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Thomas McKean (1734-1817)

Thomas McKean was the son of William McKean and Letitia (Finney), born in Chester County, Pennsylvania on March 19, 1734. He was of Scoth-Irish descent. He received his classical education under Rev. Francis Alison at New London, Pennsylvania, as did several other Signers. He was prepared for the bar under David Finney, a prominent attorney at New Castle, Delaware. At an early age he had been admitted to practice in the courts of Delaware, nearby counties of Pennsylvania, and of the Provincial Supreme Court at Philadelphia. He served as Deputy Attorney General for Sussex County, Delaware at the age of twenty-two. In 1758 he went to England to continue his legal studies at the Middle Temple.

In 1762 he, with Caesar Rodney, codified the laws of the Delaware Assembly of the previous decade. He was elected to the General Assembly the same year and reelected for seventeen consecutive annual terms, during several of which he was Speaker of the House.

He was elected a delegate to the Stamp Act Congress in 1765 and to the Continental Congress in 1774. As tensions mounted in the conflict with Great Britain he was aligned with the more active patriots in the steps leading to Independence. He was among those urging it in June 1776. On July 1st, with Delaware's delegation deadlocked between himself and George Read, he hastily summoned Caesar Rodney, absent on militia business, so that the colony's vote could be cast for Independence. Immediately after the formal Declaration was adopted on July 4th, McKean took leave of absence to march as colonel with his battalion, which served until relieved in the late summer.

In August, 1776 he was a prominent member of Delaware's constitutional convention, some sources claiming that he was the basic draughtsman. He was also a member of the Congessional Committee to draught Articles of Confederation.

For several years prior to the Revolution Thomas McKean's business had been increasingly centered in Philadelphia. In July, 1777 he was appointed Chief Justice of Pennsylvania, a post he retained until 1799. In 1777, however, he was also Speaker of the House of Assembly in Delaware. When President [Governor] John McKinley was captured in September, George Read, first in line of succession, was unable to reach Delaware until October 20th. McKean therefore acted as President of the State for five crucial weeks. He continued to represent Delaware in Congress until 1783 and in 1781 was President of that body.

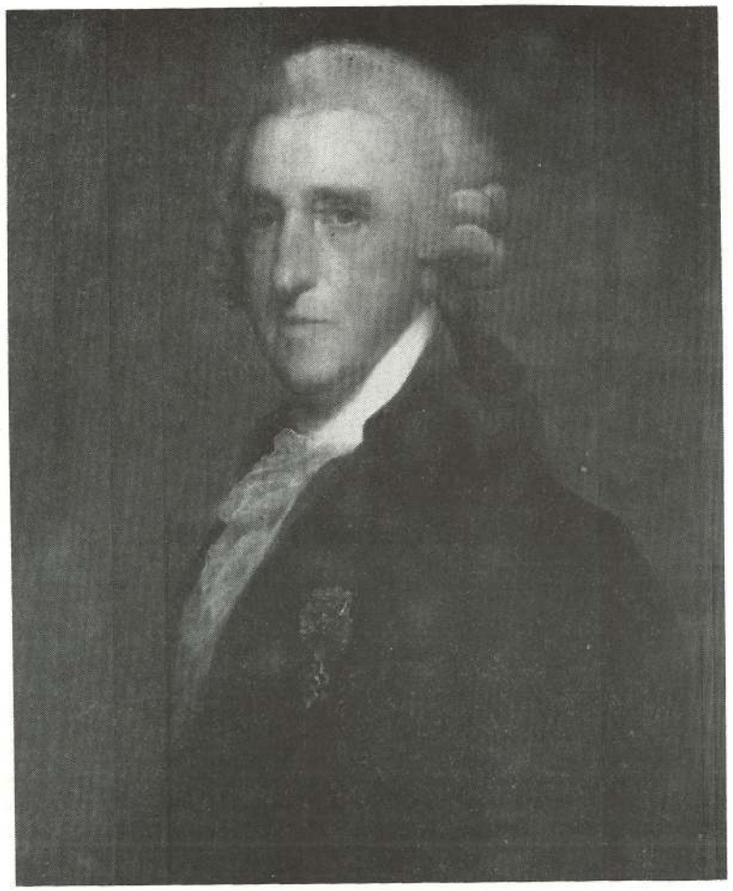
From 1777 until the close of the century, however, McKean's primary position was as Chief Justice of Pennsylvania. In 1799 he was the successful Democratic-Republican candidate for Governor, and was reelected in 1802 and 1805. He retired in 1808. He lived until June 24,1817. He had been twice married, first to Mary Borden, and after her death to Sarah Armitage. He was survived by four of the eleven children born of his two marriages, and by numerous grandchildren. He himself was interred originally in the graveyard of First Presbyterian Church, and later at Laurel Hill Cemetery, both in Philadelphia.

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Gift of the author
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Thomas McKean

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THOMAS McKEAN

E. D. Marchant's copy of a portrait of Thomas McKean by Gilbert Stuart, dated 1802, showing the subject at the age of 68. Owned by the Philadelphia Bar Association.
Courtesy of the Frick Art Reference Library.

THOMAS McKEAN AND THE ORIGIN OF AN INDEPENDENT JUDICIARY

By John M. Coleman*

THE origin of an independent judiciary in its American form is not clearly understood, despite the importance of courts in our system of government. One reason for this gap in our knowledge is that court records for the Revolutionary period are still relatively inaccessible to scholars.[1] The career of Thomas McKean, and the evolution of the Supreme Court of Pennsylvania under his Chief Justiceship from 1777 to 1799,[2] can be used to illuminate the process by which an independent judiciary was achieved in the structure of at least one state—and a strategic one, for it included the city which was to serve as the nation's capital during most of these years.

The government of Pennsylvania and the government of the new nation served side by side for a long time, and the interaction between the two can be graphically demonstrated in connection with the courts. The first major collection of American judicial decisions was the four-volume work of Alexander J. Dallas covering primarily the Supreme Courts of Pennsylvania and of the United States under the new constitution—and the entire series was dedicated to Thomas McKean.[3]

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[1] Court records are not normally available in public archives, or historical societies, but are maintained as part of the court's active files. Scholars wishing to make extensive use of older records must therefore impose on court personnel who have other, more pressing responsibilities. The writer wishes to express his appreciation particularly to Patrick N. Bolsinger, Prothonotary, Supreme Court of Pennsylvania, and to Justice Samuel J. Roberts of that Court for many courtesies extended to him in the course of his research.

[2] There is no good, recent biography of McKean. The standard works are Roberdeau Buchanan, *Life of the Hon. Thomas McKean* (Lancaster: Inquirer Printing Co., 1890), and James H. Peeling, "The Public Life of Thomas McKean, 1734-1817," unpublished doctoral dissertation at the University of Chicago, 1929. Peeling also did the article on McKean in the *Dictionary of American Biography*.

[3] See *Reports of Cases, Ruled and Adjudged in the Courts of Pennsylvania*, by A. J. Dallas, Esq. (Philadelphia, 1790). This work was continued

McKean himself was a hard-working, humorless man, who mastered the details of the cases which came before him but never lost sight of the underlying principles of the law which he was striving to enforce. He had a clear legal mind, but little tolerance for those who did not. In personal relationships he apparently lost his temper not infrequently, but whenever he sat down to write a legal opinion, he could produce a clear, concise, and on the whole judicious statement which was very difficult to refute. The evidence that we have of him is therefore conflicting. The papers which he collected over the years and transmitted to his heirs show him as a veritable John Marshall in the midst of a revolution.[4] The testimony of his contemporaries is not so flattering. Edward Burd, who was about to begin a lifetime of service as Prothonotary of the Supreme Court, wrote in 1777: "McKean . . . behaves in the most violent and imperious manner. He is principally governed by his passions, an excellent Quality in a Chief Justice."[5] Thomas Rodney, a close friend and political associate, wrote of him in his Diary in 1781 that he was a man "of great vanity, extremely fond of power and entirely governed by passions, ever pursuing the object present with warm enthusiastic zeal without much reflection or forecast."[6] If he was described in such terms by his friends, we can readily accept the accounts we have of threats and bullying from the unfortunate ones who felt the weight of his displeasure.[7]

as *Reports of Cases . . . in the Several Courts of the United States and of Pennsylvania,* Vol. II, 1798; Vol. III, 1799; Vol. IV, 1807. This series was dedicated to McKean. For other reports see Anton-Hermann Chroust, *The Rise of the Legal Profession in America,* 2 vols. (Norman: University of Oklahoma Press, 1965), II, 75.

[4] McKean wrote a short, incomplete Biographical Sketch of himself, which can be found in the Society Collection, Historical Society of Pennsylvania (HSP). He preserved scores of letters which he received, and considered important, and also occasionally copies of letters, or drafts of letters, which he sent. McKean Papers, 6 vols., HSP. His wife, Sarah, saved many of the letters which he wrote to her during the Revolution and afterwards. McKean Papers, Vol. VI.

[5] E. Burd to Jasper Yeates, Esquire, Tinian, 16th November 1777, Yeates Papers, Corresp. 1777-1779, HSP.

[6] Thos. Rodney, Diary, March 10, 1781, in Edmund C. Burnett, ed., *Letters of Members of the Continental Congress,* 8 vols. (Washington: Carnegie Institution, 1921-1936), VI, 20.

[7] See "Journal of Samuel Rowland Fisher, of Philadelphia, 1779-1781," contrib. by Anna Wharton Morris, *Penna. Mag. of Hist. & Biog.* (PMHB), XLI (1917), 145 ff. This is one of several Tory accounts with critical descriptions, such as the following: "McKean was very angry and would not give him time or opportunity to speak. . . ."

In spite of these qualities, or perhaps because of them, McKean rose high in the favor of the Revolutionary leaders, and held an imposing number of political offices. He was a member of the Continental Congress (and a signer of the Declaration of Independence) for the state of Delaware, and at one point—during the British occupation—Acting President and Commander-in-Chief of that state. He also served both as a legislator and a judge in Delaware, and did a short stint as a colonel in the Continental Army. Meanwhile, from 1777 to 1799, he was Chief Justice of Pennsylvania, and Governor from 1799 to 1808. The high point of the Revolutionary War, the battle of Yorktown, found McKean serving as President of the Continental Congress, while representing Delaware, and continuing as Chief Justice of Pennsylvania. Thus, in the course of his career he served as the chief executive officer of the general government and governor of two states—the only signer with this distinction—as well as in a judicial capacity in two states and as a legislator in one.

Of all of these positions the one which held the most power, and the most satisfaction for McKean, was the Chief Justiceship of Pennsylvania. If we can understand the process by which the Court obtained this power—or the process by which McKean was able to use his many positions to obtain such power for the Court —we will have gone a long way towards understanding the origin of an independent judiciary, as it actually occurred, in this state.

When the Revolution first broke out, and especially after John Adams's motion in Congress urging the states to suspend every form of government under the British Crown, all power in Pennsylvania (executive, legislative, and judicial) was consolidated for a time in a complex of revolutionary committees.[8] There was no separation of powers in the beginning, but rather a consensus among the conspirators, and a proliferation of special groups, military and civilian, for the accomplishment of agreed-upon, short-term objectives. In this situation judicial independence and executive independence had to be won simultaneously, and "independence" consisted only briefly in winning freedom from British control; much more important and more difficult to achieve was

[8] Peter Force, comp., *American Archives* (Washington, 1837-1853), Sec. 4, VI, 689-690. Also David Hawke, *In the Midst of a Revolution* (Philadelphia: University of Pennsylvania Press, 1961), pp. 130 ff. Peeling, "Thomas McKean," p. 45.

the winning of freedom from the revolutionary committees which dominated every other institution.

Thomas McKean had experience in all three branches of government, as well as in the Philadelphia Committee of Safety and the Continental Congress; yet as a man who was essentially conservative in his attitude towards personal and property rights, he was interested from the start in defining, delimiting, and separating powers. Acting as he did in all capacities, he had no special interest in one branch; he simply wanted a rational system of organization. The best way to achieve this, once the British had been removed, was obviously to use the common law. He saw no inconsistency in this position, and had no hesitation in citing British laws and precedents even while engaged in a war against the British. Like most of the revolutionaries, he formulated what he considered to be American rights in the terminology of British law.

At the beginning of the war the revolutionary apparatus in this area was all-powerful. The way the leaders worked is illustrated by the fact that the constitutional convention of Pennsylvania, even before it had drawn up a constitution, pushed through an ordinance for the appointment of justices of the peace for each county—and named for this position only the most zealous Patriots. It required these men to take an oath that they would "steadily and firmly at all Times promote the most effectual Means . . . to oppose the Tyrannical Proceedings of the King and Parliament . . . and to support a Government in this State on the authority of the People only."[9] There was thus a concentration of power in a few, named individuals, who were the only ones who were trusted, and this concentration tended to persist even after a more formal government had been set up. The state constitution did not, as some have assumed, automatically secure a separation of powers.

The Pennsylvania Constitution of 1776 was a curious document which differed widely from what we have since come to consider the American norm.[10] The executive was not a single governor,

[9] *Minutes of the Convention of the State of Pennsylvania from Monday, September 2, to Saturday, September 7, 1776* (Collections of the Library Co., Philadelphia), Tuesday, September 3, 1776, A.M. Printed fragments of this sort can be located in Charles Evans, *American Bibliography,* 14 vols. (Chicago: The author, 1903-1959).

[10] See text of the Constitution of 1776 in *Minutes of the Convention . . .* (Collections of the Library Co., Philadelphia). Also "The Pennsylvania Constitution of 1776: An Analysis and Explanation of its Radical Nature," by Susan Hicks, *The Picket Post.* January and April, 1966, Valley Forge Hist. Society.

but a twelve-man Supreme Executive Council. The legislature was not bicameral, but unicameral. Occasionally it met jointly with the Council, and in particular it met with the Council (and therefore dominated it) in the selection of a President of the Council. Amendments to the Constitution were to be made at the suggestion of a Council of Censors, which was to meet every seven years to see if the government were being run properly, and recommend changes. In practice this throwback to classical antiquity was never considered successful, except that its immediate and short-range effect was to postpone theoretical debates while the revolutionary leaders got on with the revolution.[11]

Of all the branches established by the Constitution of 1776 only the Supreme Court was set up in what we would now consider to be an effective way, but at first its effectiveness was doubtful. When the Chief Justiceship was offered to Joseph Reed in the spring of 1777, he hedged for four months and finally turned it down.[12] The position was then offered to Thomas McKean, who had also been critical of the new constitution, but to the surprise of many, he accepted. His nomination was immediately approved by the Supreme Executive Council, and he began his tenure on July 18, 1777.[13] In the coming years the Court was normally to be a three- or four-man body, with William Augustus Atlee, John Evans, and George Bryan as the other members.[14]

[11] Pennsylvania and Vermont were the two states with Councils of Censors. Allan Nevins, *The American States During and After the Revolution, 1775-1789* (New York: Macmillan, 1924), p. 168. The Council of Censors met in Pennsylvania in 1783 and made recommendations which subsequently had an effect on the Constitution of 1790. Burton Alva Konkle, *George Bryan and the Constitution of Pennsylvania, 1731-1791* (Philadelphia: W. J. Campbell, 1922), p. 258.

[12] John F. Roche, *Joseph Reed, A Moderate in the American Revolution* (New York: Columbia University Press, 1957), pp. 150 ff. Reed was apparently hoping for a military commission at the time; he later served as President of the Supreme Executive Council from December 1, 1778, to October 8, 1781.

[13] The original commission is available in the McKean Papers, HSP. It is dated July 18, 1777, and the date is confirmed in the court records, and the Minutes of the Supreme Executive Council, *Colonial Records,* XI, 171 ff. Yet McKean wrote legal opinions on Pennsylvania cases earlier than that —cf. Opinion of Thomas McKean, Newark [Del.], June 23, 1777, New York Public Library. Query: to whom was this opinion addressed?

[14] See Dallas, *Reports of Cases.* Appointments to the Court can be traced in several of its dockets, esp. Supreme Court: General Motions, 1750; Divorce, 1800, Office of the Prothonotary, Room 456, City Hall, Philadelphia.

One advantage which it enjoyed, which has not been sufficiently appreciated, was that it was smaller and more efficient than the Executive Council, and more completely separate from the Assembly; thus, in addition to its judicial responsibilities it found itself better adapted for the exercise of certain "sensitive" functions than the duly constituted executive was.

The extraordinary enlargement of the powers of the Supreme Court had many ramifications. It was made possible partly by McKean's position on some of the key committees of the Continental Congress, and to a lesser extent by the outside activities of the other members of the Court.[15] In general, the enlargement consisted of what would now be called police functions, or intelligence functions, but it also included a wide variety of specific powers (or prerogatives, or courtesies) not now associated with the American judiciary: helping the legislature to draft laws,[16] rendering advisory opinions,[17] supervising law enforcement agencies,[18] posting the authorities (both state and federal) concerning military intelligence,[19] and so forth.

Separation of powers came gradually over the years, as the state's executive, legislative, and judicial bodies developed standard procedures and became institutionalized. No one was more aware

For the relationship of the judges see the William A. Atlee Papers, Library of Congress, and the George Bryan Papers, HSP.

[15] Justice Atlee, for example, was appointed Deputy Commissary of Prisoners for Lancaster and Reading, under the Continental Congress. See Elias Boudinot to Atlee, Philadelphia, August 11, 1777, in the William A. Atlee Papers, Library of Congress. There were originally nine such Deputy Commissaries.

[16] In December, 1777, McKean was invited informally by the Speaker to go to Lancaster "to give a little assistance in drafting some bills." McKean to George Read, April 3, 1778, in Burnett, ed., *Letters,* III, 148-149. This invitation was confirmed in a letter: Jno. Bayard, Lancaster, February 28, 1778, to McKean, that "there are several Bills proposed which will require your Advice and Assistance." McKean Papers, HSP. McKean went to Lancaster for that purpose in March.

[17] See footnote 52.

[18] In the Prothonotary's Office, Room 456, City Hall, Philadelphia, in addition to the dockets, there are extensive Oyer and Terminer files, with treason recognizances, coroners' papers, execution orders, affidavits, habeas corpus records, and lists of grand juries. From these papers the Court's control over county officers, when it wished to exercise control, becomes obvious. It can be speculated that McKean's dealings with the local sheriffs began before he became a Chief Justice—from his connection with the Congressional Committee on Prisoners before the Declaration of Independence. See Burnett, ed., *Letters,* I, 411.

[19] Burnett, ed., *Letters,* I, 275, 290, 335, 340, 411. The Minutes of the Supreme Executive Council contain numerous other examples; for the Benedict Arnold case, see footnote 44.

of the necessity for separation than McKean—or received more criticism for plural office-holding—and no one worked harder for the adoption of the federal constitution of 1787 and the new state constitution of 1790; but meanwhile, during the war years, separation was impossible. The Continental Congress was not a legislature, but a revolutionary committee for the entire country, with no checks and balances. It should be remembered that the Revolutionary War was fought and won *before* the adoption of the Articles of Confederation, which were not finally ratified until 1781. In the war years, the state governments were dealing with a general government which had as yet no federal constitution (not even the Articles), no executive branch as such, and no federal courts (except for admiralty cases towards the end of the war).

When a revolutionary leader got in trouble—no matter in what capacity he was supposedly operating—it was to the Continental Congress that he had to go to extricate himself, as McKean quickly learned. Less than two weeks after he was appointed Chief Justice, he granted a writ of *habeas corpus* to a number of prominent Quakers who were accused of being Loyalists[20]—only to have the Assembly suspend the writ of *habeas corpus* and take the whole case out of his hands.[21] In spite of his early and consistent record as a Patriot, he was in danger of being considered "soft on Tories." He rushed to his friend John Adams with a lengthy explanation of his conduct,[22] and managed to remain in the good graces of the leaders, but it was clear that there was as yet no such thing as an independent judiciary in this state. Nevertheless, as we shall see, in a few short months this situation was to change.

During the crucial winter of 1777-1778, when the British forces under Howe were in Philadelphia and Washington was at Valley Forge, the Continental Congress and the various branches of the state government met at York and Lancaster. McKean, who was beginning his service as Chief Justice and was helping to reopen the county courts, was also serving in the Congress as a delegate

[20] Robert L. Brunhouse, *The Counter-Revolution in Pennsylvania, 1776-1790* (Harrisburg: Pennsylvania Historical Commission, 1942), pp. 42 ff. Peeling, "Thomas McKean," pp. 154 ff.

[21] *In General Assembly, Monday, September 15, 1777, A.M., An Act to impower the Supreme Executive Council of this Commonwealth, to provide for the Security thereof in Special Cases where no Provision is already made by Law.* Collections of the Library Co., Philadelphia.

[22] McKean to John Adams, Chester County, September 18, 1777, McKean Papers, I, HSP.

for Delaware. For several years, indeed, he was the only delegate for Delaware in attendance. Since the Supreme Court of Pennsylvania moved from county seat to county seat, it occasionally met in York, and while it was there McKean could arrange to divide his day between Congress and the Court—writing in April, 1778, "I have worked double tides (as the Sailors say) all the last week."[23] Later, when the British departed, and the Americans re-entered Philadelphia, he could again divide his day, whenever his Court was dealing with the County of Philadelphia.

Because McKean was the only delegate in Congress from Delaware, he was automatically a member of every committee to which that state was entitled to membership, but he was also assigned to certain committees because of his connections with or interests in Pennsylvania[24]—for example, the committee of three which made plans for the reoccupation of Philadelphia and instructed General Washington "with respect to goods and Merchandize, private property."[25] His most important committees—responsibilities which went back to the beginning of the war—were the Secret Committee (for importing arms), Qualifications (for men applying for service in the Continental Army), Prisoners (dealing with jails and the exchange of prisoners of war), Claims, and the Treasury. Each of these committees carried with it a great deal of power, for they were executive (not legislative) committees.[26] The Congress was essentially an executive body, a plural executive, which turned to the governments of the states for the performance of legislative or judicial functions.

[23] McKean to Caesar Rodney, Yorktown, April 28, 1778, in Burnett, ed., *Letters,* III, 198. The Court of Common Pleas in Philadelphia had opened briefly in September, 1777, but had been closed by the British occupation. The act of January 28, 1777 (IX, *Statutes at Large,* 29) thus remained a dead letter until the spring of 1778; by it courts of quarter sessions and gaol delivery, petty sessions, common pleas, orphans' courts, the supreme court, and courts of oyer and terminer and general gaol delivery were to be re-established.

[24] From January 30 to March 27, 1778, he received nineteen committee assignments, six of them chairmanships. Peeling, "Thomas McKean," pp. 79-80.

[25] John C. Fitzpatrick, ed., *Writings of Washington,* 39 vols. (Washington: Government Printing Office, 1931-1944), XI, 499-500.

[26] Jennings B. Sanders, *Evolution of Executive Departments of the Continental Congress, 1774-1789* (Chapel Hill: University of North Carolina Press, 1935) contains the best general discussion of this subject. The activities of the committees can be followed from day to day in *The Journals of the Continental Congress, 1774-1789,* 34 vols. (Washington: Government Printing Office, 1904-1937).

It would take a long time to catalogue the tasks of each of these committees; however, the effect which they might have had on the authority of a Chief Justice can be indicated briefly by a few examples—not to glorify McKean, but to help us to assess his power. The Secret Committee imported gunpowder (or its ingredients), brass field pieces, muskets, and ammunition; but since the central government lacked cash, the committee had to trade other commodities in order to obtain these, and inevitably became involved in complicated economic transactions both on the mainland and in the West Indies.[27] It also supervised the distribution of supplies when they were obtained—to the army, the navy, the states, local committees, and even in some cases to individuals. To do this it kept track of military units and supplies, and became in effect an intelligence agency, as well as a purchasing and distributing agency. McKean was the member of the committee who most frequently "informed the Congress" concerning the need for arms in various locations and the activities of Tories.

As a member of the Committee on Qualifications he participated in the naming of officers for the Continental Army, and in the making of policies affecting all personnel, such as "the Matter of inlisting Apprentices and small Debtors."[28] He had already sponsored a regiment for the Canadian expedition,[29] which was continued under his "protection" for several years, and as a state official had appointed officers of all ranks in the battalions of Delaware.[30] During the British invasion of 1777 he was Acting Commander-in-Chief for Delaware, and at the same time a trouble-shooter with instructions to inform the Congress "if he shall be of opinion that the strength of the well disposed people is not sufficient . . . and what additional aid it may be necessary to send."[31] His position at that point could be compared with that

[27] See L. H. Butterfield, *et al.,* eds. *The Adams Papers* (Cambridge: Harvard University Press, 1961-), III, 339, for comments on the origins of the committee.

[28] Burnett, ed., *Letters,* I, 331.

[29] *Ibid.,* I, 319, letter to George Read, January 19, 1776; 332, appointment of Col. Moses Hazen to the Canada Regiment. Also, Col. Hazen's letter to McKean from Danbury, September 29, 1778, McKean Papers, I, HSP. For his original connection with the Canadian expedition, *Journals,* IV, 40. Also, Burnett, ed., *Letters,* IV, 194-195, and V, 335-336.

[30] He appointed three general officers; see William Thompson Read, *Life and Correspondence of George Read* (Philadelphia: Lippincott, 1870), p. 278, and George Herbert Ryden, ed., *Letters to and from Caesar Rodney, 1756-1784* (Philadelphia: University of Pennsylvania Press, 1935), p. 237.

[31] *Journals,* IX, 905-906.

of the "representatives on mission" of the French Revolution. He also was one of those who interviewed foreign volunteers and evaluated their qualifications.[32]

In terms of political power the Committee on Prisoners was perhaps the most important of all committees of the Congress. This committee dealt with the administration of jails and the exchange of prisoners of war. Both sides in this war were anxious to negotiate exchanges, because prolonged imprisonments might cause epidemics. Surrenders were agreed to in the form of conventions or cartels—the prisoners being returned home on condition that they would not fight again for a specified time, or for the duration, or on some other condition.[33] Hundreds of prisoners were taken from ships captured as prizes on the high seas. The committee would frequently permit officers to be placed in house arrest, or travel at large, perhaps with their wives or members of their staffs. So far as the actual decisions were concerned, the committee merely made recommendations to Congress, and supervised the arrangements which Congress decreed; but Congress ordinarily confirmed the recommendations of the committee, which thus had effective power over the lives of thousands of persons. The members of the committee had a healthy belief in the principle of civilian control over the military, and a good deal of leverage with which to exercise it.[34] The bitterest altercation of McKean's career occurred when he was assaulted in a tavern by an officer on parole, who for two years had been refused permission to return to active duty, and who felt that McKean was arbitrarily denying him the opportunity for military glory.[35]

[32] As a case in point, when Baron von Steuben joined the army, McKean was appointed "to wait upon and confer with him to pay the necessary Compliments on his appearance in America and to learn explicitly his expectations from Congress." Burnett, ed., *Letters,* III, 91. The Baron requested, and was given, a brevet commission of captain "in order to guard against inconveniences which might attend him, if he should without any Commission in his pocket be made a prisoner."

[33] Burnett, ed., *Letters,* I, 335-341. Also McKean to Gen. Philip Schuyler, Phila., April 13, 1776, in Schuyler Papers, No. 1441, New York Public Library.

[34] McKean's influence in these matters is seen in his letter of May 16, 1778: "Colo. Francis Johnston upon my recommendation, and without his solicitation or knowledge, is appointed Commissary General of Prisoners in the stead of Mr. Boudinot, who has resigned in order to take his seat in Congress." McKean Papers, VI, HSP.

[35] General William Thompson had been captured in 1776, returned home on parole, and was waiting to be exchanged so that he would be allowed to fight again. The Committee on Prisoners passed over him to exchange

By the late spring of 1778 the Court had learned what it could and could not do, and had achieved a position of strength which stood in sharp contrast to its weakness when it was first created. McKean was able to take a strong line on the Court's behalf without fear of being overruled, as indicated in the Hooper incident.[36] Colonel Robert L. Hooper of Easton was a man who disapproved of Pennsylvania's Constitution of 1776, and was known to have urged all and sundry in Northampton County to refuse to take the required oath of allegiance. When Jonathan Sergeant, the Attorney General, lodged information against him with the Executive Council, Hooper attended the next session of the Supreme Court at Reading, found Sergeant, and beat him up. He then threatened members of the Executive Council and the Supreme Court. A little later, when he had received a writ to appear before the Court, he prevailed on General Nathanael Greene, quartermaster general at Valley Forge, to write McKean to get him off, at least temporarily. On June 3 Greene wrote: "As the Army is just upon the Wing, and part of it in all probability will march through his district, I could not without great Necessity concent

Governor John McKinley of Delaware for Governor William Franklin of New Jersey. Thompson felt that he had been "used damned rascally" and started a fight with McKean, who reported the incident to Congress as a breach of privilege. For weeks in November and December, 1778, the Congress was caught up in a maze of personalities in which Gouverneur Morris complained that McKean's opponents never knew whether they were opposing "Mr. McKean the Delegate of Delaware" or "Mr. McKean the Chief Justice of Pennsylvania." Eventually, Thompson was required to apologize, but he later criticized McKean in print and challenged him to a duel—whereupon McKean sued Thompson and his printer for libel. Trivial as the matter was, it produced more records than almost any other event in McKean's life. See Papers of the Continental Congress, No. 159, several folios, Library of Congress; Certioraries and Habeas Corpus Papers of the Supreme Court of Pennsylvania, Philadelphia; Society Misc. Collection, HSP; the *Journals;* letters of the members; the *Pennsylvania Docket,* December 29, 1778, and other newspapers.

[36] There are many discussions of the Hooper incident. See esp. Brunhouse, *Counter-Revolution in Pennsylvania,* pp. 48 ff. There is also a collection of Hooper letters in the Northampton County Historical and Genealogical Society, consisting mainly of his correspondence with Elias Boudinot, Commissary General of Prisoners, concerning prisoners of war held in Easton by Hooper as Deputy Commissary. Hooper was evidently a decent and humane individual, deeply concerned about the "wretched state" of his charges, and willing to subject himself to criticism in order to help them, but bothered by the criticism! Many of the prisoners were Hessians, whom Hooper hired out to the local farmers—an arrangement that pleased everyone, and was literally a lifesaver for the Hessians. When the authorities demanded that the prisoners be kept in close confinement, to "retaliate against the British," they got sick and many of them died.

to his being absent, as there is no other Person that can give the Necessary Aid upon this Occasion."[37] McKean replied with great spirit, obviously confident of official support:

> I do not think, Sir, that the absence, sickness, or even death of Mr. Hooper could be attended with such a consequence, that *no other person* could be found who could give the necessary aid upon this occasion; but what attracts my attention most is your observation, that *you* cannot without great necessity *consent to his being absent.* As to that, Sir, I shall not ask *your consent,* nor that of any other person in or out of the army, whether my Precept shall be obeyed or not in Pennsylvania. . . .
>
> I should be very sorry to find, that the execution of criminal law should impede the operation of the army in any instance, but should be more so to find the latter impede the former.[38]

When the British evacuated Philadelphia, the incoming American commander, Benedict Arnold, proclaimed martial law, and at once there arose a new tangle of conflicting jurisdictions.[39] State leaders were naturally eager to assume control over their chief city, but the Continental Army under Arnold was in charge. Arnold proceeded to antagonize everyone by shameless profiteering and by fraternizing with the former Tories,[40] climaxing his offenses by marrying the beautiful and socially prominent Peggy Shippen, who was reputedly on the rebound from an affair with General Howe's aide-de-camp, John André.[41]

Arnold's attitude was completely unacceptable to the government of Pennsylvania, which took a more serious view than he apparently did of collaborating with the enemy. The Executive Council feuded with Arnold for months, and eventually pinned a number of charges on him, for which Congress ordered that he be reprimanded by General Washington. Washington delivered

[37] Nathanael Greene, QMG, to the Hon. Thomas McKean, Camp Valley Forge, June 3, 1778, McKean Papers, I, HSP.
[38] McKean to Major General Greene, QMG, June 9, 1778, *ibid.*
[39] Proclamation by the hon. maj. gen. Arnold in the *Pennsylvania Evening Post,* issue of June 20, 1778, Bound Vol. IV, 210, HSP.
[40] Willard M. Wallace, *Traitorous Hero, the Life and Fortunes of Benedict Arnold* (New York: Harper, 1954), pp. 162 ff. Also James Thomas Flexner, *The Traitor and the Spy* (New York: Harcourt, Brace, 1953), pp. 221 ff.
[41] Carl Van Doren, *Secret History of the American Revolution* (New York: Knopf, 1941), pp. 183 ff., implicates Peggy Shippen Arnold in her husband's treasonable schemes.

the reprimand in such a way as to indicate that he had some sympathy for Arnold but was embarrassed by the latter's excesses.[42] In this affair the Council, whatever the arguments, was attempting to assert the right of the state to control the army within its borders, but only by persuading Congress to agree.

The Council and the Congress were both meeting in Independence Hall at this point, and the leaders of the two groups were equally distrustful of the Tories, and no doubt resentful of the luxuries of the city, after the hardships of the winter in the hinterlands. When Congress, in the fall of 1778, urged the state governments to outlaw theatrical entertainments, horse-racing, and gaming of all kinds, this policy suited the Executive Council of Pennsylvania perfectly.[43] For people in such a mood, Arnold's lavish entertaining would never do. It was in these circumstances that Arnold began to meditate a secret correspondence with the British commander in New York. The significance of the episode is that Congress, the revolutionary apparatus, began to lose its ascendancy over the state government while Benedict Arnold was misusing his authority in Philadelphia. As for McKean, he was little involved at first, but when Arnold's greatest crime was discovered—his betrayal of West Point in the fall of 1780—it was McKean who was the first in Pennsylvania to receive the news.[44] It was the Chief Justice who informed the Executive Council of Arnold's having joined the enemy, and under him the Sheriff of the City and County of Philadelphia was "directed to make diligent search for General Arnold's papers."[45]

All three branches of the Pennsylvania government took vigorous action against suspected Tories in the period following the reoccupation of Philadelphia.[46] The legislature passed acts of attainder, which named persons thought to have joined the British,

[42] Brunhouse, *Counter-Revolution in Pennsylvania,* p. 67. Van Doren, *Secret History,* p. 188, quotes Arnold's statement that he was "at all times ready to answer [his] public conduct to Congress or General Washington, to whom alone I am accountable." This should be understood as a state-federal controversy, not as a civil-military controversy.
[43] Wallace, *Traitorous Hero,* pp. 171-172.
[44] *Colonial Records,* XII, 490.
[45] *Ibid.*
[46] See Henry J. Young, "The Treatment of the Loyalists in Pennsylvania," unpublished doctoral dissertation at Johns Hopkins University, 1955, esp. Chap. V, "The Punishment of the Dynamic Loyalists."

and delegated to the Executive Council the power to proclaim additional attainders in the future.[47] Under this system approximately 500 persons were condemned unheard, and forfeited their property to the state, about 400 of them in 1778. There was even a form of judicial attainder, called outlawry, adopted by the Supreme Court in troublesome cases, such as that of the Doan gang in Bucks County, whom McKean pursued relentlessly for years.[48] To offset the severity of this record, it might be pointed out that if those who were attainted desired to stand trial, to clear their names, they were heard by the Supreme Court with due procedural safeguards. Only a few of them did, however; most fled without waiting to see what would happen, and left it to their wives or children to try to retain or recover their property.

Considering the circumstances, the policy that was followed was strict but not bloody. The number of persons actually hanged for treason in Pennsylvania was astonishingly small. In an advisory opinion delivered to the legislature in 1779, McKean's Court recommended a policy of moderation: because of the confusion and anarchy of the transition period, every man should be considered to have been free to choose sides until February 11, 1777, the date of the first treason statute.[49] McKean held to this interpretation when the Council brought the question up again, and made the principle stick.[50] In the case of the Proprietors' estates—the largest privately-owned holdings on the continent—the Court again (in another advisory opinion) recommended

[47] The short-lived Council of Safety passed an ordinance in 1777 sequestering the estates of all inhabitants who "have, or hereafter shall, abandon their families, or habitations" to join the British, and after the Council was abolished, the legislature passed a confiscation act on March 6, 1778. This bill simply named persons thought to have joined the British and gave them until April 21 to surrender and stand trial under the general treason act. It delegated to the Executive Council the power to proclaim additional attainders in the future, with forty-day grace periods. See Thomas R. Meehan, "Courts, Cases, and Counselors in Revolutionary and Post-Revolutionary Pennsylvania," *PMHB,* XCI (1967), 29-30. Also Papers in Attainder, 1778, records of Supreme Court of Pennsylvania.

[48] Oyer and Terminer Docket, September 1778, to December 1786, pp. 142, 146-147, 193, 239; Appearance Docket, 226-230, Supreme Court of Pennsylvania. *Respublica v. Aaron Doan,* I Dallas 86. Also see postscript in letter McKean wrote to his wife from Bedford as late as October 29, 1783, that Joseph Doan, senior, was in jail there, Mahlon Doan and another member of the gang were confined in Pittsburgh, and three others at York, as of that date.

[49] Young, "Treatment of the Loyalists in Pennsylvania," pp. 199 ff.

[50] *Respublica* v. *Samuel Chapman,* I Dallas 53.

moderation.[51] The Divesting Act that was passed by the legislature on November 27, 1779, was not so generous to the Penns as the Court had suggested it should be, but the Proprietors were not by any means stripped of all their property.

The Court's influence on public policy was greatly increased by the practice of rendering advisory opinions.[52] McKean and his fellow judges were asked to advise the Assembly, the Executive Council, and even the Congress on all sorts of vital matters. Sometimes they were asked for written opinions; occasionally they were invited to a conference for informal discussions.[53] Their opinions were not always followed (witness the case of the Penns' estates), but they were listened to with respect, and contributed to the national practice of having governmental agencies act in accordance with a received corpus of law, interpreted by experts. When the Supreme Court of the United States was set up a few years later, it is significant that President Washington asked for, and expected to receive, advisory opinions, as had been the practice in the Revolutionary period.

In the course of time the Court assumed more and more control over law enforcement agencies in the various counties, as it moved from Philadelphia to Chester, Reading, Easton, Lancaster, and

[51] Peeling, "Thomas McKean," pp. 166-169. In Delaware McKean was retained as an attorney by the Penns, along with Edmund Physick, to defend their interests. In that state, however, the Penns were unsuccessful.

[52] Peeling, "Thomas McKean," pp. 166-169, and Roche, *Joseph Reed,* pp. 153-154. These discussions deal with the Proprietary estates, but there were many other cases. For example, on August 22, 1778, the Executive Council approved McKean's opinion that one Frederick Verner, who had been sentenced to death by a court-martial under General Arnold, should be retried by the state's Supreme Court, and ordered that this opinion, with their endorsement, should be communicated to Congress. *Colonial Records,* XI, 561. Another illustration: in 1780 the Council referred to McKean certain queries from the Admiralty Court. The Vice Consul of France had applied to the Judge of Admiralty of Pennsylvania for a general warrant to search vessels in the Philadelphia harbor for sailors who had deserted French ships. McKean advised that the "Jurisdiction of the Admiralty in this case might be justly called into question, even were the *thing* lawful." To Joseph Reed, July 10, 1780, Society Collection, HSP. It should perhaps be mentioned that McKean was also asked for advisory opinions by officials in Delaware; cf. Burnett, ed., *Letters,* III, 300-301.

[53] "A doubt has arisen on the Construction of the nineteenth Section of the Constitution on which the Council would request a Conference with the Judges of the Supreme Court for the benefit of their advice and opinion whenever the business of the Court will admit." Joseph Reed, President, In Council, Philada. April 23rd 1781, To Honble the Judges of the Supreme Court, McKean Papers, I, HSP.

York—and later to county seats farther west.[54] The Chief Justice received information concerning persons who had been apprehended locally, or who should be, and saw to it that the necessary writs were issued.[55] The Attorney General and the Prothonotary traveled with the judges[56] and served as prosecuting attorneys; on occasion the Attorney General even joined the judges in preparing (and signing) advisory opinions.[57] Local people were required to serve the Court, and were punished without compunction if they did not. The entry for April 5, 1779, in the Court's docket listed justices of the peace and constables for the City and County of Philadelphia (over a hundred names) and added in an off-hand note: "Ordered that an attachment issue against the Constables of Germantown, the Northern and Passyunk Township for their contempt in not attending this court—which having accordingly issued—the said Constables were taken by the Sheriff and brought before this Court—and upon the reason rendered by them were discharged by the Court upon payment of costs."[58]

During these years McKean continued his activities in Congress, and in 1781 (just in time for the Yorktown campaign) he became its President. It is noteworthy that he accepted the Presidency of Congress only on condition that he be relieved the following fall to attend the Supreme Court of Pennsylvania.[59] Congress was no longer in a position to dominate the states; its prestige by this time was at a low ebb. The adoption of the Articles

[54] Oyer and Terminer Docket, September, 1778, to December, 1786, and other dockets of the Supreme Court of Pennsylvania. There is also relevant information in the Dreer, Gratz, Provincial Delegates, and Society Collections, HSP.

[55] See Bradley Chapin, "The Law of Treason during the American Revolution," doctoral dissertation, Cornell University, 1952, subsequently published as *The American Law of Treason: Revolutionary and Early National Origins* (Seattle: University of Washington Press, 1964), esp. chap. 4, "The Times that Tried Men's Souls."

[56] Lewis Burd Walker, *The Burd Papers, Selections from Letters Written by Edward Burd, 1763-1828* (Philadelphia, 1899) and J. Bennett Nolan, *Neddie Burd's Reading Letters* (Reading: Berks County Bar Association, 1927), *passim*.

[57] Jonathan Dickinson Sergeant, Attorney General, signed the opinion addressed to Joseph Reed, July 10, 1780, cited in footnote 52.

[58] Oyer and Terminer Docket, September, 1778, to December, 1786, Supreme Court of Pennsylvania. The practice of punishing the innocent by making them pay costs is still an issue in Pennsylvania. McKean started it as early as 1779, and it was written into law in 1805 when he was governor. *Civil Liberties Record,* Greater Philadelphia A.C.L.U., February 1963, Vol. 12, No. 1.

[59] Peeling, "Thomas McKean," pp. 104-105.

of Confederation in March, 1781, did little to strengthen it—if anything, the Articles added limits that had not been present before.[60] McKean's election to the Presidency caused a political explosion in Pennsylvania.[61] His enemies (who must have been waiting their chance) demanded that he resign either the Presidency or the judgeship, and the Assembly by a vote of forty-two to twelve passed a resolution that a judge of the Supreme Court of Pennsylvania could not sit in Congress as a delegate for another state, according to the Constitution of 1776.

In reply, McKean pointed out that the Pennsylvania constitution was not binding on the citizens of Delaware, and that he had been a member of Congress for Delaware *before* the Executive Council had made him Chief Justice of Pennsylvania four years previously. He ignored the Assembly, except for a brief public statement, and despite grumbling they made no further effort to force his resignation. As part of his reply he asked if his critics did not know "that the Honorable William Henry Drayton, Esquire, served in Congress for two years as a member for South Carolina, being at the same time Chief Justice of that State, that the Honorable William Paca, Esquire, was at the same time Chief Justice and a member of Congress for the State of Maryland; that the Honorable John Jay, Esquire, was Chief Justice of New York during the time he was President of Congress; that the Honorable Samuel Huntington, Esquire, the last President of Congress, was during the whole time a Justice of the Supreme Court for Connecticut; and that there are several of the present members of Congress who are Justices of the Supreme Court in their respective states?"[62] In other words, a dual role for members of the judiciary was not unusual—though there was no other case of a Chief Justice in one state's serving as a delegate to Congress from another.

McKean resigned the Presidency in the fall of 1781, as he had planned, but continued as a member until 1783. In the postwar years, his decisions in the Supreme Court became stricter than

[60] Merrill Jensen, *The New Nation: A History of the United States During the Confederation, 1781-1789* (New York: Knopf, 1950), p. 25. "The central government was given specific and sharply circumscribed powers."

[61] Brunhouse, *Counter-Revolution in Pennsylvania,* pp. 64 ff.

[62] "An Answer to Tenax abt. Presidsy of The Congress," August 6th, 1781, addressed "To the Printer." McKean Papers, I, HSP.

before, and his ability to tolerate opposition weaker.[63] For someone of his nature, it would seem, the Congress had been a restraining influence, and now it was relegated to the background. The other judges complained that the Court often worked until late at night, and that the long trips were physically exhausting. Whenever possible they took turns applying for leaves of absence.[64] It was not until 1782 that Justice Atlee, McKean's potential successor, first presided over the Court. In March of that year he wrote to his wife, "Mr. McKean is gone to New Castle (to the credit of this State) to attend to some causes he is engaged in there . . . so that I must preside in the Court here—I don't like it very well you may suppose. It is the first time—and the Gentlemen at the Barr I hope will be kind enough not to push me too hard."[65] The Chief Justice had never had worries like that.

Demobilization brought problems which no one had anticipated, and the Executive Council was inadequate for the crisis. Education and religion had languished, juvenile delinquency was high, and there were numerous economic dislocations. It was McKean's Court which stepped into the breach—with what many citizens thought was excessive zeal.[66] In a way, the Court came to per-

[63] McKean refused to admit evidence in mitigation of damages, for libel, in the case of Eleazer Oswald, December sessions, 1782. William Bradford, jun. (who subsequently became a member of the Court) protested this procedure, as follows: "But perhaps you have acquired an intuitive knowledge, an infallible rule by which you can perfectly comprehend the merits of every case from hearing one side only;—if so I congratulate the people, it will save a world of expense and trouble. . . ." 18-b-2, special hist. file of the Prothonotary, Supreme Court of Pennsylvania. Oswald was continually in trouble with the Court for many years. McKean was guilty of an even greater breach in 1797 in the case of William Cobbett, the celebrated "Peter Porcupine." This time the Chief Justice was not only judge in his own case, but stepped off the bench to be sworn in as a witness against the accused!

[64] In 1781 Justice Atlee wrote: "I consented to his [Evans's] going home on Sunday last as his daughter was unwell—and when he returns will try my Interest for leave to go home likewise—I shall have his vote no doubt." Atlee to his wife, Phila, April 18, 1781, William A. Atlee Papers, Library of Congress.

[65] Atlee to his wife, Phila, April 9, 1782, *ibid.*

[66] There was a jurisdictional dispute involving a variety of economic matters between McKean's Court and the Court of Admiralty—which became a personal feud between McKean and Francis Hopkinson. In 1780 Hopkinson was impeached and, although President Reed and the Council acquitted him, he always felt that McKean was one of those who had tried to get him convicted. The dispute was bitter, but the net effect was to strengthen McKean's Court and weaken Hopkinson's. By 1785 it was possible to hold an Admiralty Court without the presence of the Judge of Admiralty. Peeling, "Thomas McKean," summarizes the controversy.

sonify the conservative reaction of the 1780's. Earlier the Court had enjoyed a widespread popularity for its defense of the revolutionary cause; now, it was distinctly unpopular.

For this reason it is not surprising that when the new federal government was set up, President Washington refused to appoint McKean to the Supreme Court of the United States—though McKean wrote and applied for the job.[67] We do not know Washington's reasons. It may be that he felt that McKean had accumulated too many enemies[68] or become too dictatorial; or perhaps he simply wanted a younger man. In any case, he chose James Wilson (whose performance as a judge was to prove disappointing), and McKean continued as Chief Justice of Pennsylvania for more than a decade longer—until 1799. (Justice Atlee, his successor-to-be, died in 1793.)

The conservative reaction which had led to the adoption of the federal Constitution contributed also the adoption of a new Pennsylvania constitution in 1790. If additional evidence is needed to indicate that the independence of the judiciary had been won in this state, the proceedings of the constitutional convention of 1790 should provide it. With the Chief Justice taking a prominent part in the debates, or serving as Chairman of the Committee of the Whole, the convention eliminated or drastically reorganized every branch of the government except the judiciary.[69] It abolished the Council of Censors, changed the plural executive to a one-man governor (with greatly expanded patronage powers), changed the unicameral to a bicameral legislature, and left the Court substantially alone, except that the judges were henceforth to serve during good behavior (i.e., indefinitely), instead of for seven-year terms.[70]

The independence of the judiciary was thus attained—though

[67] Peeling, "Thomas McKean," pp. 198-199. The letter to Washington, April 27, 1789, is cited in *American Historical Review*, II (1896), 98-99.

[68] McKean had been active in establishing a federal Court of Appeals and had been nominated for a position on this Court three times, but had failed of election each time.

[69] See esp. William H. Loyd, *The Early Courts of Pennsylvania* (Boston: Boston Book Co., 1910), and Frank M. Eastman, *Courts and Lawyers of Pennsylvania*, 3 vols. (New York, 1922). Also Sanford W. Higginbotham, *The Keystone in the Democratic Arch* (Harrisburg: Pennsylvania Historical and Museum Commission, 1952), pp. 7 ff.

[70] In 1783 the Council of Censors had recommended that the seven-year term for judges be eliminated to give the judiciary greater independence. Loyd, *Early Courts of Pennsylvania*, p. 129.

McKean himself was never to reach the natural climax of his career, and never to return to the center of the national stage. If he had been appointed to the United States Supreme Court (in place of James Wilson), or if he had been appointed Chief Justice (in place of John Jay), his name would certainly have become better known than it is today. As it happened, he remained Chief Justice of Pennsylvania until 1799, and then served three unhappy and disappointing terms as Governor,[71] "curbing the excesses of a radical legislature," and fighting off impeachment proceedings at the end of his long public life. It was left for others to develop the powers of an independent judiciary which he had labored so steadfastly and so effectively to create.

[71] He also served, ex officio, as a member of the High Court of Errors and Appeals, and retained this position until the Court was abolished in 1806. Although McKean was in some respects a "Jeffersonian" governor, he was atypical in that he continued to fight for a strong judiciary and believed that the independence of both the executive and the judicial branches should be defended at all costs against the encroachments of the legislature.

To all people to whom these presents shall come.

We the Commissioners for managing & causing to be Levied His Majesty's Customs & other Duties in America Do hereby Depute and Impower Thomas Mc Kean Esq.r to be Collector of the Customs at the Port of New castle in Pensylvania, and to do and perform all Things to the said Office or Employment belonging ——— By virtue

£310 — whereof He hath power to enter into any Ship, Bottom, Boat or other Vessel, & also in the day time with a Writ of Assistants granted by his Majesty's Superior or supreme Court of Justice and taking with him a Constable, Headborough or other public Officer next inhabiting, to enter into any House, Shop, Cellar, Warehouse or other place whatsoever, not only within the said Port but within any other Port or place within our Jurisdiction, there to make diligent Search and in case of resistience to break open any Door, Trunk, Chest, Case, Pack, Truss or any other parcel or package whatsoever, for any Goods, Wares or Merchandizs, prohibited to be exported out of, or imported into the said Port, or whereof the Customs or other Duties have not been duly paid: And the same to Seize to his Majesty's use and to put and secure the same in the Warehouse in the Port next to the Place of Seizure. In all which Premises He is to proceed in such manner as the Law directs. Hereby praying & requiring all and every his Majesty's Officers & Ministers & all others whom it may concern, to be aiding & assisting to Him in all things as becometh. Given under our hands and Seal at the Custom House BOSTON this Thirtieth day of September in the Eleventh year of the Reign of our Sovereign Lord King George the Third, and in the Year of our Lord One Thousand Seven Hundred and Seventy One.

Chas Paxton Jno Burch Hen. Hulton

Pro. Fee 4/

New castle Oct.r 22.d 1771. Sworn this day duly sworn &c. before the Hon.r Richard Penn Esq.r Governor &c. as Collector. — Tho.s McKean

Commission.
Hon.ble Comm.rs of the Customs
to
Thomas McKean Esquire,
appointing him Collector of
the port of Newcastle &c. Sept.r
30th. 1771.

No 29

Gen. Ref. #69