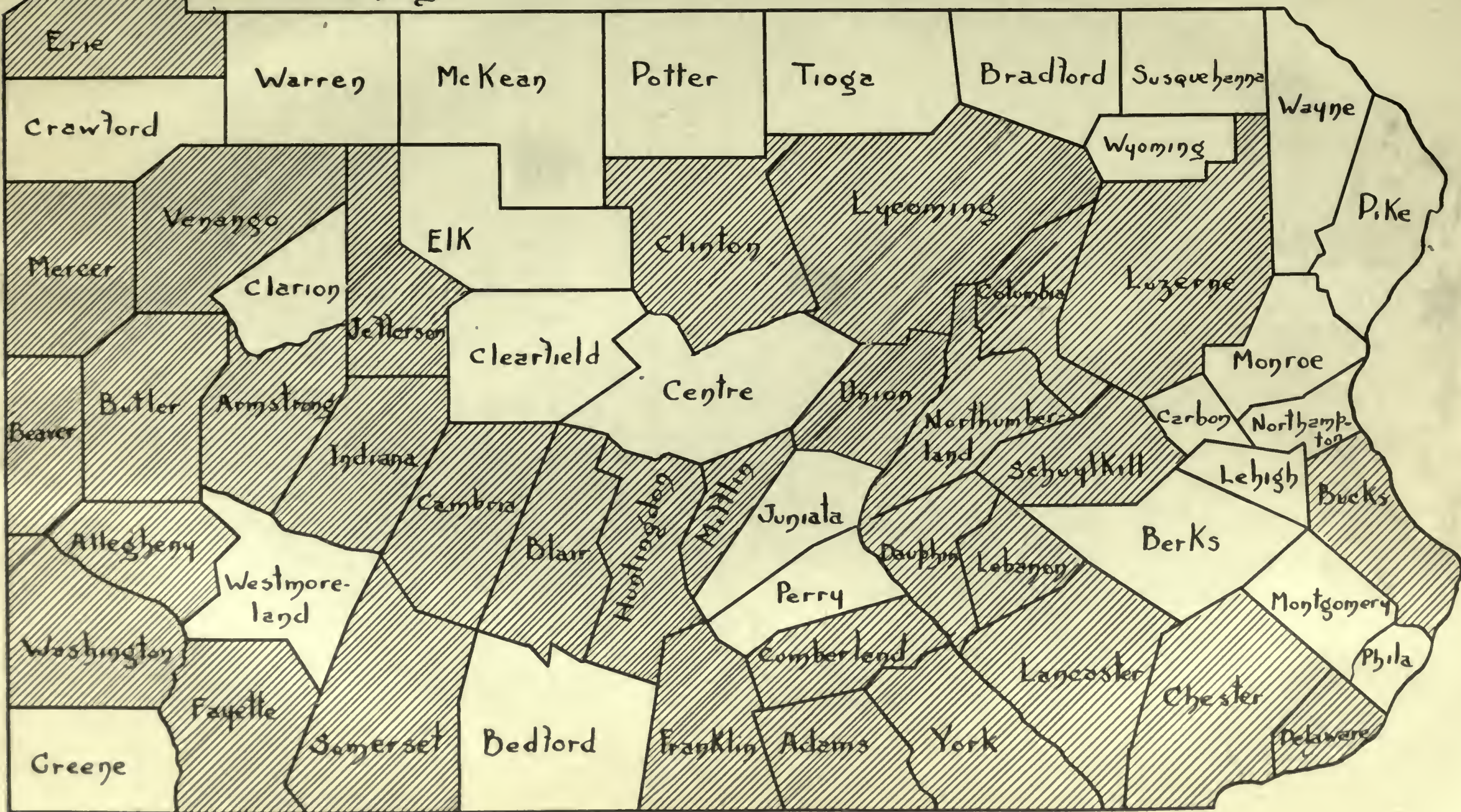
[1] *Daily Keystone and People's Journal,* October 13, 1846.

[2] *United States Gazette,* June 18, October 9, 1846; Binney, *Life of Horace Binney,* pp. 246, *et seq.*

[3] *Public Ledger,* October 10, 15, 1846.

[4] *Ibid.,* October 8, 13, 1846.

[5] Election returns from the *Pennsylvania* quoted in *Niles' Register,* vol. lxxi, p. 150.



ELECTION FOR CANAL COMMISSIONER IN 1846

sylvania delegation in Congress had voted for the Tariff Bill of 1846, was returned.[1] The election to the legislature resulted favorably for the Whigs, for they would control eighteen of the thirty-three senators and fifty-six of the one hundred representatives.[2] The Whig candidate for the office of canal commissioner was elected by a plurality of more than 7,500.[3] He was the only canal commissioner the Whigs elected.

The vote cast at this election was small, which may in some degree be accounted for by the inclement weather.[4] The small vote was, however, chiefly due to the disgust of the electorate. The total vote was approximately 20,000 less than in 1845 when there had been no congressional elections. The Whig vote was about 7,500 more than in 1845, the Native American about 7,000 less, and the Democrats registered a loss of more than 20,000. Many of the strongest Democratic counties were in this election carried by the Whigs, clearly indicating disgust with the course pursued by the Democracy on the tariff. The election also showed that the Native American party could not hope to assume any dignity even in state politics. Over 14,000 of their 15,000 votes came from Philadelphia city and county; the balance came from a few strong Whig counties.[5]

[1] Ex-Governor Porter was alleged to have said that Wilmot's district went for free trade because "in that region of country the only thing the people manufactured were shingles, and they stole the lumber to make them, and the only *protection* they wanted was protection from the officers of justice!" *North American,* November 18, 1846.

[2] *Public Ledger,* January 6, 1847.

[3] Official returns: Power (Whig) 97,963; Foster (Dem.) 89,064; Morton (Nat. Am.) 15,424; Elder (Liberty) 2,028; *ibid.,* October 27, 1846.

[4] *Pennsylvanian,* October 16, 1846.

[5] The Natives reelected Levin to Congress, but elected no member of the legislature.

When the legislature met in January, 1847, it was fully under the control of the Whigs. They were urged to expedite business, to make the session short, and to grant no charters, which would, at any rate, be vetoed by the Democratic governor.[1] On March 3, 1847, the governor signed a bill affecting the status of slaves within the state. The act made kidnaping a high misdemeanor and provided heavy penalties therefor. Judges were authorized to issue writs of *habeas corpus* and to inquire into the cause of imprisonment of any human being within the commonwealth. It denied the use of the state jails for the detention of captured fugitive slaves. It repealed the portions of the sojourning act of March 1, 1780, which had allowed slaves to be brought into and retained within the commonwealth for a period of six months. The act also permitted slaves to be witnesses in judicial proceedings.[2] The bill passed both the senate and the house without a roll-call and received the signature of the Democratic governor.[3] It was claimed that the act was made necessary by the decision of the Supreme Court of the United States in the case of Prigg *v.* Pennsylvania, which had been handed down in 1842. The decision held that the state act of March 25, 1826,[4] which provided for state assistance in the rendition of fugitive slaves, was unconstitutional on the ground that the rendition of fugitive slaves was a subject for exclusive

[1] *North American,* October 27, 1846.

[2] *Session Laws,* 1847, p. 206; the act was entitled "An act to prevent kidnapping, preserve the public peace, prohibit the exercise of certain powers heretofore exercised by judges, justices of the peace, aldermen and jailors in this commonwealth, and to repeal certain slave laws." *Cf.* Turner, *The Negro in Pennsylvania,* pp. 227-249, for the history of the rendition of fugitive slaves from the state.

[3] *House Journal,* 1847, vol. i, pp. 76, 207, 355, 394; *Senate Journal,* 1847, vol. i, pp. 217, 312, 343.

[4] *Session Laws,* 1825-26, p. 150.

federal legislation.[1] It must be borne in mind that the act of March 3, 1847, was passed five years after the decision of the Supreme Court, and that it followed hard on the passage of the Tariff Act of 1846. The act must, therefore, be considered as the reply of the state to the repeal of the Tariff Act of 1842. The support of the Tariff Act of 1842 had been non-partisan, so the adoption of the act of March 3, 1847, was not a party measure. The passage of the act together with the fact that the Democrats in this legislature joined in endorsing the Wilmot Proviso indicates how complete the disorganization of the Democracy within the state was as a result of the passage of the Tariff Act of 1846. From this disorganization they were to recover, however, before the end of the year. The repeal of the Tariff Act of 1842 had given the Whig party of the state a moment of triumph, but it made the party anti-slavery.

[1] 16 *Peters* 539.

CHAPTER IV

A Political Interlude

1847-1848.

The war with Mexico called attention to the question of slavery in the territory, which it was assumed would be acquired. Although the war was in progress during the political campaign of 1846, yet none of its issues entered directly into the struggle, which was fought on the repeal of the Tariff Act of 1842. Although the Whigs of the state questioned the justice of the course of the President in asserting that the Rio Grande was the boundary of the United States, yet, when the assertion of this claim led to war, they urged all to join in the defense of their country. One of their leading journals in Philadelphia said,

The war was uncalled for, but being declared, there is but one duty for every man who claims the name of American (and is not conscientiously scrupulous on the subject of arms), he must aid to carry on that war with vigor, that its termination may be the more speedily secured. Our country, our whole country, and nothing but our country, when she is endangered by a war, no matter how that war happened. But let us not, in our enthusiasm, forget the high duties of patriots and men. Let us not fall into the miserable error of supposing that *success* in a campaign, is a justification of war.[1]

[1] *United States Gazette,* May 27, 1846; *ibid.,* May 8, 11, 12, 13, 16, 19, 20, June 3, July 1, November 24, December 10; *Daily Commercial Journal,* May 13; *North American,* November 25, December 17, 18; *Pennsylvania Telegraph,* June 3, 17, 1846.

Opposition to the annexation of any territory, even that of California, was freely voiced. The people inhabiting this area were declared to be unfit to become citizens of the United States.[1] A Pittsburgh journal condemned the war and urged the hastening of peace.

The spoliation of Mexico has assumed the attitude of a wrong; and whether in nations or individuals, wrong if persisted in cannot prosper. Let peace be concluded with Mexico—on no grinding terms either, but such as it would become the generosity of a great nation to grant to a prostrate though gallant foe.[2]

The insistence of the Whigs upon inquiring into the causes of the war led to their being charged by the Democrats with a lack of patriotism and to their being branded Federalists; both of which charges they, of course, vigorously denied.[3]

On August 8, 1846, a two-million-dollar appropriation bill for the purpose of conducting preliminary peace negotiations with Mexico passed the House of Representatives, although the Wilmot Proviso had been attached to it. Not a dissenting vote from Pennsylvania was cast against the measure.[4] The bill was before the Senate when Congress adjourned. The comments on the bill, made

[1] *North American,* June 6, 12, 1846.

[2] *Daily Commercial Journal,* July 25, 1846.

[3] *Ibid.,* June 8; *North American,* November 11, 13, 25, 28, December 18, 22, 1846, January 22, February 1, 1847. In its issue of November 11, 1846, the *North American* printed a fictitious address signed by twenty-eight leading Democrats. The address stated that the signers, old Federalists, have secured control of the Democratic party and they now ask for the support of all former Federalists. The alleged signers from Pennsylvania are James Buchanan, William Wilkins, Richard Rush, John M. Read, Henry D. Gilpin, John K. Kane, and Ellis Lewis.

[4] *House Journal,* 29th Congress, 1st session, p. 1284.

by the Whig press, were criticisms on the purpose of the appropriation and not on the proviso.[1] When it became evident that the acquisition of territory would be one of the results of the war, the adoption of the proviso, not as a Whig but as a Northern measure, was advocated.[2] A resolution, adopted by the state legislature on January 22, 1847, instructed the Senators and requested the Representatives "to vote against any measure whatever, by which territory will accrue to the Union, unless, as a part of the fundamental law upon which any compact or treaty for this purpose is based, slavery or involuntary servitude, except for crime, shall be forever prohibited."[3] The adoption of this resolution was not a partisan measure, for it passed the house by a vote of 96 to 0, and the senate by a vote of 24 to 3.[4]

During the second session of the Twenty-ninth Congress another appropriation bill, but for three million dollars, to conduct preliminary peace negotiations was introduced. When the Wilmot Proviso was attached in the House to this bill, the *North American* was led to exclaim, "The Freedom Proviso has again been attached to the Bribery Bill."[5] Five of the Pennsylvania Democrats in the House voted against the adoption of the proviso.[6] When the bill was returned to the House with the proviso rejected by the Senate, the House failed to sustain its former vote. Amongst those who changed their votes were three Demo-

[1] *North American*, August 17; *Daily Commercial Journal*, August 11, 1846. The latter paper said Polk had started to conquer a peace but now he proposed to buy one.

[2] *North American*, January 18, 1847.

[3] *Session Laws*, 1847, p. 489.

[4] This resolution was introduced by a Democrat. *House Journal*, 1847, vol. i, p. 143; *Senate Journal*, 1847, vol. i, p. 129.

[5] February 10, 1847.

[6] Analysis of vote in *North American*, February 19, 1847.

crats from Pennsylvania.[1] The defeat of the proviso was attributed to the failure of the Democrats to stand by their previously expressed opinion.[2] The Twenty-ninth Congress, it was stated, had been particularly under the control of the South. "Every measure of the North and West was strangled either by the votes of Congress or the Executive Veto." [3]

The shifting of the Democracy in Pennsylvania from support of to opposition to the Wilmot Proviso has been indicated by the voting in Congress. Definite argument against the measure was furnished in a letter from Buchanan to the Democrats of Berks county, who on August 28, 1847, were holding a Harvest Home Festival at Reading. Buchanan urged the extension of the Missouri Compromise line through the territory which might be acquired from Mexico. He had previously advocated the plan at cabinet meetings, winning the President to its support. He claimed that the nature of the region and the type of immigrants who would be attracted to the area would be a bar to slavery; consequently it was unwise to agitate for the proviso.[4] Dallas in a speech at Pittsburgh took position with Lewis Cass and others and advocated "leaving to the people of the territory to be acquired the business of settling the matter for themselves." [5] The anti-slavery Whigs considered the proviso the means of deciding the conflict between free and slave labor. At this time there occurred at the Tredegar Iron Works, Richmond, Virginia, a strike

[1] Analysis of vote in *Niles' Register*, vol. lxxii, p. 18.

[2] *North American*, March 15, 17; *Lancaster Union and Tribune*, March 23, 1847.

[3] *Daily Commercial Journal*, March 6, 1847.

[4] Moore, *Works of James Buchanan*, vol. vii, p. 385; *Polk's Diary*, vol. ii, pp. 308-9, 334-5.

[5] *Public Ledger*, September 29, 1847.

because of the introduction of slave labor into several departments of the plant. This strike in the home of slave labor was held clearly to illustrate the inherent conflict between free and slave labor.[1]

On the question of the tariff the Democrats were taking new ground. In the election of 1846 they had been completely disorganized and had had no defense against the attacks of the Whigs. Now they were beginning to argue that the Tariff Act of 1846 was an excellent one.[2] The basis for this claim was the high prices obtained for foodstuffs, as a result of the failure of the crops in Europe. The extension of the railroads and the substitution of solid for plate rails were beneficial to the iron industry.[3] To the charge

[1] *Daily Commercial Journal,* June 8, 1847; the proceedings and communications of the strikers are in the *Richmond Enquirer,* May 29, 1847. The Whigs declared the proviso was nothing new as it contained Jefferson's anti-slavery resolutions of 1784; *North American,* August 13, 1847.

[2] Even the *Spirit of the Times,* which the year before had shouted, "Repeal is the word," took this position; September 6, 11; *York Gazette,* October 5, 1847. The Whigs in the legislature had not been able to have resolutions, favoring the restoration of the tariff of 1842, adopted. The Whig majority of the special committee in the senate, to which was referred so much of the governor's message as related to the tariff, reported as follows to the senate: "'Polk, Dallas, Shunk, and the Tariff of 1842!' was their battle cry in our State, and (admitting that no frauds were committed at the polls) the people of Pennsylvania decided in favor of the Democratic candidates. But their vote was for Polk, Dallas, Shunk, and *the tariff of* 1842. The tariff was as much a part of the ticket voted, as if it had been printed on it, and but for it the then candidates, whose names were thus connected with it, would now be in the obscurity of private life." *Senate Journal,* 1847, vol. i, p. 252. The Democratic minority reported, "If 'Polk, Dallas, Shunk, and the tariff of 1842', were in any instance adopted as the 'battle cry' of the democracy, it was rather as idle bravado than the deliberate manifestation of political sentiment." *Ibid.,* p. 427.

[3] Jesse Miller, November 9, 1846, to Buchanan, Buchanan Mss; R. I. Arundel, October 15, 1847, to John McLean, McLean Papers, Lib. of Cong.; *Daily Commercial Journal,* October 28, November 22; *Spirit of the Times,* September 11, 1847.

that their dire predictions of 1846 had not materialized, the Whigs replied that the Democrats had made the same prophecies.[1] The fact that prices were high could not be denied and warnings of a dismal future received little attention.

Although the four parties made nominations for governor and canal commissioner, yet the contest lay between the Democrats and the Whigs. For governor the Whigs nominated James Irvin and for canal commissioner Joseph H. Patton. Irvin was extensively engaged in the iron industry in Centre county, was a strong advocate of a protective tariff and consequently would appeal to the like-minded individuals of the state. Originally a Democrat, he had left that party as the result of Jackson's attack on the bank. He had been elected to the Twenty-seventh and the Twenty-eighth Congresses and had supported the Tariff Act of 1842. The Democrats renominated Governor Shunk and for canal commissioner they nominated Morris Longstreth. The contest was more bitterly personal than any which had recently preceded.[2] Behind these recrimina-

[1] *Daily Commercial Journal,* June 4, 1847.

[2] The Democrats made the following charges against Irvin: he is, "1. An Aristocratic Iron Master! 2. The Father of the Bankrupt Law! 3. The Advocate of Taxing Tea and Coffee! 4. The Reviler of General Jackson! 5. The Friend of Thaddeus Stevens! 6. The Supporter of the Buckshot War! 7. The Advocate of the Gettysburg Railroad! 8. The Worshipper of a United States Bank! 9. The Trumpeter of his own Acts of Charity! 10. An Old-school, Anti-war Federalist!" quoted from the *Bedford Gazette* in the *North American,* August 19, 1847; other Democratic attacks *American Volunteer,* September 16; *York Gazette,* October 5; *Spirit of the Times,* October 12; *Lancaster Intelligencer,* August 24, September 21, 1847. For Whig attacks *cf. North American,* April 7, 8, May 18, 25, June 19, 22, July 2, 3, September 11, 16, 17, 23, 25, 27, October 2, 6; *Miners' Journal,* March 20; *Butler Whig,* May 26; *Daily Commercial Journal,* September 27, 28, 29, 30, 1847.

tions was the effort of the Whigs to make the tariff and the Wilmot Proviso the issues of the campaign.[1] In this they failed, and Shunk was reelected by a plurality of more than 18,000 votes.[2] The total vote was 42,000 less than in 1844, but 80,000 more than in 1846. The decline in the vote of the Native American party continued. The legislature did not pass into the hands of the Democrats; they secured control of the house, but the senate, due to holdovers, remained Whig.[3]

In the main, the Whigs contended that the victory of their opponents was temporary and indecisive. "It has been induced by the false confidence in the high prices for produce consequent upon the famine in Europe," said one.[4] A leading Democratic journal in the eastern portion of the state declared, "The sovereign people have recorded their verdict upon the War with Mexico, the Tariff of '46, the Sub-Treasury, as well as Federal treason to our native land!"[5] Despondently a Whig paper in the western part of the state replied, "It is even so. Pennsylvania adheres to Polk, Dallas, and Buchanan—repudiates the Wilmot Proviso, though introduced by one of her own representatives—adheres to this wicked war of conquest and land

[1] *Daily Commercial Journal,* September 20, October 12; *North American,* June 12, July 3, 17; *York Gazette,* October 5, 1847.

[2] *Smull's Legislative Hand-Book,* 1919, p. 720; the official returns for governor were: Francis R. Shunk (Dem.) 146,081; James Irvin (Whig) 128,148; E. C. Reigart (Nat. Am.) 11,247; F. J. Lamoyne (Liberty) 1,861; scattering 6. A number of former Anti-Masons supported Reigart in preference to Irvin.

[3] *North American,* January 4, 1848. In the senate were 19 Whigs, and 14 Democrats; in the house 36 Whigs, and 64 Democrats. Wm. F. Johnston, a former Democrat, was sent, by a small majority, to the senate from a normally Democratic district.

[4] *Ibid.,* October 16, 1847.

[5] *Spirit of the Times,* October 15, 1847.

robbery—and covers with its large popular sanction even the enormous maladministration of this war, which it approves."[1] The Whigs had failed in raising these issues, for they had determined to conduct a quiet campaign, with the result that the Democrats polled a larger percentage of their full strength.[2]

Attention for some time had been directed to the presidential election of 1848. The news had scarcely reached the country that General Taylor had won several battles from the Mexicans before he was placed in nomination for the presidency by a mass meeting at Trenton, New Jersey.[3] As his military success continued, he became a stronger and stronger presidential possibility; but it was not known to what party he professed to belong. There was no doubt but that Buchanan would again endeavor to secure the endorsement of the state for the presidential nomination at the next Democratic national convention. There was, however, a strong faction in the state, led by Simon Cameron, ex-Governor Porter, ex-Secretary of War J. M. Porter, Reah Frazer, and Henry A. Muhlenberg, which oposed Buchanan's control of the Democracy in the state. They decided, inasmuch as the nature of Taylor's politics was not known, to avail themselves of his growing popularity to overthrow Buchanan. Taylor's military achievements would make him all the more attractive, as General Scott was frequently mentioned for the Whig nomination. On April 25, 1847, Cameron wrote a letter to the editor of the *Norristown Register*, in which he stated his belief that Taylor was a Democrat.[4] To give definiteness to the move-

[1] *Daily Commercial Journal*, October 21, 1847.

[2] *Pennsylvania Inquirer*, October 20, 1847; McClure, *Old Time Notes*, vol. i, p. 171.

[3] *Niles' Register*, vol. lxx, p. 256.

[4] Republished in the *Daily Commercial Journal*, June 4, 1847.

ment, a convention assembled early in July at Harrisburg; a "Democratic Taylor Central Committee" was appointed to organize the movement.[1] It decided to hold a Democratic Taylor mass meeting at Harrisburg on September 24, 1847. The mass meeting enthusiastically endorsed Taylor for the presidency.[2]

In the meantime, the Native Americans had assembled at Pittsburgh on May 11, 1847, in what they grandiloquently called a national convention.[3] Letters had previously been written to leading politicians asking them whether they would accept the nomination of the party for the presidency, if it were unanimously given them. The recipients of this offer either rejected it or neglected to answer the letter making it.[4] At this convention no nomination was made, and an adjournment was made to Philadelphia, where the convention was to reassemble on September 10. In the interval between the two conventions, the president of the

[1] *Pennsylvania Inquirer,* July 31, August 6, 1847. On the committee were the following prominent Democrats: Seth Salisbury, John M. Read, Richard Vaux, Simon Cameron, Ellis Lewis, George Kremer, H. B. Wright, and Henry A. Muhlenberg.

[2] *Evening Bulletin,* October 6, 1847.

[3] *Daily Commercial Journal,* May 12, 1847. Delegates from Pennsylvania, New York, Kentucky, Illinois, Indiana, and Massachusetts were said to be present.

[4] Peter Sken Smith acted as chief interrogator. On March 16, 1847, he wrote John McLean, who replied that he considered such an early nomination of doubtful value; McLean Papers, Lib. of Cong. On March 19 a letter was sent to Henry Clay, who on April 2 refused to consider the offer. On March 26 Commodore Charles Stewart declined the offer in Smith's letter of March 18. On May 1 Smith received a reply from Ogden Edwards stating that he considered the time inauspicious for a nomination. Letters published in the *Daily Commercial Journal,* September 15, 1847. On April 24, John C. Calhoun was sent one of these letters, which he apparently never answered; *Report of the American Historical Society,* 1899, vol. ii, p. 1116.

convention inquired of General Taylor whether he would accept the nomination if it were tendered him. On July 13 Taylor replied, in his usual form, that he would yield to the wishes of the people.[1] Upon the reassembling of the convention at Philadelphia, General Taylor was "proposed" as the "People's Candidate" for the presidency and General H. A. S. Dearborn was nominated by the Native Americans for the vice-presidency.[2] The Native Americans were now in a position to cooperate with the Taylor Democrats or any other group favoring Taylor for the presidency.

On February 22, 1848, there assembled at Harrisburg a "Peoples' Convention," over which James M. Porter presided. The members of the convention were chiefly Native Americans and anti-Buchanan Democrats. An electoral ticket pledged to Taylor was reported and a central committee was formed.[3] But the hopes of the Taylor Democrats were soon blighted; on the same day, at a Whig celebration at Philadelphia, Taylor's letter of August 3, 1847, to Joseph R. Ingersoll was read. In this letter Taylor endorsed Ingersoll's statement on the floor of Congress that Taylor was "a Whig—not indeed an ultra-partisan Whig—but a Whig in principle."[4] The Democrats in the Taylor movement individually began immediately to reject him on the ground that he had declared that he was not a Democrat.[5] After the nomination of Taylor by the Whigs, this prior endorsement of Taylor by these Democrats was given due publicity by the Whigs.[6]

[1] *Daily Commercial Journal,* September 15, 1847.

[2] *American Press and Republican,* September 18, 1847.

[3] *Public Ledger,* February 23, 25, 1848.

[4] *Niles' Register,* vol. lxxiii, p. 407.

[5] Letter of Henry A, Muhlenberg, dated March 2, 1848, in the *Daily Commercial Journal,* March 15, 1848.

[6] *Ibid.,* November 6, 1848.

The Whigs of the eastern portion of the state were likewise considering Taylor as a favorite candidate for the presidency. On April 10, 1847, he was endorsed for that office by a convention of the "Democratic Whigs of the City and County of Philadelphia."[1] No further action was taken this year. At the Buena Vista Festival of February 22, 1848, at Philadelphia, at which Taylor's letter declaring that he was a Whig was read, one of the speakers after condemning Clay for his Lexington speech said he had three reasons for urging his audience to support Taylor; they were, "1. Because he is honest and capable; 2. because he is a Whig; 3. because he can be elected."[2]

In the western part of the state, Scott and Clay appealed more to the Whigs than did Taylor; and huge mass meetings endorsing the one or the other of them were held.[3] On March 1, 1848, the Allegheny county convention instructed its delegate to the national convention to support Clay.[4] It was not, however, until April 10 that Clay announced that he would allow his name to be presented to the Whig national convention.[5] Previously, however, Clay had alienated many of his admirers by delivering on November 13, 1847, what was popularly known as his Lexington speech. In it he condemned the President for pursuing a policy which had caused the war and for conducting it without properly consulting Congress. The war was declared to be one not of defense but one of aggression. If Mexico were conquered, what then? To the forcible annexation of territory, even in the shape of an indemnity, he was op-

[1] *North American,* April 12, 1847.

[2] *Public Ledger,* February 24, 1848.

[3] *Ibid.,* February 29; *Daily Commercial Journal,* February 3, 24, 1848.

[4] *Daily Commercial Journal,* March 2, 1848.

[5] *North American,* April 13, 1848, for Clay's letter to the public.

posed. If the people of the United States desired it, California, including the Bay of San Francisco, should be purchased. The purposes of the war should be proclaimed by Congress and the war should be continued only until these aims had been accomplished. Throughout the speech there was an insistence on the Whig principle that the Executive be controlled by Congress.[1] Whig opinion on the speech was divided. On December 6, 1847, a large mass meeting in Philadelphia adopted the resolutions which Clay had proposed in his speech,[2] but the mass meeting of February 22, 1848, declared that the speech had made him a presidential impossibility. One of his ardent admirers in the western part of the state affirmed that the movement in his favor had been ended, for "our conviction is that this speech settles the point—that Mr. Clay cannot be nominated as the Whig candidate—or, if nominated, that he could not be elected."[3]

On March 15, 1848, the Whig state convention assembled at Harrisburg. Its duties were to nominate a candidate for canal commissioner, to select senatorial delegates to the national convention, and to form an electoral ticket. On the second ballot Ner Middleswarth, a former leader of the Anti-Masons, was chosen as the standard bearer. The convention refused to take even a vote on its preference of a presidential candidate, consequently it refused to instruct the senatorial delegates. It resolved, "That the Whig candidate for the Presidency, to be worthy of the support of the Whig party, must be known to be devoted to its principles, willing to become their exponent and champion, and

[1] The speech is reported in full in *Pennsylvania Telegraph,* November 30, 1847; extracts and the resolutions are in Sargent, *Life and Public Services of Henry Clay,* pp. 105, *et seq.*

[2] *Evening Bulletin,* December 7, 1847.

[3] *Daily Commercial Journal,* December 2, 1847.

prepared to carry them faithfully out in the execution of his official duties." In another resolution they expressed their belief that such a candidate would be nominated and to him they pledged the support of Pennsylvania.[1] Many doubts still existed as to the Whig orthodoxy of Taylor and these resolutions were an attempt to meet the situation. These doubts were somewhat quieted by the publication of his letter of April 22, 1848, to J. S. Allison in which he stated that he was a Whig but not an ultra Whig.[2]

The Whig national convention had been called, by caucuses of the Whig members of Congress on January 27 and February 3, 1848, to meet at Philadelphia on June 7.[3] The convention nominated Taylor and Fillmore, but adopted no resolutions.[4] On no ballot did Taylor receive a majority of the votes from the Pennsylvania delegates, but they naturally pledged their united support to him.[5]

Inasmuch as the Whigs had nominated Taylor, the way was open for them to secure the votes of the Native Americans for their candidate. Prior to the national convention the "Whig Rough and Ready Club of the City and County of Philadelphia" had been formed.[6] After the nomination of Taylor, the name was changed to the "National Rough and Ready Club." It was resolved,

[1] Proceedings in the *Public Ledger,* March 16, 17, 1848.

[2] *Daily Commercial Journal,* May 6, 1848.

[3] *North American,* February 7, 1848.

[4] Proceedings in *Public Ledger,* June 9, 10, 1848. The nominations split the Whig party in Massachusetts and for a time threatened to do the same thing in New York. No opposition to the nominations developed in Pennsylvania.

[5] Pennsylvania's vote on the various ballots was 1. Taylor 8; Clay 12; Scott 6. 2. Taylor 9; Clay 7; Scott 10. 3. Taylor 12; Clay 4; Scott 10. 4. Taylor 12; Clay 4; Scott 10.

[6] *North American,* March 27, 1848.

" That the friends of Taylor and Fillmore be invited to join the Club at its meetings, and become members, to aid in promoting the election of Zachary Taylor, of Louisiana, and Millard Fillmore, of New York." [1] In counties other than Philadelphia, where the Native Americans had effected an organization, the same policy of conciliation was pursued by the Whigs. As a result the Native Americans did not form a ticket for either local or state offices.[2]

Before the fall elections it was necessary to make nominations for governor. Governor Shunk was slowly dying. On Sunday, July 9, the last day on which he could do so in order to make an election possible that year, the governor resigned.[3] The Whigs immediately charged their opponents with thrusting themselves on the dying man in order to secure the resignation.[4] Some of the Whigs also raised the question of whether it would be possible to have a legal election this year because of certain technicalities and ambiguities in the law. William F. Johnston, speaker of the senate, who had become acting governor, did not lend himself to the schemes of postponing the election to the follow-

[1] *Pennsylvania Inquirer,* June 21, 1848.

[2] In printing the list of candidates, which it supported, the *American Press and Republican* (Native American), September 9, 1848, *et seq.*, made the following distinctions: 1. "The People's Candidate for President, Endorsed by the Whig National Convention"—General Taylor. 2. "Whig Nominations"—for Vice-President, Millard Fillmore; for canal commissioner, Ner Middleswarth. 3. "Independent Rough and Ready Electoral Ticket." 4. "Rough and Ready Nominations"—for Governor, Wm. F. Johnston; for Congress, Thaddeus Stevens; for the legislature.

[3] *Pennsylvania Archives,* series iv, vol. vii, pp. 275-6.

[4] *North American,* July 11, 13; *Miners' Journal,* July 15; *Pennsylvania Inquirer,* July 11, 1848. For an account, by a witness, of the securing of the resignation, *cf.* DeWitt, *A Discourse on the Life and Character of Francis R. Shunk,* p. 10.

ing year, so on August 12 he issued his proclamation calling for an election in the Fall.[1] He had earlier indicated that this would be the course which he would pursue. Therefore, on July 20, the Whig state central committee called on the "friends of General Zachary Taylor and Millard Fillmore in the State of Pennsylvania" to elect delegates to a convention to meet at Harrisburg on August 31 to name a gubernatorial candidate.[2] The convention unanimously nominated Johnston on the first ballot. The resolutions favored a protective tariff, opposed the extension of slavery, and denounced executive usurpation.[3] As the opponent of Johnston, the Democrats after a warm controversy nominated Morris Longstreth.[4]

The nomination of Johnston was a happy one, for which the way had been previously paved. He had been a protectionist Democrat of considerable influence in the western portion of the state, serving a number of terms in the lower house. He had not consistently acted with his party, and in 1841 had introduced the measure providing for the payment of the interest on the state debt by means of the relief notes. The passage of the Tariff Act of 1846 he viewed as a violation of the Democratic pledges made during the presidential campaign of 1844. Thereupon, he abandoned his old party and was elected by the Whigs in 1847 to the senate. His accession to the Whig ranks was hailed with delight, for he was a man of marked ability and of honest convictions. At the close of his first year in the senate, it was evident that the speaker of that body, according to the terms of the constitution, would be governor *pro tempore* upon the death of Governor Shunk, which was imminent.

[1] *Pennsylvania Archives,* series iv, vol. vii, p. 283.

[2] *Pennsylvania Telegraph,* July 25, 1848.

[3] *Daily Commercial Journal,* September 6, 1848.

[4] *Public Ledger,* August 31, September 1, 1848.

The Whigs, who controlled the senate, secured the resignation of the speaker, whose term would expire with this session. They then honored Johnston by electing him speaker, thereby assuring themselves of the support of many protectionist Democrats.

The nomination of Cass by the Democrats led to the disaffection of Van Buren, who with Charles Francis Adams was nominated as the standard bearer at a convention of Free Soil men at Buffalo on August 9.[1] The movement in Pennsylvania was led by David Wilmot. On June 29 he wrote a letter in which he said, " I shall support Van Buren with the whole strength of my patriotism, and do all in my power to get up an electoral ticket for him in Pennsylvania." [2] The Buffalo nominations were endorsed at county mass meetings in various parts of the state.[3] These mass meetings chose delegates to a state convention, which had been called for Reading by the Pennsylvania delegates to the Buffalo convention.[4] The state convention upon assembling on September 13 formed an electoral ticket, but, despite the desires of the delegates from western Pennsylvania, refused to form a state ticket.[5] It was hoped that this movement would attract the free-soil Whigs, who, however, being in control of their party, asserted that the Whig party " has been and is the bulwark of freedom." [6]

One characteristic of this election was the writing of numerous letters by Taylor. As no platform had been adopted by the national convention, the Whig journals began

[1] *Public Ledger,* August 10, 11, 12, 1848.

[2] *Ibid.,* July 19, 1848.

[3] *Ibid.,* August 28, September 1, 7, 1848.

[4] *Ibid.,* August 16, 1848.

[5] *Ibid.,* September 14, 15, 1848.

[6] *Daily Commercial Journal,* September 2, 1848.

publishing as the party's policy the letter of Taylor to J. S. Allison, dated April 22, 1848, and his letter of acceptance, dated July 15, 1848, to J. M. Morehead.[1] Taylor, in the mean time, naively continued to insist that he was not a party candidate.[2] He even accepted from the "Democratic citizens of Charleston," South Carolina, a nomination for the presidency on the same ticket with W. O. Butler, the regularly nominated Democratic candidate for the vice-presidency.[3] These numerous letters of Taylor were causing so much trouble that he was forced finally to yield to the insistence of his political advisers that he write no more letters for publication.[4]

A new method was introduced into the mechanics of campaigning in Pennsylvania when Johnston toured the state. The *Public Ledger,* an independent journal, approved of this plan, as it gave the voters the opportunity of seeing and of hearing the candidate. Because of the large number of newspapers in the East, this method had not been considered as essential as it had been in the South and in the West.[5] In his tour Johnston stated that the issues involved were the tariff and the extension of human slavery. He contended that in contrasting the effects of the tariff of 1842 and the tariff of 1846 it would be found that "the former had covered the country with blessings, while the latter in giving (according to the Baltimore Convention) 'a renewed impulse to the cause of Free Trade,' had brought or was bringing ruin, stagnation, and business revulsion."

[1] *Daily Commercial Journal,* August 11, 1848, *et seq.*

[2] Letters in the *Public Ledger,* August 15, 22, 1848.

[3] *Ibid.,* August 28, 1848.

[4] Taylor to J. J. Crittenden, September 23, 1848; Miscellaneous Manuscript Collection of the New York Historical Society.

[5] September 7, 1848.

In regard to slavery, he declared that the policy of the state had been always to oppose its extension.[1]

On the question of the tariff the Whigs in the state were everywhere united, but they did not all join in the support of the Wilmot Proviso. The *Pennsylvania Inquirer*, for example, limited itself during the entire campaign to a discussion of the military renown of General Taylor and to the need of adequate protection to home industry. It specifically stated the issue to be "Taylor and the Tariff of '42." It did not discuss the Wilmot Proviso.[2] That the issue of the tariff was not without force was shown by an address of tariff Democrats in Clarion county. They rejected the Baltimore platform and the Democratic candidates, declaring that "what was democratic doctrine in '44 should be the same in '48." [3] As the campaign progressed, it became evident that Pennsylvania was "the real battle ground" and that this was due to the tariff.[4]

The free-soil Whigs, however, had control of the state party and pushed the issue of the Wilmot Proviso as well as the issue of the tariff. The fate of this measure, it was pointed out, rested not only on the Congressmen but also on the President. Cass was pledged to veto the measure should it be presented to him. Since Van Buren could not be elected, those, who were interested in the proviso, were urged to vote for Taylor.[5] Wide publicity was given to a Democratic pamphlet, distributed in the South, which the

[1] *Public Ledger*, September 2, 1848.

[2] October 10, 19, November 3, 1848.

[3] *Pennsylvania Inquirer*, September 27, 1848.

[4] *The Writings and Speeches of Daniel Webster*, vol. xvi, p. 500.

[5] *North American*, August 2, 16, September 5; *Daily Commercial Journal*, May 30, June 21, July 7, 1848. Cass' letter of February 19, 1847, giving his views on the Wilmot Proviso in the *Public Ledger*, September 1, 1848.

Whigs republished for distribution in Pennsylvania. The pamphlet was entitled, " A Statement proving Millard Fillmore, the Candidate of the Whig Party for the Office of Vice President, to be an Abolitionist, by a Review of his Course in the 25th, 26th, and 27th Congress. Also, showing General Taylor to be in favor of extending the Ordinance of 1787 over the Continent, beyond the Rio Grande; in other words to be in favor of the Wilmot Proviso." [1]

The strong Whig counties of Allegheny and Lancaster were completely under the control of the free-soil element. In Allegheny county, Moses Hampton secured the Whig renomination to Congress only by pledging himself definitely to support the Wilmot Proviso.[2] In Lancaster county Thaddeus Stevens through the adroit manipulation of the Native American delegates to the " Rough and Ready County Convention " secured his nomination as the congressional candidate.[3] This nomination was tantamount to an election. His anti-slavery views were well known and pronounced. The abolition leaders in the county, however, addressed a letter to both Stevens and Emanuel Schaeffer, the Democratic candidate, and asked the following questions:

1. If elected to a seat in the Congress of the United States will you vote for and support at all times the principles of the Jeffersonian Ordinance of 1787 in their application to the whole of our newly acquired territories, so far as the same may be necessary to exclude slavery and involuntary servitude from them forever?

2. If elected will you support a bill for the extinction of this

[1] Reprinted entire in the *Daily Commercial Journal,* September 12, 1848.

[2] *Ibid.,* May 10, 18, 19; June 9, 26, July 28, 1848.

[3] *Public Ledger,* August 17, 21, 24; *American Press and Republican,* August 26; *Lancaster Intelligencer,* August 29, 1848.

institution (Slavery) wherever Congress possesses Constitutional jurisdiction over it?

The Democratic candidate replied that the people of each state and territory had the right of controlling and of checking the advance of this institution. Stevens answered both questions in the affirmative and requested the committee to consider his answers "as expressing merely opinions and feelings long entertained, and not as pledges, given for the occasion. . . . . I will further add, what, perhaps, your letter does not require; that I will vote for no man for any office, who I believe would interpose any official obstacles to the accomplishment of these objects." [1]

In all of the congressional districts the Whigs nominated candidates, and did not endorse any tariff Democrats, as they had done in 1844. In two of the Philadelphia districts, however, they endorsed two of the nominees of the Native Americans in return for their acceptance of the balance of the Whig ticket.[2] The Democrats used the Ten Hour Law in an appeal to the factory workers. This law of March 28, 1848, declared that a legal day's work in the textile mills in the state consisted of ten hours of labor. Trouble had developed in some mills over the enforcement of the law. Although there was no large gain as a result of this appeal, yet, inasmuch as the election was close, the defeat of Middleswarth, Whig candidate for canal commissioner, was partly due to his opposition in the senate to this bill.[3]

[1] Correspondence in the *Lancaster Intelligencer,* September 26, 1848.

[2] *Public Ledger,* September 28, 1848. The Whigs endorsed Congressman L. C. Levin for reelection and John S. Littell, a former Whig. A few Whigs, who were opposed to Levin, nominated their own candidate.

[3] Parke, *Historical Gleanings,* p. 78; *Public Ledger,* July 7, 15, 25, September 19, 1848. McClure, *Old Time Notes,* vol. i, p. 177, attributes Middleswarth's defeat to his opposition to the law. For the act, see *Session Laws,* 1848, p. 278.

It is difficult, on the basis of the returns, to state definitely who carried the October elections. The Whigs secured the greater portion of the offices, but the Democratic majority seems to have been about 3,000. Of the twenty-four Congressmen, fourteen Whigs, one Native American-Whig, eight Democrats, and one Free Soil Democrat, David Wilmot, were elected.[1] In the eleventh district, a mining region, the Democrats had nominated two candidates, with the result that the Whig had been elected by a very small plurality.[2] Wilmot had been elected by a huge majority.[3] On joint ballot the Whigs would control the legislature, assuring the election of a Whig Senator. In the senate the Whigs had twenty-one of the thirty-three members; the house contained fifty Democrats, forty-five Whigs, and five Native Americans, who had been elected in Philadelphia county with the assistance of the Whigs.[4]

The early returns for governor and canal commissioner indicated that the Whigs had elected both of them. It soon was evident, however, that Middleswarth had been defeated. For a period of ten days, it was doubtful whether Johnston or Longstreth had been elected governor, but then it became clear that Johnston had been chosen by a majority of over two hundred votes.[5] The Democratic candidate for canal

[1] *Public Ledger,* October 20, 1848.

[2] H. B. Wright, in a letter of October 16, 1848, to Buchanan, attributed his defeat in this district to the "amalgamation of Abolitionists—free-soil men—the Beaumont and Collings men on Butler the federal candidate." Buchanan Mss. The split in the party was due to the "rotten" delegate system to the county convention. "Free Trade has got its quietus — and hereafter men must learn wisdom," said the leading county paper, the *Luzerne Democrat,* October 11, 1848.

[3] *Public Ledger,* October 23, 1848.

[4] *Ibid.,* October 21, 1848.

[5] *Smull's Legislative Hand-Book,* 1919, p. 720; the official returns were William F. Johnston (Whig) 168,522; Morris Longstreth (Dem.) 168,225; scattering 72.

commissioner secured a majority of over three thousand. The vote for commissioner as compared with that for governor showed a decline in the Whig vote of 4,400 and in the Democratic vote of 1,100. The larger falling off in the Whig total than in the Democratic represented the refusal of the factory workers and of the free-soil Democrats to support Middleswarth. The former had been antagonized by his opposition to the Ten Hour Bill. In Allegheny county alone, he lost over 600 of the factory workers' votes. In Wilmot's district, he lost over 425 of the free-soil votes which had been cast for Johnston. This defection is not so noticeable in the southeastern part of the state.[1] Painter, the successful candidate, received the votes of the Taylor Democrats, since he had been one of those who had worked for Taylor, being a signer of the resolutions of June 26, 1847.[2]

The election of Johnston by so small a majority indicated that there had not been a political upheaval in the state. Johnston had been a Democrat, but had abandoned that party after its tariff pledges of 1844 had been violated. Support came to him from similarly minded Democrats. The manner in which the death chamber of Governor Shunk had been entered by the politicians disgusted a number of the voters. In his tour of the state Johnston had made many friends. He argued the tariff question closely and consequently secured the normal Democratic counties of Schuylkill, an iron- and coal-producing area, and of Washington, a wool-growing region. The fact that the Native Americans did not have an independent state ticket assured him of their support. The Free Soil Democrats did not have a state ticket and his views on the Wilmot Proviso

[1] *Senate Journal,* 1849, vol. ii, p. 347.

[2] *Pennsylvania Telegraph,* July 11, October 31, 1848.

were acceptable to them. In Wilmot's district, although he received a minority of the votes cast, yet he secured 1,250 more votes than did the Whig candidate for Congress. Since the majority of Johnston was so small, any and all of these elements were decisive factors.

The election of Johnston, their first governor, highly elated the Whigs, for it also presaged the election of Taylor in November.[1] For the first time, the election for President was to occur on the same day in all parts of the Union. It had become quite clear that New York and Pennsylvania would determine the election. The Whigs were certain that they would carry the former because of the wide breach in the Democracy of the state. Their efforts were consequently concentrated on Pennsylvania, where both parties more systematically used the customary campaign methods.[2] The result of the efforts to obtain a full vote was the polling of the largest vote hitherto cast. Taylor secured a plurality of 13,500 over Cass, and a majority over Cass and Van Buren of 2,250 in a total vote of over 368,000.[3]

The reason for their defeat, said the chairman of the Democratic state central committee, was due to "Taylorism, and 'nothing else.' This is Jacksonism and Harrisonism over again." [4] The recession from high prices for agricultural products, which had prevailed during the past two years because of the failure of crops in Europe and

[1] Nathan Sargent, October 12, 1848, to J. R. Chandler, "Only think of a *WHIG* governor of Pa.! Hurrah! Hurrah!! Hurrah!!!" Society Collection, Hist. Soc. of Penna.

[2] E. W. Hutter, chairman of the Democratic state central committee, on October 31, 1848, wrote Buchanan that the Whigs had an "ocean of money." Their committees of visitation were actively engaged in house to house canvasses; Buchanan Mss.

[3] *Smull's Legislative Hand-Book*, 1919, p. 715, gives the official returns as Taylor 185,513; Cass 171,976; Van Buren 11,263.

[4] E. W. Hutter, November 8, 1848, to Buchanan; Buchanan Mss.

Taylor

Erie
Warren
McKean
Potter
Tioga
Bradford
Susquehanna
Wayne
Pike
Crawford
Wyoming
Sullivan
Venango
Forest
Elk
Clinton
Lycoming
Luzerne
Mercer
Clarion
Jefferson
Clearfield
Columbia
Monroe
Centre
Union
Butler
Armstrong
Beaver
Indiana
North-umberland
Carbon
Northampton
Schuylkill
Lehigh
Mifflin
Juniata
Cambria
Allegheny
Bucks
Blair
Dauphin
Lebanon
Berks
Westmore-land
Perry
Huntingdon
Montgomery
Washington
Cumberland
Somerset
Phila
Fayette
Lancaster
Bedford
Franklin
Chester
Delaware
Adams
York
Greene

because of the repeal of the British Corn Laws, helped the Whigs in their argument on the tariff. One of the Democratic leaders in the mining region attributed the result of the election "to gunpowder and the Tariff! which of these had the greatest influence—it will be hard to ascertain." According to him, the Democrats in the coal and iron districts could not be controlled. "They said it was bread and they would not stand to principle."[1]

[1] H. B. Wright, November 13, 1848, to Buchanan; also J. W. Forney to Buchanan, November 11, 1848; Buchanan Mss.

CHAPTER V

The Slavery Question in State Politics

1849-1851.

Upon the assembling of the state legislature in 1849, the Whigs without any trouble secured control of the senate. In the house the Democrats had exactly one half of the one hundred members, the Whigs forty-five and the Native Americans five. On the first ballot for speaker none of the Native Americans voted for the Whig candidate, but on the second ballot two did so. Twenty-one ballots were cast without an election. On January 5 one of the Native Americans announced that if three votes would break the deadlock, he with two other Native Americans would change their vote in order to prevent a further waste of time. On the next ballot William F. Packer, a Democrat, was elected with fifty-two votes.[1] By casting their votes as a unit, the Democrats elected the other officers of the house.

On joint ballot, however, the Whigs and Native Americans had a majority, and were able on the third ballot to elect James Cooper to the United States Senate. Cooper had been appointed attorney-general by the governor, but an estrangement had been developing. It was increased by the refusal of the governor to favor any of the candidates for Senator.[2] The Whigs because of the failure of the

[1] *Public Ledger,* January 2, 3, 4, 5, 6, 1849.

[2] *House Journal,* 1849, vol. ii, p. 74; *Public Ledger,* January 11, 1849; McClure, *Old Time Notes,* vol. i, p. 180.

Native Americans to cooperate lost a number of the state offices. For state treasurer they nominated a member of the legislature and secured his election by his own vote, an action which they endorsed at a subsequent caucus of their party.[1]

It was assumed that Pennsylvania would be represented in the cabinet of President Taylor, inasmuch as it had been influential in securing his nomination and election. The same problem confronted Taylor that had worried Harrison. The two branches of his supporters in the state made a choice difficult.[2] The Whig Congressmen from Pennsylvania, willing to aid Taylor with unsought advice, at a caucus recommended Andrew Stewart for the Treasury Department.[3] Stewart came from western Pennsylvania and was known to be in favor of sweeping changes in the tariff and in the sub-treasury system. His views on these questions made him acceptable to the northern but unacceptable to the southern supporters of Taylor. As a result, Stewart was rejected and William M. Meredith, a Philadelphia lawyer, was given the portfolio.

The distribution of the federal patronage caused trouble, inasmuch as both Governor Johnston and Senator Cooper were striving to control the Whig party in the state. The governor requested the national leaders to allow no nominations in Pennsylvania to be made which were hostile to him, as this would disrupt the party.[4] In compliance with

[1] *House Journal,* 1849, vol. ii, p. 165; *Public Ledger,* January 16, 17, 1849.

[2] Charles B. Penrose, January 2, 1849, and John M. Kennedy, November 26, 1848, to J. J. Crittenden; Crittenden Papers, Lib. of Cong. Wm. D. Lewis, December 18, 1848, and E. C. Reigart, February 19, 1849, to John M. Clayton; Clayton Papers, Lib. of Cong.

[3] *Public Ledger,* January 22, 24, 25, 26, 1849.

[4] Wm. F. Johnston, January 17, 1849, to J. J. Crittenden; Crittenden Papers, Lib. of Cong.

his request, William D. Lewis was appointed collector of the port of Philadelphia, one of the most remunerative offices within the state. The collector had great power in appointing subordinates. The appointment of Lewis was declared to be unfair to the "Working Whigs."[1] It indicated clearly that the national administration was favoring Johnston rather than Cooper. The former was supported by the free-soil element in the party and, consequently, those who opposed this policy turned to Cooper. Cooper was dissatisfied with the neglect of his wing of the Whig party and with the refusal of Lewis to appoint his followers to subordinate positions in the customs house. Despite the strenuous opposition of Cooper, confirmation of the appointment of Lewis was secured, but not until September 18, 1850.[2]

The governor and the senate of the legislature were Whig, but the house was under the control of the Democrats. It was, therefore, impossible for the Whigs to adopt any distinctively Whig measures. Acting upon the suggestion of the governor, a sinking fund for the state debt was established, but as a non-partisan measure.[3] There was consequently nothing in the acts of the administration which could be used as an issue.

The Democrats were the first to hold their state convention, which assembled on July 4 at Pittsburgh and placed John A. Gamble in nomination for the canal commissionership.[4] The Whigs met at Harrisburg on August 16 and

[1] *Daily News*, June 23, July 3, 1849.

[2] *Senate Executive Journal*, vol. viii, p. 233. The vote on confirmation was 36 to 7. Cooper was the only Whig who voted against it.

[3] Message of January 6, 1849; *Pennsylvania Archives*, series iv, vol. vii, p. 322.

[4] *Daily Commercial Journal*, July 6, 7, 1849.

nominated Henry M. Fuller.[1] The Democrats at their convention rejected the national plank of 1848 on the slavery question and now took a position virtually the same as that of the Whigs. The Native Americans did not hold a state convention, but in some of the counties they endorsed Kimber Cleaver.[2] Unless the Whigs could secure the support of the Native Americans, they could not elect the canal commissioner nor the county officials in Philadelphia. The Native Americans were dissatisfied with the distribution of the patronage, as many of them felt that only the friends of Congressman Levin were favored.[3] Furthermore, as a body they felt that they had been slighted. Their endorsement of Taylor had come first in point of time, and they felt that in the distribution of the federal patronage they in turn should have come first.

The Whigs were ready to continue the alliance with the Native Americans in Philadelphia county but they were opposed to abandoning their own organization and forming the "Taylor Republican Association."[4] The "Rough and Ready City and County Convention," meeting in the latter part of August and in the beginning of September, made nominations for the county offices.[5] In this joint organization of the Whigs and Native Americans, the anti-Levin Native Americans refused to participate and named their own candidates.[6] About half of these candidates were endorsed by the joint organization. When the elections

[1] *Pennsylvania Inquirer*, August 18, 1849.

[2] *Public Ledger*, September 26, 1849.

[3] A. D. Chaloner, August 18, 1849, to J. M. Clayton; Clayton Papers, Lib. of Cong.

[4] *Daily News*, July 6, 10, 11, 24, 1849.

[5] *Pennsylvania Inquirer*, August 24, September 6, 11, 12, 15, 1849.

[6] *Public Ledger*, September 5, 1849.

were held, those candidates who had been endorsed by both bodies were elected. The candidate of the exclusive Native Americans for county auditor showed unusual strength and was elected. The returns clearly indicated that the so-called " Rough and Ready " party had more supporters than the exclusive Native American, which polled an average of only 2,000 votes but which had nevertheless decided the election. This led the Whigs to determine that in the future they would have an exclusively Whig ticket.[1] In Philadelphia city, ordinarily a Whig stronghold, a combination of dissatisfied Whigs, Democrats, and Native Americans elected Joel Jones mayor on the " Independent People's Ticket." [2]

Throughout the state the election was remarkable for the apathy displayed and for the lack of partisan zeal.[3] When the President made a tour of the state, an endeavor was made to convert it into a Whig procession and to impress upon him the need of protection to the industries of the state. The President, however, refused to consider his tour as anything but non-partisan in nature.[4] During the campaign the Whigs reiterated the claim that they were the free-soil party but asserted that need for the Wilmot Proviso was " now a thing of the past: it has ceased to be necessary, and dies with the exigency that created it." [5] They generally kept this issue in the background and confined their

[1] *Daily News,* October 13, 1849. Compare the following returns for the influence of the Native American vote: for treasurer—Wagner (Rough and Ready; Native) 21,265; Thomas (Dem.) 19,514; for register—Vinyard (Rough and Ready) 18,446; Bunton (Dem.) 19,735; Bonsall (Nat. Am.) 2,828.

[2] *Public Ledger,* September 4, 11, 25, October 1, 6, 12, 1849.

[3] *Ibid.,* October 8, 1849.

[4] *Ibid.,* August 11-27, 1849.

[5] *Daily News,* May 24; *Miners' Journal,* April 28, 1849.

discussions to the tariff. The reference by the *Washington Union* to the "periodical 'pig iron' clamor raised by the iron masters of Pennsylvania" was resented.[1] The failure of the tariff of 1846 to give protection to industry when prices were low was attributed to its *ad valorem* schedule and was declared to be reason for changing to specific rates.[2] That the method of levying the duties was causing unemployment was shown by the fact that large orders for railroad iron were being placed with British firms.[3] Because of the low prices which were prevailing, it was reported, the Hudson River Railroad had found it profitable to pay Peter Cooper of Trenton, New Jersey, $54,000 for the cancellation of a contract made several years previously.[4] Henry M. Fuller, Whig candidate for canal commissioner, claimed on good authority that in the period 1842 to 1846 seventy-five iron furnaces had been erected west of the mountains in Pennsylvania, but from 1846 to 1849 only three had been erected.[5] In an address to the Whig young men of Pennsylvania, it was asserted that less protection was required now because of the protection which had been previously given, and that if the policy of protection were continued, less and less would be required until the country ultimately could without danger be placed on a tariff revenue basis.[6] The fate of the tariff was said to depend on Pennsylvania.[7]

The Democrats tried, as much as possible, to avoid the

[1] *Miners' Journal*, September 29, 1849.

[2] *Daily News*, June 28, 1849.

[3] *Daily Commercial Journal*, April 13, 1849.

[4] *Daily News*, August 28, 1849.

[5] *Pennsylvania Inquirer*, September 4, 1849.

[6] *Ibid.*, August 31, 1849.

[7] *Miners' Journal*, September 22, 1849.

tariff question.[1] They appealed to the workingman by asserting that the Ten Hour Law of March 28, 1848, which declared ten hours of labor constituted a legal day's work in the textile mills of the state, was an exclusively Democratic measure. They raised this issue particularly in Allegheny county where the year before there had been rioting over the enforcement of the law. In this county the Whig press attacked the law because of its inequitable operation even within the state, and because of its consequent manifest unfairness to the local capitalist.[2] The Whig press was compelled by the Democrats to take strong ground against the law, and asserted that a man could not possibly do as much work in ten as he could in twelve hours. The agriculturists were appealed to by the statement that the law in order to be equitable would have to apply to them too.[3] In the election the county was retained by the Whigs, but the Democrats succeeded in electing one of the four assemblymen.[4]

The state election resulted in the choice of a Democratic canal commissioner.[5] The legislature came fully under the control of the Democrats, who now had seventeen of the thirty-three senators, and fifty-nine of the one hundred representatives.[6] This control was of importance as it was the duty of this legislature to reapportion the state. The free-soil Whigs claimed that they had been defeated " not

[1] *Pittsburgh Gazette,* September 6, 1849, for the proceedings of the Allegheny county Democratic convention.

[2] *Daily Commercial Journal,* January-February, 1849.

[3] *Pittsburgh Gazette,* July 24, 25, 1849. Attacks on the law were continued after the election; *ibid.,* November 22, 1849; February 27, 1850.

[4] *Daily Commercial Journal,* October 11, 16, 1849.

[5] Official returns in *Public Ledger,* October 25, 1849.

[6] *Pennsylvania Inquirer,* October 19, 1849.

through weakness, but through a reprehensible indifference."[1] The supporters of Senator Cooper, on the other hand, asserted that the overthrow was due to appointing "Parlor Politicians" and not "Working Whigs" to office.[2] The election illustrated, just as did the election of 1847, the fact that the Democrats due to their superior organization could wrest the control of the state away from the Whigs in the year following a disastrous defeat. Although the Democrats had a majority in both houses of the legislature, yet they were not to control the organization of the senate. On the seventh ballot for speaker of the senate, the Whigs voted for Valentine Best, a Democrat who had not attended his party caucus. On the following ballot he voted for himself and was elected. The Whigs received their reward in obtaining the chief senate offices.[3]

It was with an endeavor to influence the new Congress that an iron masters' convention was held at Pittsburgh in November, 1849. The *ad valorem* duties of the tariff of 1846, with the sliding scale of low rates for declared high values, were attacked on the ground that they made fraud possible. The convention asked for a "duty of $10 per ton on Pig Iron, and $20 per ton on common bar, and a corresponding increase on all other iron and manufactories of iron, in proportion to cost of make." The largest number of the delegates came from western Pennsylvania, but there were representatives present from other states. The convention was not distinctively Whig, and yet Colonel McCandless, a leading Democrat of western Pennsylvania, refused to address the convention, claiming that his views

[1] *Pittsburgh Gazette,* October 17, 1849.

[2] *Daily News,* October 16, 1849.

[3] *Public Ledger,* January 2, 3, 5, 1850; McClure, *Old Time Notes,* vol. i, p. 185.

on the subject of protection were different from those of the great majority of the delegates in the convention.[1]

The control of the Thirty-first Congress was in doubt.[2] The struggle over the election of the Speaker of the House indicated that the chief issue before Congress would be the question of the extension of the slave area, as involved in the admission of California as a state and in the erection of new territories. After many unsuccessful ballots the House chose Howell Cobb. Many of the Pennsylvania Whigs considered him the least objectionable of the southern Democrats because he had voted to add the anti-slavery provisions of the Northwest Ordinance of 1787 to the Oregon Bill. One free-soil Whig paper declared,

> Oregon free, and California once admitted as a free State, the Free Soiler will have nothing left to contend for, and the Wilmot Proviso, having performed its office, ceases to be an issue before the country. . . . We lose nothing as friends of freedom in the new territories by the election of Mr. Cobb to the Speakership.[3]

In his message of January 6, 1849, Governor Johnston urged the legislature to adopt resolutions opposing the further extension of slavery. The senate by a vote of 30 to 2 passed such resolutions, on which, however, the house took no action.[4] In February, 1850, the legislatures of

[1] *Public Ledger,* November 26, 27, December 20, 22; *Pittsburgh Gazette,* November 22, 23, 24, 1849.

[2] All the states did not hold their congressional elections in 1848. Only 138 of the 231 Congressmen were chosen in that year. The Whigs, therefore, lost the advantage which would have come to them from having the elections in the same year as the successful presidential election.

[3] *Daily Commercial Journal,* December 24, 1849.

[4] *Senate Journal,* 1849, vol. i, p. 375; *House Journal,* 1849, vol. i, pp. 51, 669.

Georgia and Virginia passed resolutions asserting that the northern states in not aiding in the rendition of fugitive slaves were not living up to the compromises of the Constitution. They denied that Congress had the power to interfere with slavery in the District of Columbia or in the new territories. In a strong message to the legislature the governor vigorously denied that Pennsylvania had not been living up to the compromises of the Constitution. That Pennsylvania had always been opposed to the extension of slavery was shown to be true. Furthermore, he claimed that although the interests of Pennsylvania had often been injured by slavery, nevertheless Pennsylvania had remained faithful to the compromises.[1] This message offended the Democrats so deeply that the house refused to order its printing for distribution.[2] In April the house by a strict party vote decided to repeal the act of March 3, 1847, which refused the use of the state jails for the detention of fugitive slaves. The senate, however, took no action on the bill.[3] This act for the first time was being considered as a party issue.

The message of the President on the admission of California was declared by the Whigs to meet with general approval in the North, but not so his views on the formation of the new territories. This region, it was said, had been declared by Mexico in 1829 to be free soil, and consequently slavery could be introduced only by a positive act of Congress or of the states to be erected there. The policy of "non-intervention" would keep the area free, and therefore there was no longer need to agitate for the Wilmot Proviso.[4] This attitude was more clearly reflected in the

[1] *House Journal*, 1850, vol. ii, pp. 419 *et seq.*

[2] *Ibid.*, vol. i, p. 727.

[3] *Ibid.*, vol. i, pp. 495, 845; *Senate Journal*, 1850, vol. i, 916.

[4] *Pittsburgh Gazette*, January 28, 1850.

Pennsylvania house of representatives, where efforts were made to repeal the resolutions of 1847 in favor of the Wilmot Proviso.[1] It was stated that if this policy should be adopted, the South would make concessions on the tariff, internal improvements, and land distribution.[2]

The attitude of the orthodox Democracy on the slavery issue was reflected in a mass meeting in Philadelphia on February 22, 1850. The meeting, sponsored by the supporters of James Buchanan, deprecated all disunion talk and agitation, and abandoned the "no extension of slavery" plank of the state convention of 1849. It resolved that "the people of the separate territories, when politically organized, . . . have then exclusively the right to prohibit or allow slavery in such territories." The Wilmot Proviso was declared to be

> the same ancient, aristocratic, pernicious and pestilent political heresy, (ever repudiated and denounced by the Democratic party of the Union), which seeks by means of an implication of power of Congress, gradually to undermine State sovereignty, destroy legislation in the respective States, consolidate the Union, and establish on the ruins of States Rights, a central sovereignty, easily controlled or managed by the few at the expense of the many.[3]

The other resolutions recommended the passage of a fugitive slave law and endeavored to assuage the South which was talking of disunion.

This position was combatted by the free-soil Democrats at a mass meeting at Philadelphia on March 13, 1850. They decried the abandoning of the party position of 1849, which they declared was the policy not only of the state

[1] *Public Ledger,* January 24, 1850.

[2] *Ibid.,* February 19, 1850.

[3] *Ibid.,* February 23, 1850.

Democracy but also of the state. John M. Read, the principal speaker, forcefully emphasized this fact. Free soil was required for free labor, he contended, as was proven by the absence of immigration to the South.[1]

These mass meetings were held chiefly as replies to the call for the Nashville convention and the subsequent disunion discussion. The Whig journals of the state, relying on the coolness and firmness of the President, refused to become excited over the disunion agitation. One of them said, "The chivalry of the South have dissolved the Union any day these three months, yet it stands firm and we cannot, for the soul of us, feel it is in any more danger to-day than it was yesterday."[2] Another of the journals claimed that the Nashville convention, called by a "Southern junto, who are desirous of dissolving the Union, unless they can force the North into a cowardly compliance with their unrighteous and unjust demands, is likely to prove a complete failure."[3] When the convention adjourned without accomplishing anything, F. J. Grund, the Washington correspondent of the independent *Public Ledger,* called it

> humbug No. 3. The first humbug was the Wilmot Proviso; the second humbug was Col. Jeff. Davis' Proviso, (the Missouri Compromise line, with a positive recognition of slavery south of it), and the third is the attempt of a handful of enthusiasts in favor of Niggerdom to present an ultimatum to the Congress of the United States![4]

In the meantime, the question of the admission of Cali-

[1] *Public Ledger,* March 14, 1450; Read's speech in full in *ibid.,* April 4, 1850.

[2] *Daily Commercial Journal,* March 8, 1850.

[3] *Pittsburgh Gazette,* April 5, 1850.

[4] June 12, 1850. Proceedings of the Nashville Convention in *ibid.,* June 4-14, 1850.

fornia and the organization of the new territories was closely followed by the public as it was discussed in Congress. The Whigs of Pennsylvania resented the fact that these two questions had been joined. One of them put it, "The free State of California, with as just a right of admission as any State in the Union, is to be made the pack horse to carry slavery into the new territories, provided nature and their present inhabitants will let it go there." [1] It was again mildly asserted that the Whigs would have to insist on the Wilmot Proviso or some other compromise.[2] The continued agitation of the South Carolina leaders led one editor wearily to express the hope that there might be found a way to let her "slip quietly and peacefully out of the Union. Since the days of her Revolutionary deeds, she has been but a pest and a nuisance; and the Union could well spare her, and Texas to boot." [3] The passage of the series of bills in September was considered to settle the question of the extension of slavery in the negative.[4]

The Whigs of Pennsylvania were from the opening day of Congress eagerly watching the apparently interminable struggle over the slavery question in the hope that it would soon be ended so that the tariff might receive some attention. Constantly they pointed out the inadequacy of the existing rates, and claimed that idle mills and workingmen rioting because of reduced wages were the result of the lack of protection to industry.[5] This state of affairs was

[1] *Pittsburgh Gazette,* April 22, 1850.

[2] *Daily News,* May 27, 1850.

[3] *Daily Commercial Journal,* August 8, 1850.

[4] *Ibid.,* September 14, 1850.

[5] *Ibid.,* March 9; *Pittsburgh Gazette,* May 3; *Daily News,* May 3, 1850. The *Public Ledger,* May 18, 1850, said that of the 121 live furnaces in western Pennsylvania, with a total capacity of 96,600 tons per annum, only 59 with a capacity of 47,200 tons per annum were in blast.

attributed not so much to the low rates as to the *ad valorem* principle on which they were based.[1] Merchants, farmers, and the manufacturing class all felt the absence of protection. Overproduction, if it existed, as the Democrats claimed it did, existed according to the Whigs only in the British mills and certainly not in the American.[2] As the session dragged on, the hope of the Whigs in Pennsylvania that the tariff would be favorably altered changed to disgust that nothing was being done. An editor of western Pennsylvania thus voiced his disapproval at the continued neglect,

> While our leading statesmen are willing to risk their reputation, for wisdom and consistency, by concocting unpalatable, if not disreputable, compromises, because a few dissatisfied spirits have blustered about disunion, they seem to care nothing for the desires and demands and necessities of hundreds of thousands of toiling freemen—which the present policy is fast impoverishing. . . . Is it not time for this struggle to cease, and for some useful legislation to be entered upon? [3]

The hope that the tariff might be considered at this session of Congress was crushed when the southern Whigs joined the Democrats in voting to postpone the question of

[1] *Pittsburgh Gazette,* April 9; *Daily News,* April 17, 1850.

[2] *Daily Commercial Journal,* August 7, 1850.

[3] *Pittsburgh Gazette,* May 13, 1850. On May 31, 1850, Congressman Moses Hampton, of the Allegheny district, tendered his resignation. In his letter to the Whig county convention, he said, "But we do not admit that the slave holding states are the only sufferers by a want of proper legislation for the protection of property, for I will venture to say, that the State of Pennsylvania alone has lost more in a pecuniary point of view, within the last four years, by the repeal of the tariff of 1842, than the value of all the slaves that have ever escaped from all the slave holding States, since the formation of the Union." *Daily Commercial Journal,* June 6, 1850.

amending the tariff until after the settlement of the slavery issue.[1]

The state parties, in the meantime, were making preparations for the elections of that year. The Democratic state convention met at Williamsport on May 29, 1850, and on the twenty-sixth ballot nominated W. T. Morrison for canal commissioner.[2] Prior to the assembling of the Whig state convention on June 19, the county conventions of the Whigs called for changes in the existing tariff and for no further extension of slavery.[3] Joshua Dungan was nominated by the Whigs for canal commissioner. Congress had as yet taken no final action on any of the measures before it. The convention urged speedy action on the tariff and submitted the following resolution,

The Whigs of Pennsylvania desire to present the question to the present Congress, whether their action on the subject is to be controlled by the wishes of the British Minister, or the voice of the Northern freemen of the American Union.

The Whigs declared that they were "opposed as they have ever been, to the extension of slavery," and that they stood "neither on the Baltimore Platform nor the Nash-

[1] *Public Ledger*, August 19, 1850; Toombs was reported to have said privately that the "reason for his vote was the opposition of some of the leading Whigs to the settlement of the slavery question on equitable terms."

[2] *Ibid.*, May 31, June 3, 1850. At this convention Cameron was accused of attempting to bribe delegates. Pamphlet, *Report of the Proceedings of the Williamsport Convention.*

[3] The York county resolutions commended the governor for his sturdy defense of the state against the attacks in the Georgia and Virginia resolutions, and they joined the Franklin county Whigs in condemning the lower house of the legislature for refusing to publish his message. This refusal was "only another indication of the willingness of that party in the North to submit to the requisitions of their Southern allies." *Pittsburgh Gazette*, June 3, 1850.

ville Platform, nor any other local or temporary structure, but . . . . on the great structure of the Constitution."[1] Their position on the slavery question was now diametrically opposed to the position of the Democrats, who in their state convention had rejected their state resolution of the year before and had endorsed the national plank of 1848.

The state election attracted little attention, as the session of Congress had been so long that only a short period of time intervened between adjournment and election day. The fact that the acts of Congress were compromises made it impossible to use them in the campaign. The rupture in Wilmot's district, which had developed in 1848 over the endorsement of Van Buren, was healed by the withdrawal both of Wilmot and of his rival and the subsequent nomination of Galusha A. Grow, who was Wilmot's law partner and had been adopted as a compromise candidate at his insistence. The views of Grow on the slavery question were as radical as those of Wilmot.[2] The majority of the Whig candidates for Congress had free-soil proclivities;[3] but the Whig state central committee in discussing the issues of the election did not introduce the slavery question. The election was declared to be of great importance because the new legislature would choose a federal Senator and reapportion the state. Efforts should be made to secure the Congressmen for the Whigs since the tariff needed revision and since the Democrats, although business was depressed, were opposing any alteration in the tariff schedule on the ground that it would be inexpedient to make changes.[4]

[1] *Public Ledger,* June 20, 21, 1850.

[2] *Ibid.,* October 8, 1850. Grow acknowledged "the constitutional power of Congress to prohibit by positive law, the extension of slavery into the territories of the nation" and recognized "the necessity for the exercise of this power." DuBois and Mathews, *Galusha A. Grow*, pp. 67, *et seq.*

[3] List of the candidates in *Public Ledger*, October 8, 1850.

[4] *Daily Commercial Journal,* September 16, 1850.

Before election day, but after the death of President Taylor, the "Rough and Ready County Convention" of Philadelphia converted itself into the "Whig County Convention," an act which clearly illustrated the recession of the Native American movement.[1] In the first congressional district the Whigs threw their influence to Levin, the Native American candidate, who had maintained considerable strength in this district. A faction of the Whigs, led by Senator Cooper and Josiah Randall, were opposing the leadership of the party by the governor. This faction nominated a Whig candidate for Congress in the first district, who diverted votes from Levin and secured the election of the Democratic candidate.[2] The Native Americans in the main supported the Whig nominees, but an independent faction polled about 250 votes.[3] Despite this opposition the Whigs as usual secured most of the offices in Philadelphia city and county.[4]

[1] *Daily News*, August 15, 1850.

[2] Wm. D. Lewis, September 21, 1850, James E. Harvey, October 14, 1850, to Thomas Corwin; Corwin Papers, Lib. of Cong. *Public Ledger*, October 1, 12, 1850.

[3] *Daily News*, October 12, 1850. Early in 1850, there occurred a new outbreak of anti-Catholicism, but this time in Pittsburgh. A certain man, by the name of Barker, was placed in jail as the result of his vehement anti-Catholic street preaching. This detention was considered to be persecution, with the result that Barker was nominated for mayor as the "Anti-Catholic and People's Candidate." Largely through the votes of the Whigs he defeated both his Whig and Democratic opponents. After being pardoned by Governor Johnston and after being released from jail, he served his term as mayor. *Pittsburgh Gazette*, January 9, 10; *Daily Commercial Journal*, January 11, 1850.

[4] Horn R. Kneass, Democrat, was returned as elected district-attorney of the county of Philadelphia. His opponent, Wm. B. Reed, appealed to the courts. The court decided that Reed had been duly elected; 2 *Pars. Eq. Cas.* 553. Judges Wm. D. Kelley and King, Democrats, as the result of this decision were rejected by their party, but Campbell, who dissented, the following year received a nomination to the

The election for state officers showed a Democratic majority of about 13,500.[1] The Whigs secured only nine of the twenty-four Congressmen, and controlled neither of the two houses of the legislature. Consequently, a Democratic Senator, Richard Brodhead, was chosen to represent the state at Washington.[2] The constitutional amendment to make the judges of the supreme court of the state elective by the people was adopted by a large majority.[3] In contrasting this election with the one of 1848, the large decrease in the number of votes cast is at once noticeable. The loss to both parties was great but was much greater for the Whigs, who were unable to hold the voters who had been attracted in 1848 by the candidacy of General Taylor.

As previously mentioned, the distribution of the federal patronage in Pennsylvania caused a division in the Whig ranks. Senator Cooper, who was dissatisfied with the reception of his suggestions to William D. Lewis about men to be appointed to subordinate positions in the customs house, attempted to block the confirmation of Lewis' nomination to the collectorship of the port of Philadelphia. The appointment had barely been made, when charges of fraud were presented against Lewis.[4] Governor Johnston, a

supreme court of the state. The following year Kelley was nominated by the Whigs to be President Judge of the county. Despite the bitter attacks of the Democrats and of a few Native Americans, he was easily elected. *Public Ledger*, October 11, 1851. Subsequently Kelley changed from a free-trader to a high protectionist.

[1] *Public Ledger*, October 24, 1850.

[2] *Ibid.*, January 2, 15, 1851.

[3] *House Journal*, 1851, vol i, p. 493; the vote for the amendment was 144,594, against it 71,995.

[4] Pamphlet by Wm. D. Lewis, *A brief Account of the Efforts of Senator Cooper . . . . to prevent the Confirmation of Wm. D. Lewis;* also, *Preliminary Reply of Mr. Levin to Senator Cooper;* various letters in the Corwin Papers, Lib. of Cong.

supporter of Lewis, strongly opposed the efforts which were being made to secure his removal, which was being advocated, he felt, "for no other reason than the gratification of a few gentlemen who have private griefs against the present incumbents." [1] The result of the charges was an official investigation, which failed to establish any guilt on the part of Lewis.[2] The outcome of the investigation was that the state administration, even though it had strong free-soil tendencies, rather than the supporters of Senator Cooper would receive the aid of the national administration in controlling the state party. Randall, one of Cooper's chief co-workers, sadly acknowledged defeat as follows.

If the administration continue to give the Free Soil party of Pennsylvania their support and patronage, time will develop what course we shall take, whether we shall raise the standard of opposition or retire and ground our arms—but in no event could we unite with Seward, Clayton, Johnston & Co. Respect to ourselves—to you—and our other friends—and the principles which you and we have so triumphantly maintained would forbid so unholy a combination.[3]

Johnston, on the other hand, had been waiting for the decision of the administration before deciding on his course of action. It was not until after Corwin's letter of April 16 exonerating Lewis had been published that he announced his intention to stand for reelection as the Whig candidate. Had he refused to be the Whig candidate, his refusal

[1] Wm. F. Johnston, April 11, 1851, to Millard Fillmore; copy in the Corwin Papers, Lib. of Cong.

[2] Letter of Thomas Corwin, Secretary of the Treasury, in the *Public Ledger*, April 18, 1851.

[3] Josiah Randall, April 30, 1851, to Webster; Webster Papers, Lib. of Cong.

would have meant the shortening of the life of the Whig party within the state.

When the Whig state convention met at Lancaster on June 24, it unanimously nominated Johnston for reelection on the first ballot. John Strohm, whose vote in the senate in 1838 had been instrumental in ending the Buckshot War by securing the recognition of the Hopkins house, was selected as the party candidate for canal commissioner. The convention also selected candidates for the state supreme court, one of whom was Richard Coulter, a member of the existing bench. Coulter had been proposed to but not accepted by the Democratic convention to nominate judicial candidates. The resolutions, which were adopted by a vote of 92 to 27, clearly indicated that the Whig party was under the control of the free-soil element. The resolutions advocated a thoroughgoing revision of the tariff. The convention refused to endorse the recent compromises of Congress and merely "Resolved, that the adjustment measures of the last Congress shall be faithfully observed and respected by the Whigs." The twenty-seven members voting in the negative wished to endorse the compromises in unmistakably strong language. Some members of the convention, refusing to vote on the resolutions, opposed them because of their free-soil expressions. One of them, ex-Congressman Ogle, said that he was "against slavery in any shape, and especially against that slavery which three thousand abolitionists in Pennsylvania would establish in regard to politics and politicians in the State!" The convention indicated that its choice for the next presidential candidate was General Winfield Scott. In a speech immediately following his nomination, Governor Johnston, in outlining his views on the slavery question, said that he would not have voted for either the Texas Boundary Bill or the Fugitive Slave Bill but, since they

were the law of the land, these two measures would have to be respected. He, however, insisted that they needed amendment.[1]

The Democrats held two conventions, the one to nominate the usual state officers and the other to select candidates for the supreme court. The first convention, which met at Reading on June 4, was completely under the control of the Buchanan forces. William Bigler was nominated for governor and Seth Clover for canal commissioner. Bigler was not a novice in state politics, having served two terms in the senate and having held a number of appointive offices. His career had been an upward struggle from obscurity and poverty to prominence and wealth. The early death of his father, caused by a fruitless effort to gain a livelihood from a wild tract in Mercer county, terminated his brief school career. He served an apprenticeship of three years on the *Centre Democrat* under his brother John, who later was chosen the first governor of California in the same year his erstwhile apprentice was elected governor of Pennsylvania. Bigler after serving his apprenticeship borrowed money to purchase a second-hand press and half-worn type. With this equipment, in 1833, he moved to Clearfield county to establish the *Clearfield Democrat,* "as he used afterwards in a jocular spirit to characterize it, an eight-by-ten Jackson paper, to counteract the influence of a seven-by-nine Whig paper which had preceded him into that mountainous region." [2] After a few years, he sold the paper, became interested in the lumber business, and soon was one of the largest producers of timber on the West Branch of the

[1] *Public Ledger*, June 25-30, 1851. Stevens' control of the Whig party in Lancaster county was weakened. His vote in 1850 had been smaller than in 1848. This year the county convention did not elect him a delegate to the state convention. *Pittsburgh Gazette,* June 19, 1851.

[2] Armor, *Lives of the Governors of Pennsylvania,* p. 414.

Susquehanna River. The acquisition of wealth did not diminish his ardor for the Democracy, nor was the nature of his business such as to influence him to favor a protective tariff. On the slavery question, his views had shifted with those of his party, and he was in full sympathy with the action of the convention.

The resolutions urged the repeal of the state statute of March 3, 1847, which forbade the use of the state jails for the detention of fugitive slaves. The compromise measures of 1850 were fully endorsed, but on the tariff question an ambiguous resolution was adopted.[1] On June 11 a different set of delegates assembled at Harrisburg to nominate candidates to the supreme court. Amongst the five nominees was James Campbell, of Philadelphia, who was chosen despite strenuous objections.[2] A group of leading Democratic lawyers of Philadelphia declared that he was mentally incapable of performing the duties of a justice of the state supreme court, that his endorsement at the Philadelphia county primary had been secured by fraud, and that he had been endorsed in large measure because he was an Irishman and a Catholic.[3]

In the campaign of this year the Whigs attempted to make the tariff the chief issue. Constantly they referred to the depressed condition of the iron industry. They could not ignore the question of the compromises, so they generally adopted the position which had been taken by Governor Johnston that the law must be obeyed as long as it remained on the statute books but that these measures ought to be amended.[4] In the meantime, Governor Johnston was

[1] *Public Ledger*, June 5, 6, 1851.

[2] *Ibid.*, June 12, 13, 1851.

[3] *Ibid.*, May 31, 1851.

[4] *Pittsburgh Gazette*, June 19, 1851; *Pennsylvania Inquirer*, August 22, 1851. In some of the counties, where the free-soil element was

withholding his signature to a bill repealing the sections of the act of March 3, 1847, which forbade the use of the state jails for the retention of captured fugitive slaves. The Democrats were trying to make his refusal to sign the bill the issue of the campaign.[1] The Whigs showed that this act of March 3, 1847, had passed the legislature without a roll-call and had been signed by a Democratic governor. Amongst those in the senate when the bill had passed without objection was William Bigler, now the Democratic candidate for governor. With this reply the Whigs answered the criticisms of their opponents and continued to discuss the need of tariff reform and the value of the state sinking fund, which had been inaugurated by Johnston. The Whigs were making headway with their campaign arguments, when, on September 11, occurred the Christiana riot. This event completely changed the issue and put the Whigs on the defensive.

In order to understand properly the manner in which the Christiana riot influenced the election, it will be necessary to review the enforcement of the Fugitive Slave Law of

particularly strong, the attacks on slavery by the Whigs were severe. In Beaver county they resolved, "That on the subject of slavery we maintain the position we have always occupied, looking upon it as an institution at variance with religion, the rights of man, and civil liberty, as well as subversive of the best interests of those among whom it exists; and therefore we cannot help expressing our dissatisfaction with the provisions of the fugitive slave law." *Pittsburgh Gazette,* June 27, 1851.

[1] On May 5, 1851, Bigler wrote Buchanan, "What will Gov. Johnston do with the repealing section? If he signs it, the Liberty men in the West will not touch him but will bring a man of their own into the field. If he refuses to sign it, he cannot maintain himself with a certain class of Whigs. This is his dilemma. *Our course is to sustain the letter and spirit of the Compromise.* If Gov. J. refuses to sign the bill now in his hands, this will be the great issue." Buchanan Mss. See also the proceedings of a Democratic meeting at which Bigler stressed this point; *Public Ledger,* August 4, 22, 1851.

1850 within the state. The law had scarcely been enacted before an exodus of negroes to the north was noticed, even those who for years had lived in certain communities near the Mason and Dixon line left their old abodes.[1] One month after the passage of the act, on October 18, 1850, the first case before a federal court came up for decision in Philadelphia before Judges Grier and Kane, who determined that the alleged fugitive slave should be tried before the United States Circuit Court and not before the commissioner. The fugitive was ordered to be released on the technical ground that ownership was not legally established by the claimant, who had failed properly to authenticate the will under which he was executor and residuary legatee. The decision seemed to indicate that the law would be strictly applied against the claimant.[2] Although the fugi-

[1] *Public Ledger,* September 25, October 2; *Pittsburgh Gazette,* September 24, 1850; *cf.* also Fred Landon, "Negro Migration to Canada," *Journal of Negro History,* January, 1920; Siebert, *Underground Railroad,* p. 249. A comparison of the census returns of 1850 and 1860 shows an increase in the negro population of the state, which is equaled by the increase in the neighborhood of Philadelphia. Around Pittsburgh and in the counties along the Maryland border, there was a marked decrease, which is balanced by the increase in the counties of the interior, particularly in those near Harrisburg.

[2] *Ex parte* Garnet, *Fed. Cases* 5243; *Public Ledger,* October 19, 1850. There had been an earlier case under the new law, which had resulted in the remanding of the negroes. Three negroes escaped from Virginia taking some horses to aid them. They were pursued by their owners and overtaken at Harrisburg. Since they could not be detained in the county jail as fugitive slaves, they were charged with larceny, and held on the order of a justice of the peace. On a writ of *habeas corpus* they were, on August 24, 1850, brought before the Dauphin county court. They were ordered to be released on the ground that the warrant of arrest did not state where the crime had been committed and that the ownership of the property alleged to have been stolen was not sufficiently averred. The court intimated that the negroes might be seized as escaped slaves. Commonwealth *v.* Wilson *et al.,* 1 *Phila. Rep.* 80. The suggestion of the court was adopted

tive in this case was freed, yet misunderstandings of the decision prevailed. The doubt as to the fairness of procedure Judge Grier tried to remove by a public letter in which he stated that under the law the alleged fugitive slave was granted the same protection accorded a white man who was threatened with extradition. For both men the only question involved was one of identity.[1] While the case had been in progress, threats of violence had been heard. Judge Grier made it understood that he was determined to carry the case through, even though it might be necessary to call on the President for a thousand soldiers.[2]

At times, however, the apprehension of the fugitives was prevented,[3] and opposition to the law was freely and openly expressed, chiefly by the Whigs.[4] On November 18, 1850,

as the negroes were leaving the jail. Rioting followed during which one of the slaves escaped. The owners, the other two slaves, and several of the crowd were imprisoned for rioting and bound over for an appearance at the next session of the Court of Quarter Sessions; *Public Ledger*, August 25, 26, 27, 1850. On September 30, without any excitement, the slaves were handed over to their owners under the authority of the new law; *ibid.*, October 1, 1850. A verdict of "not guilty" was returned in the case of the owners and assistants; Commonwealth *v.* Wm. Taylor *et al.*, 4 *Clark* (*Pa.*) 480.

[1] *Public Ledger*, October 28, 1850.

[2] *Ibid.*, October 19, 1850.

[3] The failure to capture a party of thirteen escaped negroes because of the intervention of the citizens of Wilkes-Barre is noted; *Public Ledger*, October 21, 1850.

[4] The *Pittsburgh Gazette*, October 20, 1850, held the law to be "morally void, although legally binding," and it resisted "not the constitutional requirement, but the unnecessary and degrading encroachment upon the rights and feelings of the people of the free States, in enforcing its claims." Thaddeus Stevens, in a case before the United States District Court, was reported to have urged citizens to aid escaping slaves, to have called the law "hateful," and to have appealed to the "higher law." For this speech he was taken to task by his fellow counsel in the case, Wm. B. Reed; *Daily News*, October 24, 1850. The *Daily News*, Senator Cooper's organ, upheld the law; October 23, 24, 1850.

Judge Kane of the United States District Court charged his grand jury to be on the watch for those who were obstructing the operation of the law. But, he cautioned them, "I would distinguish liberally, and I would have you to distinguish between mere extravagance of diction and the endeavor by threats or force to obstruct the execution of the laws of the country." [1] Three days later a large Union meeting was held at Philadelphia, at which resolutions calling for the repeal of the act of March 3, 1847, and for hearty support of the compromises were adopted. This meeting, sponsored only by the Democrats and by the anti-Johnston Whigs, was of great service in the South in quieting the fear that the Fugitive Slave Law would not be enforced in Pennsylvania.[2]

The next case under the law was tried before Commissioner Ingraham at Philadelphia in December, 1850, and caused much unfavorable comment. An alleged fugitive slave, Adam Gibson, on insufficient testimony and after an imperfect hearing, was placed in the custody of the agents of the claimant to be conveyed to him in Maryland. When the negro was taken to his alleged owner, the reception of the negro was refused because he was not the runaway slave. Although many persons had been attracted to the trial of the negro, yet there had been no attempt made to block the proceedings by a rescue. On the return of the negro to Philadelphia, not only the commissioner but also the law received a vast amount of harsh criticism.[3] In March, 1851, Price, the agent in the Gibson case, was sentenced by a state court to a term of imprisonment for eight

[1] *Public Ledger*, November 19, 1850.

[2] *Ibid.*, November 22, 1850.

[3] *Ibid.*, December 23, 24; even the *Daily News*, December 24, 1850, attacked the "new judge in Israel."

years in the Eastern Penitentary for the technical kidnapping of a child born in Pennsylvania, who had been spirited away with its mother, an escaped slave. For being implicated in the same case, George Alberti received a ten years' sentence.[1] The conviction and the sentencing of these two men was used by the southern newspapers to prove to their readers that the people of the North were unwilling to abide by the recent compromises.[2]

After the conviction of Alberti and Price, Governor Johnston requested Governor Lowe of Maryland to extradite J. S. Mitchel, the owner of the woman. This request was refused.[3] In the meantime, attacks on the statute of March 3, 1847, continued, and urgent demands for its repeal were made.[4] In a special message to the legislature Governor Johnston defended the act and replied to the criticisms of Governor Lowe. The dispute between Maryland and Pennsylvania involved the question of the freedom of children born in a free state of a slave mother. The common law, which Maryland followed, held that a child so born was slave, while Pennsylvania by statute had declared that the child was free. Those, who opposed the act of March 3, 1847, claimed that a great deal of misunderstanding would be averted by its repeal. The agitation for the repeal of the act finally resulted in the passage of a bill to accomplish this. The bill was passed just before the close

[1] Commonwealth *v.* Alberti *et al., 2 Pars. Eq. Cas.* 495; *Public Ledger*, January 6, March 6, 1851. In 1850, in Cumberland county, a kidnapper had been convicted under the act of 1847, the constitutionality of which had been upheld, although it ran counter to the common law principle of *partus sequitur ventrem; 4 Clark (Pa.)* 431.

[2] *Public Ledger,* September 9, 1851.

[3] *Ibid.,* March 10, 1851; *cf.* message of Governor E. L. Lowe of Maryland on January 7, 1852, for his views on the trial of Alberti; *Maryland Legislative Documents,* 1852, pp. 33-40.

[4] Mass meeting of anti-Johnston Whigs, Philadelphia, February 27, 1851; *Public Ledger*, February 28, 1851.

of the legislative session, and Governor Johnston was withholding his signature, for which he was being attacked during the course of the campaign.

The chief criticism against the Fugitive Slave Law was because of the creation of the special tribunals.[1] So intense was the opposition to this feature of the law, particularly after the hasty decision in the Gibson Case, that Judge Kane of the United States District had the cases arising within the next few months after that decision brought from the commissioner before him on writs of *habeas corpus*.[2] In all the cases, although there was always considerable excitement, there was no attempt at a rescue, whether the alleged fugitive were remanded or set free.[3]

Then occurred the Christiana riot in Lancaster county on September 11, 1851, which resulted in the death of Edward Gorsuch, the owner of the alleged fugitives, and the wounding of his son.[4] This portion of the state, lying close to the Maryland border, was a refuge for fugitives. It had also been the scene of several recent "kidnaping" expeditions and feeling against the "slave-catchers" was running high.[5] The riot was immediately seized upon by

[1] Message of Governor Johnston of January 8, 1851; *Public Ledger*, January 9, 1851. This annual message has been omitted from the *Pennsylvania Archives*.

[2] Summary of three cases in May, *The Fugitive Slave Law and its Victims*; for other cases *cf. Public Ledger* January 25, 27, 28, February 7, 8, 10, March 8, 10, 11, 12, 13, 14, 1851.

[3] In addition to the references in the note above *cf. Public Ledger*, December 17, 1850; February 14, March 14, April 24, July 3, 23, August 19, 1851.

[4] Hensel, *The Christiana Riots and the Treason Trials of 1851; Public Ledger*, September 12-18, 1851.

[5] Hensel, *op. cit.*, pp. 16, *et seq.; Public Ledger*, January 21, March 19, 1851. The people of the neighborhood in a meeting had resolved to refuse to assist in enforcing the law and to aid all fugitives in escaping; quoted from the *Lancaster Examiner* by the *Public Ledger*, September 18, 1851.

the Democrats as proof of their claim that the Whigs—for this was one of their strongholds—were encouraging resistance to the enforcement of the Fugitive Slave Law. The resistance had led to the murder of an individual relying on the law to recover his property.

On September 14 the leading Democrats of Philadelphia issued a call for a mass meeting to be held on the seventeenth to take action on the recent resistance to the laws and to prevent another outbreak. They also issued an open letter to the governor stating that the memorialists were "not aware that any military force has been sent to the seat of the insurrection, or that the civil authority has been strengthened by the adoption of any measures suited to the momentous crisis." The governor, who was in Philadelphia on the following day, issued a proclamation, previously prepared, offering a reward for the arrest of those guilty of the murder. In reply to the open letter, the governor denied that there was an insurrectionary movement in Lancaster county and said that he would not excite the public by marching troops into that county. Those guilty of the crime of murder and of resistance to the law would be punished. He asked for the cooperation of the memorialists, "as citizens of Pennsylvania, not only to see that the law is enforced, but to add to the confidence which we all feel in the judicial tribunals of the land, by abstaining from undue violence of language, and letting the law take its course." That evening the Whigs held a previously scheduled mass meeting, at which the governor defended his course in withholding his signature from the repealing bill. To the governor's letter and to his speech the Democrats rejoined,

The purpose of our communication has been entirely misconceived by you. The crime which had been perpetrated in our

immediate neighborhood was treason, in preventing, by armed resistance, the enforcement of a law of the United States. Our purpose was to request your attention to this fact and not to censure the local police of a county, as you suppose.

They also accused the governor of tardiness in issuing his proclamation. The signers declared their belief that resistance to the law would again be attempted and that his letter would encourage this lawless design. "We understand it as a declaration of your opinion that there should be no change in the course of the State government, and that no public measures of State are required in order to prevent the recurrence of the late bloody outrage."[1] The Democrats relied exclusively on this riot in the closing days of the campaign for their election material. In addition to their correspondence with the governor, the Democrats made effective use of a letter from the Reverend Gorsuch, son of the murdered man, in which charges of neglect of duty were made against Governor Johnston.

Judge Kane of the United States District Court gave strength to the Democratic contention that treason had been committed when his charge to the grand jury on September 29 included a discussion of that crime.[2] With this crime the men, who had been arrested for being implicated in the riot, were charged. Although the trials did not come until after the election, nevertheless, the charge of the judge and the indictments were used by the Democrats as election material to prove the depravity of the Whigs.[3] The Whigs

[1] Correspondence in Hensel, *op. cit.*, pp. 145, *et seq.*; *Public Ledger*, September 15, 16, 17, 1851.

[2] Charge to the grand jury in 2 *Wall. Jr.* 134.

[3] For the trials *cf.* United States *v.* Hanway, 2 *Wall. Jr.* 139, in which the jury after an absence of twenty minutes returned a verdict of "not guilty" on the charge of treason. This was the leading case and the others were dismissed by writs of *nolle prosequi.* A certain indi-

vigorously denied that they were responsible for the riot and that they were a party of disorder. One of their papers put it:

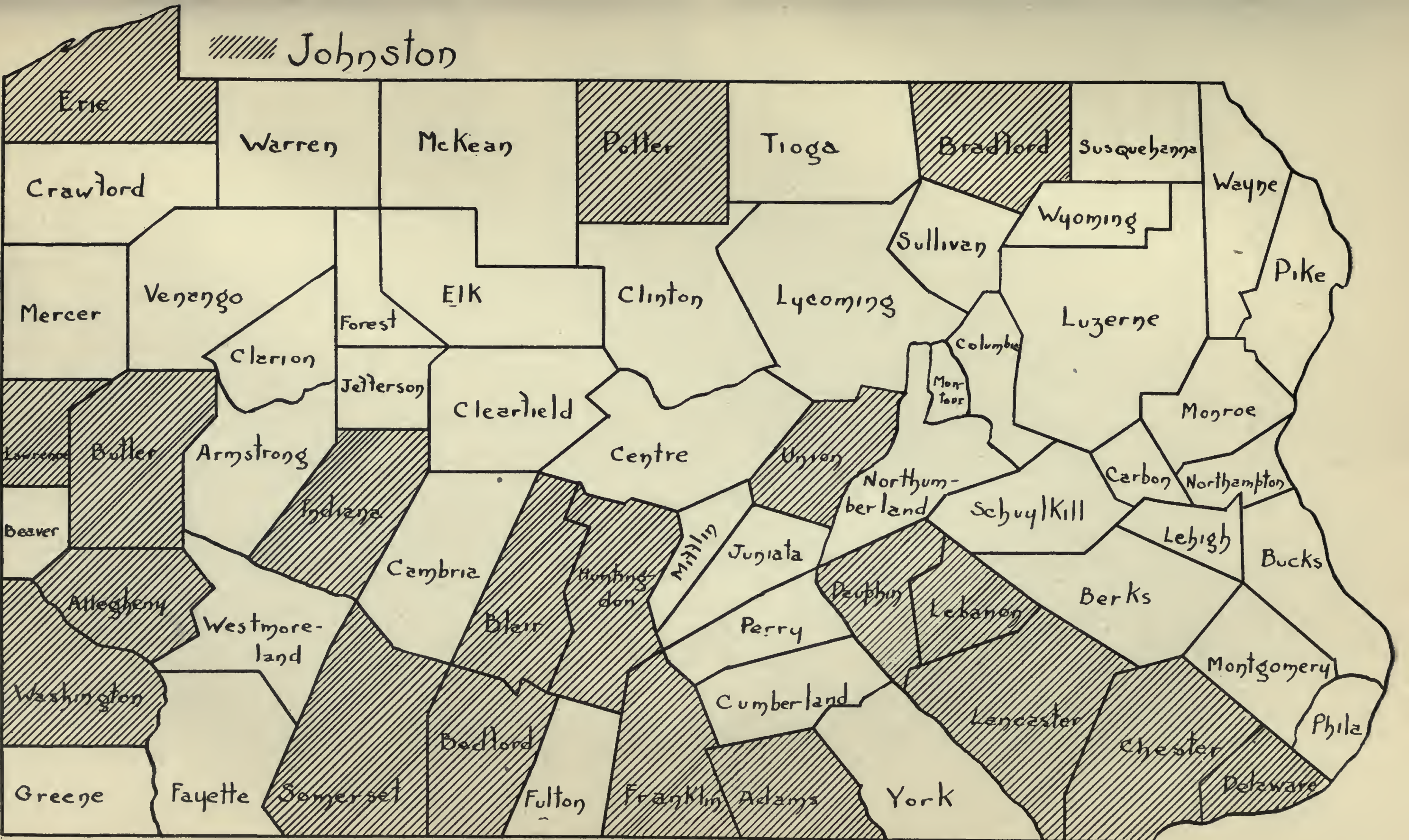
The Whigs of Pennsylvania, with Governor Johnston at their head, are a Union loving, law abiding, and mob hating people, and they hurl back with scorn, the base and contemptible innuendoes of their opponents. If ever the true patriots of Pennsylvania have to weep over outraged laws, violated engagements, and connivance with rapine and murder, they will find the actors in the tragedy, not among the Whigs, but in that party which has always justified wrong when it led to aggrandisement, and which is now even reeking with the blood of its Cuban victims.[1]

On October 14 the election was held with a very heavy vote being polled. The vote for governor exceeded the vote of 1848 for the same office by 29,400 votes but fell 2,500 short of the vote cast for President in the same year. Bigler received 8,455 more votes than Johnston, who in 1848 had had a majority of about 300. The increased vote of this year was distributed 18,000 to Bigler, 9,500 to Johnston, and 1,900 to Cleaver.[2] The Democrats increased their majorities in the greater number of the counties which they ordinarily carried. It was chiefly in the northern counties, comprising the area in which the influence of Wilmot was strong, that the Democrats lost votes. The free-soil men preferred Johnston to Bigler. In Lancaster

vidual, Samuel Williams, was tried for obstructing the enforcement of the Fugitive Slave Law on the ground that he brought news of the coming of Gorsuch. A verdict of "not guilty" was rendered; 5 *Clark* (*Pa.*) 155. *Cf.* also *Public Ledger*, January 13, February 6, 1852.

[1] *Pittsburgh Gazette*, September 22, 1851.

[2] *Smull's Legislative Hand-Book*, 1919, p. 720, gives the returns Bigler (Dem.) 186,489; Johnston (Whig) 178,034; Cleaver (Nat. Am.) 1,850; scattering 67.


Johnston
Erie
Warren
McKean
Potter
Tioga
Bradford
Susquehanna
Wayne
Pike
Crawford
Wyoming
Sullivan
Luzerne
Mercer
Venango
Forest
Elk
Clinton
Lycoming
Clarion
Columbia
Montour
Jefferson
Clearfield
Monroe
Lawrence
Butler
Armstrong
Centre
Union
Northumberland
Carbon
Northampton
Schuylkill
Beaver
Indiana
Mifflin
Juniata
Lehigh
Bucks
Cambria
Huntingdon
Dauphin
Lebanon
Berks
Allegheny
Westmoreland
Blair
Perry
Montgomery
Washington
Cumberland
Lancaster
Phila
Bedford
Chester
Greene
Fayette
Somerset
Fulton
Franklin
Adams
York
Delaware

county, where the riot occurred, and in the nearby Whig counties of Chester, Dauphin, Delaware, and Lebanon, the Whigs increased their majorities. In the nearby Democratic counties of Berks, Bucks, Montgomery, and York, the Democratic vote was increased. The returns in the rural districts indicate that the election had little effect on the customary party allegiance. In Philadelphia city and county, where the riot was particularly used by the Democrats to depict the Whigs as a party of lawlessness and where there was fear that southern trade might be lost if the Fugitive Slave Law was to be thus nullified, the Whigs lost 2,200 votes to the Democrats and to the Native Americans. The improved condition of business also cost the Whigs votes in the counties where the tariff appeal had been efficacious in securing votes from the Democrats. The mining county of Schuylkill, a Democratic region, which in 1846 and in 1848 had been carried by the Whigs on the tariff issue, now returned to the Democracy. Johnston's majority of 700 in 1848 was now converted into a minority of the same amount in this county. In the other mining counties, which were normally Democratic, the majorities against the Whigs were increased.

The Democrats elected four of the five judges of the supreme court of the state. The defeated Democratic candidate, James Campbell, lost by 3,000 votes to Richard Coulter, who received 7,000 less votes than the lowest successful Democratic judge. Coulter had been on the bench, and after having been refused a nomination by the Democrats had received one from the Whigs. The Catholicism of Campbell along with his alleged incompetency lost him 4,000 votes in Philadelphia and Allegheny counties alone.[1] The

[1] Official vote in the *Public Ledger*, October 31, 1851. Campbell was taken care of the following year by being appointed Postmaster-General by Pierce.

Democrats in carrying the state elected the canal commissioner, the auditor-general, and the surveyor-general. The state senate would contain sixteen Democrats, sixteen Whigs, and one Native American; the house would have fifty-five Democrats, forty Whigs, and five Native Americans. Had the Whigs and Native Americans combined on all the candidates in Philadelphia, their control of the house would have been assured.[1]

The Whig party in the South rejoiced at the defeat of Governor Johnston.[2] This rejoicing irritated the supporters of the governor within the state. One of them claimed that the southern Whigs seemed to be demented on the question of slavery, and were apparently unwilling to show any tolerance for differences of opinion. "If such an absurd course is to be pursued, there is an end of all future cooperation. What hope can southern Whigs have of Pennsylvania hereafter, when they are loud in rejoicing over the defeat of Governor Johnston, who received the votes of over 178,000 Whigs!" This rejoicing, it was noted, was not confined to Alabama and to Mississippi, but even the Whigs of Baltimore were claiming that the election of Bigler was a triumph for the national Whig administration.[3] This state of internal bickering boded no good for the coming presidential campaign.

[1] *Public Ledger,* October 24, 1851. One wing of the Native Americans had held a convention at Harrisburg on July 24, but this small body split on the question of the advisability of nominating state officers. The seceders insisted on making nominations for governor and canal commissioner but made none for the supreme court; *ibid.,* July 29, 1851. They continued the fight against an alliance with the Whigs in their county convention; *ibid.,* August 12, 1851.

[2] Cole, *The Whig Party in the South,* p. 226; message of Governor Lowe of Maryland on January 7, 1852; *Maryland Legislative Documents,* 1852, p. 40.

[3] *Pittsburgh Gazette,* November 13, 1851.

CHAPTER VI

The Whig Party Marks Time

1852-1853.

In the organization of the legislature the Whigs secured the speaker of the senate because of the refusal of several Democrats to vote, but the Democrats easily maintained control of the house.[1] On January 8, 1852, immediately after the organization of the legislature, Governor Johnston returned to the senate the bill repealing the sixth section of the act of March 3, 1847. His refusal to sign the bill had been used effectively by the Democrats in the last campaign. In his veto message the governor discussed the history of the passage of the act, contending that the act was based on the interpretation of the Constitution of the United States made by the federal Supreme Court.[2] The senate could not pass the measure over the veto of the governor, whose term was about to expire. In his inaugural message of January 20, 1852, Governor Bigler urged the legislature to repeal the obnoxious sections of the act of March 3, 1847,[3] and, in compliance with his request, an act repealing the sections, which forbade the use of the state jails for the detention of fugitive slaves, was passed.[4] Before the passage of the repealing act, partly to right an

[1] *Public Ledger*, January 7, 8, 1852.

[2] *Pennsylvania Archives*, series iv, vol. vii, pp. 491, *et seq.*

[3] *Ibid.*, series iv, vol. vii, pp. 519, *et seq.*

[4] *Session Laws*, 1852, p. 295.

alleged wrong and partly to mollify the South, Governor Bigler pardoned George Alberti, who had been convicted of kidnaping under the statute of March 3, 1847.[1]

The effect of the defeat of the Whigs in 1851 was felt in the spring municipal elections of 1852. The election of a Democratic mayor on January 13 in the Whig city of Pittsburgh led to the warning that "this abandonment of Whig nominees, by known Whigs, *must* stop here, or the party fails utterly, for all good ends." [2] The defeat of the Whig candidate was due to many Whigs supporting Mayor Barker, who was running for reelection on the Anti-Catholic ticket.[3]

As was the custom, the state conventions were held in March. The Democrats, despite the strenuous opposition of Simon Cameron, endorsed Buchanan for the presidency, and nominated William Seabright for canal commissioner.[4] Before the election another convention was necessitated by the death of Seabright. This convention met on September 5 and nominated William Hopkins, who had been the speaker of the successful house in the Buckshot War.[5] The Whigs in their convention reaffirmed their action of the year before and endorsed Scott for the presidency. As their candidate for canal commissioner they selected Jacob Hoffman.[6] The control of the Whig party within the state was not wrested from the free-soil element. On the other hand, the Democrats did not waiver from their opposition to the free-soil agitation.

[1] *Keystone,* February 10, 1852.

[2] *Daily Commercial Journal,* January 14, 1852.

[3] *Public Ledger,* January 15, 1852.

[4] *Ibid.,* March 5, 6, 1852.

[5] *Ibid.,* September 6, 1852.

[6] *Ibid.,* March 26, 1852.

It was not in the state but in the national party that the breach in the Whig ranks assumed alarming proportions. A caucus of the Whig Congressmen, according to party custom, drew up and issued the call for the national convention. When the caucus met this year, an effort was made by the southern members to have the caucus assume the new duty of deciding the "principles" by which the party would be guided at the coming election. The "principles" were to be an unqualified endorsement of the compromise measures. At the first session of the caucus no action was taken. At a subsequent session the assumption of the power to declare "principles" was rejected by a vote of 46 to 21. The vote was largely on a sectional basis, although seven southerners voted against the measure and seven northerners for it. Senator Cooper of Pennsylvania was the only Whig from that state who favored the proposition. The opposition to the adoption of "principles" was led by Thaddeus Stevens and by several North Carolina Whigs.[1] After their defeat in the congressional caucus, eleven of the southern Whigs issued an address in which they pledged themselves not to support the candidate of the Whig national convention unless the Compromises of 1850 were specifically endorsed. They declared themselves ready, if necessary, to form a new party.[2] In reply to this address, the *Daily Commercial Journal* reflected the attitude of the state Whig party, in saying,

The yearly exactions and demands of the South are no longer tolerable, and our only defence and substantial reliance is, *a Northern Party*.

We can elect Scott without the aid of the South, and there never will be harmony and repose, in the relations of the two

[1] *Public Ledger*, April 12, 21, 22, 29, 1852.

[2] *Ibid.*, April 29, 1852.

wings of the party until we show these disorganizers not only that we *can* do without them, but that we mean to carry our man in spite of them.

There has been always a "*Southern* Whig Party," whilst we could boast only of "A Whig Party of the Northern States." The remedy for this state of things is a "Northern Whig Party," and the defiant attitude of the Southern Whigs suggests this as the proper time for an application of the remedy.[1]

The state Whigs were still rankling under the gloating of the southern Whigs over the defeat of Johnston a few months before.

At a caucus, held the day before the assembling of the national convention at Baltimore, the southern Whigs intimated that in return for a resolution in the convention affirming the finality of the Compromises of 1850 they would favor resolutions endorsing a protective tariff and the improvement of the rivers and harbors.[2] The convention, before it balloted for a candidate, adopted its platform. A tariff of specific duties was endorsed, and the appropriation of money for the improvement of rivers and harbors was advocated. The last resolution dealt with the compromises, which were declared to be "a settlement in principle and substance of the dangerous and exciting questions which they embrace," and which would be maintained "as essential to the nationality of the Whig party and the integrity of the Union."[3] The free-soil element of Pennsylvania, controlling the delegation of the state, selected ex-Governor Johnston as the state member of the committee on resolutions. The vote of the state delegation for the

[1] May 3, 1852.

[2] *Public Ledger,* June 17, 1852; the friends of Webster, in particular, were said to favor these measures.

[3] Stanwood, *History of the Presidency,* vol. i, p. 252.

resolutions was twenty-one in favor and six in opposition. On the fifty-third ballot Scott was nominated for the presidency; he received twenty-six and Fillmore one of the votes from the Pennsylvania delegates. The nomination of William A. Graham of North Carolina for the vice-presidency caused no struggle.[1] The Whigs of the South, not satisfied with the resolutions, awaited Scott's letter of acceptance before taking further action. Its contents, when published on June 24, did not please them; so on July 3 they issued a manifesto in which they declared Scott to be "the favorite candidate of the Free Soil wing of the Whig party," and they regarded it "as the highest duty of the well wishers of the country everywhere, whatever else they may do, to at least withhold from him their support. This we intend to do."[2] The most ardent admirers of Scott in Pennsylvania, professing to feel no alarm over this manifesto, declared that the signers came from states which at best would give Scott no support. "We believe," declared one editor, "General Scott will never feel the opposition of these gentry, and we are not sorry that their treason is, at length, fully unmasked."[3]

Prior to the Whig convention, the Democrats had placed their candidates in nomination. Throughout the balloting the Pennsylvania delegation supported Buchanan; but it soon became evident that neither he, nor Cass, nor Douglas could be nominated. On the thirty-fourth ballot a few votes were cast for Pierce, and on the forty-ninth a break occurred in his favor and he was nominated. The Buchanan supporters were somewhat mollified by the nomination of W. R. King, one of Buchanan's most intimate friends,

[1] *Public Ledger,* June 17-22, 1852.

[2] *Ibid.,* June 30, July 8, 1852.

[3] *Daily Commercial Journal,* July 7, 1852.

for the vice-presidency.[1] After the nominations were known, the Whigs raised the cry "Who is Franklin Pierce?" They contended that Pierce was not to be blamed for his obscurity but that the Democrats were to be censured for nominating a man of such unknown qualities.[2]

On July 6 the Native Americans, who in 1848 had cooperated with the Whigs, held a national convention at Trenton. They decided to change the party name from "Native American" to "American." Daniel Webster and George C. Washington were placed before the public as their nominees.[3] Strong objections were made to these nominations particularly by the anti-Levin branch of the party.[4] The failing health of Webster removed him as a possibility, so in the election the Native Americans voted for Jacob Broom of Philadelphia and Reynell Coates of New Jersey, who were placed in nomination by the executive committee after the death of Webster and the declination of Washington.[5] In the Philadelphia districts and in four other districts of the state, the Native Americans ran congressional candidates.[6]

In August there assembled at Pittsburgh the national convention of the Free Soil Democracy. The convention nominated John P. Hale and George W. Julian. Prior to the national convention, there had been a state mass convention of the "friends of freedom" to prepare for the

[1] *Public Ledger*, June 2-7, 1852.

[2] *Daily Commercial Journal*, June 28, 1852.

[3] *Public Ledger*, July 7, 1852. In order to avoid confusing them with the Know-Nothings or Americans they will be referred to by their older designation.

[4] Letter of Peter Sken Smith in *ibid.*, August 30, 1852.

[5] *Ibid.*, October 30, 1852; C. O. Paullin, "The National Ticket of Broom and Coates, 1852," in *The American Historical Review*, vol. xxv, pp. 689-691, July, 1920.

[6] *Public Ledger* October 12, 1852.

national convention. At one of its later meetings the state convention nominated a state ticket.[1] The convention recommended that congressional candidates be run in each district, but only in the three districts at the headwaters of the Ohio was this done in Pennsylvania. The vote of the party in the state was much smaller than in 1848, particularly in Wilmot's district.[2] In the Whig counties it succeeded in retaining its small following.

The Whigs raised the question of the tariff as the big issue of the campaign, but met with little success.[3] The Whig cry for Pennsylvania was said to be "Scott, Graham and a Tariff with specific Duties."[4] The stressing of the deceit of the Democracy in 1844 had no practical effect.[5] In both parties there was an apathy towards the campaign which had not been in evidence in preceding presidential elections. The *Public Ledger*, an independent paper, said,

We see here and there, especially in the great cities, almost daily attempts to hold "mass meetings." But though these meetings are crowded to suffocation in the newspapers, very

[1] *Public Ledger*, August 11-14, 1852.

[2] Wilmot realized that the Whig party is "now substantially a Free Soil party and would resist any further aggression of the slave power; but if they succeed in electing a president they would be pro-slavery, as is the Democratic party. So long as they are out they will be an anti-slavery party. . . . There will be an organized political nucleus for the Free-Soil elements of the free States to fall back upon in this contest. We Free-Soilers of the northern counties will therefore probably vote for Pierce in this election, not because we believe in him, but because in our judgment it is the wisest course to prepare for the conflict which must come upon the extension of slavery in this country." Quoted in DuBois and Matthews, *Galusha A. Grow*, p. 94.

[3] *Daily Commercial Journal*, July 21, 23, 24, August 4; *Public Ledger*, September 2, 1852.

[4] *Daily Commercial Journal*, June 26, 1852.

[5] *Ibid.*, August 27, 1852.

few attend them bodily. They seem to think that a metaphorical attendance will do as well for the cause, whatever it be, and much better for themselves.[1]

On October 12 the state elections were held with the Democrats receiving twenty thousand more votes than the Whigs.[2] The legislature would be divided in control due to hold-overs in the senate which would contain seventeen Whigs, fifteen Democrats, and one Native American; the house would be made up of sixty-two Democrats and thirty-eight Whigs. The Democrats elected sixteen of the twenty-five Congressmen and the Whigs nine. If the Whigs and Native Americans had combined in three of the Philadelphia districts, the fusion candidates would have been elected. In the Beaver-Lawrence-Mercer district in western Pennsylvania the Whig candidate for Congress was defeated because of the large number of votes cast for the Free Soil nominee.[3]

The Whigs claimed that their defeat in the state election was due to the "stay-at-home" vote. In the presidential election, they affirmed, they would be successful, if they could induce these men to go to the polls. Increased votes

[1] September 9, 1852.

[2] The official returns for canal commissioner are given in the *Public Ledger*, October 28, 1852; Hopkins (Dem.) 171,551; Hoffman (Whig) 151,601; Wyman (Free Soil) 3,843; McDonald (Nat. Am.) 8,187. Judge Coulter of the state supreme court had died in April. George Woodward had been appointed to fill the vacancy. Later he was nominated by the Democrats and defeated Joseph Buffington, the Whig nominee, by 172,619 to 153,715.

[3] *Ibid.*, October 16, 1852; the beginning of a reaction against the control of the free-soil element is seen in the Whig party, particularly in Lancaster county. The "Silver Greys" succeeded in ousting the "Wooly Heads"; they nominated Isaac Hiester for Congress. Stevens' activity as counsel for the defense in the trial of the Christiana rioters helped in his overthrow from leadership; *ibid.*, August 23, October 11, 1852.

had been secured in 1840 and in 1848 by party activity and the elections had been won. What was to prevent the same result from being attained now?[1] The introduction of the temperance question in some of the local elections had worked to the disadvantage of the Whigs, who were always affected by the introduction of these extraneous issues.[2] In the presidential campaign the Democrats made free use of the attacks on Scott by the southern Whigs.[3] In a speech at Greensburg Buchanan devoted himself to the question of the advisability of raising the commanding general of the army to the presidency. The views of Scott, as given in a letter of October 25, 1841, were criticized as showing his incompetency.[4] The course of the Whigs in endorsing Governor Johnston's withholding his signature to the bill repealing the act of March 3, 1847, was condemned.[5] The Democrats by these criticisms made the Whigs abandon the issue of the tariff of 1846 as the main question and forced them to reply to their attacks.

The election was carried by Pierce with a majority of

[1] *Daily Commercial Journal,* October 15, 1852; address of the Allegheny County Scott Club, *ibid.*, October 22, 1852.

[2] *Ibid.*, October 13, 16, 1852.

[3] The pamphlet, *Whig Testimony against General Scott,* was widely circulated.

[4] Moore, *Works of James Buchanan,* vol. viii, pp. 460, *et seq.* This letter of Scott had been sent by him to various Whig leaders in the North after the party broke with Tyler; copies in the Ewing Papers and in the McLean Papers, Lib. of Cong. At the same time, Scott was actively corresponding with Thaddeus Stevens, who was hoping to restore the Anti-Masons to power under the possible leadership of Scott; letters of Stevens to Scott, October 20, 1841, February 15, 1843, of Scott to Stevens, November 1, 4, 21, 1841, May 5, August 2, 1842; Stevens Papers, Lib. of Cong.

[5] *Daily Commercial Journal,* October 4; *Public Ledger,* October 8, 1852.

9,000 votes over his three opponents within the state.[1] Upon the defeat of Scott, the *Daily Commercial Journal* remarked,

> For the sake of conciliating the South, the Whigs of the North admitted into their platform of principles an element which was distasteful to the mass of the Whigs of the North, and, as the sequel has shown, lost to the cause northern Whig States. The South was imperative in exacting the admission of this element of discord; and after securing its admission, the States of the South—the Whig States—have refused to sustain either platform or candidate, and we are covered with defeat. This is the point of difficulty, in submitting with good grace and comfortable temper, to the defeat of Scott and Graham.
>
> For our own part, patience and our capacity of endurance have been wholly exhausted in the labor of standing by the South, to witness the South stand by and succor and give victory to our opponents. We will no more of it.[2]

The statements of R. M. Riddle, editor of the paper, that the party ought to be dissolved did not meet with hearty approval even in the western part of the state. One of the leading Whigs of Butler county took issue with him and maintained that it was necessary for the Whigs to hold to their old policies.[3] Judge H. M. Brackenridge of Allegheny county felt that the North and not the South was to blame for the estrangement between the two sections. The abolitionists and the free-soilers were the ones who were threatening to break up the Whig party. This was shown

[1] *Smull's Legislative Hand-Book,* 1919, p. 715, gives the returns as Pierce (Dem.) 198,562; Scott (Whig) 179,104; Hale (Free Soil Dem.) 8,495; Broom (Native American) 1,678.

[2] November 4, 1852.

[3] Letter of Samuel A. Purviance to R. M. Riddle, November 15, 1852; *Daily Commercial Journal,* November 22, 1852.

Scott

Erie
Warren
McKean
Potter
Tioga
Bradford
Susquehanna
Wayne
Crawford
Wyoming
Pike
Sullivan
Venango
Merer
Lycoming
Luzerne
Elk
Clinton
Forest
Clarion
Columbia
Mon-
tour
Jefferson
Clearfield
Monroe
wrence
Butler
Armstrong
Centre
Union
Northumber-
land
Carbon
Northampton
Indiana
eaver
Schuylkill
Lehigh
Cambria
Mifflin
Juniata
Bucks
Hunting-
don
Dauphin
Allegheny
Westmore-
land
Blair
Lebanon
Berks
Perry
ashington
Montgomery
Cumberland
Lancaster
Phila.
Fayette
Somerset
Bedford
York
Chester
Delaware
Greene
Fulton
Franklin
Adams

by the fact that the South had favored a protective tariff before the passage of the Missouri Compromise Act; with the passage of this act had begun the agitation against slavery with the resultant objection of the South to a protective tariff.[1] William D. Lewis, a leader of the free-soil wing in Philadelphia, wrote after the election,

We are told in the good book that "whom the Lord loveth he chasteneth," which of course it would be impiety to doubt. It is clear then that the Whig party must stand high in his favor, for he has recently given it such a chastening as I hope he may deem sufficient to purify its rebellious blood for all time.[2]

After the elections the discouragement and despair of the Whigs was pronounced and profound. A ray of light pierced the darkness when the Pittsburgh Whigs defeated the Democratic mayor who was up for reelection.[3] Whatever doubt existed as to the continued existence of the Whig party was removed when the Whig state central committee, meeting at Harrisburg on February 16, issued a call for a state convention to meet at Lancaster in March.[4] The most significant act of the convention was the appointment of a large central committee of fifty-five, which indicated a determined effort to effect a thoroughgoing revivification of the state Whig party.[5] The spirit shown at the convention soon slumped. At another state convention, meeting in August at Huntingdon, for the pur-

[1] Letter to R. M. Riddle; *ibid.*, November 22, 1852.

[2] Letter of November 13, 1852, to J. M. Clayton; Clayton Papers, Lib. of Cong.

[3] *Daily Commercial Journal*, December 30, 1852, January 10, 12, 1853. The Anti-Catholic party had disappeared and so there was nothing to divert Whig votes away from their candidate, R. M. Riddle.

[4] *Pennsylvania Telegraph*, February 19, 1853.

[5] *Ibid.*, March 26, June 1; *Daily News*, May 14, 1853.

pose of nominating a candidate to succeed Judge Gibson on the supreme court, only a few counties were represented.[1] This lack of interest and this apathy continued throughout the campaign of 1853.[2] It could be attributed in part to the fact that only minor officers were to be elected, but the indifference, more pronounced than usual, indicated party disintegration. Nevertheless, an assertion by Horace Greeley that the Whig party was dead was vigorously denied.[3] Elections in Tennessee, Kentucky, and other southern states were taken as denials of his claim.[4]

Without success the Whigs endeavored to raise an issue on the question of the sale of the public works. They had been characterized by a leading Democrat as "a lazarre house of corruption" and by a Whig as "an infirmary for broken down politicians."[5] This question had been lightly touched upon in the first Whig convention, but was stressed in the second.[6] The Democrats, however, did not oppose the demand for the sale of the public works, and, consequently, there could be no issue raised on this question.[7] Although the Whigs were insisting on the sale of

[1] *Pennsylvania Telegraph,* August 3, 31, 1853.

[2] *Ibid.,* October 19, 1853.

[3] *Daily News,* May 20, 26, 1853.

[4] *Evening Bulletin,* August 15, 1853.

[5] *Pennsylvania Telegraph,* April 9, 1853.

[6] *Ibid.,* August 31, 1853.

[7] The following year the act of April 27, 1854, authorized the offering at auction of the main line of the public works; but no bids were received. On December 20, 1855, the Pennsylvania Railroad Company made an offer for the main line. Under the authority of the act of May 16, 1857, which, in the main, followed the offer of the Pennsylvania Railroad Company, an auction was held on June 25, 1857, at which the main line was purchased by the railroad. The lateral canals were sold under authority of the act of April 21, 1858. This ended state ownership of internal improvements other than roads. Bishop, "State Works of Pennsylvania," in *Transactions of the Connecticut Academy of Arts and Sciences,* vol. xiii, pp. 254, *et seq.*

the public works as a means of relieving the state from its tremendous financial burden, which had been incurred through the construction of these works, yet they tried to get support in certain sections of the state because they had favored local extensions.[1] The beginning of a demand that the tonnage tax on freight hauled by the Pennsylvania Railroad be repealed was heard.[2]

The campaign became complicated by the appearance of many local issues. For a time the question of a loan of two million dollars by Philadelphia county to the Sunbury and Erie Railroad threatened to become an issue in Philadelphia,[3] but attention was soon diverted to the movement for the consolidation of Philadelphia city and county. Although both the Whig and the Democratic county conventions declared for consolidation, yet a ticket was formed from the nominees of both parties, who were known to be particularly favorable to consolidation. As was usual under such circumstances, the result favored the Democrats.[4] In many of the counties the temperance question assumed such large proportions as to be alarming to the old parties. The Whigs generally endorsed candidates, who were pledged

[1] *Pennsylvania Telegraph*, September 28, 1853.

[2] *Daily News*, March 16, 1853.

[3] The city councils had made provision for a loan of two million dollars, but since the conditions had not been met by the railroad, the loan had not been made. The contemplated loan by the county was to take the place of the loan by the city, which eventually made the loan and thereby quieted the agitation over the question of the legality of the loan by the county. The city had previously subscribed four million dollars to the Pennsylvania Railroad, one half million to the Hempfield Railroad, and one half million to the Easton and Water Gap Railroad. *Evening Bulletin*, March 4, 7, 8, 11, 14, 1853; January 9, 1854.

[4] *Daily News*, September 30, October 17; *Public Ledger*, October 15; *Evening Bulletin*, October 15, 1853.

to the reform. If they failed to do this, an independent nomination would be made by the reformers. As a result of the injection of this question into county politics, the Democrats secured ten members of the lower house and two in the upper from what were ordinarily Whig districts.[1]

The election of 1853 resulted in an easy victory for the Democrats. No issue of either state or national significance was involved and the election was based on party solidarity. In fact, the Whig party was politically bankrupt. Even though the anti-free-soil branch of the state Whig party admitted that the old issues had been settled, yet they insisted that there was need of it since "the distinctive principle or feature of the Whig party is what it has ever been, a conservative opposition to the rank radicalism and Jacobinism which has ever been a distinguishing feature of Locofocoism."[2] Others of the Whig party hailed the defeat as a good omen, claiming that it portended the disappearance of partizanship, because all the old questions had been settled. One of them declared that "no cohesive principle exists any longer between partizans, except the memory of past animosities and the prospect of future spoils."[3] Although the apparent collapse of the Whig party was noted, yet no such similar breakup of the Democratic party was evidenced to cheer the Whigs. The passage of the con-

[1] *Daily News*, October 21; *Pennsylvania Telegraph*, October 19, November 16; *Westmoreland Intelligencer*, October 20, 1853. The Whigs now lost control of the senate, which contained 18 Democrats, 14 Whigs, and 1 Native American; the house contained 71 Democrats, 25 Whigs, and 4 Native Americans; *Pennsylvania Telegraph*, November 2, 1853. The vote for canal commissioner was Forsyth (Dem.) 152,867, Pownall (Whig) 117,937; Morgan (Native American) 7,764; Mitchell (Free Soil) 3,579; *Public Ledger*, October 27, 1853.

[2] *Daily News*, October 25, 1853.

[3] *Evening Bulletin*, October 15, 1853.

solidation act, signed by the governor on February 2, 1854, brought the question of the reorganization of the Whig party to the fore, at least so far as Philadelphia city and county were concerned.[1]

[1] *Session Laws*, 1854, p. 21; *Daily News*, January 12, 18, February 4, 1854.

CHAPTER VII

The Disappearance of the Whig Party

1854-1856.

In the early part of 1854 there was a recrudescence of anti-Catholic sentiment, which was closely associated with intense hatred of foreigners. Heretofore, candidates in local elections had been defeated by an appeal to religious prejudices, but now the agitation was to assume state-wide proportions. In the past few years there had been a number of causes to increase the fear felt because of the alarming number of immigrants. In the election of 1852 assertions were made that the Democrats put up placards urging the Catholics to vote for Scott, with the anticipated result that many Protestants, generally Whigs and native-born, had rejected him but no foreign- or native-born Catholics had been attracted to him.[1] The opposition, partly anti-Catholic, which had prevented the elevation of Campbell to the supreme court of the state, was deeply offended when Pierce made him Postmaster-General.[2] The tour of Bedini, the nuncio of the Pope, in the latter part of 1853 and in the beginning of 1854, led to rioting in various cities of the United States. The anti-Catholic element occasionally condemned the rioters, but universally condemned the nuncio as the cause of the disorder. In order not to offend their supporters of German ancestry, the Whigs declared that it was

[1] *Pennsylvania Telegraph,* November 10, 17, 1852.

[2] *Public Ledger,* January 4; *Evening Bulletin,* March 8, 1853.

only the Irish Catholics who did not condemn Bedini.[1] This anti-Catholic sentiment, sedulously aroused this year by the Whigs, was to prove of temporary advantage but of ultimate discomfiture to them.

The four parties within the state in their conventions made nominations for the elections, which were of importance as a governor was to be chosen. As usual, the struggle would lie between the Whigs and the Democrats, although the Native American nominations would draw some votes away from the Whigs and the nomination of David Wilmot as the gubernatorial candidate of the Free Soil Democracy would harm the orthodox Democracy. The Whigs, led by the free-soil element of their party, placed James Pollock, of Northumberland county, in nomination for the governorship; the Democrats nominated Governor Bigler for re-election. The Whig candidate stood in many ways in sharp contrast to the Democratic nominee. Pollock, president judge of the eighth district, had been graduated from Princeton with the highest honors; Bigler had a meager common-school education. Pollock had served three terms in Congress, representing a normally Democratic district; Bigler had held none but state offices. Pollock was born of native American parents of Scotch-Irish descent; Bigler's parents were of German descent. Consequently, as the Know Nothing movement developed, its adherents supported Pollock rather than Bigler.

The consideration of the Kansas-Nebraska Bill by Congress raised an issue which was eagerly seized by the Whigs.[2] Their state convention, on March 15,

Resolved, that those provisions of the Kansas and Nebraska

[1] *Evening Bulletin*, February 2, 13, 15, 1854.

[2] *Daily News*, January 30, February 17; *Pennsylvania Telegraph*, February 17, 1854.

Bill now before Congress, which affect and repeal the Missouri Compromise, are a deliberate breach of plighted faith and public compact, a high-handed attempt to force slavery into a vast territory now free from it by law, a reckless renewing of a quieted agitation, and therefore meet the stern, indignant and unanimous condemnation of the Whig party.[1]

This question was vigorously pressed and suggestions were made that Pollock withdraw in favor of Wilmot, but the proposition was promptly rejected.[2] Pollock, in reply to a letter from opponents of the Kansas-Nebraska Bill, placed himself in their ranks.[3] The letter attracted the leaders of the Free Soil Democracy, who opened a correspondence with him. The result was the withdrawal of the nomination of Wilmot and the pledging of their support to Pollock.[4] This act was significant, indicating the coalescing of free-soil sentiment into one party. Wilmot had in 1848 bolted the regular Democratic organization and had supported Van Buren. In 1851 he had supported Bigler and in 1852 Pierce, not because he favored them, but because he feared that, if the Whig party came into power, it would cease to be free-soil. He was preparing for the dissolution of the Whig party on the slavery question. The accession of Wilmot to the support of Pollock startled many of the Whigs,

[1] *Pennsylvania Telegraph*, March 18, 1854. The Whig press was almost unanimous in condemning the measure. Even the *Daily News*, February 17, 1854, which in 1850 had condemned Governor Johnston for not endorsing the compromises of that year, declared itself emphatically against the repeal of the compromises of 1820. It asserted that if those of 1820 were not binding, neither were those of 1850, and that "the real friends of the measures of 1850 will be the first to sound the tocsin for *their* repeal."

[2] *Daily News*, April 22; *Pennsylvania Telegraph*, April 29, 1854.

[3] *Pennsylvania Archives*, series iv, vol. vii, p. 784, for letter of June 19, 1854.

[4] *Westmoreland Intelligencer*, September 7, 1854.

who, recalling Wilmot's vote in favor of the Tariff Act of 1846, declared that they wanted no fusion with free traders.[1] The tariff could not, however, be raised as an issue, and emphasis during the campaign was placed on the Kansas-Nebraska measure. The Whig state central committee, under the leadership of A. G. Curtin, declared that "never, in the history of Pennsylvania, was there a clearer and stronger line drawn—never a more distinct definition of principle." [2] Bigler, however, even after his recovery from an illness which prevented him from being active in the early days of the campaign, refused to discuss the slavery question.[3] In its final address, issued on October 5, the Whig state central committee, referring to this attitude on the part of the Democratic candidate, said, "The Nebraska question—the great issue between the propagandists of slavery and the defenders of human liberty—is ignored." [4] In addition to the support of the abolitionists, Pollock was assured the support of another reform element within the state. The electors were to vote on the question of whether the state ought to adopt a stringent liquor law. The reply of Bigler to an inquiry was considered inadequate, while the answer of Pollock was deemed satisfactory; consequently Pollock was endorsed.[5]

The opposition to the Catholics and to the foreign-born was taking definite shape in the organization of secret political societies. This was an independent movement and was not connected with the remnant of the former Native American organization. In Philadelphia a celebration be-

[1] *Daily News,* August 25, 1854.

[2] *Ibid.,* July 20, 1854.

[3] *Evening Bulletin,* October 7, 1854.

[4] *Daily News,* October 9, 1854.

[5] *Pennsylvania Archives,* series iv, vol. vii, p. 783.

cause of the consolidation of the city and county, planned for Washington's birthday, 1854, was postponed until March 10. In the parade were a large number of "American" organizations, composed of native-born citizens, who had "organized within a few years." Several delegations of "Know Nothings," as they were called because of their ostentatious reticence, were in line.[1] That these new organizations were working in secret for political power and that they were rapidly developing strength was shown in a non-partisan election for school directors in Lancaster city on May 3. Two men, not avowed candidates, received six hundred votes, while the two defeated candidates, who were Catholics, received only sixty votes.[2] A still more important indication of the strength of the movement was given in the election for mayor of the enlarged city of Philadelphia on June 6. In this election Robert T. Conrad and a preponderantly Whig council with other Whig officials were elected by the votes of the Know Nothings, receiving a majority of more than eighty-five hundred.[3] "This earthquake shake," wrote a Democrat to Buchanan, "alarms us in the fate of Governor Bigler." [4]

[1] *Evening Bulletin,* March 10, 1854.

[2] *Inland Daily,* May 9; *Pennsylvania Telegraph,* May 10, 1854; Judge A. L. Hayes to Buchanan, May 8, 1854, Buchanan Mss.

[3] *Daily News,* June 8, 1854; in its issue of May 31, 1854, this journal contended that the Germans were going with the Democracy and had made the contest one of "Lager Beer and Vaux versus Temperance and Conrad." The *Evening Bulletin,* June 7, 1854, claimed that the election was a rebuke of the state and of the national administrations for having taken up Campbell. "The weakness on foreign questions, the bullying on home questions, the indecencies of the Nebraska legislation, the base resort to all sorts of demagogue tricks, the traffic in offices to secure votes, the filibustering inclinations and the general unfitness for the control of a great nation" have all contributed to the merited defeat.

[4] Daniel T. Jenks, June 9, 1854; Buchanan Mss.

The Democrats sharply attacked the Whigs for organizing the Know Nothings, whose principles, particularly of religious intolerance, were shown to be contrary to those of the founder of the commonwealth. Pollock, they declared, had been initiated into the order and full details of the ceremony were printed.[1] To show the inconsistency of the movement, assertions were made that Thaddeus Stevens, leader of the former Anti-Masons, had taken the oath of secrecy and had been duly inducted into the mysteries of the society.[2] To the attacks of the Democrats the supporters of the movement replied that the Jesuits, a Catholic organization, had been the originators of secret religious societies with a political purpose.[3] The omnipresence of representatives of the "Most Holy Order of Jesus" was vividly depicted for the doubtful. According to one journal,

> The help in your kitchen, and the girl in your nursery, are Jesuits. The fellow who blacks your boots is one of the same Order: but he don't like "saycret societies," and he declaims against "Know Nothings" with a volubility that defies the oral peculiarities of a Billingsgate fish woman. At the very time he is doing this, he is peering into your private affairs—telling Bishops and Priests what you eat for breakfast, dinner, and supper; how you do the business in which you are engaged; what your income is, and how you manage to live.[4]

The Democrats were determined to root out the influence of the Know Nothings within their own party. Candidates in Philadelphia were questioned as to their possible mem-

[1] Pamphlet, *To the Thinking Voter of Pennsylvania.*

[2] Forney, *Address on Religious Intolerance and Political Proscription,* p. 47; *Daily News,* September 30, 1854.

[3] *Pennsylvania Telegraph,* June 14; *Daily News,* July 25, 1854.

[4] *Pennsylvania Telegraph,* June 14, 1854.

bership in the new organization.[1] Mott, Democratic candidate for canal commissioner, was endorsed by the Know Nothings, but it was vigorously denied that he was therefore a member of that society.[2] The Whigs declared that the Know Nothings drew their members from all the old parties, and that consequently they could not justly be condemned for the movement.[3]

In the elections for Congress the issue was sharply and clearly drawn on the Kansas-Nebraska Act. In strong, normal Democratic districts the Whigs threw their influence to "Independent Democrats," who pledged themselves to work for the repeal of the measure. The Whigs as a body stood bound in opposition to the act. In Lancaster county, a stronghold of the Whigs, where two years before the "Silver Greys," so called because they favored the slaveholder, had secured control of the party organization, an independent Whig, run by the Stevens "Wooly Head" faction, which leaned towards abolition, was elected with the help of the Know Nothings.[4] In the second congressional district of Philadelphia, Joseph R. Chandler was refused a nomination for reelection because he was a Catholic.[5] The reasons openly avowed were that he had not opposed the establishment of a branch mint at New York, which was detrimental to Philadelphia, that he had voted for the subsidy to the Collins steamship line, a New York corporation, and that his actions at the Vatican during a recent visit had been unseemly.[6] The friends of Chandler placed him in nomination as an independent Whig candidate

[1] *Evening Bulletin*, September 12, 1854.

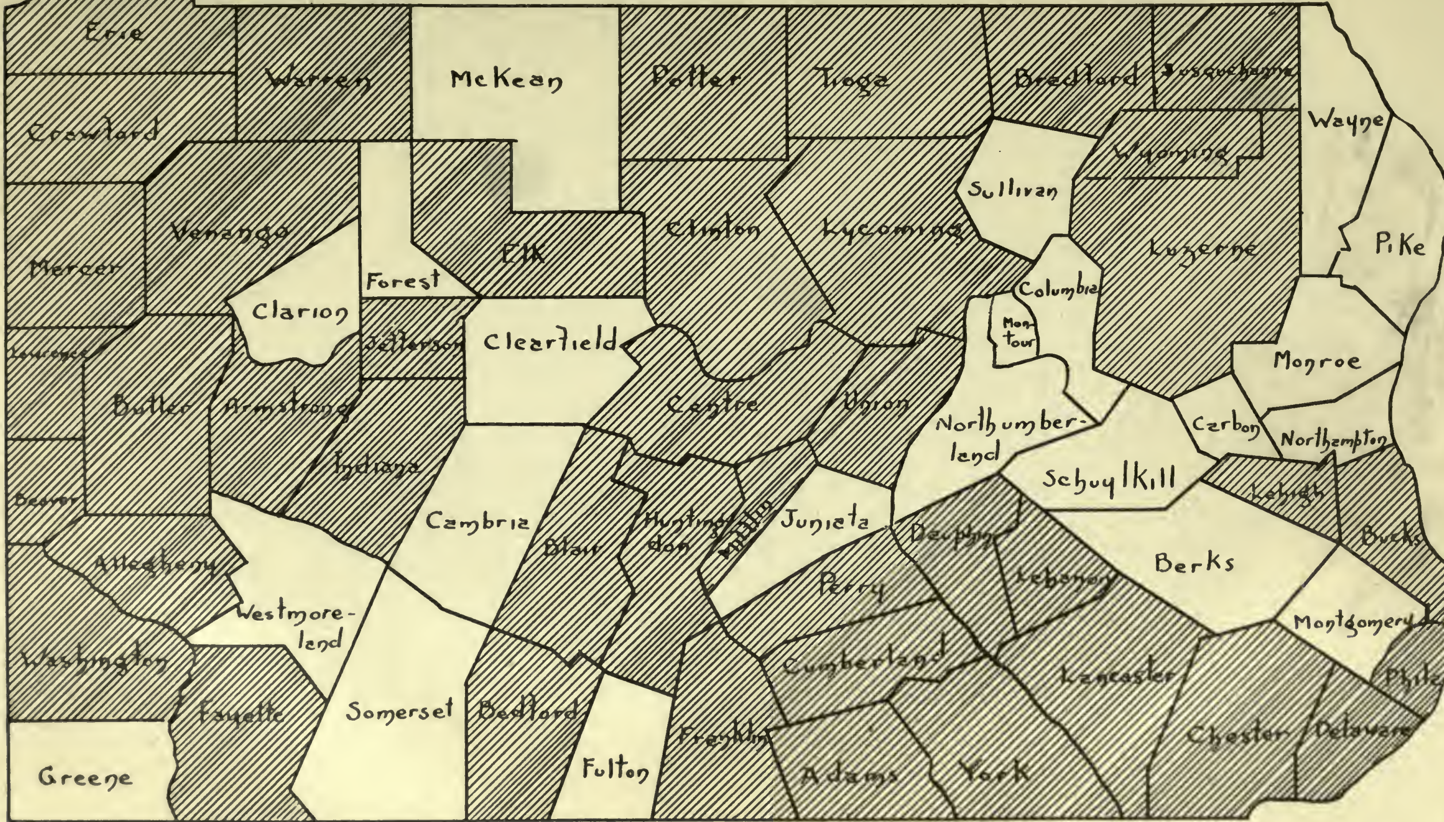
[2] *Daily News*, August 30, 1854.

[3] *Ibid.*, October 4, 1854.

[4] *Evening Bulletin*, October 28, 1854.

[5] *Ibid.*, September 6; *Daily News*, September 28, 1854.

[6] *Daily News*, October 2, 1854.


Know Nothing Vote the Decisive Factor
Erie
Warren
McKean
Potter
Tioga
Bradford
Susquehanna
Crawford
Wayne
Wyoming
Sullivan
Mercer
Venango
Elk
Clinton
Lycoming
Luzerne
Pike
Forest
Clarion
Columbia
Montour
Lawrence
Jefferson
Clearfield
Monroe
Butler
Armstrong
Centre
Union
Northumberland
Carbon
Northampton
Indiana
Schuylkill
Lehigh
Beaver
Cambria
Blair
Huntingdon
Mifflin
Juniata
Dauphin
Bucks
Allegheny
Berks
Perry
Lebanon
Westmoreland
Montgomery
Washington
Cumberland
Lancaster
Phila
Fayette
Somerset
Bedford
Franklin
Chester
Delaware
Greene
Fulton
Adams
York

but he was easily defeated.[1] In the fourth congressional district, also in Philadelphia, pressure was brought to bear on the Whig nominee, who withdrew in favor of the Native American candidate, Jacob Broom, presidential candidate in 1852, who was duly elected. In the first district, although the Native American candidate withdrew, the Whig was defeated.[2] Of the twenty-five Congressmen-elect twenty-one were anti-Nebraska men, composed of fourteen Whigs, one "Independent" Whig, one Native American, and five Democrats; this gave the administration only four Democratic supporters from the state.[3]

The general election for state officials resulted in the choice of James Pollock, Whig, for governor, of Henry S. Mott, Democrat, for canal commissioner, and of Jeremiah S. Black, Democrat, for judge of the supreme court. The total vote was approximately 370,000, of which the Democrats controlled 167,000, the Whigs 83,000, and the Know Nothings 120,000.[4] The Know Nothing vote was well diffused throughout the state, and differed from the nativist vote of 1844 in this respect. Although not independently organized, the Know Nothings by selecting candidates from the nominees of the major parties secured their election. The result was a legislature of a peculiar

[1] *Evening Bulletin,* September 12, 16, 19, October 28, 1854.

[2] *Daily News,* October 9, 1854.

[3] *Evening Bulletin,* October 21, 1854.

[4] Official returns for governor in *Smull's Legislative Hand-Book,* 1919, p. 720, James Pollock (Whig and American) 203,822; William Bigler (Dem.) 166,991; B. Rush Bradford (Nat. Am.) 2,194; scattering 33. Official returns in *Evening Bulletin,* October 26, 1854, for canal commissioner, Henry S. Mott (Dem.) 274,074; George Darsie (Whig) 83,331; B. M. Spicer (Nat. Am.) 1,244; for supreme court judge, Jeremiah S. Black (Dem.) 167,010; Thomas H. Baird (Nat. Am.) 120,596; Daniel Smyser (Whig) 73,571; for prohibition 158,342, against 163,510.

complexion. There were twenty-five Democrats in the lower house, thirteen Democratic-Americans, three independent Democrats, and one Temperance-Democrat, a total of forty-two. The Whigs had fifty-three members, composed of thirty-six Whigs, fifteen Whig-Americans, and two Temperance-Whigs. There were also four Americans and one Temperance-American.[1] This legislature well illustrates the cross currents of politics in the state as the result of the advent of the Know Nothings. Certainly it cannot with justice be claimed that the Democratic defeat was due exclusively to either the Know Nothing movement or the anti-Nebraska agitation, although either one of them independently would have accomplished the overthrow of the Democrats in 1854. There was no doubt but that the Whigs were badly disorganized. The question, however, of the disposition of the 83,000 Whigs remained to be solved. The governor-elect realized that the old parties were decadent and looked to the organization of a "liberal, tolerant, high-minded and truly American party." He viewed the victory as the "vindication of great American principles, too long the sport of demagogues and too often overthrown by influences foreign to the best interests of our Country." [2]

When the legislature assembled, some of the difficulties of organizing the society, which had worked in secret, into a political party came into evidence. On February 9, 1855, a caucus of the Know Nothings or Americans, as they were now called, was held to place a candidate for the United States Senate in nomination. Ninety-one members of the

[1] *Evening Bulletin*, October 21, 1854. It now became customary to call the Know Nothings by the name of Americans; they will be referred to hereafter as such.

[2] Letter from James Pollock, October 30, 1854, to John M. Clayton; Clayton Papers, Lib. of Cong.

legislature, considerably more than avowed themselves Americans, attended. The voting was by ballot and not *viva voce.* On the sixth ballot one more vote than members attending was cast, and Simon Cameron was within one vote of having a majority. Thirty-two members then withdrew, declaring that they would not abide by the decision of the caucus. On the next ballot Cameron received the nomination of the remainder of the caucus.[1] The nomination was widely condemned, regardless of party affiliation. The seceding members in an address, justifying their withdrawal, affirmed,

But what we say unto one we say unto all, invite us not in to partake of a buzzard's feast. Ask us not to support a nomination brought about, as we believe, by the concentrated and cohesive power of public plunder, and the superadded element of shameless and wholesale private bribery.[2]

Inasmuch as Cameron did not control a majority of the votes of the members of the legislature, and inasmuch as the opposition could not concentrate on one candidate, the election was postponed until the following year.[3]

Successful efforts to organize the Know Nothings, or the Americans, on a national scale were made. The slavery question, which had split the Whig party, was to have the same effect on the newer organization. This was evidenced when the national council assembled in June. The resolutions, which were adopted, declared in Article XII that

the National Council has deemed it the best guarantee of common justice and of future peace, to abide by and maintain the existing laws upon the subject of Slavery, as a final and conclusive settlement of that subject, in spirit and in substance.

[1] *Daily News,* February 12, 15, 1855.

[2] *Pennsylvania Telegraph,* February 21, 1855.

[3] *Daily News,* March 14, 15, 1855.

And regarding it their highest duty to avow their opinions upon a subject so important, in distinct and unequivocal terms, it is hereby declared as the sense of this National Council, that Congress possesses no power, under the Constitution, to legislate upon the subject of Slavery in the States where it does or may exist, or to exclude any State from admission into the Union, because its Constitution does or does not recognize the institution of Slavery as a part of its social system; and expressly pretermitting any expression of opinion upon the power of Congress to establish or prohibit Slavery in any Territory, it is the sense of the National Council that Congress ought not to legislate upon the subject of Slavery within the Territory of the United States, and that any interference by Congress with Slavery as it exists in the District of Columbia, would be a violation of the spirit and intention of the compact by which the State of Maryland ceded the District to the United States, and a breach of the National faith.[1]

Fifteen members of the council, led by ex-Governor Johnston of Pennsylvania, withdrew, protesting against the introduction of the slavery question and maintaining that its introduction was contrary to the principles of the American party, and that, if the question were to be disposed of, the Missouri Compromise should have been endorsed.[2] When the convention itself met, fifty-four delegates from twelve

[1] *Evening Bulletin,* June 15, 1855.

[2] *Pennsylvania Telegraph,* June 20, 1855; the delegates came from Pennsylvania, Illinois, New Jersey, Vermont, Delaware, and Connecticut. The Indiana delegates issued a separate protest. The same journal, on June 27, 1855, approved of the course adopted, saying, "To exact a National sentiment in favor of a sectional institution—and that institution *slavery*—is simply an absurdity. . . . Philadelphia and New York may cry 'Peace! Peace!'—but until you concede *freedom* to Kansas and Nebraska, and restore the Missouri Compromise, the masses from the interior will respond 'no peace!' Platforms may be reared as high as heaven, and numerous as the stars, but if constructed of Kansas timber, the parties occupying them would do well to dispose of their estates and appoint executors."

New England and western states withdrew because of the introduction of this question.[1] The bolters from the Philadelphia convention met at Cincinnati on November 21, 1855, according to call. A motion to expunge Article XII, however, was not adopted and no definite action was taken.[2]

The fight on Article XII was carried by ex-Governor Johnston into the Pennsylvania convention of the American party, which assembled at Reading on July 2. The convention was under the control of the free-soil element, and Article XII failed of adoption by a vote of 30 to 143. On the other hand, the strong free-soil report of the majority of the platform committee was rejected by a vote of 89 to 104, and the milder minority report was accepted by a vote of 133 to 53. The substitute for Article XII stated that the slavery question should not have been brought up in the National Council, but now that this question had been forced upon the attention of the party the state convention felt compelled to declare that the repeal of the Missouri Compromise was "an infraction of the plighted faith of the nation" and that the compromise should be restored. Seventy-three of those supporting the minority report were eastern delegates. Of those who opposed it because of its mildness thirty were western delegates and twenty-three eastern. This action of the state convention led to the withdrawal of ten Philadelphia delegates, for whom the platform was too radical. This group had been endeavoring to block the free-soil element, continued their efforts, and in the election of 1856 merged with the Democrats.[3]

The formation of the Republican party had, in the mean-

[1] *Ibid.*, June 20; *Daily News*, June 14, 1855. The bolters came from Ohio, Indiana, Illinois, Michigan, Massachusetts, New Hampshire, Vermont, Maine, Rhode Island, Connecticut, Iowa, and Wisconsin.

[2] *Pennsylvania Telegraph*, September 12, November 28, 1855.

[3] *Ibid.*, July 11; *Daily News*, July 9, August 27, 1855.

time, been under way within the state. On November 27, 1854, a local organization was effected in Wilmot's district,[1] which was followed by similar movements in other portions of the state.[2] The strength of the new party came from the dissatisfied free-soil element of the older parties. Many "old line" Whigs, however, barred by the religious proscription of the American party, distrusted the radicalism of the Republican party, and consequently attempted to fuse the local Whig organization with the Democrats, in the hope that the new parties might be overwhelmed.[3] The fusion nominees of the conservative Whigs and of the Democrats were barely defeated in the May municipal elections in Philadelphia by the combined efforts of the radical Whigs and Americans.[4]

In July, 1855, attention was strikingly attracted to the slavery question by the imprisonment of Passmore Williamson in the Moyamensing Jail, Philadelphia. Williamson was a Friend and acted as secretary of the Pennsylvania Abolition Society. He had encouraged a female slave with her two children to abandon their owner, who was on his way through the city to New York where he intended to embark for Nicaragua to take up his duties as consul. Upon the failure of Williamson to produce the escaped slaves when a writ of *alias habeas corpus* was served on him by order of Judge Kane of the United States District Court, he was adjudged guilty of contempt of court, and was imprisoned until such time as he should purge himself of the contempt. By one trial or another the case was kept

[1] *Daily News*, December 4, 1855.

[2] *Pennsylvania Telegraph*, March 21; *Evening Bulletin*, August 31, 1854.

[3] Address of the Whig committee of correspondence, *Daily News*, August 31, 1855.

[4] *Ibid.*, April 3, 10, 25, May 4, 11, 1855.

prominently before the public from July 18, the date of the escape, until November 3, when Williamson was released.[1] During the time of his imprisonment the state organization of the Republican party was being effected.[2] At the state mass convention, which met at Pittsburgh on September 5, strong anti-slavery resolutions were adopted. The candidate for canal commissioner proposed by the committee was set aside by the convention and amidst great enthusiasm Passmore Williamson was nominated. This action was strenuously opposed by Alex. K. McClure, Theophilus Fenn, and others, who hoped to nominate an individual acceptable to the less radical Whigs, who were soon to meet in state convention.[3]

In all the counties of the state a political realignment was necessary for the election of 1855. The Democrats absorbed a large number of Whigs who were alarmed at the radicalism of the new parties. In practically every county of the state the Democrats ran their ticket. In a majority of the counties the American party had assumed control of the old Whig organizations, but in former Whig strongholds the Whig party maintained an independent existence. In the western portion of the state and in the northern tier of counties, where the Liberty and Free Soil parties had existed, and in the counties around Philadelphia, where

[1] *Evening Bulletin,* July 19, 20, 21, 27, 28, August 1, 9, 29, 30, 31, September 1, 3, 8, 10, 28, 29, October 8, 9, 12, November 3, 7, 1855. United States *ex rel.* John H. Wheeler *v.* Passmore Williamson, 5 *Clark* 365,377; Passmore Williamson's Case, 26 *Penna.* 9; Williamson *v.* Lewis 39 *Penna.* 9; Hildreth, *Atrocious Judges,* pp. 389-432, "Case of Passmore Williamson."

[2] On August 8, 1855, thirty-two representatives from ten counties had assembled at Reading and issued the call for the mass convention; *Daily News,* August 13, 1855.

[3] *Ibid.,* August 29, September 8; *Evening Bulletin,* September 6, 1855.

Friends were numerous, the Republican party succeeded in organizing.[1]

The only general official to be elected this year was the canal commissioner, for which office all the parties made nominations. Of the opposition to the Democrats, the Native Americans, meeting on June 7, were the first to nominate. They were followed on July 2 by the Americans, on September 5 by the Republicans, and on September 11 by the Whigs.[2] There assembled for the Whig convention fifty-nine delegates, some of whom had been active in the Republican convention, but the remnant of the Whigs had no cohesive principle. The report of the committee on resolutions decried proscription, condemned the slavery course of the federal administration, favored the restoration of the Missouri Compromise, opposed filibustering, proposed the modification of the Fugitive Slave Law and a provision for jury trial for the alleged fugitive slave, and advocated the sale of the state-owned public works; but this report was tabled and no resolutions were adopted.[3] With four opposing party candidates in the field, it was evident that the Democrats would have no difficulty in electing their candidate, so efforts were made to effect some sort of cooperation. On September 27 the state central committees of the Whig, the American, and the Republican parties met at Harrisburg. Each committee then withdrew its party nominee, and the joint committee thereupon

[1] *Daily News,* June 2, 14, 28, 29, July 16, 20, 21, 26, 28, 31, August 3, 4, 6, 9, 11, 13, 15, 20, 22, 23, 27, 29, 30, 31, September 3, 5, 7, 8, 11, 12, 13, 17, 19, 20, 21, October 4, 5; *Evening Bulletin,* August 29, September 5; *Pennsylvania Telegraph,* July 4, 11, August 1, 8, September 5, 1855.

[2] *Daily News,* June 11, July 9, September 8; *Pennsylvania Telegraph,* July 11, September 19; *Evening Bulletin,* September 7, 12, 1855.

[3] *Pennsylvania Telegraph,* September 19; *Evening Bulletin,* September 12, 1855.

nominated Thomas Nicholson as the "Union" candidate for canal commissioner.[1]

Although their opponents agreed on a "Union" candidate, nevertheless, the Democrats succeeded in electing their nominee, but only by a plurality.[2] In the senate there would be seventeen Democrats, fourteen Americans, one Republican, and one Whig hold-over; in the house there would be sixty-five Democrats, twenty-one Americans, nine Republicans, five anti-Democratic fusionists, and no Whigs.[3] The election did not indicate the strength of the Democrats, but clearly showed that the opposition had proceeded only a short way towards cooperation. The Republicans in particular were severely criticized by the Americans, whom they were beginning to replace.[4] In summing up the reasons for their failure to defeat the Democrats, one journal said,

> Our contemporaries are busily engaged in hunting for explanations of our late defeat in Pennsylvania,—one attributes the result to the Liquor League, another to the withdrawal of Williamson,—a third to the Foreign Protestant vote,—a fourth to disaffected Whigs,—a fifth to the anti-Nebraska position of the Order,—a sixth to the secrecy and exclusiveness of the

[1] *Daily News,* September 20, 26, October 1, 8; *Pennsylvania Telegraph,* October 3, 1855. George Darsie, who had been president of the Republican convention, denied that Williamson's name had been withdrawn.

[2] *Pennsylvania Telegraph,* October 24, 1855, gives the official returns: Plumer (Dem.) 161,281; Nicholson (Union) 149,745; Williamson (Rep.) 7,224; Martin (Amer.) 678; Cleaver (Nat. Amer.) 4,056; Henderson (Whig) 2,293.

[3] *Evening Bulletin,* October 20, 1855.

[4] *Pittsburgh Times,* quoted in *Pennsylvania Telegraph,* October 10, 1855. The *Daily News,* November 10, 1855, called the Republican party "a miserable failure" and accused it of "rushing into a wild abolition crusade against the South."

Americans,—and the *Pennsylvanian* and the Washington *Union* to the popularity of Pierce, Campbell and the Nebraska infamy.[1]

The movement for cooperation was continued when the state legislature assembled. On February 13, 1856, the Whig, American and Republican members issued a call for a "Union Convention" to meet at Harrisburg on March 26; the delegates to this convention were to be selected in county "Union Conventions."[2] According to the call the conventon assembled and determined to effect a thorough-going scheme of cooperation for the coming state election. This was made evident in the nice distribution of the nominations; for auditor-general Davison Phelps, an American from the western portion of the state, was nominated, for surveyor-general Bartholomew Laporte, a Republican from the northern portion, and for canal commissioner Thomas E. Cochran, an "old line" Whig from the eastern section.[3] With these nominees the "Union" organization could at the same time make sectional and political appeals. The convention practically marked the end of the Whig party as a state organization, for it lost its identity.

Efforts to throw the remaining Whig county organizations to one of the other parties continued. In the greater portion of the counties independent organizations had been abandoned for the election of 1855. In the western portion of the state the Whigs had, in the main, fused with the Americans, who were now in turn being absorbed by the Republicans.[4] In Philadelphia the Whig organization

[1] *Pennsylvania Telegraph*, October 10, 1855.

[2] *Carlisle Herald*, March 19, 1856.

[3] *Public Ledger*, March 27, 28; *Harrisburg Telegraph*, March 28, April 1, 1856.

[4] *Daily News*, February 25, 1856.

had been continued by those who were bitterly opposed to the proscriptive Americans. They forced out of their county convention all who were suspected of being affiliated with the American movement. In the spring of 1856 they formed an independent ticket for the municipal elections, but later withdrew it. Lack of strength and lack of interest led them on April 24 definitely to abandon their existence as a party.[1] Their support was then given to the Democrats whose ticket they helped elect.[2] This marked the end of the last local organization within the state.

Although the Whig party had disappeared as a state and as a local organization, yet its existence as a national or-

[1] *Ibid.*, March 10, 15, 19, 25, 28, April 1, 25, 1856. This movement in Philadelphia was led by Josiah Randall and William B. Reed, who were offended by the anti-Catholic policy of the American party. Reed on February 7, 1856, wrote to Buchanan, "I have been all my life as you know a Whig, and if I do mark my *old age* by a conversion or apostacy it will be a very disinterested one. This has come to pass mainly through the growth of this miserable business of Know Nothingism which has corrupted and destroyed the party I once belonged to. Mingled with this is a conviction, the fruit of slow reflection, that the Democratic party is now and is likely to continue the conservative party of the nation. So much for myself—about which it is hardly worth while to say so much." Reed mentioned the fact that other "old line Whigs" were adopting the same course; Buchanan Mss. In Lancaster county Isaac Hiester, who in 1852 had defeated Stevens and the "Wooly Heads" and had reestablished the "Silver Greys" in control of the county Whig organization but had again lost it in 1854 through the Know Nothing movement, now went over to the Democrats; *Harrisburg Telegraph*, March 4, 1856. Benjamin H. Brewster complained to Buchanan on October 16, 1858, that these acquisitions had all deserted by that date. "They never intended to stay. They all wanted to be captains in our common plebian ranks and as we had not commissions for them they have deserted." Buchanan Mss.

[2] The Republicans made nominations for the municipal elections in Philadelphia but they received little support. The vote for mayor was Vaux (Dem.) 29,534; Moore (Amer.) 25,445; Thomas (Rep.) 280; *Daily News*, April 11, 16, May 9, 1856.

ganization terminated only with the presidential election. The American party was the first to make its nominations. Trouble had arisen in the party because of two articles in its platform of 1855. Article VIII, dealing with the Catholic question, deeply offended the Louisiana delegation, while Article XII, dealing with the slavery question, led to the withdrawal from the organization of a large number of northerners. On February 18, 1856, the National Council met at Philadelphia and repealed the platform of 1855. In the new series of resolutions the slavery question was carefully avoided.[1] In the nominating convention, which met on February 22, 1856, the slavery question was again raised by contesting delegations from Pennsylvania. The "Edie" delegates, chosen at the Reading state convention of the year before, who were free-soil in their tendencies, were seated because of the regularity of their selection. The "Hunsecker" delegation, chosen by the bolters from the state convention, although pro-slavery, was rejected. The discussion of the resolutions led to the temporary withdrawal of a large number of southern delegates, while the nomination of Fillmore and Donelson led to the permanent withdrawal of northern delegates. A portion of the Pennsylvania delegation, led by ex-Governor Johnston, joined with other northern seceders in issuing a pronunciamento justifying their action and looking for cooperation with the Republicans. They condemned the platform of their party and insisted on the restoration of the Missouri Compromise.[2] The state council of the American party, as a result of these withdrawals, now came under the control of those who had been defeated in the state convention

[1] *Ibid.*, February 20, 21, 22; *Public Ledger*, February 20, 21, 22; *Harrisburg Telegraph*, February 22, 1856.

[2] *Daily News*, February 23, 25, 26, 27; *Public Ledger*, February 23, 25, 26, 1856.

of the year before and who were intent on mollifying the South.[1] When the council met on May 13 at Harrisburg, the seceders from the Philadelphia convention were condemned and the nominations of Fillmore and Donelson endorsed.[2]

The Republican party was completing its preparations for participation in the national elections. On February 22, 1856, a preliminary mass convention of the party was held at Pittsburgh. The expectation of some form of cooperation with the American party was not realized; for the latter party proceeded, without consulting the Republicans, to make its own nominations. Consequently, the Republicans called a nominating convention to assemble on June 17 at Philadelphia.[3] Five days before the date set for the assembling of this convention, there met at New York the seceders from the American convention, who called themselves the "North Americans." An invitation had been extended them to cooperate with the Republicans. A committee was appointed to proceed to Philadelphia, after an informal ballot had disclosed the fact that their preferences were Banks and Johnston.[4] The Republicans treated with this committee very informally. Frémont and Dayton were the Republican nominees.[5] Following this action, Banks withdrew his name as the potential candidate of the "North Americans." The committee upon its return to New York complained of the treatment which they had received, but recommended that their party endorse the Republican nominees. The convention then nominated

[1] *Daily News*, February 27, 1856.

[2] *Harrisburg Telegraph*, May 15, 1856.

[3] *Ibid.*, February 26, March 4, 1856.

[4] *Daily News*. June 13, 14, 16, 17, 18, 1856.

[5] *Harrisburg Telegraph*, June 19, 26, 1856.

Frémont and Johnston.[1] Later in the campaign, on August 29, Johnston withdrew, and thereupon the support of the "North Americans," with the exception of a small group, was given to the Republican party.[2]

On September 17 there gathered at Baltimore a Whig national convention for which somehow or other delegates from twenty-one states had been selected. They claimed to be "old line" Whigs, who assembled to reaffirm the faith, but many avowed Americans were in attendance. The convention placed Fillmore and Donelson in nomination.[3] This action attracted little attention, although in Philadelphia a mass meeting was held to celebrate the event.[4] In the interior of the state the Whig remnant had joined in endorsing Frémont and Dayton as the "People's Candidates" and were forming "Union" tickets.[5]

In the spring campaign of 1856, the Democrats of Pennsylvania indiscriminately attacked both the Americans and the Republicans, particularly after the formation of the state "Union" ticket. The chief organ of the state party said that the national American convention was "composed of flesh, fish, fowl and small beer, the latter ingredient forming the largest part of the *pot pourri*. . . . No part of the assemblage knows what it wants, but the negro portion, and they go for Nigger first, last and all the time." [6] When

[1] *Daily News*, June 21, 1856.

[2] *Harrisburg Telegraph*, September 11, 1856; the New Jersey and five other delegates nominated Robert F. Stockton and Kenneth Raynor, *Daily News*, June 17, 18, July 10, 1856. Johnston's letter of withdrawal in *Evening Bulletin*, September 15, 1856.

[3] *Daily News*, September 18, 19, 1856.

[4] *Ibid.*, September 22, 1856.

[5] *Harrisburg Telegraph*, July 17, August 7, 14, 28, September 4, 11, 1856.

[6] *Daily Pennsylvanian*, February 21, 1856.

the Democrats carried the mayoralty election of Philadelphia in May, this journal gloried at the defeat of the "Dark Lantern Party" and at the discomfiture of the "Nigger Worshippers."[1] When it became evident that the Americans and the Republicans were not cooperating in the national campaign, the Democrats, changing their tactics, attacked primarily the Republicans, striving to prove them as unpalatable to the Americans as to the Democrats. If cooperation should be achieved by the Republicans and by the Americans, the Democrats might lose the state and the election; otherwise, their candidate was fairly sure of success.

In adopting the policy of attacking the Republicans most bitterly, the Democrats avoided being too offensive to the Americans. They asserted that Frémont was a Catholic, and, despite the denials of his supporters, repeated the charges. They pointed out how distasteful it was to see clergymen, like Henry Ward Beecher and Theodore Parker, take an active part in politics. The formation of German Republican clubs was mentioned again and again, in the hope that their organization would disgust the ardent Americans.[2] The Democrats not only strove to keep the Republicans and Americans apart, but renewed their efforts to capture more of the votes of the "old line" Whigs. In past elections they had secured a number from this group, by painting the Americans, who referred to their party as "Sam," as the party of proscription. After the preliminary plans for cooperation in the presidential election had been perfected, one editor stated that "Sam has

[1] *Daily Pennsylvanian*, May 8, 31, 1856.

[2] *Ibid.*, September 20, 27, October 25; *Harrisburg Weekly Telegraph*, September 25, October 9, 23; *Bedford Gazette*, July 25, August 22, September 19, October 3, 10, 1856.

yielded to Sambo." [1] Repeatedly they made the claim that Frémont was a sectional candidate, favored abolition, and that disunion would follow his election.[2] The sneer of Thaddeus Stevens, that "The cry of 'The Union is in danger' is the argument of fools to an audience of idiots," was declared to be characteristic of "that bold, daring, conscienceless demagogue." Many evils had descended upon the state in the past because the opposition party had yielded to his leadership, and now he was unfurling the banner of disunion for them.[3]

If disunion came as a result of the election of Frémont, as the Democrats asserted it surely would, then, they continued, the profitable trade of Philadelphia with the South would be lost. In fact, the trade of some Philadelphia merchants in that area was already being tampered with. According to a card, published by Morris L. Hallowell and Company, who had an extensive southern trade in dry goods and clothing, "systematic and pertinacious efforts" were made in the South to divert trade away from them "by appeals to the prejudices of buyers on the score of *unsound* political sentiments of some of the members of our firm." The firm held "in *especial* contempt that class of dealers in our city who 'sell their principles with their goods.'" In order that there might be no mistaking their position they concluded their card as follows:

The members of our firm, entertaining a wide difference of views on various topics, and as many opinions on the Slavery Question as there are members of it, are fully united on *one* point namely: that where any one presumes to demand as a preliminary to purchasing from us, that he shall know our

[1] *Daily Pennsylvanian,* October 4, 1856.

[2] *Ibid.,* September 6, 13, 16, October 2, 7, 1856.

[3] *Ibid.,* October 7, 1856.

opinions on Slavery, or any other mooted question in Religion or Politics, he shall be informed . . . that he *cannot* purchase from us for cash or upon *any* terms, until he shall have amply apologized for the insult.[1]

Stories were assiduously circulated that if Buchanan should be defeated, the South would refuse to pay the sixty million dollars, which it owed to the merchants and manufacturers of Philadelphia.[2] That Philadelphia merchants, manufacturers, and workingmen were dependent for their prosperity on continued amicable relations with the South, which, in turn, were dependent upon the election of Buchanan, was the gist of this Democratic argument. Queries to manufacturers brought out the extent of the southern trade. Richard Morris and Son, engine-makers, said, "The South is decidedly our best customer;" to it they annually sent $300,000 worth of commodities, but to the New England states nothing. Bailey and Brothers, jewellers, thought that without their southern trade their sales would drop off one-half; they sold nothing to the New England states. Dunlap and Brothers, coach makers, claimed that their business with the South was ten times as large as that with New England. They said, "Should difficulty occur with the South, we will be compelled to close part of our factory and discharge half of our men." From a scrutiny of these and other facts, the editor of the Democratic *Daily Pennsylvanian* concluded that

the main source of the great wealth and prosperity of Philadelphia, and indeed of all the Northern States, is the trade of the slaveholding States—this it is that builds up and sustains the cities and towns of the North—builds up and sustains our

[1] *Evening Bulletin*, August 23, 1856.

[2] *Ibid.*, September 30, 1856.

commerce and our manufactures, and gives to the real estate in and about Philadelphia its present increased value.

Will you, workingmen, mechanics, manufacturers, merchants, or property-holders, strike it down, as is proposed by Black-Republican leaders, either by a dissolution of the Union, or by endangering its peaceful continuance? or by alienation of the friendly feeling of the Southern States? Will you destroy or jeopard it that the three or four millions of negro slaves in these States may be set *free*, let *loose* upon the country, to come upon *you*, the people of Pennsylvania, to fill your cities, towns, and country, with paupers and crime, as is now exhibited in St. Domingo and Jamaica, to take the place of you, white workingmen, mechanics, and manufacturers, or to become your equals and companions? Ask the Judge Kelleys and the Speaker Banks', and all their Fremont Abolition leaders and their Fillmore aiders and abettors, these questions.[1]

The Democrats asserted that, if Buchanan should be elected, it " will have been the work of the conservative men of the country, including many of the mercantile classes." The Republicans urged the voters not to forget that Buchanan was one of the authors of the Ostend Manifesto, and that if he were true to its doctrines, war would inevitably follow. Naturally, in that event, the merchants would be the first to suffer.[2] The Republicans tried to appeal to the workingmen by reviving the stale charge that Buchanan favored a daily wage of ten cents for them.[3] Little advantage was derived from this line of attack.

The Democrats fully realized that of their two opponents Frémont was the more formidable, and constantly referred to him as " The Abolition Candidate." [4] One editor from

[1] October 11, 1856.

[2] *Evening Bulletin*, October 28, 1856.

[3] *Harrisburg Weekly Telegraph*, September 25, October 9, 1856.

[4] *Daily Pennsylvanian*, October 2, 7, 1856.

the western portion of the state said the true issue was, "Is a white man as good as a black man?"[1] The Democratic state central committee, under the leadership of John W. Forney, declared the negro in the North was nowhere the equal of the white man and asked, "Why is it that Abolitionism does not begin at home and reform these things?"[2] The Republicans did not shirk from meeting these attacks, admitting that the "extension or non-extension [of slavery] is the sole issue," but denied that the question of interference with it where it existed was involved.[3]

In June Buchanan had been nominated at Cincinnati as the Democratic candidate for the presidency. With two opponents in a normally Democratic state, it was quite evident that the Democrats would be victorious. Despite the proposal that a "Union" electoral ticket be formed, the American party held a state convention to form a Fillmore and Donelson electoral ticket.[4] This proved to be the chief obstacle in the way of thoroughgoing cooperation. However, on October 7, 1856, the "Union" state central committee, appointed at the March convention to secure the election of the state officers there nominated, called a convention of all the Buchanan opponents to meet on October 21. They proposed, in their call, a plan of proportional cooperation, whereby the voters were to vote for the same twenty-six electors and the twenty-seventh elector, who was to head the list, was to be either Fillmore or Frémont according to the preference of the voter. In the event that the "Union" ticket should be elected, the twenty-seventh

[1] *Bedford Gazette,* August 1, 1856.

[2] *Daily Pennsylvanian,* August 30, 1856.

[3] *Evening Bulletin,* November 1, 1856.

[4] *Daily News,* August 7, 1856.

elector would be lost but the other twenty-six electors were to vote for Fillmore and for Frémont according to the proportion of votes which they had received as the twenty-seventh elector.[1] Before the convention met, the state election was held and the Democrats were victorious by a small majority of two thousand.[2] This defeat acted as an incentive for the adoption of the proposed plan. The electoral ticket which was thus formed was endorsed by the Republican and the "North American" committees, but by only six, a minority, of the Fillmore and Donelson committee.[3]

The views of both the Republicans and Democratic parties were most assiduously spread throughout the state both before and after the state elections on October 14. The intensity of the campaign increased prior to the presidential election. The Democrats claimed that the Republicans in secret conclave in New York city had raised $100,000 to be used in the state.[4] They themselves apparently had a large fund at their disposal. Into each one of the twenty-eight senatorial districts of the state, they sent speakers, either from beyond the state or from some other portion of the state. For two weeks prior to the election, some sixty men were kept busy with itinerant speech-making.[5] In no preceding campaign had the state been so thoroughly covered by any political party.

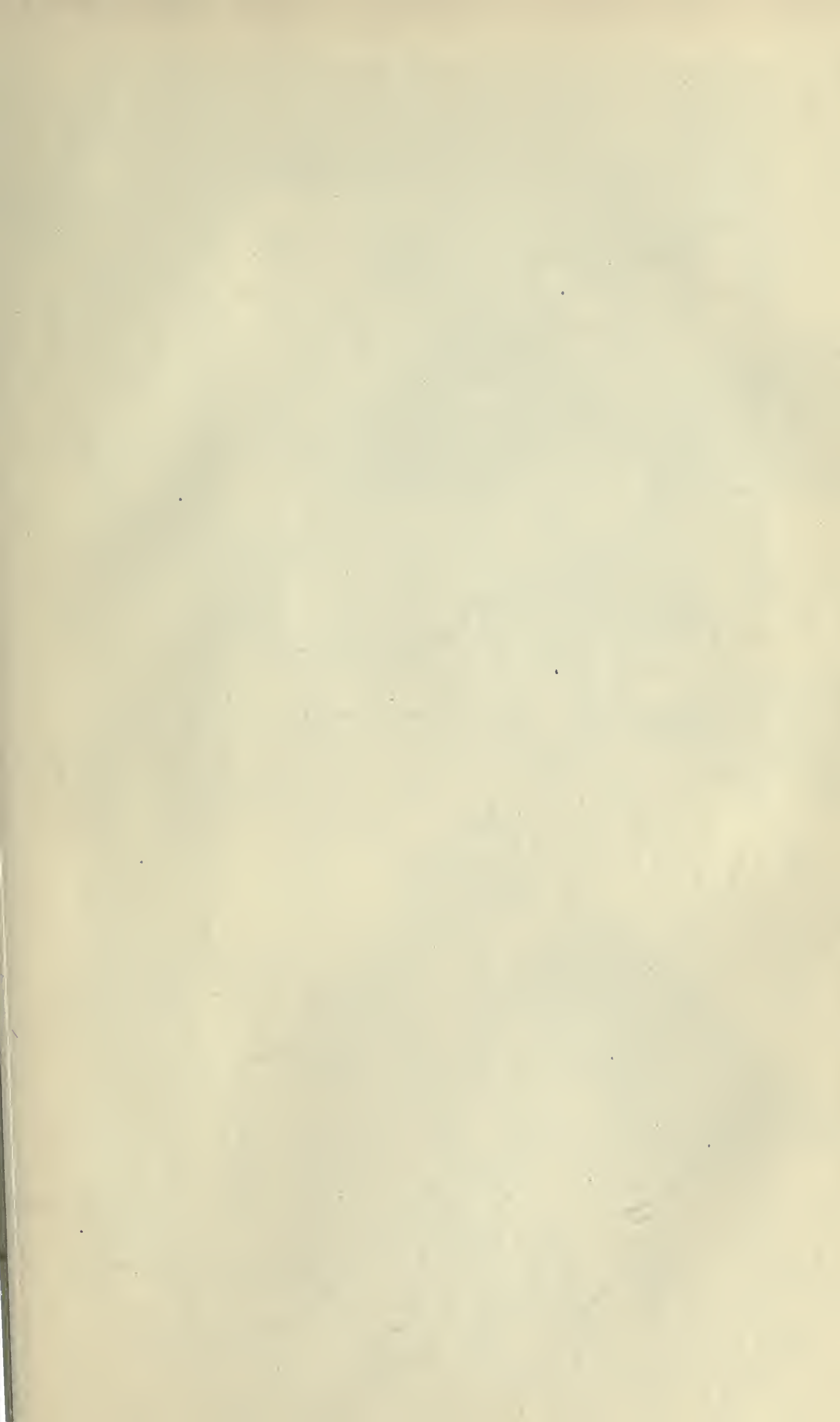
[1] *Carlisle Herald*, October 15, 1856.

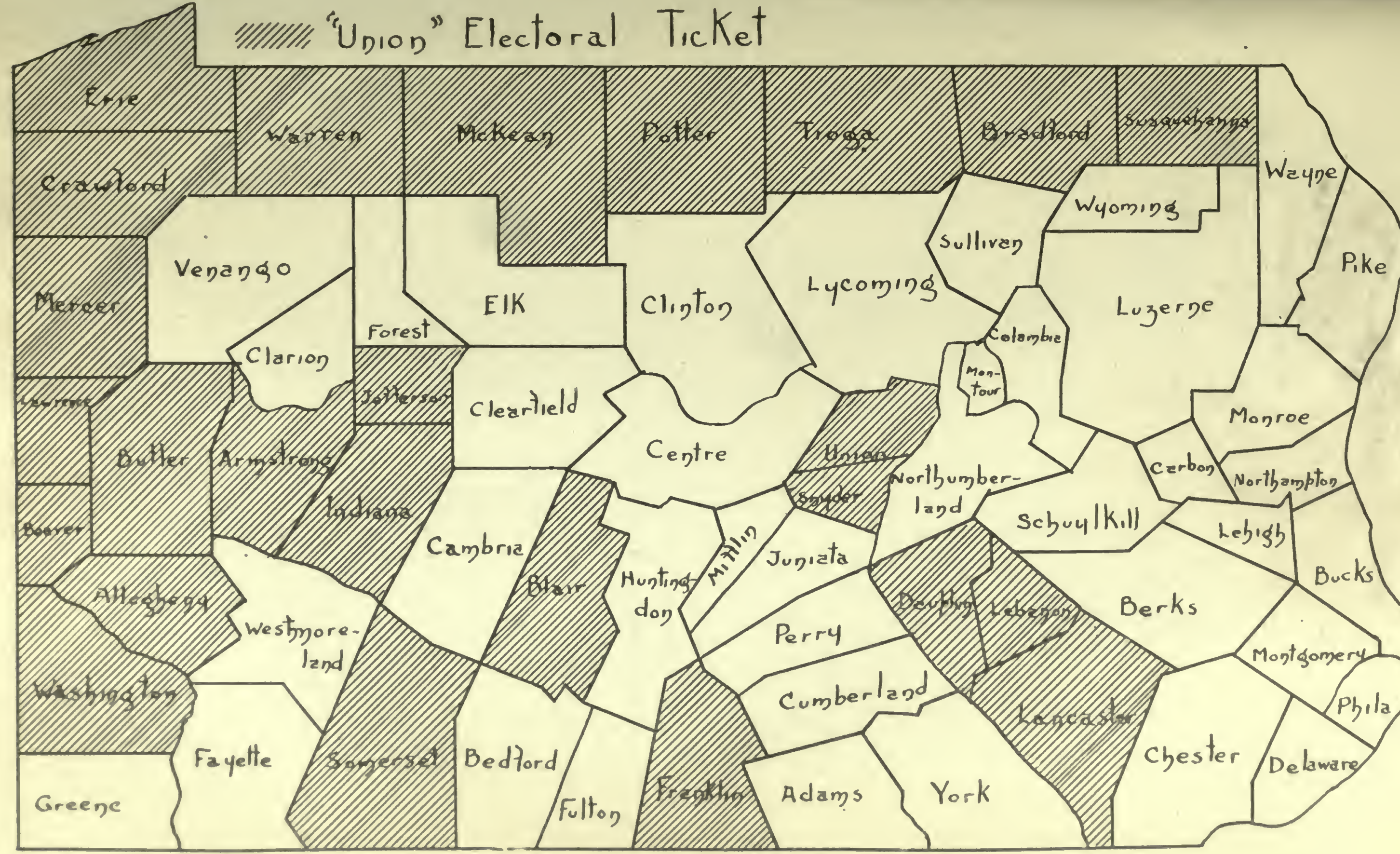
[2] *Harrisburg Weekly Telegraph*, October 30, 1856; the vote for canal commissioner was George Scott (Dem.) 212,925; Thomas Cochran ("Union") 210,172.

[3] *Ibid.*, October 22, 1856.

[4] *Daily Pennsylvanian*, October 18, 1856; for the gathering of funds in other states to be used in Pennsylvania, see Rhodes, *History of the United States*, vol. ii, pp. 230-231.

[5] *Ibid.*, October 18, 1856.




"Union" Electoral Ticket
Erie
Crawford
Mercer
Lawrence
Beaver
Allegheny
Washington
Greene
Warren
Venango
Butler
Armstrong
Clarion
Forest
Westmoreland
Fayette
McKean
Elk
Jefferson
Indiana
Clearfield
Cambria
Somerset
Bedford
Potter
Clinton
Centre
Blair
Huntingdon
Fulton
Franklin
Tioga
Lycoming
Union
Snyder
Mifflin
Juniata
Perry
Cumberland
Adams
York
Bradford
Sullivan
Colombie
Montour
Northumberland
Dauphin
Lebanon
Lancaster
Susquehanna
Wyoming
Luzerne
Schuylkill
Berks
Chester
Carbon
Monroe
Northampton
Lehigh
Bucks
Montgomery
Phila
Delaware
Wayne
Pike

Amidst great excitement, the election was held on November 4. The returns indicated that Buchanan, due to the failure of some of the Americans to cooperate with the Republicans, carried the state by a comfortable plurality of 27,000. Of the popular vote he received 230,686. As the twenty-seventh elector on the "Union" ticket, Frémont received 147,286 and Fillmore 55,852 votes; but the first elector on the "Union" ticket received 203,534. For the independent American electoral ticket 26,337 votes were cast. Buchanan thus had a majority of only 815 votes. Had there been a thoroughgoing cooperation, it is probable that Buchanan would not have carried the state. In that case, he would not have had a majority of the votes of the electoral colleges, and the choice of a President would have devolved upon the national House of Representatives.[1]

[1] The state electoral returns are in *Legislative Documents*, 1857, pp. 666-677.

CHAPTER VIII

Characteristics of the Whig Party

The Whig party, both in its national and in its state organizations, was peculiarly one of compromise and concession. Policies were announced, adhered to for a time, and, on the threat of internal opposition, modified and ultimately abandoned. While the shifting of parties on alleged principles is a common phenomenon of politics, yet possibly no party was ever so thoroughly committed to it as was the Whig. In a measure, it was inevitable that this should be so. Its great leader and idol, Henry Clay, had earned for himself, because of his compromising and compounding on the tariff issue in 1833, the title of "The Great Pacificator." A willingness to compromise on other issues marked his later career, culminating in the series of laws adopted in 1850, none of which definitively answered the questions which had been raised. With Clay and other leaders willing to abandon avowed principles and unwilling to adhere to definitely announced policies, the party wandering after the will-o'-the-wisp of immediate gain finally lost all.

The existence of the Whig party was not, however, without some advantage to the country. Its policy of political opportunism afforded ample time for the divergent sentiments in the sections to crystallize, showed the futility of efforts to compromise on fundamental principles, and proved the incompatibility of membership which was not founded on homogeneity. For, the accessions, which came to the Whig party as the result of its compromising, prevented

the party from becoming homogeneous, which in turn forced it on to other compromises. At the elections for the presidency in 1844 and in 1852, at which the party endeavored to enunciate principles, the Whigs suffered defeat. In its two successful elections, the candidates, made palatable by a certain amount of military glory, were nominated without platforms.

Within the state, the lack of homogeneity and its accompanying evils were strikingly in evidence. At the formation of the party, the National Republicans, who had a strong following only in and around Philadelphia, converted themselves into the Whig party, accomplishing the transformation largely throughout a mere change of name. The Anti-Masons, who had more supporters in the state than the National Republicans, controlled the opposition to the Democracy in the interior counties. By holding themselves aloof and by not joining the new Whig organization, they compelled the Whigs to be pretentiously conciliatory to them, and thus secured the direction of the opposition to the Democracy for the entire state until after the Buckshot War. Consequently, the Whigs during this period found themselves committed to a policy with which they were not in sympathy. Only the collapse of political Anti-Masonry relieved the Whigs from their embarrassing situation; but the sentiment for Anti-Masonry persisted and sporadically continued to vex the Whigs. Political like-mindedness, the basic principle of all effective party organization, was consequently missing amongst the Whigs. Another political element, coming early to the Whigs, but not numerically as important as the Anti-Masons, was from the "Convention Democrats." Although numerically few, yet they exercised, temporarily at least, an influence on the Whigs out of proportion to their strength. But in the long run they lost their power, because, on account of their small numbers, the pos-

sibility of their withdrawal from the party caused no great alarm to the Whigs.[1]

The lack of homogeneity is possibily best seen in the readiness with which defections occurred from the ranks of the Whigs. The sudden spread of the Native American movement in 1844, particularly in Philadelphia city and county, caused the Whigs great concern, for the new party was composed largely of former Whigs and the movement was symptomatic of what might recur at any moment. The defeat of Clay and the remarkable strength of the Native Americans left the Whigs so badly disorganized that disintegration of the party threatened for a time in the early part of 1845. The failure of the Native American movement to assume national proportions led to its gradual decadence within the state, removed the possibility of its achieving even an effective state organization, and left a mere local party, but strong enough, if not cooperating with the Whigs, to prevent them from carrying the elections. Efforts to win back the former Whigs through coalition and then amalgamation were made, but without a great deal of success. The nomination of Taylor in 1848 made it possible for the Native Americans to cooperate with the Whigs without feeling that they were abandoning their party. Many Native Americans and a few Taylor Democrats were thus definitely won to the party. A number of irreconcilable Native Americans by maintaining an independent organization after the election of Taylor and by refusing to cooperate caused the defeat of Whig candidates, and constantly through their existence threatened a revival of active Native Americanism.

With the appearance of the Know Nothing movement in 1854, the Whig party, as a national organization, was well

[1] For a keen analysis of the Whig party in another state, see Fox, *The Decline of Aristocracy in the Politics of New York*, pp. 409, *et seq.*

on its way to decay. The readiness with which Whigs went off and joined the new organization precluded the possibility of a rejuvention of the Whig national party. The blighting effect was first evidenced in the state party. As a state organization, the Whigs had weathered the stormy defeats in the gubernatorial election of 1851 and in the presidential election of 1852. In the former election, Free Soil Democrats had supported Johnston, but the following year refused their votes to Scott. After the latter election, statements that the party was dead abounded; but the state organization, weakened as it was, nevertheless showed some signs of vitality in the election for canal commissioner in 1853. Prospects for a revival of the party were fairly bright in 1854, but were soon lost to view because of the dazzling brilliancy of the Know Nothing movement. Unmistakable evidence was now at hand that the Whig party could not recover its lost glory, and that within a short period of time the party would completely disappear.

The instability of the Whig constituency, in part acquired and held as the result of frequent compromising and vacillating, was its chief element of weakness. At any moment, disaffection might lead large or small groups out of the party. The Native American and the Know Nothing movements illustrate the danger from this source. The Liberty party in the forties and the Temperance movement in the fifties carried away in local elections a number of Whigs. A problem, consequently, constantly facing the Whigs was how to prevent the disaffection and how to win back the disaffected. At times the efforts of the Whigs were successful. But the shifting of the members of the party almost en masse to the Know Nothings left only a feeble minority of the Whigs, making futile efforts to maintain the old organization. The absence of common definite political principles had worked itself out to its logical conclusion. The

Whig party of the state in its effort to absorb so many heterogeneous elements had constantly been suffering from acute political indigestion, which had regularly caused it discomfort and ultimately brought it to an untimely end.

Throughout its career, the Whig party was a minority party in the state, but a minority party of sufficient strength to cause the opposition considerable alarm. Rarely did it succeed in carrying an election. Two of its five electoral tickets, the one in 1840 by a majority of less than 350, and the other in 1848 by a majority of 2,400 and a plurality of 13,500, were elected. Of their gubernatorial candidates, the Whigs succeeded in electing only William F. Johnston, in 1848, and that by a narrow majority of 225. Ritner, the Anti-Masonic candidate in 1835, was supported by the Whigs and was elected as the result of the split in the Democratic party. The election of James Pollock in 1854, the Whig nominee, was made possible only because of the support of the Know Nothings and was by no means an indication of Whig vitality. The political upheaval in 1846 made the election of a Whig canal commissioner a certainty, just as the election of 1848 made the choice of a United States Senator by the Whig legislature an actuality. The weakness of the party made impossible the appearance of a powerful office-holding Whig, capable of using the patronage to build up a strong political machine. For a time, Governor Johnston offered some hope, but his leadership was immediately threatened by Senator Cooper and the free-soil tendencies of the governor alienated sympathizers with the South. The southerners themselves tried to prevent the use of the federal patronage to strengthen the position of the governor. His defeat for reelection in 1851 eliminated the strongest leader the party had developed in Pennsylvania and left it with a discredited head.

At the formation of the Whig party, there seemed to be

presented an issue which would sharply divide Whigs from Democrats. The hostility of President Jackson to the Bank of the United States and the means used by him to crush it lent themselves readily to political agitation. Although enthusiasm for the bank was connected with cries of "executive usurpation," nevertheless progress, sufficient to carry the election, was not made. The election of Ritner in the following year prevented the elimination of the banking question, for the bank received a state charter. At best, it was hoped that this would be a mere temporary expedient, and, at worst, not wholly undesirable; for, if the Whigs should be successful in the presidential election of 1836 or of 1840, the state charter might be converted into a national one. Two features of the act granting the state charter proved to be extremely disadvantageous to the state. The repeal of the direct taxes, intended to be nothing more than a beautiful gesture to attract attention to the Whig-Anti-Masonic coalition, resulted in the temporary financial bankruptcy of the state. The lavish expenditure of the money received for the charter secured the needed votes to obtain the passage of the bill, but did not bring the hoped-for permanent support. The act, however, pledged the state to construct extensions of the public works which burdened it by their unprofitableness. The continued existence of the dreaded money monopoly, now a state corporation, did not tend to assuage the fears of the people of the interior of the state. The business depression beginning in 1837 and the numerous suspensions of the banks kept the question of finance prominently in the foreground for a number of years. The Whigs attempted to avoid responsibility for the plight in which their policy had put the state. It was only after the final failure of the Bank of the United States and the recovery of the country from the industrial depression that other issues demanded more attention.

In the early forties, the question which, so far as the state was concerned, attracted most attention was the tariff. Between the two parties there was no line of demarcation on this issue. The Tariff Bill of 1842, although not conceding all that the ardent protectionists demanded, did not receive an adverse vote from a Pennsylvania Congressman in its passage through the house. In the election of 1844 both parties claimed to be the ardent friends and guardians of this measure. Widely separated positions were taken on the question of the annexation of Texas, with the Democrats favoring and the Whigs opposing it. The admission of Texas was an accomplished fact before the tariff received consideration. When the bill of 1846 passed the Senate, the two Senators from Texas made the passage of the bill possible by their votes. No extensive argument was required to convince the Whigs of the state that the tariff had been tampered with on the insistence of the slave-owners that less protection was needed. For a time, even the Democrats, stunned by the passage of the bill, joined in the retaliatory action of the state against slavery. They participated in the passage of the act of March 3, 1847, forbidding the use of the state jails for the detention of captured fugitive slaves, and in adopting resolutions endorsing the Wilmot Proviso. By the election of 1848 the Democrats of the state had partially recovered from their panic and willingly followed the national party in the pro-slavery principles which it enunciated. The national Whig party failed to adopt a platform for this election; consequently it was possible for the state parties to take individual lines of departure. In Pennsylvania, the Whig party, continuing its opposition to the extension of slavery, was completely under the control of the free-soil element. Although all the elements of decay were present in the national Whig party in the election of 1848, yet they

did not become fully manifest until the succeeding election. By that time, it was evident that the state parties had wandered so far apart that no common meeting ground could be agreed upon, and that the scattering of the membership must follow. The efforts of the American party to frame a platform acceptable to the divergent elements were likewise unsuccessful. With the appearance of the Republican party and its adoption of understandable principles, new life was infused into the opposition to the Democracy.

One naturally expects to find the wealthy merchants and manufacturers rallying to the Whig standard. Thomas P. Cope, whose commercial ventures were made in all parts of the globe and who founded one of the first regular lines of packets between the United States and Europe, and John Price Wetherill, who left "a large fortune, probably near a million," made in manufacturing, assume positions of leadership in the ranks of the party in Philadelphia. The leaders of the Philadelphia Bar, John Sergeant and Horace Binney, closely associated with the mercantile and the vested interest classes, occasionally found time to leave their lucrative practice and accept political office. That the Whigs were in control of the banking interests of the state was the conclusion reached by an analysis of the officials of these institutions made by a Democratic journal. The majority of the manufacturers of iron took their stand in the Whig ranks; occasionally, however, due to the avowed protective tariff principles of the Democracy, a manufacturer, who started life as a Democrat, did not abandon his party upon the acquisition of wealth. In the thinly settled mountainous districts, the halting policy of the Democracy on the tariff question was early and consistently condemned. One of their journals criticized Governor Wolf, a Democrat, as follows:

See his annual message to the Legislature in favor of Henry Clay's "American System," the "Protective Tariff," so called, which extorted from the working people $35,000,000 a year, and lavished a great part of it upon favorites, and the rank aristocracy of the cities, under the name of protection.[1]

In 1846, a Democrat from this section was the only one of the Representatives from the state who dared vote for the Tariff Bill of 1846. Despite his vote, or possibly because of it, he was triumphantly reelected.

The evaluation of the property in the counties of the state for the purposes of taxation gives interesting information on the prosperity of the Whig counties. The data for 1851, when there were sixty-four counties, seventeen of which were normally Whig, is somewhat fuller than that for other periods.[2] Philadelphia city, in addition to the seventeen counties, was regularly carried by the Whigs and the county by the Democrats, where the Whigs, however, always showed considerable strength. The statistics for the county and the city are unfortunately not separated. Although Philadelphia city and county contained less than eighteen per cent of the population, yet they possessed almost twenty-eight per cent of the evaluated property of the state. Omitting Philadelphia city and county and arranging the other counties of the state according to population, it is seen that fifteen of the first thirty-three counties are normally Whig. If they are arranged according to the evaluation of their property thirteen of the first thirty-three are Whig. A difference is noted, for in the second classification the Whig counties are nearer the head of the list. The seventeen Whig counties—Philadelphia city and county are omitted—contained somewhat more that thirty-

[1] *Democratic State Journal,* May 11, 1835, quoting *Wilkesbarre Farmer.*

[2] *House Journal,* 1852, vol. ii, pp. 136-137.

five per cent of the population but a trifle less than forty-three per cent of the wealth. If Philadelphia city and county are included, the Whig counties contained somewhat over fifty-eight per cent of the population and over eighty-one per cent of the wealth. The Whigs were thus in control of the more prosperous counties of the state. In the more prosperous of the normal Democratic counties, with the exception of Berks, the Whigs possessed a strong following, at times well over forty per cent of the voters. Fertile Berks, settled by Germans, was the fourth county of the state in population and in wealth. The voters had been won over early by the Democratic-Republican party, later worshipped Andrew Jackson, and the imperturbable "Pennsylvania Dutch" farmers never failed to roll up large Democratic majorities. The voters, due to the absence of a sectarian appeal, had been untouched by the Anti-Masonic movement and consequently remained true to their Democratic faith. The conclusion is almost inevitable that although the Whig party did not include all the people of wealth in the state, yet the vast majority of those possessing vested interests felt that the Whig party offered them more protection than did the opposition party.

From the foundation of the Whig party, the Democrats claimed that the policy of their opponents was to favor the wealthier classes. One of their journals at the capital asserted,

The Whig, resting government on wealth, lays the foundation of a monied aristocracy; Democracy, resting government on the intelligence and morality of the masses, establishes the supremacy of the people, and opens the way to the principality of virtue.[1]

At its foundation, the Whig Party, particularly in the

[1] *Democratic State Journal,* December 8, 1835.

counties of the interior, claimed for itself true democratic principles, in some instances, as has been seen, asserting that the party was based on the foundations laid by Jefferson. During the first decade of its existence, these claims gradually disappeared. The statement of the *Pennsylvania Telegraph,* that "Whig policy is democratic without being revolutionary; conservative in opposition to agrarian," [1] may be taken as a typical view of themselves during the second decade. The tendency to stress the fact that the party was conservative appeared more strongly with the passage of time. When the death rattle was in the throat of the Whig party, one of the more conservative of the Whig journals said, in reply to the assertions that the Whig party was dead,

Indeed, not only is the Whig party still alive, but, in one sense at least, it can never die. A party composed of similar materials to that which rallied around Clay and Webster must always exist in this country under one name or another. For it is the representative of the more highly educated, the more prudent, and the wealthier classes, combined, if you will, with the more aristocratic. Thousands, who start life as Democrats, end by deserting to this party, because, with age, the illusions of youth disappear, and faith grows cold.

The editor thought that the Whigs had been in the minority because the country was young, but as it grew older the Whigs would predominate.[2] Hardly had these predictions been made, when many of the conservative "old line" Whigs, alarmed at the radicalism of the new American and the newer Republican parties and realizing that their old organization had passed on to its political reward, found refuge in the ranks of the Democrats because they considered it the only conservative party.

[1] August 3, 1847.

[2] *Evening Bulletin,* August 15, 1853.

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