

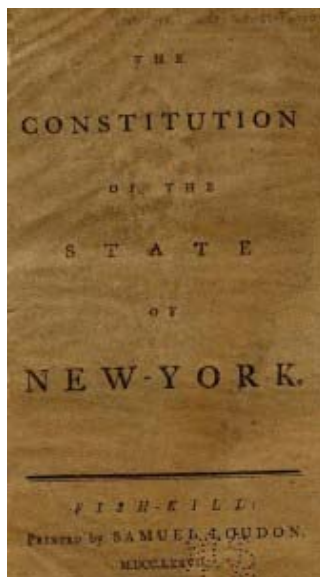
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3 Important NYS Constitutional Conventions

By [James S. Kaplan](#) on [January 25, 2016](#)



The next referendum to decide whether to hold a New York State Constitutional Convention will be held on November 7, 2017. During the last two referenda in 1997 and 1977 (they are held every 20 years) voters declined to hold such a convention. In fact the last time a convention to revise the New York State Constitution was held was almost 50 years ago in 1967, and despite the hard work of its delegates, voters rejected the revised Constitution in its entirety.

Although amendments to the New York State Constitution occur with some regularity (including several last November), the last time the Constitution was changed through the Convention process was in 1938, almost eighty years ago.

Nevertheless, the history of Constitutional Conventions in New York State is not as bleak as this recent history would suggest. In fact, three New York State Constitutional Conventions — those of 1777, 1821 and 1938 — helped shape the State's political history.

New York State Constitutional Convention of 1777

After the Declaration of Independence some New Yorkers set about creating a mechanism to revise the Colonial Charter to create the independent State of New York. This Constitution provided for a two-house legislature. Male property holders elected a New York State Assembly, every year, and a New York State Senate, elected less frequently. The constitution also provided for an independently elected Governor and a Council of Appointment with sweeping powers. Unlike virtually every constitution in the world at the time, it also provided for freedom of religion. Under the circumstances, a ratification vote of the state's electors was virtually impossible and on April 20, 1777 it was read in its entirety from the steps of the Ulster County Courthouse in Kingston and declared the law of New York State. In October of 1777, British troops under General Vaughn burned nearly all of Kingston to the ground, allegedly as punishment for the inhabitants' support of the patriots and their new constitution.

The key figures at the New York State Constitutional Convention of 1777 were three young lawyers — John Jay, Robert Livingston, and Gouverneur Morris – who would play important parts during the federal constitutional convention in Philadelphia 10 years later. In fact, the U.S. Constitution shares elements of the New York State Consti-

tion such as a bicameral legislature and independent executive power and freedom of religion. Jay would later be Governor of New York, U.S. Secretary of State, and Justice of the U.S. Supreme Court. Livingston spent 24 years as Chancellor of New York State, swore-in George Washington as President in 1789, and as Ambassador to France in 1803, was one of the architects of the Louisiana Purchase. In addition to his work on the U.S. Constitution, Gouverneur Morris would be an important early promoter of the Erie Canal.

The [New York State Constitutions of 1777](#) was not without its faults. Property qualifications greatly restricted eligibility to vote. For example, it required that all voters for representatives to the State Senate own at least \$250 in property and as a result it's estimated that just 10% of the male population in places like New York City were eligible electors. Furthermore veto powers held by the Council of Appointment were increasingly seen as elitist and restricting. These problems were compounded by the fact that the 1777 Constitution did not outline a specific procedure for its amendment.

New York State Constitutional Convention of 1821

From the 1770s into the 1810s, the issue of who was qualified to vote was contentious as control of New York saw-sawed between Federalists and Democratic Republicans. With a major goal of expanding the voting franchise, in 1818 a Democratic Republican state legislator introduced a bill for a Constitutional Convention referendum to bypass the State Legislature and amend the New York State Constitution directly. A version of the bill passed in 1820 and in the referendum that followed the state's electors voted overwhelming for a constitutional convention. This convention proved to be one of the most productive in the State's history as it substantially revised the wartime Constitution of 1777 (including eliminating the Council of Appointment).

At the 1821 Convention there was a bitter debate over the property qualifications for voting. A number of the State's most prominent political leaders strongly supporting continuing to limit the vote to property owners. Chancellor James Kent, the state's leading legal scholar and the head of its highest Court, argued that if all citizens in the State had the right to vote those without property would, through taxation and other means, appropriate the property of landowners.

"By the report before us, we propose to annihilate, at one stroke, all those property distinctions, and to bow before the idol of universal suffrage," he stated. "The extreme democratic principle, when applied to the legislative and executive departments of government, has been regarded with terror by the wise men of every age, because in every European republic, ancient and modern, in which it has been tried, it has terminated disastrously, and been productive of corruption, injustice, violence and tyranny. And dare we flatter ourselves that we are a peculiar people, who can run the career of history, exempted from the passions which have disturbed and corrupted the rest of mankind?"

Leading the opposition to this mostly elite group of landowners were the "bucktail" faction of Democrats, headed by Martin Van Buren. Van Buren gave a long speech urging the rejection of a motion to retain property qualifications and attacking Chancellor Kent's theories. Similarly Governor Daniel Tompkins, the chairman of the Convention who had led the State militias during the War of 1812 argued that the men who fought in the wars should have a right to vote:

“Who filled the ranks of your armies? Not the aristocrats, not the men of wealth, not the speculators: the former were preaching sedition and the latter were urging the government to fatten its spoil,” Tompkins argued. And yet the very men who were led on to battle, had no vote to give for their commander in chief... It is the citizen soldier who demands the boon, and he rightfully demands it.”

The motion to retain property qualifications for voting was defeated by a vote of 19 to 100. The vote was among the most important political developments in New York’s history. As the state’s economy changed from agricultural to industrial and as immigrants arrived from around the world, the right of the land-less to vote, rather than creating “corruption, injustice, violence and tyranny” as Chancellor Kent had warned, instead helped the establish broad-based suffrage that would eventually replace the most of the monarchies of the past.

The [New York State Constitution of 1821](#) was not without its flaws either. It said nothing about the voting rights of women and it retained the property qualification for free African American men. They needed at least \$250 of property to qualify to vote, a requirement that effectively disenfranchised New York’s black community. African-American leaders repeatedly tried to have this provision removed from the Constitution, but these efforts did not succeed until more than 30 years later, following the Civil War.

New York State Constitutional Convention of 1938

The Constitutional convention in 1938 had broad support of New York’s political leaders including Governor Herbert Lehman, and came at a very different time in the State’s politics. Both the country and the state were reeling economically from the impact of the Great Depression. New York politicians such as Al Smith and Franklin Roosevelt had led the country in instituting programs to combat the effects of the depression. A number of these efforts had been challenged by a Conservative Supreme Court and so New York progressives sought to enshrine programs for low income housing, aid to poor children and medical assistance in the State’s Constitution. As a result, the current New York State Constitution is seven times longer than the Federal constitution.

This entry was posted in History and tagged Civil Rights, Political History on January 25, 2016 [<http://newyorkhistoryblog.org/2016/01/25/3-important-nys-constitutional-conventions/>] by James S. Kaplan.

About James S. Kaplan

James S. Kaplan is a lawyer, writer and walking tour historian who is the President and one of the founders of the Lower Manhattan Historical Association. The Association annually celebrates July 4 Weekend with a parade through Lower Manhattan and the Alexander Hamilton Immigrant Achievement Awards ceremony recognizing contributions to New York City by prominent individuals born outside the United States. It also is responsible for naming Evacuation Day Plaza at Bowling Green and efforts to revive the ancient New York City holiday of Evacuation Day and for the Saratoga/Yorktown celebration in Trinity Churchyard annually held in October. Mr. Kaplan is also the founding partner of Greenberg & Kaplan, where his a practicing Tax, Estate and Guardianship lawyer.

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2 thoughts on "3 Important NYS Constitutional Conventions"

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Carolyn Bennett Glauda

January 26, 2016 at 8:41 AM

In 2013, the State Library had a display of their constitutional convention materials, as well as a timeline of major events that happened while the original state constitution was being written.

<http://www.nysl.nysed.gov/collections/nysconstitution/april2013.htm>

I was the (uncredited) work study student from UAlbany who put these materials together. If you want to learn more, the library has all of the known documents from the conventions.



Kyle Jenks

January 26, 2016 at 10:04 AM

Thank you for this article Mr. Kaplan. I am a proud native upstate New Yorker who portrays a Virginian as our fourth President: Mr. James Madison. I am seeking ways to connect Mr. Madison's experiences in New York into my presentations and this was a motivator for me to begin a more in depth study of this aspect of Mr. Madison's sphere. Thank you for providing me with this incentive!
