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**THE UNITED STATES CONSTITUTIONAL HISTORY
THROUGH THE BARRISTERS AND POLITICAL THEORIES
OF THE MIDDLE TEMPLE INN OF COURT**

PROFESSOR ALLEN SHOENBERGER

The connections between members of the Middle Temple and the Constitutions and Constitutional Law of the United States are surprisingly many, albeit unknown to most American lawyers. Most recently each of the last three Chief Justices of the United States Supreme Court were admitted to membership in the Middle Temple.¹ Obviously these Chief Justices votes and leadership on the Supreme Court are important in constitutional interpretation. In the history of the drafting of the United States Constitution and several state constitutions, lawyers trained in the Middle Temple played significant roles. Five members of the Middle Temple signed the Declaration of Independence, and seven members signed the Constitution. Four signed the Articles of Confederation.

In the earliest colonial time, a figure from the Middle Temple played a major part in bringing English constitutional rights to the new world: Sir Edwin Sandys, Treasurer of the Virginia Company, lived in Virginia from 1621 to 1631. When in England he was zealous in protecting the rights of colonists against the crown, and frequently quarreled with both the Colonial Council and the Royal Governors. It was his draft of the first charter of the Virginia Company that first transplanted the rights of Englishmen to the new world. That charter provided that the colonists were to have, “all the liberties, franchises and immunities of English subjects.” These included the right to trial by jury. James Beck, Solicitor General of the United States,² called Sandys “the father of American Constitutionalism.” Sandys also drafted the second charter of the Virginia Company of 1618 that created the first legislature of the British colonies.³

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¹ Chief Justices Warren Burger, William H. Rehnquist, and John Roberts.

² Beck served as Solicitor General during the Harding and Coolidge administrations. He was a strong proponent of American’s involvement of World War I because of the moral obligations to the allied cause. He became a national celebrity in England, giving frequent speeches on the cause. The New York Times obituary for Beck declared him “one of the foremost authorities on the Constitution.”
<http://www.moravian.edu/default.aspx?pageid=3034>

³ Lord Chief Justice Nicholas Phillips of Worth Matravers, discussed these two documents drafted by Sandys, pointing out that the 1618 document gave the first political rights to

Sandys was a leader of parliamentary thought in England. He took the position that the King's authority rested upon mutual obligations of subject and sovereign, which neither party could violate with impunity. His position was thus in stark contrast to that of King James I, who espoused the divine right of kings. Sandys was himself brought before Star Chamber but although he was bound over, nothing happened to him, probably because of his popularity with the public.

In several other ways Sandys was important. He insisted that colonists should be of high character, not felons as were shipped out to Australia centuries later. Moreover, he took the radical position (for the times) that prisoners were entitled to representation by counsel.

The Middle Temple played a role in the education of many lawyers in the American colonies. One indication of that is that 6 of 7 of the lawyers who drafted the South Carolina constitution were members of the Middle Temple. Benjamin Franklin's son, William was also a member of the Middle Temple. Although there are four Inns of Courts in London, Middle Temple, Inner Temple, Grays Inn and Lincoln's Inn, by one estimate fully 62 percent of students coming to study law from the American colonies came to the Middle Temple.

The earliest admittees from the colonies include Andrew Rutledge, from South Carolina, who was admitted to Middle Temple in 1726. It was one of his descendants (also admitted to the Middle Temple) who played a very important role in drafting the Constitution of the United States during the hot Philadelphia summer. One of the next admittees, William Drayton, became in 1789 the first federal judge in South Carolina after admission to the Middle Temple in 1750.

Virginia had the most members admitted to the Middle Temple, 46 members, including four Lees, and three Randolphs. Pennsylvania had twenty-four members of the Middle Temple. Massachusetts has far fewer, four, but of those three were from Boston. The initial patent to found the Maryland colony was given by King Charles I to George Calvert, Lord Baltimore, a Member of the Middle Temple and stockholder in the Virginia Company. Lord Baltimore died, but his son, Cecelius, the second Lord Baltimore, took up the patent and started the colony, naming it after Henrietta Maria, Charles I's wife. Because of its religious tolerance, many

colonists. Reflections on the Rule of Law America's 400th Anniversary at Jamestown Addresses, 43 U Rich. L. Rev. 37 (2017). Phillips points out that another member of the Middle Temple became a governor of Virginia.

Irish settlers came to Maryland, including the Dulany and Carroll families; fully 24 members of the Middle Temple came from the Maryland colony.

There were several years in the middle 1750s when there were more American and Irish students admitted to the Middle Temple, than English students!

However, several English members of the Middle Temple played significant roles in Parliament speaking out for the American colonists. Edmund Burke and John Dunning were particularly important Parliament figures. In 1775 Burke thundered against the use of force against colonists speaking on the floor of Parliament. He asserted that while force could subdue for a moment, it did not remove the necessity of subduing again and again. A nation is not governed which is perpetually to be conquered.

The fierce spirit of liberty is stronger in the English colonies probably than in any other people of the earth {because} the people of the colonies are descendants of the Englishmen... The are therefore not only devoted to liberty, but to liberty according to English ideas and English principles.⁴

Indeed, when the first Continental Congress convened, Peyton Randolph of Virginia, a Middle Templar, was elected its first President in 1773. Randolph had gained notoriety because of his remonstrance against the proposed *Stamp Act* in 1764 and became speaker of the Virginia House of Burgesses. He was chairperson of the Committee of Correspondence between the colonies. The last President of the Continental Congress was another Middle Templar, Cyrus Griffin of Virginia. The Second Continental Congress of 1775 also elected Peyton Randolph as President, but he passed away and was succeeded by John Hancock.

A Middle Temple lawyer from Pennsylvania, John Dickenson, drafted the Declaration of the Causes and Necessities of taking up Arms, a document that rejected separate independence, but asserted that he would rather die than be enslaved. John Dickenson was one of the leading pamphleteers of the revolution, writing many missives entitled Letters from a Pennsylvania Farmer.

Five signers of the Declaration of Independence were Middle Templars. During the Revolutionary War nearly three quarters of the Middle Templars

⁴ John Colyer, *The American Connection*, in *History of the Middle Temple*, ed. by Richard O. Havery, Hart Publishing, 239, 249 (2011).

in the colonies supported the revolution, but the remainder, numbering 41 loyalists had a difficult time after the war. Sixteen became political refugees in England, one died en route to exile, and another three immigrated to Canada. In total, 27 loyalists left the colonies because of the war.

During the war one Middle Templar, Col. John Laurens, (son of a President of the Continental Congress who was captured and interred in the tower of London for fifteen months) became a significant aide de camp to George Washington.⁵ Laurens' language ability proved quite valuable in dealing with the new allies of the colonists, the French. Laurens negotiated the terms of surrender of Cornwallis, and was placed in charge of prisoners. He negotiated the swap of his father for Cornwallis. Unfortunately, Laurens fell to a sniper bullet only weeks before the hostilities ceased. A copy of his portrait in uniform hangs in the Middle Temple near the door to the American Library.⁶

On the British side of the war, Col. (later Sir) Banastre Tarleton, also a Middle Templar played a more nefarious role. It was he who was recently portrayed as the hated head of a troop of Dragoons in South Carolina, soldiers notorious for their brutality.⁷

Another *aide de camp* to George Washington, Joseph Reed, a Middle Templar and attorney general of Pennsylvania (1778-1780), was the target of an unsuccessful attempt at British bribery.

The Movement to a New Constitution

After several years of operation under the Articles of Confederation it became clear to many citizens of the newly independent states that the system of government was not working well. Two Middle Templars, Charles Pinckney and John Rutledge in 1786 proposed a motion in Congress for the reorganization of the government.⁸ In January 1786 Virginia called for a convention in Annapolis to consider inter-state commerce. The convention was held but only nine states attended. John Dickenson (a Middle Templar) was elected to preside. Instead of deliberating substance the convention adopted a resolution asking for a constitutional conference to be convened.⁹

⁵ Colyer, *supra* note 4 at 254.

⁶ *Id.*

⁷ *Id.* at 254-255.

⁸ Colyer, *supra* note 4 at 256.

⁹ *Id.* at 257.

That constitutional conference opened on May 25, 1787 in Philadelphia, Pennsylvania with fifty-five delegates from twelve states (no Rhode Island representatives).¹⁰ Half of the delegates had legal training with Middle Templars present in force.¹¹

John Dickinson (a Middle Templar), it has been argued, was one of the most important speakers at the Constitutional Convention.¹² Natelson concludes his article about Dickinson:

If James Madison was the “the father of the constitution,” then John Dickinson was at least a kindly uncle. In part this conclusion can be inferred from the results, which were much closer to Dickinson’s ideas than to Madison’s. More importantly, we have explicit evidence that Dickinson played pivotal roles at numerous points of constitutional decision making: choosing a method of electing senators, setting the formula for apportioning the Senate, establishing the balance between state and federal powers, deciding to enumerate the powers of Congress, excluding judges from the executive veto, creating independent federal courts below the Supreme Court, protecting states from being forcibly combined with other states, and adding trust-style limitations on Congress’s financial powers. One historian ... Professor M.E. Bradford [called Dickinson] “Possibly the most learned of the Framers ... undoubtedly the most undervalued and misunderstood of their notable company... He is... definitive of the moderate Federalist position of 1787-1788 and a key to the meaning of what was achieved. Professors Forrest and Ellen Shapiro McDonald agree that “the most underrated of all the Founders of this nation was John Dickinson.”

A committee was appointed to draft the constitution and the Middle Templar John Rutledge of South Carolina was appointed chair of the five-person committee.¹³ The first draft of the constitution was completed in ten days of intense work. The Constitutional Convention as a whole then considered the draft work and appointed a committee on Detail to finalize the draft.

¹⁰ Id.

¹¹ Id.

¹² Robert F. Natelson, *The Constitutional Contributions of John Dickinson*, 108 Penn St. L. Rev. 415 (2003).

¹³ Rutledge became one of the first Justices of the U.S. Supreme Court, resigning to become Chief Justice of South Carolina in 1791. He returned briefly to the U.S. Supreme Court to act as Chief Justice in 1795.

The Committee of Detail consisted of five members, four were lawyers, including John Rutledge a Middle Templar, James Wilson from Philadelphia (who had been a pupil of John Dickenson, a Middle Templar), Oliver Ellsworth and Edmund Randolph.¹⁴ Miller notes that the Committee of Detail itself drafted the Necessary and Proper Clause of Article I, Sec. 8 of the Constitution, a phrase derived from letters of attorney in use at that time.¹⁵

On September 12 that committee reported and on September 15th the proposal was adopted. Thirty-nine members signed the final Constitution including seven Middle Templars.¹⁶

Conclusion

From the founding of the first colony in the New World to the U.S. Constitution, Middle Templars were active drafting various important constitutional documents for Americans. The rights and privileges of Englishmen were enshrined in the earliest charter of Virginia, representative democracy, the right to a jury trial and deep distrust of excesses of power by the crown or any central authority figured prominently in the spirit of the Middle Temple and its many progeny. The structure embedded in the text of the U.S. Constitution owes much to their involvement. The first Constitutional Decision of the Supreme Court, *Marbury v. Madison*,¹⁷ cited only one authority, the Middle Templar Blackstone.¹⁸ Indeed., many American Middle Templars of the pre-Revolutionary era undoubtedly met Blackstone., Blackstone's Commentaries on English Law had as many copies sold in America as in England.¹⁹ "Over 1000 copies of Blackstone's Commentaries were imported to America before 1772, and 1400 copies of the first American edition in 1772 were subscribed for in advance by

¹⁴ Miller, *The Corporate law Background of the Necessary and Proper Clause*, 79 *Geo. Wash. L. Rev.* 1, 5 (2010).

¹⁵ *Id.*

¹⁶ William Livingstone, John Blair, John Dickinsen, John Rutledge, Charles Coteswood Pickney, Charles Jared Ingersoll, and Charles Pickney.

¹⁷ 1 *Cranch* (5 U.S.) 137, 163 (1803).

¹⁸ Charles Lee, former Attorney General of the United States (1795-1801) argued *Marbury v. Madison* on behalf of *Marbury*. While Lee had not been educated in the Middle Temple, he read law under Jared Ingersoll of Philadelphia, who was a Middle Templar. Ingersoll himself argued *Chisoholm v. Georgia*, 2 U.S. 419 (1793) (result overturned by the 11th Amendment) as well as *Hylton v. U.S.*, 3 U.S. 171 (1796) (the first U.S. Supreme Court case challenging the constitutionality of an act of Congress).

¹⁹ Randy J. Holland, *Anglo-American Templars: Common Law Crusaders*, 8 *Del. L. Rev.* 137, 148 (2006).

virtually every leading member of the American legal profession.”²⁰ The clear footprints of the Middle Temple were readily apparent throughout the new constitutional and legal system of the newly independent United States.

²⁰ Id.

