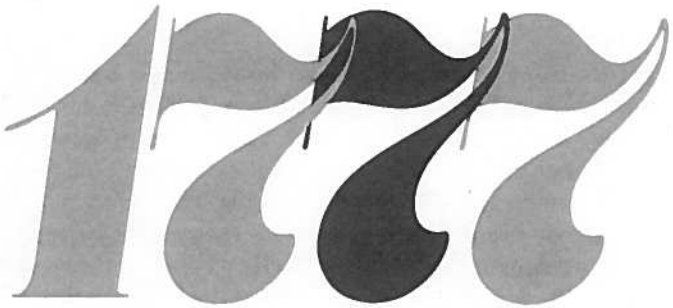

The Political Revolution and New York's First Constitution

William A. Polf

New York State Bicentennial Commission

Albany, 1977

Foreword

MORE THAN EIGHT YEARS passed between the opening attack on British control of the province of New York at Fort Ticonderoga on May 10, 1775, and the British evacuation of New York City on November 25, 1783. No war of independence could have been sustained for so long a time by a people who cared only for the destruction of the old order. A clear vision of a better life was needed if patriots were to refute the Tory belief that rebellion would only lead from chaos to the tyranny of the mob. Only a new charter of government could provide that vision in convincing terms. A constitution could not wait upon victory; it was needed as a weapon in a cause that, for the first two years, was losing ground on the battlefield.

This is the first publication of the Bicentennial Commission to focus on the constitutional birthday of New York State. It also contains the first handy reprinting of the 1777 constitution in two hundred years. The Commission hopes that this booklet will serve not only as a timely appreciation of a great Revolutionary achievement, but also as an aid in the review of those perennial questions of government that each generation must answer for itself.

John H. G. Pell
Chairman

ACKNOWLEDGMENTS

Steve Bielinski, Tom Felt, Richard Morris, Gary Snyder, and Wendell Tripp read the manuscript at various stages and made useful suggestions. Staff members of the New York State Library, particularly those in the manuscript room and the legislative reference department, were helpful and considerate, as always. John Moore Graphic Design created the cover and fabricated the political map, and Jane Weldon edited the manuscript. All of them have my thanks.

William A. Polf
June 1977

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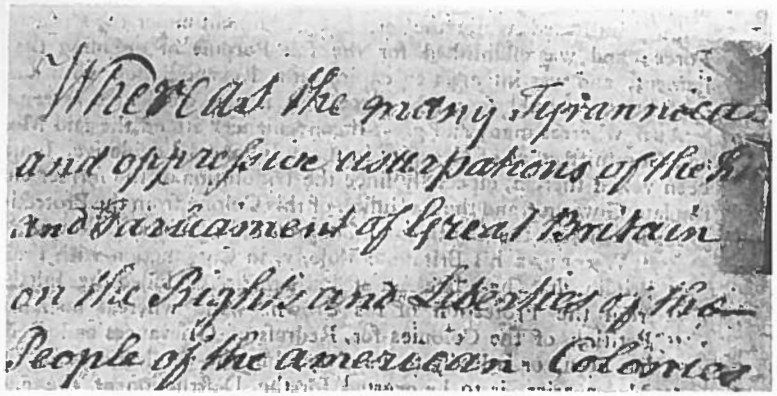


Only one official manuscript copy of New York's first constitution exists today. Part of the preamble and articles twenty-seven and twenty-eight, written on separate sheets of paper, are missing from the manuscript.

This draft was composed on either April 17 or 18, 1777, apparently in anticipation of a final vote on approval by the Convention of the Representatives of the State of New York, the body which had been designated to form a state government. But changes were still being made as late as the afternoon of April 20, so the final document signed by convention president pro tem Leonard Gansevoort was heavily amended when it was taken to Fishkill to be printed.

The constitution is in the custody of the New York State Library and will be transferred to the New York State Archives in 1978.

Portions of the manuscript are reproduced throughout the booklet. The entire text of the constitution, except for the Declaration of Independence, which was included in the introductory material, is printed as a separate section of this booklet.

Above are the opening lines of the preamble.

Fourteen Revolutions

YEARS BEFORE the United States constitution was written, each of the independent American states adopted constitutions of their own. America's rebellion against British rule destroyed thirteen distinct colonial governments. Each had a direct political link with England; there was no formal political connection between the colonies themselves. As these colonial governments began to collapse under the pressure of the growing rebellion in 1775 and 1776, the revolutionaries recognized that the various congresses and committees which were directing the revolutionary movement within the states would have to be replaced by more permanent governments.

Constitutions were being written and state governments organized even before independence was declared. In January 1776, New Hampshire adopted a preliminary constitution; South Carolina did so in March. (Both states later replaced these hurriedly drafted documents with permanent constitutions.) On May 4, Rhode Island converted its colonial charter into a state constitution by purging all references to royal authority, a method followed by Connecticut in October. Virginia acted in June, and on July 2, the very day the Continental Congress declared independence, New Jersey's constitution became law. Delaware and Pennsylvania adopted constitutions in September, followed by Maryland in November, North Carolina in December, Georgia in February 1777, and New York in April. Vermont proclaimed a constitution in July 1777 even though none of the other states acknowledged the state's independence until the 1780s. (Control of the territory of present-day Vermont was disputed between New York and the Vermont separatists.) In 1780, the temporary government

which had been in operation in Massachusetts since 1775 was replaced by a permanent constitution.

These first state constitutions made the war for American independence a genuine political revolution. Although the states had united under the Continental Congress to declare their independence, raise an army, and conduct a unified defense against England, the Continental Congress had no political jurisdiction within the states themselves. The creation of state governments gave substance to the declaration of independence: not only were Americans prepared to fight for their independence, but also they were filling the political vacuum caused by the repudiation of British authority. That political vacuum was filled in ways that transformed American political culture. Unique forms of government were established; even though the principles underlying them were ancient, and even though the language had been adopted largely from English law and politics, Americans knew perfectly well that they were undergoing a political revolution unprecedented in scope and originality.

New York's first constitution, like all the others, was an experimental document devised to cope with a political emergency. On July 9, 1776, delegates to a specially elected provincial congress, the fourth since May 1775, convened in White Plains for the purpose of establishing "such a government as they shall deem best calculated to secure the rights, liberties and happiness of the good people of this colony; and to continue in force until a future peace with Great-Britain shall render the same unnecessary." By the time the fourth congress met, peace with Great Britain was unlikely. Seven days earlier, independence had been declared by the Continental Congress. New York's delegates in Philadelphia, lacking specific instructions, refused to vote but instead referred the matter of independence back to the provincial congress. As soon as the meeting at White Plains had begun, the declaration of independence was adopted unanimously. The next day, the provincial congress changed its name to "the Convention of the Representatives of the State of New-York." For nearly a year the convention of representatives and its derivative committee of safety governed the state, while the work of framing a more permanent state government went ahead.

On August 1, the convention assigned the task of drafting a constitution to a committee of thirteen men—John Jay, John

Sloss Hobart, William Smith (of Suffolk County), William Duer, Gouverneur Morris, Robert R. Livingston, John Broome, John Morin Scott, Abraham Yates, Jr., Henry Wisner, Samuel Townsend, Charles De Witt, and Robert Yates. James Duane was later added. The committee had to work under the most extreme wartime conditions. Staten Island had already been occupied by the British army when the convention met, forcing it to assemble in White Plains instead of New York City. Planning for the constitution had hardly begun before the convention was forced to flee northward as Long Island and Manhattan fell to the British. Those convention delegates from Suffolk, Queens, Kings, and New York Counties who participated in the constitutional deliberations became exiles from their homes; they would not be able to return for more than seven years.

Understandably, the drafting proceeded slowly. Abraham Yates, the chairman, constantly had trouble assembling a quorum of committee members. Several had active military commands which kept them away. Others had local governmental responsibilities or were serving on additional committees. There were also charges that the delay was deliberate. Some committee members were suspected of dragging their feet in the hope of a reconciliation with England, or were believed reluctant to be associated with the drafting of a constitution if New York fell to the British, a real possibility in late 1776 and 1777. A few members insisted that it was a waste of time to debate a constitution while the state's independent existence was still very uncertain.

It was hardly surprising, then, that the drafting process took months, despite the prodding of the convention and complaints from local officials. The committee was initially ordered to report a draft by August 26, but this date passed. Another month went by. Early in October, as criticism began to mount, committee member Henry Wisner informed General George Clinton that "the formation of government goes on very slow indeed; we have done little or nothing about it." Two weeks later, John McKesson, the convention secretary, made an optimistic progress report; the impasse was apparently broken. But once again, the committee was silent. More than five more months passed before James Duane stood in the convention on March 12, 1777, and read the draft the committee had prepared.

Four of the principal figures in the drafting and adoption of New York's first constitution. The drawings of Jay, Morris, and Livingston are from Benson J. Lossing, Pictorial Field-Book of the Revolution. *Yates's portrait is reproduced courtesy of the New York Bar Association.*

John Jay

Gouverneur Morris

The work was still far from over. For another six weeks, the members of the convention subjected the committee draft to an article-by-article scrutiny. Some provisions were scarcely debated; others took days. By the time the convention had finished, many basic changes had been made.

The document that became the state's first constitution reflected the joint efforts of the drafting committee and many of the more than thirty members of the convention who regularly attended during the floor debate. A few people stand out. John Jay—brilliant, detached, reserved—single-handedly reduced the cumbersome, long-winded committee draft into a compact, concisely written document for the convention to consider. During the convention debate, Jay excelled at breaking deadlocks by proposing workable compromises. He often discussed his ideas with Gouverneur Morris. Urbane, sarcastic, cynical, contemptuous of the new popular influences in politics, and utterly self-assured, Morris exerted his influence most strongly during the floor debate, where he displayed superb parliamentary skills to dominate the proceedings. He often got his way, but he could not persuade the members to abolish slavery.

Robert R. Livingston

Abraham Yates, Jr.

Jay and Morris usually acted in concert with Robert R. Livingston, scion of one of the state's most notable political families. Livingston was frequently bored by the tedious legal argumentation at which Jay excelled, and he wrote Edward Rutledge of South Carolina that he was "sick of power and politics" and would not "give one scene of Shakespeare for 1,000 Harringtons, Lockes, Sidneys and Adams to boot." Yet he helped Jay formulate the compromises that kept the discussion from foundering and, like Morris, was often able to control the floor debate.

Abraham Yates, the former sheriff of Albany County, was selected as chairman of the drafting committee though he lacked the political credentials of Jay, Morris, and Livingston. Yates was the incarnation of the new men of the revolution, who rose from obscurity to positions of power and who were distrusted and despised by colonial patricians such as Morris. Yates led those convention members who wanted to increase public control over politics.

Others also played important parts: James Duane, a New York City lawyer, and William Duer, an English-born land speculator; Duane and Duer usually supported the actions of Jay, Mor-

ris, and Livingston. William Smith of Suffolk County (not to be confused with the loyalist William Smith, Jr.) and Robert Yates, nephew of Abraham Yates, helped to draft the constitution and then to guide it through the convention. Henry Wisner, a farmer and landowner who doubled as a manufacturer of gunpowder, and Thomas Tredwell actively proposed and supported measures designed to increase popular influence in the new state government.

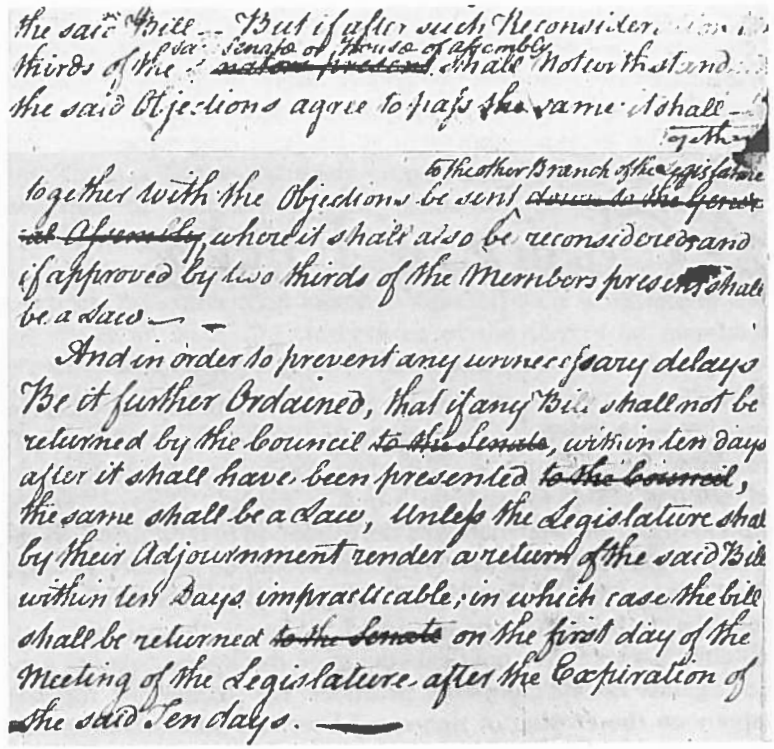
Often at odds, but just as often able to submerge their differences, the convention members finished their work late in the day on April 20, 1777. Thirty-three of the thirty-four members present voted in favor of the constitution; only Peter Livingston dissented. No time was allowed for making a clean copy before the document was rushed to the printer. Convention president Leonard Gansevoort signed his name to the heavily amended last draft, which was covered with erasures and interlineations; words and phrases were crossed out and clauses were written in the margins.

Two days later the constitution was proclaimed.

A Choice of Dishes

"WE HAVE a government to form," wrote John Jay early during the drafting of New York's constitution. "God knows what it will resemble. Our politicians, like some guests at a feast, are perplexed and undetermined which dish to prefer." Throughout the states Americans were debating the formation of their new governments. Opinions varied widely on what should be included or what should not, what powers should be granted to whom and how they should be defined or restricted. Although the colonists had obtained an extensive political education during the years of protest against Britain's imperial practices, the debate had focused largely on the erosion of rights and liberties; little attention was paid to planning alternative forms of government if British authority collapsed. When that happened, there was a scramble to fabricate workable structures.

While there was no consensus on just how the governments should be constructed, there were certain basic principles which all the constitution-makers accepted. It was universally agreed that, by the act of revolution, the people had became their own political masters; there could be no higher political authority. No one seriously doubted that the new governments would be republican in form. The colonists rejected the royal colonial governments in favor of republicanism, Thomas Jefferson observed in 1777, as easily as "throwing off an old and putting on a new suit of clothes." Americans were also committed to government by law and the protection of basic rights; most agreed on the necessity of distributing power between various branches of government. "It is essential to Liberty," the voters of Boston stated in May 1776, "that the legislative, judicial, and executive Powers of Govern-


the said Bill. But if after such Reconsider... thirds of the ~~Senate or House of Assembly~~ shall notwithstand... the said Objections agree to pass the same it shall ... together with the Objections to the other Branch of the Legislature be sent ~~down to the Gener... Assembly~~ where it shall also be reconsidered and if approved by two thirds of the Members present shall be a Law.

And in order to prevent any unnecessary delays Be it further Ordained, that if any Bill shall not be returned by the Council ~~to the Senate~~, within ten days after it shall have been presented ~~to the Council~~, the same shall be a Law, Unless the Legislature shall by their Adjournment render a return of the said Bill within ten Days impracticable; in which case the bill shall be returned ~~to the Senate~~ on the first day of the Meeting of the Legislature after the Expiration of the said Ten Days.

As initially drafted, bills vetoed by the Council of Revision were to be returned to the senate for reconsideration. If the veto was overridden by the senate, the bill would then be sent to the assembly for reconsideration. Just before the constitution was adopted, article three was amended to stipulate that vetoed bills be returned to the house in which they had originated.

ment be, as nearly as possible, independent of and separate from each other, for where they are united in the same Persons, there will be wanting that natural Check, which is the principal Security against the enacting of arbitrary Laws, and a wanton Exercise of Power in the Execution of them."

Sovereignty of the people, superiority of republicanism, rule of law, protection of rights, separation of powers—few Americans in 1776 would have found fault with any of these basic principles.

But within this framework of principles was a wide range of possible applications. Theory did not necessarily translate smoothly into practice. It was easier to declare that the people were their own political masters than to create mechanisms through which they truly governed themselves. Republicanism was fine in principle, but there were questions about what representation really meant or even who was to be represented. Guaranteeing rights was a laudable objective, but could liberty truly be threatened if the people themselves controlled the government? Nor was it easy to draw distinct lines between various types of political power. Where, for instance, did legislative authority end and executive authority begin? Or where did the process of administering the laws—an executive function—become distinct from interpreting them—a judicial responsibility?

The constitution-makers of 1776 and 1777 had to refer to basic principles partly because they lacked exact models to guide them. Republics had existed from time to time since antiquity, but in no case did the conditions completely match those in America. Written constitutions of the kinds Americans were beginning to envision were also rare. The closest thing to a working model was, ironically, the British government. Even though most Americans believed that English politics had become hopelessly corrupt, they also believed that England, with its entrenched traditions expressed in the common law, its commitment to the protection of basic rights and liberties, and its balanced institutions, had the best-constructed government in the world. Americans continually insisted that they were fighting to protect their rights "as Englishmen"; many believed that the American war was being waged to preserve the spirit of English law. Yet even England's form of government could not be followed exactly, particularly since America lacked two of the most conspicuous elements in the English social and political balance—a monarchy and a hereditary nobility.

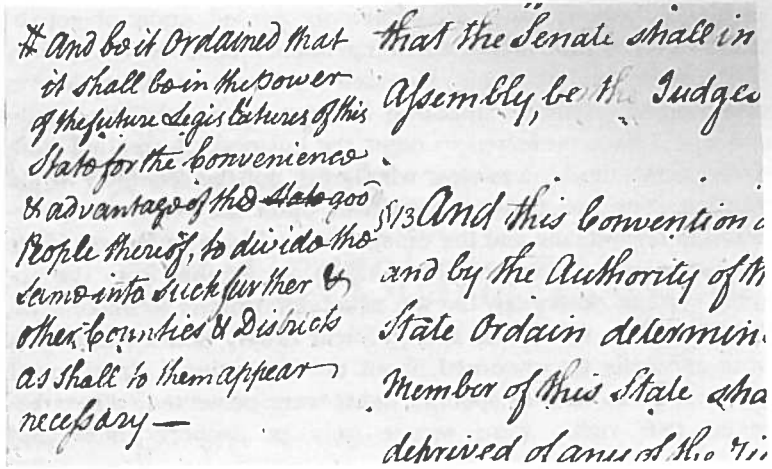
Ideas flowed into the constitution-making process from many sources. Well-educated Americans were familiar with European political and legal literature, both classical and contemporary, English and continental. Throughout the constitutional discussions are references to the writings of Livy, Cicero, Plato, Plutarch, Thomas Hobbes, Henry St. John (Viscount Bolingbroke), Baron de Montesquieu, Sir Edward Coke, Jean Louis De Lolme,

David Hume, Baron de Pufendorf, Jean Jacques Rousseau, the third earl of Shaftesbury, Emmerich de Vattel, and many others. John Adams, who pursued the business of making constitutions with characteristic intensity, absorbed many of the ideas of these and other writers, fashioning them into *Thoughts on Government,* a kind of political manual for Americans. John Jay carried a copy of Adams's book with him as he returned to New York from Philadelphia to participate in the drafting of New York's constitution.

American political thinking was influenced most by the principles of the English Whigs. English Whig thought had taken shape during the English civil wars of the mid-seventeenth century and the politically volatile period of Stuart rule that followed. Through such prominent seventeenth-century theorists as John Milton, James Harrington, Algernon Sidney, and John Locke, Americans were introduced to basic Whig political maxims—the contractual nature of political society, the supremacy of natural rights, the eternal tension between power and liberty, and ideal of balanced government. In the early eighteenth century, as English politics became more pragmatic and patronage ridden, Whig political rhetoric became more radical in content and strident in tone, particularly as expressed in the essays of Thomas Gordon and John Trenchard.

Trenchard and Gordon's essays, called *Cato's Letters,* drew a dark, conspiratorial picture of politics. Government, in their view, was very nearly the natural enemy of society. Politicians were invariably corrupt and grasping, intent upon pursuing self-interest at the expense of the public good. Individual liberty was in constant danger from those who ruled. Only a virtuous populace, cautious in granting political authority and ever vigilant against abuses of power, had a chance of establishing and maintaining a free government.

Radical Whiggery reflected the dissatisfaction and suspicion of those excluded from political power. The shrill rhetoric of Trenchard and Gordon and others had little influence in England but appealed to Americans, who were keenly aware of their own isolation from English politics. *Cato's Letters* and similar writing were widely read in the colonies long after they had been forgotten in England. While the earlier Whig writers were a source of basic principles and structural concepts, the radical Whigs provided


And be it Ordained that it shall be in the power of the future Legislatures of this State for the convenience & advantage of the ~~State~~ good People thereof, to divide the same into such further & other Counties & Districts as shall to them appear necessary —

that the Senate shall in Assembly, be the Judges

5/3 And this Convention and by the Authority of th State Ordain determin Member of this State sha deprived of any of the ri

The paragraph empowering the legislature to create new counties and senatorial districts was inserted at the last minute.

Americans with an emotional political language capable of giving vent to their own frustrations under British rule.

Not everything in the constitutions was new. Even a political revolution as deep as the one Americans were undergoing could not uproot everything from the political past. Some revolutionaries did not believe it should. Many of those who were forming new governments had substantial experience in the old, and they brought to the constitution-drafting process their collective thinking on what should be preserved as well as what should be repudiated. There was substantial political carryover from the old governments, particularly at the local level. Components of the colonial system were often altered only slightly, if at all. The degree of continuity between the colonial period and statehood varied from state to state, but in every case it was a major factor shaping the new constitutions.

From this combination of principles and experience, general fears and specific aspirations, lofty intentions and pragmatic assumptions, the constitution-makers had to find workable formulas for their new governments. Complicating the process further was the fact that Americans did not always agree on what they wanted their revolution to accomplish. Even by July 1776, when inde-

pendence became the most commonly agreed upon objective, many of those who supported independence believed that it was still possible (and desirable) to reach some sort of reconciliation with England. Others supported independence only reluctantly and would have preferred to defer the business of creating state governments until it was clear whether or not the rebellion would succeed. Nor was there a consensus upon the relationship between independence and the creation of new governments. Some revolutionaries wanted as little change as possible from the colonial system; others saw the war as an opportunity to make drastic reforms in the social and political order. Some Americans were generally unconcerned about the institutional structure of government as long as specific rights were protected; others believed that rights were secure only in properly fabricated governments.

It is understandable, then, that the first constitutions shared certain common features and differed greatly in others. Starting from the political assumptions underlying the revolution throughout the colonies, New York's constitution-makers created a state government reflecting their own experience under colonial rule and designed to meet the state's particular needs. Though a hybrid creation, as Jay had anticipated it would be, it proved to be among the most effective of the first state constitutions.

Organizing the Legislature

AMERICANS were convinced that the success of their new governments would depend upon the creation of strong legislatures. Republicanism, for most Americans, meant that the power to make laws resided in elected representatives of the people. Part of the controversy between England and the colonies in the 1760s and early 1770s involved the American claim that Parliament was attempting to usurp the constitutional prerogatives of the colonial assemblies. As the new state governments began to take shape, it was clear that Americans considered their legislatures to be the very embodiment of the revolutionary changes occurring in American society. "It is in their legislatures that the members of a commonwealth are united and combined together into one coherent, living body," a Rhode Island newspaper stated. "This is the soul that gives form, life and unity to the commonwealth."

Most of the state constitutions established bicameral legislatures. In these states, one legislative branch was called the house of delegates, or the house of representatives, or, as in New York, the assembly. This house of the legislature was considered to be closest to the people themselves, most concerned with protecting their welfare, espousing their interests, and guarding their rights. The people expressed their sovereign power most directly through this legislative branch. So it was important, argued John Adams, that each lower house "should be in miniature an exact portrait of the people at large. It should think, feel, reason, and act like them." Although these legislative houses were modeled on the colonial assemblies, each state made important changes

designed to make them more representative and more responsive to the public will.

New York's state assembly was basically similar to the lower house in the other states. Assemblymen were to be elected annually, a term of office adopted by every other state except South Carolina. Under the colonial government, assembly terms could last as long as seven years, and the colonial assembly met only when called by the governor. It was not unusual for several years to pass without the assembly's meeting. New York's new constitution, therefore, required that the legislature meet at least once a year. Changes were also made in electoral districts. The colonial government had allowed each county two assemblymen. Additional representatives were granted to the municipal corporation of New York, the township of Schenectady, the borough of Westchester, and the manors of Livingston, Cortlandt, and Rensselaerswyck. These special representatives were eliminated in the state constitution. State assemblymen were to be elected by county, with the size of each county's delgation based on its population. Representation for the two municipal corporations—Albany and New York—was included in their respective counties.

The minimum number of assemblymen was set at seventy, creating a house twice the size of its colonial predecessor. The city and county of Albany had the largest delegation—ten—followed by the city and county of New York with nine. Only two representatives were allowed for the counties of Kings, Richmond, and Gloucester (now in Vermont). All others ranged somewhere in between.

An important innovation was the provision for proportional representation. It was generally agreed that one of the defects of the British government was the failure to reallocate parliamentary seats to reflect shifts in population. Some large metropolitan areas were without representation, while some depopulated areas still had seats in Parliament. The control of these so-called "rotten boroughs" by the crown or by wealthy members of the aristocracy was regarded by Americans as one of the most conspicuous examples of corruption within the British political system.

New York's constitution provided for a septennial census of "electors and inhabitants" in order to reapportion assembly delegations. Population shifts amounting to one-seventieth of the total number of electors was the basis for increasing or decreasing a county's representation in the assembly. Since the population of the state was expected to grow after the war, the legislature was given the power to create new counties with appropriate assembly delegations until the assembly reached its constitutional maximum of 300 members.

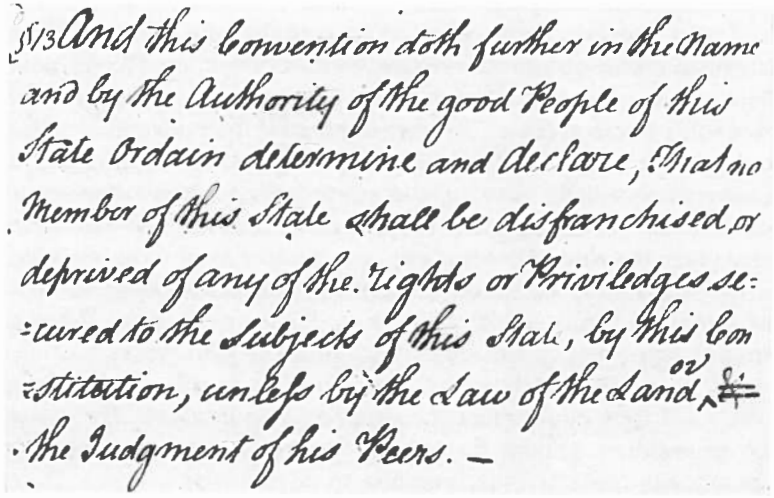
Deciding who should be allowed to vote was a major concern in all the states. Under the colonial system, members of the assemblies were elected by voters possessing a "freehold" (basically, real property) worth £40. Most of the state constitution framers accepted the maxim that voting was the privilege of those with a tangible stake in the community. Few Americans advocated universal adult male suffrage, and almost no one believed that women should be allowed to vote. Every state except Vermont imposed at least a nominal property-holding requirement for the franchise, and only in New Jersey was the constitution phrased in a way that did not absolutely exclude women from voting.

New York's constitution committee eliminated the colonial £40 stipulation and proposed that all adult male freeholders who had paid taxes should be allowed to vote for assemblymen. This suggestion was substantially revised by the convention. Gouverneur Morris's motion that the franchise be restricted to those with freeholds worth at least £20 was adopted by the convention. Also approved was Robert R. Livingston's suggestion to enfranchise land-renting tenents who paid annual rents of £2. All "freemen" of the cities of Albany and New York as of October 14, 1775, were also given the vote. (Freemanship was the technical term for those who were legally permitted by a municipal corporation to vote and conduct business within its limits. By the time of the Revolution, it was possible for almost any resident who worked or engaged in trade in Albany or New York to qualify for freeman status.) If they could meet the property requirements, there was no prohibition against free blacks voting, but the constitution specifically restricted the franchise to adult males.

Despite these changes, the legacy of the colonial assemblies was so strong that New Yorkers felt it was a sufficient statement of the powers of the state assembly to declare that "it shall . . . enjoy the same privileges, and proceed in doing business in like manner as the assemblies of the colony of New-York of *right* formerly did. . . ." Conspicuously missing from the constitution

was a grant of exclusive power to the assembly to originate money bills, a stipulation that was made in almost every other state that adopted a bicameral legislature. After the Revolution, when the New York senate challenged the assembly's insistence that it alone could initiate legislation on money matters, the assembly cited the precedent of the colonial assemblies.

While the state assemblies were basically patterned upon the colonial assemblies, there was no colonial counterpart for the second branch of the legislature. The closest approximation had been the provincial councils, which, in all the colonies except Massachusetts, Rhode Island, and Connecticut, had been appointed by the crown on the recommendation of the governors. The colonial councils acted as the upper house of the legislature, often serving as the highest colonial appellate court. But the councils were regarded primarily as buttresses to executive authority, since they served mostly as advisory bodies to the governors. This mixture of legislative, judicial, and executive au-



§13 And this Convention doth further in the Name and by the Authority of the good People of this State Ordain determine and declare, That no Member of this State shall be disfranchised or deprived of any of the Rights or Priviledges secured to the Subjects of this State, by this Constitution, unless by the Law of the Land, or the Judgment of his Peers. —

New York's first constitution contained no bill of rights, even though the drafting committee had been ordered to prepare one. Some specific rights were protected in various articles; others were covered by implication in the clause adopting the English common law. Article thirteen, above, guaranteed due process of law.

thority clearly violated the doctrine of the separation of powers, and even those state constitutions that adopted councils modeled on the provincial councils usually stripped them of their legislative roles and made them strictly a part of the executive branch.

Much more innovative than these remodeled councils was the division of legislative authority between two houses with basically similar powers but with different qualifications, different constituencies, and different terms of office. New York, like most other states, called the second house the "senate," a name initially suggested for the Virginia constitution by Thomas Jefferson. The underlying rationale of the state senates was the classical notion that society was a compound of three distinct elements—monarchy, aristocracy, and democracy. In an ideally balanced government, each of these three social components held a share of power, which enabled it to act as a check upon the others. The distribution of power in England between the king, the House of Lords, and the House of Commons was the clearest expression of mixed government; when it was working correctly, Americans believed that there was no better form of government.

Even though America had no monarchy or aristocracy, most of the constitution-makers were convinced that a tripartite division of political authority should be instituted in the state constitutions. From their own colonial experience they knew that governors usually tried to extend their power while the people tried to increase their liberty. Going too far in either direction was dangerous. Tyranny lay at one extreme, anarchy at the other. Ideally there should be a mitigating force between the two extremes that would keep them from pulling against each other until the government was torn apart. In theory this was one of the functions of the House of Lords: it kept the king from becoming too despotic, the House of Commons from being too unruly.

John Adams argued forcefully for the creation of state senates. Despite the rhetoric of republican equality that underscored the revolutionary effort, Adams had no doubt that men were not equal in abilities, just as they were rarely equal in estates. Somehow government had to be constructed to insure that men of superior talent had a secure role to play. "To conduct the affairs of a community in a safe and successful way," Adams wrote, "requires all the *wisdom* of the most learned and experienced members of the state, as well as the *vigilance* and particular attention of the pecu-

liar [i.e., exclusive] deputies of the whole people." Adams believed that the "contemplative and well-informed," as he called them, would often lack the popularity necessary to be elected to the assemblies. Some device was necessary to guarantee that such men had a continuing role in government, safe from the tumult of democratic politics, in which they would be able to bring stability and caution to the law making process. Creating a second legislative branch, chosen by a more restricted electorate and serving longer terms of office, would ideally provide such a forum.

Others saw the senates in less noble terms. Although America lacked the stark class divisions of Europe, many dedicated revolutionaries nevertheless believed that there was an inherent tension between the wealthier and poorer members of American society. Some feared that the war for independence might degenerate into class warfare, with the more numerous poor using the new state governments to plunder the rich. As one loyalist cynically observed: "A Legislature of Beggars will be Thieves." A second legislative branch chosen by electors of substantial property would provide a minimum of security against the potential danger of the assemblies becoming the exclusive province of the poorer members of society. A kind of artificial aristocracy had to be created, one based not upon inherited titles but upon gradations of wealth.

Many critics of this reasoning pointed out that such a notion was anachronistic in America where, as one writer put it, "none were entitled to any rights but such as were common to all." If the legislatures were to represent all the people equally, what justification could there be for splitting legislative authority? This, in a sense, was like asserting that the people, in whom sovereign power resided, could somehow be their own enemies and that some sort of check could constitutionally be placed upon the exercise of their sovereign will. Despite the seeming paradox in such reasoning, most of the constitution-makers in the states agreed with Adams that "a people cannot be long free, nor even happy, whose government is in one assembly."

The members of the committee that drafted New York's constitution apparently never questioned the desirability of dividing legislative authority. A plan calling for a single-house legislature, similar to that in Pennsylvania, circulated early in the drafting process, but received little serious attention. Abraham Yates later recalled a general agreement that there would be elements of "monarchy, aristocracy, and democracy" in the government, a fact strongly suggesting that the drafters decided at the outset to create a legislative upper house.

Once it had been decided to establish a second branch of the legislature, the drafting committee considered several methods to place it at some distance from the pressures of electoral politics. One plan called for the selection of special electors who would choose the senators, an idea later adopted for electing the president of the United States. This proposal was rejected in favor of a high property holding franchise requirement. At first the committee considered retaining the £40 freehold of the colonial era, but this was later raised to £100. Senators were to be chosen by an electorate with property five times greater than the assembly electorate. Senators would also serve a much longer term of office than assemblymen, four years as opposed to the one year assembly term. Four senatorial districts consisting of groups of counties were established, and the number of senators to be chosen in each district was stipulated.

The committee's plan for the senate ran into determined opposition on the convention floor. Robert Harper moved to strike the £100 franchise requirement, and William Harper proposed a reduction of the term of office from four years to one. Both motions were defeated. A proposal by Henry Wisner to elect the senators, like the assemblymen, by counties also failed to pass. Robert Yates attempted to redraw the senatorial districts in a way that would give New York and Westchester Counties an additional senator at the expense of the thinly populated northeast. Like the other efforts to change the committee's plan, Yates's motion was defeated.

A long discussion then followed on reapportionment. Proposals made by Robert and Philip Livingston established the same septennial reapportionment adopted for the assembly, and Gouverneur Morris inserted a clause requiring adjustments in senatorial delegations when changes amounting to one-twenty-fourth part of the qualified electorate occurred. Delegates from New York County, apparently afraid that upstate New York might use the reapportionment power to increase their representation at the expense of New York City, objected to this proposal, but all the other counties approved it. With that amendment the senate was complete, essentially as proposed by the drafting committee.

New York's senate was given much the same authority in law-making as the assembly. Like the assembly, the senate was the judge of its own members and, when the lieutenant governorship was vacant, had the right to elect its own leader, or "president." The two houses shared the responsibility of appointing delegates to the Continental Congress, and although the assembly had the authority to nominate the state treasurer, both houses had to approve the candidate. Unlike most other states, New York's senate was not specifically denied the right to originate money bills, an omission that caused a conflict between the two houses after the war.

New York had created a legislature broadly similar in structure and powers to those in most other states. Only three states—Pennsylvania, Georgia, and Vermont—departed from the bicameral principle, opting instead for single-house legislatures. Pennsylvania was distinctive for another reason. Since adopting its constitution in September 1776, the state had been in an almost constant state of political turmoil. By April 1777 the situation had become so serious in Pennsylvania that the Continental Congress stepped in to restore order. No state, said New Yorker James Duane, writing from Philadelphia, "ever cried more loudly for a vigilant active and decisive government."

Pennsylvania was an example of what New Yorkers hoped to avoid. Indirectly, the political situation there influenced the creation of New York's executive branch.

Establishing the Executive

PENNSYLVANIA'S CONSTITUTION was among the most innovative of all the first state constitutions. At the center of the government was an all-powerful, single-house legislature. All taxpaying male adults with one year's residence could vote. Adult sons of taxpayers could also vote even if they themselves paid no taxes. There was an elected executive council, modeled on the colonial councils, which shared executive authority with a president elected by the house of representatives and the council. Assemblymen and councillors could serve only four years out of seven. Before becoming law, bills passed by the legislature had to be "printed for the consideration of the people," who could then exercise a sort of veto by ordering their representatives to vote against the bill when it was resubmitted in the next session. The government was to be scrutinized every seven years by a specially elected "council of censors," with the power to probe into every activity and impeach government officials.

Many New Yorkers were critical of Pennsylvania's constitution, particularly the executive clauses. Dividing authority between the president and council, it was felt, hamstrung the executive branch. Too much power had been given to the legislature, critics in New York and elsewhere charged; the executive branch was too weak and too clumsily constructed to provide effective government. Most of the constitution framers in the states agreed that while the legislature should meet only periodically to pass laws, the executive was supposed to keep the administration of the laws in continuous operation. In theory there should be no time during which the executive branch was not functioning. But

when James Duane, a member of the committee that drafted New York's constitution, arrived in Philadelphia to attend the Continental Congress, he was appalled to discover that Pennsylvania's executive council had adjourned. "Executive adjourned, say you, how is this possible?" he exclaimed to John Jay. "Sirs, they *have* adjourned. . . . Faith I cannot tell you why—perhaps for Want of Authority to save their Country under their new Constitution, perhaps for Want of Resolution to exercise the power they have. . . . The Civil Governours [have] in effect abdicated for a month. . . ."

William Duer, another New York delegate to the Continental Congress and also a member of the constitution drafting committee in New York, regarded Pennsylvania's difficulties as an extreme example of what was happening in a number of other states. In almost every state where new governments had been established, he wrote from Philadelphia in May 1777, "either from the Contention of Parties, or from a Want of proper Powers being vested in the Executive branches, Disaffection has encreased prodigiously and an Unhappy languor has prevailed in the whole Political System."

But identifying the problem was easier than solving it. Although most Americans recognized that an executive branch was necessary, they were primarily concerned with keeping it from being too strong. Much of the animosity of the prerevolutionary years had been directed at the colonial governors, and many of the specific grievances under the colonial governing structure concerned the extent of executive power. Even if Pennsylvania had overreacted, its constitution reflected a dislike and distrust of executive authority shared by most Americans. The states experimented with various methods of establishing workable executive branches, but nearly everywhere the chief executive was almost completely dominated by the legislature and usually had to share authority with an executive council.

New York, however, created one of the strongest executive branches of all the first state constitutions. Several measures adopted in other states to limit executive power were either rejected or ignored in New York. Most states kept the chief executive subservient by giving the legislature the power to elect him; New York's governor was chosen directly by the same electorate qualified to vote for senators. Extremely short terms of office,

usually one year, were adopted for the chief executive in most states, and several of them included prohibitions against reelection or limited the number of terms one person could serve. New York established a three-year term with no provision against reelection.

Early in the deliberations of the constitutional committee, the members considered the creation of a "council of state" to "assist the Governor in exercising the Supreme executive Power," as one draft put it. It soon became apparent that similar councils adopted in several other states were hampering executive authority, particularly in Pennsylvania. As late as February 1777 the council of state was still included in committee drafts, but soon after that it disappeared. The subject was not resurrected during the convention debate.

One of the great weaknesses of many other constitutions was the failure to outline clearly the powers of the executive. New York's constitution defined the governor's power unequivocally. He could call the legislature into special session and prorogue it for a maximum of sixty days, a power unprecedented in all the other constitutions. The state militia and navy were firmly under his command. He was obligated to report on the condition of the state at every session of the legislature and to recommend measures for its consideration. All government officials were commissioned by him and reported to him; he was to correspond with the Continental Congress and the other states. Most important, he was "to take care that the laws are faithfully executed." Clearly, New York's governor was expected to govern actively and decisively.

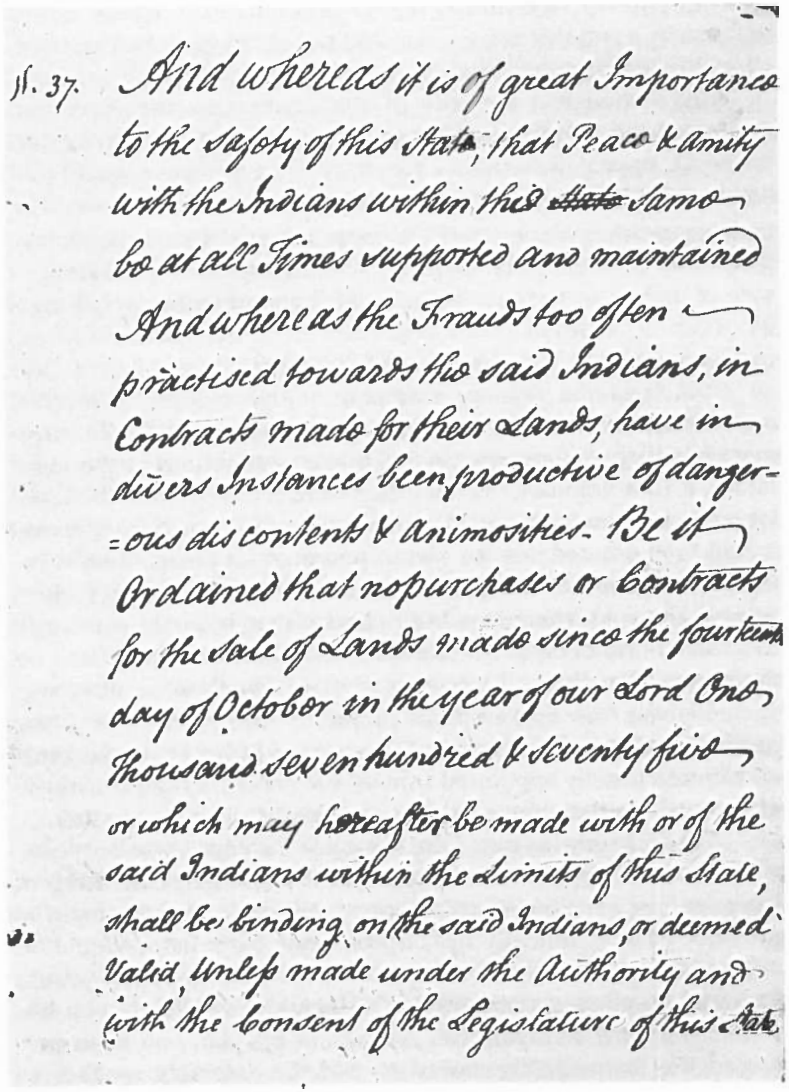
Two powers held by the royal governors had been particularly detested by Americans. The governor's power to veto bills passed by the colonial assemblies had been a continuing source of friction in most colonies. Even more disliked was the governor's control of appointments. Most Americans believed that King George III and his royal predecessors had thoroughly corrupted the English political system through the abuse of patronage, a procedure attempted by the colonial governors in America. Nothing frustrated Americans more, declared the *Pennsylvania Packet,* than seeing the royal governors "sporting with our persons and estates, by filling the highest seats of justice with bankrupts, bullies, and blockheads."

There was little doubt that the veto and appointment powers would be altered drastically in the new state constitutions. John Adams, who wanted a stronger executive branch than most, did not favor giving "the Governor a Negative" on laws; in only a few states did the chief executive have even a limited role in the veto process. Appointments were also carefully controlled. Several state constitutions gave the appointment power to the legislature; Georgia even went to the extreme of electing most officials who had traditionally been appointed.

Although New York's constitution did not grant the governor exclusive authority to veto laws or make appointments, it did give him a substantial role in both. In fact, at the outset it appeared that the convention was willing to give the veto power to the governor alone. The constitutional committee had made no recommendation on who, if anyone, should be able to reject bills passed by the legislature. On March 13, Joseph Smith of Orange County moved that the governor be added as a third branch of the legislature and, as the convention journal reads, that he "may have a negative upon all laws passed by the Senate and Assembly." This proposal was derived from the ancient English notion that the king had a right to participate actively and directly in the law-making process and to reject any objectionable bill.

Smith's proposal caught the convention members off guard. Henry Wisner and James Duane managed to delay the discussion of it until the afternoon. When the convention reconvened, Gouverneur Morris softened Smith's motion by changing it to read that the governor would have no authority to propose or amend laws, only to accept or reject them. Opponents of this weakened version tried to delay the discussion once again, but on the following day, after a long debate, the Smith-Morris measure was adopted.

John Jay and Robert R. Livingston then took the initiative in reversing what the convention had done. Two weeks after the measure had been adopted, they brought it up again. After Jay moved to repeal the Smith-Morris amendment, Livingston then proposed a compromise on the veto power. Bills passed by the legislature would go to a so-called "council of revision," consisting of the governor, the justices of the supreme court, and the chancellor (the highest justice of the equity court system). The governor and any two of the others would have the authority to "revise," or veto, all bills and to return them, along with an ex-


fl. 37. And whereas it is of great Importance to the safety of this State, that Peace & amity with the Indians within this ~~State~~ same be at all Times supported and maintained And whereas the Frauds too often practised towards the said Indians, in Contracts made for their Lands, have in divers Instances been productive of dangerous disconteats & animosities. Be it Ordained that no purchases or Contracts for the Sale of Lands made since the fourteenth day of October in the year of our Lord One Thousand seven hundred & seventy five or which may hereafter be made with or of the said Indians within the Limits of this State, shall be binding on the said Indians, or deemed Valid Unless made under the Authority and with the Consent of the Legislature of this State

On April 14, the convention adopted an article which required that all purchases of Indian land be approved by the state legislature.

planation, to the legislature. Vetoed bills could be repassed over the veto by a two-thirds vote. Any bill not acted upon by the council within ten days would automatically become law.

Even though a majority of the convention members had supported the Smith-Morris amendment, the Jay and Livingston proposals appealed to them even more. The governor would still have a substantial voice in vetoing bills, but he would have to do so in consultation with the state's highest judicial officials. Jay's proposal was adopted unanimously, and Livingston's passed by a vote of thirty-one to four. Not until Massachusetts finally adopted its constitution in 1780 did any chief executive have more authority in vetoing bills than that of New York.

Much of the debate on the executive clauses concerned appointment power. The drafting committee proposed an arrangement in which the governor would make nominations to the legislature. If four nominees for an office were rejected, then the legislature itself would make the appointment. Since this proposal would have created just the sort of potential for direct clashes between the governor and the legislature that most New Yorkers wanted to avoid, there was little chance that it would survive in the convention debate. Several alternate plans were proposed on the convention floor. Zephaniah Platt of Dutchess County suggested giving the appointment power to the governor and the justices of the supreme court; Gouverneur Morris proposed that all officials usually appointed instead be elected by the senatorial electorate. Neither of these ideas appealed to the convention.

On the following day, John Jay made a compromise proposal. A "council of appointment" would be established, consisting of the governor and four senators, one from each of the senatorial districts, chosen annually by the assembly. No senator would be allowed to serve two years in succession. The governor would make all nominations and preside at meetings of the council but would vote only to break ties. As soon as his plan had been presented, Jay immediately moved to add the assembly speaker to the council.

For the next few days the Jay plan withstood several efforts to either expand or lessen the governor's role in appointments. William Harper was defeated in an effort to have the governor removed from the council; Charles De Witt was unsuccessful in trying to have one assemblyman from each county added. Robert

Yates reversed the drafting committee's plan by proposing that the legislature make nominations from which the governor could choose. Thomas Tredwell suggested giving the entire appointment power to the legislature. Both proposals were soundly defeated. Robert R. Livingston and Morris failed in an effort to allow the governor to have a vote on every nomination, and Morris was frustrated in trying to make the council an advisory body only, with no authority to reject nominations. All these proposals were defeated by substantial majorities; most of the convention members clearly preferred the Jay plan.

One substantial change was made in Jay's proposal. On the day before the constitution was adopted, Robert R. Livingston succeeded in having the assembly speaker removed from the council. This prompted several efforts by other members to give the assembly a larger role in appointments. Henry Wisner proposed adding to the council an assemblyman chosen by the assembly itself, and Thomas Tredwell moved to have the council members chosen from the assembly rather than the senate. Neither proposal was adopted. The Jay plan, minus the assembly speaker, was incorporated into the constitution.

With the end of the debate on the appointment power, the executive branch was complete. A substantial majority of the convention members found it satisfactory. Most members apparently shared the concern of Duane and Duer that the other states, especially Pennsylvania, had tipped the governmental balance too far in the direction of the legislature at the expense of the executive. They wanted a governor strong enough to provide stable government and maintain order but not so powerful that his powers might be used dictatorially. Only those who had wanted to make the governor stronger or weaker were unhappy with the results in New York's constitution. Morris groused to his friend Alexander Hamilton that executive authority had been hamstrung by the convention, but in fact New York's executive branch proved to be one of the most workable and effective of any created by the first state constitutions.

The office of governor, like the senate, was a new creation, based on old ideas and traditional models adapted to the unique requirements of American politics. In contrast, the judiciary established by the constitution was much more familiar to New Yorkers than either the executive or legislative branches.

Creating the Courts

VERY LITTLE is said about the judiciary in the first state constitutions. While the constitution-makers paid close attention to designing the legislative and executive branches, they simply adopted with few changes the existing colonial court and legal system. Most of the changes made concerned only the very top of the court structure; the local courts were largely untouched. All the states instituted reforms relating to qualifications for judgeships or terms of office, but in general the details of judicial organization and procedures were left to the legislatures. Each state also adopted the English common law and all applicable Parliamentary and colonial statute law that was not in conflict with specific provisions of the constitutions. Since the enforcement of the law was the part of the governmental process that touched the lives of Americans most directly, the continuity in the administration of justice provided an important foundation for an orderly transition from British rule to statehood.

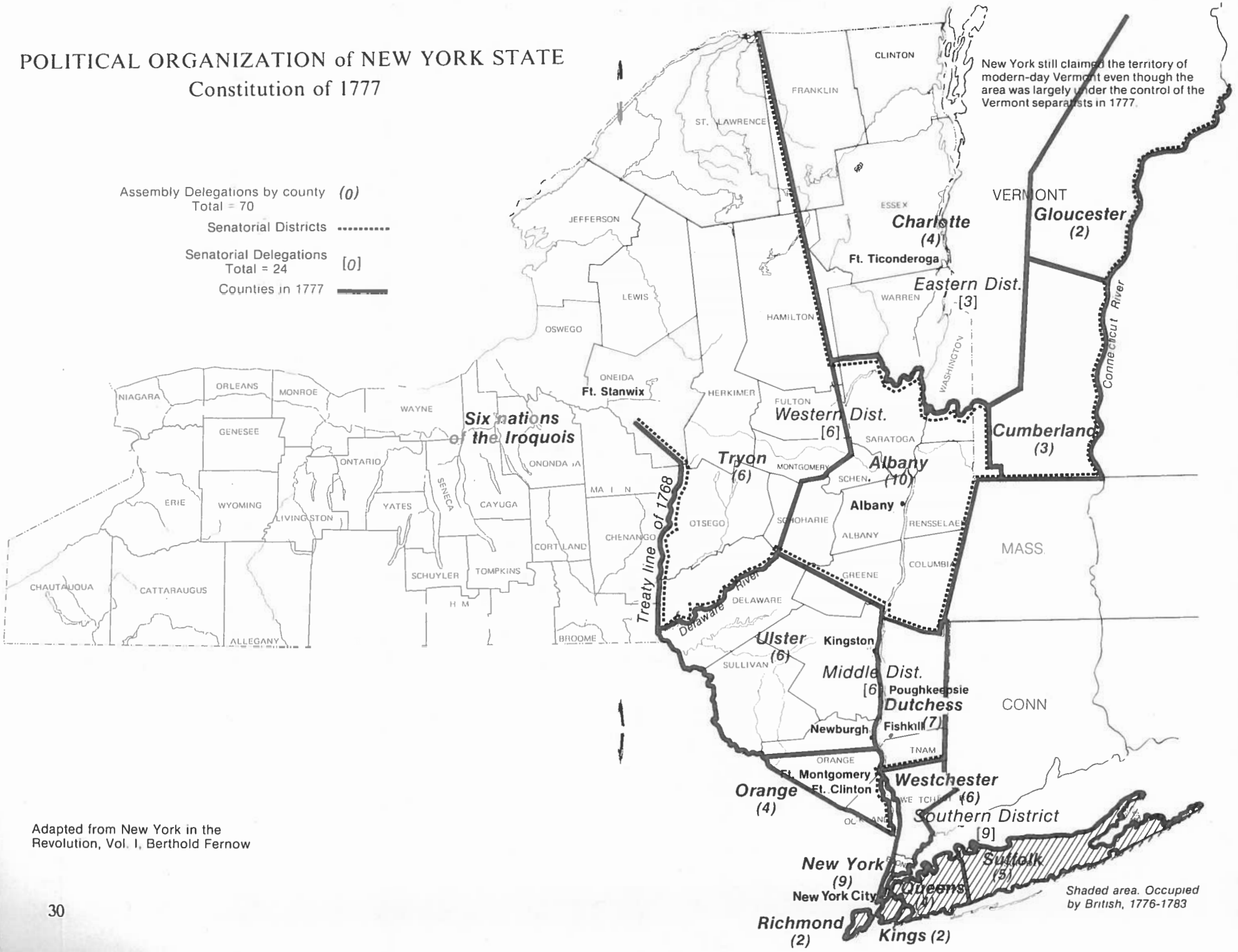
New York's colonial court system was basically similar to those in the other colonies. Each colony had a supreme court with jurisdiction over the inferior civil and law courts. Despite its name, the supreme court could be overruled by the governor and council, and appeals could still go even higher to the king and his privy council. Equity courts in most colonies were separate from law courts, with equity, or "chancery," authority residing in the royal governors. Probate authority in colonial New York was exercised under a unique surrogate system. While the law courts governed probate matters in most colonies, in New York the governor had held probate authority technically since 1686. During the eighteenth century, the control of local surrogate appointments and administration of probate gradually passed to the provincial secretary.

With the severing of the tie to England, some of this structure had to be changed. In New York, equity and probate authority was given to the newly created office of chancellor. County law courts continued under a state supreme court. Over both the chancellor and the supreme court was placed a special appeals court, or "court of errors" as it was called, consisting of the senate, the president of the senate (normally the lieutenant governor), the supreme court justices, and the chancellor. Neither the chancellor nor the supreme court justices could vote on appeals from their respective branches, although they were expected to participate in the deliberations.

This same specially constructed high court was empowered to try impeached public officials. No reform was closer to the heart of the revolutionary generation than the establishment of a method for removing public officials from office. Impeachment of crown officers by Parliament was an ancient practice in England, but it had never been attempted by the colonial legislatures. While all the state constitutions made provisions for impeachment, they differed widely in stating which officials were liable to impeachment and how the trials were to be conducted. So confused was the impeachment process that James Madison later commented: "The diversified expedients adopted in the Constitutions of the several States prove how much the compilers were embarrassed on this subject."

In New York, as in most states, the impeachment power was given to the assembly. The plan presented to the convention by the constitutional committee had called for a three-fourths vote of the members present to institute an impeachment proceeding, but during the floor debate this was reduced to two-thirds. Impeachment trials were then to be conducted by a special court with the same membership as the court of errors. Impeached officials could still be prosecuted in the regular courts if convicted and removed from office. Early drafts of the constitution had contained lists of those officials who could be impeached. Since this was a politically sensitive matter, the list later disappeared, and the constitution left the question of liability purposely vague. The impeachment process outlined in the New York constitution was very similar to that later adopted in the United States constitution.

POLITICAL ORGANIZATION of NEW YORK STATE
Constitution of 1777



Adapted from New York in the Revolution, Vol. I, Berthold Fernow

Keeping the judiciary independent of the other branches of government was a fundamental maxim of Whig political theory. This independence was accomplished in most states primarily by prohibiting judges from holding other public offices. New York's top judicial officials were allowed to hold no other office except delegate to the Continental Congress, and the chief judge in the county courts could simultaneously serve only in the state senate. New York's judges were permitted to appoint their own clerks and registers, a device intended to keep these court officers free from the influence of the governor and legislators.

But it was easier to keep the judiciary independent in principle than in practice. Making the senate the highest appellate court was a clear violation of the principle of the separation of powers, as many critics pointed out. Since the chief county judges could, if elected, also serve in the senate, they were potentially in a position to participate in rulings on appeals from their own courts. A similar situation had provoked criticism under the colonial governments. Colonial supreme court justices invariably served also on the governor's council and therefore could participate in ruling on appeals from the supreme court.

Other changes in the court system were intended to insure a degree of public control over judges. In some states judges were appointed by the legislature; in Georgia they were elected. Most states adopted extremely short terms of office, and in all states judges could be impeached. New York's constitution contained relatively fewer restrictions than those of most other states. Judges served during good behavior, or, in the case of the chancellor, the supreme court justices, and the chief county judges, until age sixty. Inferior county judges and justices of the peace had to have their commissions renewed every three years, but there was no mandatory retirement age.

After the revolution the states began to pay more attention to their judicial systems. Americans who had previously concentrated almost entirely on the legislative and executive branches now recognized that the courts did not constitute the coequal branch of government which the principle of separating powers presupposed. During the 1780s, a new role for the courts was conceived. Many Americans began to argue that the courts had an obligation to decide whether laws passed by the legislature violated some higher law or were in conflict with basic constitutional

privileges. The right of the courts to decide when a law was, in a sense, legal was an innovative concept resulting directly from the experience of the country under the newly formed state governments. Even though the people expressed their sovereign will through their legislatures, argued a Rhode Island newspaper in 1787, laws were still "liable to examination and scrutiny by the people, that is, by the Supreme Judiciary, their servants for this purpose; and those that militate with the fundamental laws, or impugn the principles of the constitution, are to be judicially set aside as void, and of no effect."

New York, through the Council of Revision, had already gone further than most other states in giving its top judicial officers a role in checking legislation. But even this role was limited, for vetoes could be overridden by the legislature. During the 1780s, some New Yorkers, notably Alexander Hamilton and James Duane, began to argue for full-fledged judicial review. As the judge in a case called *Rutgers vs Waddington,* Duane ruled in 1784 that the courts could decide when the legislature might not foresee the consequences of its actions and inadvertently violate an individual's rights. Although Duane insisted that the courts were doing nothing more than enforcing true legislative intent, his point was clear: even the popularly elected legislatures, the very bodies created to express the public will, were capable of violating that trust and had to be checked.

Judicial review was based on the premise that it was necessary to protect fundamental rights even under a republican form of government. The guarantee of rights had been at the core of the revolutionary impulse, and, in one way or another, influenced the course of constitution-making in the states.

Rights and Ballots

AMERICANS justified their rebellion against British rule on the grounds that the British were violating the basic rights of the colonists. The creation of independent state governments, read the opening clause of New York's constitution, was made necessary by "the many tyrannical and oppressive usurpations of the King and Parliament of Great Britain, on the rights and liberties of the people of the American colonies. . . ." The loss of rights had been at the core of the dispute with England since the beginning. In 1776 and 1777, Americans recognized, as one commentator put it, that the strength of the new governments would depend upon the framers' success in "determining and bounding the power and prerogatives of the rulers [and] ascertaining and securing the rights and liberties of the subjects."

Several states in 1776 and 1777 prefaced their new state constitutions with bills of rights. Pennsylvania characteristically wrote one of the most comprehensive, guaranteeing everything from complete religious liberty to the right of the people to dissolve their government if they saw fit. The committee designated to draft New York's constitution was also ordered to draw up a bill of rights, but the committee members inexplicably ignored this part of their instructions. Later, when the constitution was debated on the convention floor, there was no apparent objection to the absence of the bill of rights. Why the convention members let the matter drop is not known. After waiting nine months for the government to be organized, they probably were anxious to get it into operation and were simply unwilling to become involved in a time-consuming debate over the question of rights.

The absence of a separate bill of rights does not mean that basic rights and liberties were not protected by the constitution. Most of the liberties that Americans were concerned about were encompassed by the common law, which was adopted by all the states. Some specific rights were protected by clauses incorporated directly into the text of New York's constitution; others were covered by implication. A jury trial was assured "in all cases in which it hath heretofore been used in the colony of New York," and New Yorkers were protected against arbitrary or extra-legal proceedings by a clause stating that the legislature shall "at no time hereafter, institute any new court or courts but such as shall proceed according to the course of the common law." New York's constitution, like all the others, incorporated the basic principle that rights granted in the constitution, especially the right to vote, could only be withdrawn by a trial at law or a jury conviction. This provided a safeguard against unlawful arrests or seizures.

One specific liberty which New Yorkers debated at length was freedom of religion. Because New York had one of the most religiously diverse populations in America, it had always been one of the more tolerant colonies toward religious groups. Most New Yorkers were probably predisposed to accept a strong declaration on religious freedom in their new constitution, and when the draft constitution came from the committee, it included such a provision. On the convention floor, John Jay tried to insert a clause that would have barred Catholics from owning property or enjoying civil rights until they had sworn before the state supreme court that their allegiance to the Pope did not transcend loyalty to the state. Jay also wanted to make Catholics deny the "damnable doctrine" that the Pope could absolve them of sin. When Jay's proposal lost after a long debate, he finally had to content himself with adding to the article on naturalization of foreigners the stipulation that they renounce "all allegiance and subjection to all and every foreign king, prince, potentate and state, ecclesiastical as well as civil."

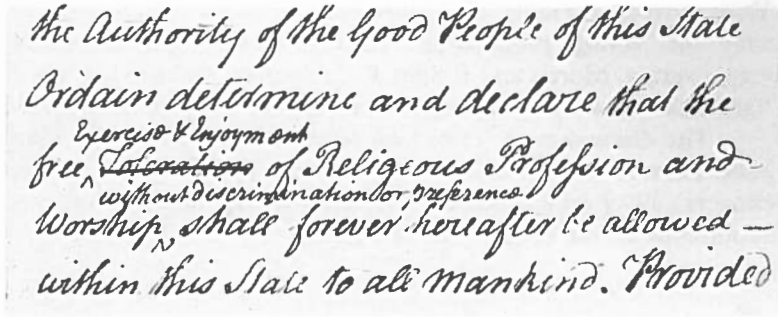
Just before the adoption of the constitution, the wording of the article on religious liberty was changed to make it even stronger. The clause as it stood stated that "the free Toleration of Religious Profession and Worship shall forever hereafter be allowed. . . ." The convention members agreed unanimously to

change it to read: "the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever hereafter be allowed. . . ." Religious worship was not merely to be "tolerated"; it was to be absolutely free of interference. With these changes New York had adopted one of the strongest constitutional clauses on religious liberty of all the states.

There were also other important religious features in the constitution. Free religious worship was not to be "so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of this state." Quakers, whose scruples against swearing oaths and bearing arms had always caused problems for colonial authorities, were allowed by the constitution to substitute for the loyalty oath an affirmation of loyalty to the state. They were declared exempt from militia service but were to pay a special tax in lieu of it. Because New Yorkers were also concerned with keeping religion out of politics, another article of the constitution prohibited clergymen from holding any civil or military office. New York was the only state which established no religious test for holding public office. Nor did the constitution make the protestant religion supreme, a provision included in several other state constitutions.

The constitution-makers recognized that workable electoral procedures were an important safeguard of representative government. Voting in the eighteenth century was traditionally done by voice; each voter stood among the assembled voters and openly declared his preferences. Many revolutionaries, convinced that this left voters vulnerable to pressure and intimidation, advocated the adoption of the secret ballot as a corrective. But there was no consensus on the point. Opponents argued that ballots were more susceptible to tampering, particularly since many voters could neither read nor write. Between the time that the ballots were cast and later recorded at a central location, there would be ample opportunities for fraud. Voting by voice, they argued, gave each voter the assurance that his vote was clearly understood by everyone within hearing distance, reducing the possibility that it would be misrecorded.

New Yorkers debated the subject at length during the drafting of the constitution. In November 1776, the drafting committee agreed that the governor and lieutenant governor would be elected


the Authority of the good People of this State
Ordain determine and declare that the
free Exercise & Enjoyment ~~Toleration~~ of Religious Profession and
without discrimination or preference
Worship shall forever hereafter be allowed —
within this State to all Mankind. Provided

On the afternoon of April 20, just hours before the constitution was finally adopted, the clause on religious liberty was strengthened.

by ballot, and this recommendation was subsequently adopted by the convention. A much longer discussion ensued concerning assembly and senate elections. Advocates of the secret ballot, led by Abraham Yates, managed to insert a requirement that the secret ballot be used in elections for the assembly, following it up with five pages of minutely detailed instructions on exactly how the ballots were to be cast, tallied, and recorded. When John Jay revised and edited the committee draft, the five pages of instructions disappeared.

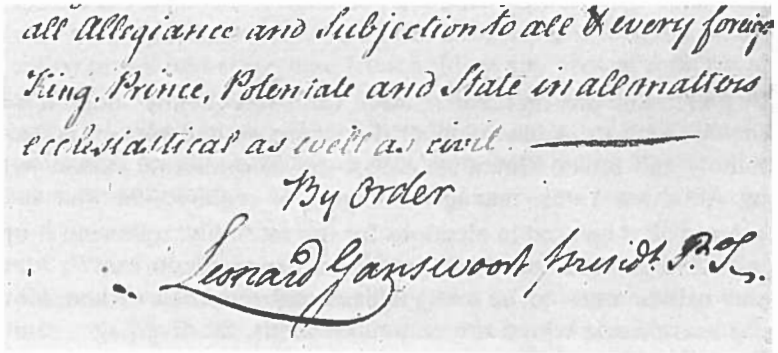
Opponents of the secret ballot marshalled their forces during the floor debate. Led by Gouverneur Morris, they managed to delete the clause requiring the use of the ballot in assembly elections. On April 5, John Jay brought the issue back to life by proposing a compromise: voting during the war would continue to be by voice, but after the war, senators and assemblymen would be elected by ballot. If problems resulted from the use of the secret ballot, the legislature would be empowered to restore voice voting by a two-thirds vote of each house. Despite Morris's objections, the compromise proposal passed thirty-three to four.

Abraham Yates still was not satisfied. He had been absent when the Jay compromise was adopted, and when he returned, he announced that he planned to propose further changes. On the morning of the day that the constitution was finally adopted,

Yates moved to remove the clause empowering the legislature to alter the voting procedures. Through skillful parliamentary maneuvering, Morris and Robert R. Livingston managed to keep Yates's proposal from coming to a vote.

The discussion on Yates's proposal was the last substantive issue debated by the convention. After a flurry of last-minute changes, all of which passed unanimously, the constitution was adopted by a vote of thirty-three to one.

Since both the president of the convention, Abraham Ten Broeck, and the vice-president, Pierre Van Cortlandt, were absent on April 20 when the constitution was adopted, the document was signed by president pro tem Leonard Gansevoort.


all Allegiance and Subjection to all & every foreign
King, Prince, Potentate and State in all matters
ecclesiastical as well as civil. ——
By Order
Leonard Gansevoort, Presidt. P.T.

Revolution and Compromise

THE FORTY-TWO ARTICLE constitution proclaimed in Kingston on April 22, 1777, was a compromise document. Few of the other state constitutions contained so many provisions specifically designed to split the difference between various political and ideological groupings. Most conspicuous were the councils of appointment and revision, creations which revealed the balance between those who believed that vetoes and appointments were proper executive functions and those who were fearful of erecting an executive branch too much like its colonial predecessor. The jerry-rigged Jay compromise on the secret ballot was an obvious effort to relieve the tension between those New Yorkers who thought that the war should bring basic political changes and those who felt that, even in a revolution, innovations should be adopted cautiously, if at all. Other features for which there had been considerable sentiment early in the drafting process—an article delineating the state's boundaries, a bill of rights, an executive council, a detailed description of the electoral process—fell by the wayside as convention members submerged their differences in order to get the state government into operation.

Because New York's constitution-makers were able to compromise during the drafting process, the constitution they produced provided a strong foundation for the new state government. No one, of course, believed that it was perfect, or even that everything would work out as planned. The Council of Appointment, for instance, was a product of the reaction against the excessive power of the colonial governors. Within a decade, the appointment process was intensely politicized by the emergence of political parties, a development largely unforeseen before the revolution. There was also considerable uncertainty about the use of the secret ballot in elections for governor. According to William

Smith, Jr., there appeared to be a conflict between the constitutional provision for electing the governor by ballot and the law passed by the convention outlining election procedures. Peter Livingston told Smith that the convention members themselves were confused, and Smith reported that in Dutchess County the election inspectors failed to keep a record of the electors and their votes, casting doubt on the legality of the election.

Some convention members were unhappy with all or part of the constitution. Peter Livingston, the only member who voted against adoption, believed it was too democratic; others thought it was not democratic enough. Gouverneur Morris complained that it was "deficient for the Want of Vigor in the executive, unstable from the very Nature of popular elective Governments, and dilatory from the Complexity of the Legislature." Other members criticized it for having too strong a governor and too weak a legislature. John Jay, who contributed more to it than any other member of the convention, was angered by the clause allowing judges to appoint officers of the court. Empowering inferior court judges to license attornies, he lectured Morris and Livingston, "will fill every County in the State with a Swarm of designing cheating litigious Pettifoggers, who like Leaches and Spiders will fatten on the Spoils of the Poor, the Ignorant, the Feeble and the unwary."

Despite such criticism, the constitution proved to be an effective instrument, particularly in comparison with the first constitutions in most other states. Alexander Hamilton, who later wrote some of the most articulate arguments in favor of the United States constitution, recognized that the strengths of New York's constitution outweighed the weaknesses. Like Gouverneur Morris, Hamilton was concerned that the executive branch might be too weak and also feared that the senate might degenerate into an exclusive, obstructionist body. But he regarded the core of the constitution as sound. "A representative democracy, where the right of election is well secured and regulated and the exercise of the legislative, executive and judiciary authorities, is vested in select persons chosen *really* and not *nominally* by the people," he wrote Morris, "will in my opinion be most likely to be happy, regular and durable." New York had gone far toward establishing such a government, he continued. "On the whole, though I think there are the defects intimated," he concluded, "I think your

Government far the best that we have yet seen, and capable of giving long and substantial happiness to the people."

Hamilton was correct. The constitution of 1777 lasted largely unamended for forty-five years, through a political period nearly as turbulent as the revolutionary era had been. It served the state until a new political generation replaced the one that had created the first state government. Not until 1821 was another constitutional convention called. The resulting constitution guaranteed more individual rights, particularly habeas corpus and freedom of speech, both of which had been protected by statute since 1787. The Council of Appointment was abolished: the compromise which had been so effective in overcoming obstacles in 1777 proved to be one of the most troublesome features of the first constitution. Some of the nearly 15,000 military and civil offices controlled by the council would now be filled by the legislature; others would be elective; still others were to be filled by the governor acting either alone or with the concurrence of the senate.

The Council of Revision was also eliminated in 1821. The governor would now have the sole power to veto bills, subject to reversal by the legislature. At the same time, the governor's term of office was reduced from three years to two. (The three-year term was reestablished by amendment in 1874 but once again reduced to two years in 1894.) The secret ballot was made permanent in 1821, and an amendment approved by the voters in 1826 removed the property-holding suffrage requirements for white males. Black males still had to qualify under the 1777 property provisions. Property qualifications for blacks were not removed until 1874, after the fifteenth amendment to the United States constitution had already made such provisions illegal.

Three more times in the nineteenth century, in 1846, 1867, and 1894, conventions were called to revise the constitution. The new constitution adopted in 1846 contained many new features, including the reduction of the senatorial term from four years to two. Changes in the judicial system were among the most important provisions in the 1846 constitution. The chancery court system and the office of chancellor were abolished and the powers absorbed by the supreme court. A court of appeals consisting partly of the supreme court justices and partly of specially elected appellate judges was substituted for the court of errors created in 1777. In 1867, the court of appeals was restructured: the su-

preme court justices were removed from it, and provisions were made for a seven-man, elected court.

A clause of the 1846 constitution required that the voters decide every twenty years whether a new constitutional convention should be convened. The first convention held under this provision in 1867 drafted a new constitution, but the voters rejected all except the judicial clauses.

The next constitutional convention, which should have met in 1887, was delayed seven years because of partisan conflict between the governor and the legislature. When it did finally meet in 1894, the constitution was substantially revised. Among the more important changes was the creation of a civil service system. Suffrage for women was debated at length but not adopted.

Three constitutional conventions have met in the twentieth century. The constitution proposed by the convention of 1915 was overwhelmingly defeated. In 1938, a substantially new constitution was approved, but the voters rejected the constitution drafted in 1967. The 1894 constitution was amended sixty-eight times between 1899 and 1937. Adult suffrage without sex discrimination was adopted by amendment in 1917. In 1937, an amendment increased the term for assemblymen from one year to two and the terms for governor and lieutenant governor from two years to four. Between 1939 and 1975, 107 amendments have been adopted.

New York's state constitution, which began as a forty-two article document filling thirty-three printed pages, is now 173 pages long in the legislative manual, not counting the index and the table of contents.

The CONSTITUTION of 1777

EDITOR'S NOTE: The constitution of 1777 is transcribed from the first edition printed in Fishkill by Samuel Loudon shortly after adoption. Only the text of the Declaration of Independence has been omitted. The elongated "s" used in eighteenth century printing has been modernized, and current rules of punctuation have been followed for hyphenating words at the end of the line. Otherwise, spelling, capitalization, and punctuation are reproduced exactly as they appear in the Loudon edition.

The CONSTITUTION, &c.

WHEREAS the many tyrannical and oppressive usurpations of the King and Parliament of Great Britain, on the rights and liberties of the people of the American colonies, had reduced them to the necessity of introducing a government by Congresses and Committees, as temporary expedients, and to exist no longer than the grievances of the people should remain without redress.

AND WHEREAS the Congress of the colony of New-York, did on the thirty-first day of May now last past, resolve as follows, *viz.*

"WHEREAS the present government of this colony by Congress and Committees, was instituted while the former government under the crown of Great-Britain existed in full force; and was established for the sole purpose of opposing the usurpation of the British Parliament, and was intended to expire on a reconciliation with Great-Britain, which it was then apprehended would soon take place, but is now considered as remote and uncertain.

"AND WHEREAS many and great inconveniences attend the said mode of government by Congress and Committees, as of necessity, in many instances, legislative, judicial, and executive powers have been vested therein, especially since the dissolution of the former government by the

abdication of the late Governor, and the exclusion of this colony from the protection of the King of Great-Britain.

"AND WHEREAS the Continental Congress did resolve as followeth, *to wit,*

'WHEREAS his Britannic Majesty, in conjuction [sic] with the Lords and Commons of Great-Britain, has, by a late act of Parliament, excluded the inhabitants of these United Colonies from the protection of his crown.----And whereas no answers whatever, to the humble petition of the colonies for redress of grievances and reconciliation with Great-Britain, has been, or is likely to be given, but the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction of the good people of these colonies.---And whereas it appears absolutely irreconcileable [sic] to reason and good conscience, for the people of these colonies, *now* to take the oaths and affirmations necessary for the support of any government under the crown of Great-Britain; and it is necessary that the exercise of every kind of authority under the said crown should be totally suppressed, and all the powers of government exerted under the authority of the people of the colonies, for the preservation of internal peace, virtue and good order, as well as for the defence of our lives, liberties, and properties, against the hostile invasions, and cruel depredations of our enemies.

'Therefore, RESOLVED, That it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs has been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.'

"AND WHEREAS doubts have arisen whether this Congress are invested with sufficient power and authority to deliberate and determine on so important a subject as the necessity of erecting and constituting a new form of government and internal police, to the exclusion of all foreign jurisdiction, dominion and controul [sic] whatever.---And whereas it appertains of right solely to the people of this colony to determine the said doubts, Therefore

"RESOLVED, That it be recommended to the electors in the several counties in this colony, by election in the manner and form prescribed for the election of the present Congress, either to authorize (in addition to the powers vested in this Congress) their present deputies, or others in the stead of their present deputies, or either of them, to take into consideration the necessity and propriety of instituting such new government as in and by the said resolution of the Continental Congress is described and recommended: And if the majority of the counties, by their deputies in Provincial Congress, shall be of opinion that such new government ought to be instituted and established; then to institute and establish such a government as they shall deem best calculated to secure the rights, liberties and happiness of the good people of this colony; and to continue in force until a future peace with Great-Britain shall render the same unnecessary. And

"RESOLVED, That the said elections in the several counties, ought to be had on such day and at such place or places, as by the Committee of each county respectively shall be determined.---And it is recommended to the said Committees, to fix such early days for the said elections, as that all the deputies to be elected have sufficient time to repair to the city of New-York by the second Monday in July next; on which day all the said deputies ought punctually to give their attendance.

"AND WHEREAS the object of the aforegoing resolutions is of the utmost importance to the good people of this colony,---

"RESOLVED, That it be, and it is hereby earnestly recommended to the Committees, freeholders, and other electors in the different counties in this colony, diligently to carry the same into execution."

AND WHEREAS the good people of the said colony, in pursuance of the said resolution, and reposing special trust and confidence in the members of this Convention, have appointed, authorized and empowered them for the purposes, and in the manner, and with the powers in and by the said resolve specified, declared and mentioned.

AND WHEREAS the delegates of the United American States, in general Congress convened, did on the fourth day of July now last past, solemnly publish and declare, in the words following, *viz.*

[Text of the Declaration of Independence omitted.]

AND WHEREAS this Convention having taken this declaration into their most serious consideration, did on the ninth day of July last past, unanimously resolve, that the reasons assigned by the Continental Congress, for declaring the United Colonies, free and independent States, are cogent and conclusive: And that while we lament the cruel necessity which has rendered that measure unavoidable we approve the same, and will at the risque [sic] of our lives and fortunes join the other Colonies in supporting it.

By virtue of which several acts, declarations and proceedings, mentioned and contained in the afore recited resolves or resolutions of the General Congress of the United American States, and of the Congresses or Conventions of this State, all power whatever therein hath reverted to the people thereof, and this Convention hath by their suffrages and free choice been appointed, and among other things authorized to institute and establish such a government, as they shall deem best calculated to secure the rights and liberties of the good people of this State, most conducive of the happiness and safety of their constituents in particular, and of America in general.

I. This Convention therefore, in the name and by the authority of the good people of this State, doth ORDAIN, DETERMINE, and DECLARE, that no authority shall on any pretence whatever be exercised over the people or members of this State, but such as shall be derived from and granted by them.

II. This Convention doth further in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that the supreme legislative power, within this State, shall be vested in two separate and distinct bodies of men; the one to be called the Assem-

bly of the State of New-York; the other to be called the Senate of the State of New-York; who together shall form the legislature, and meet once at least in every year for the dispatch of business.

III. AND WHEREAS, Laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed; BE IT ORDAINED, that the Governor for the time being, the Chancellor and the Judges of the Supreme Court, or any two of them, together with the Governor, shall be, and hereby are, constituted a Council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened; for which nevertheless, they shall not receive any salary or consideration under any pretence whatever. And that all bills which have passed the Senate and Assembly, shall, before they become laws, be presented to the said Council for their revisal and consideration; and if upon such revision and consideration, it should appear improper to the said Council, or a majority of them, that the said bill should become a law of this State, that they return the same, together with their objections thereto, in writing, to the Senate, or House of Assembly, in whichsoever the same shall have originated, who shall enter the objections sent down by the Council, at large, in their minutes, and proceed to reconsider the said bill. But if after such reconsideration, two thirds of the said Senate or House of Assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall be a law.

And in order to prevent any unnecessary delays, BE IT FURTHER ORDAINED, that if any bill shall not be returned by the Council, within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days.

IV. That the Assembly shall consist of at least seventy members, to be annually chosen in the several counties, in the proportions following, *viz.*

For the city and county of New-York, nine;
The city and county of Albany, ten;
The county of Dutchess seven;
The county of West-chester, six;
The county of Ulster, six;
The county of Suffolk, five;
The county of Queens, four;
The county of Orange, four;
The county of Kings, two;
The county of Richmond, two;
The county of Tryon, six;
The county of Charlotte, four;
The county of Cumberland, three;
The county of Gloucester, two.

V. That as soon after the expiration of seven years, subsequent to the termination of the present war as may be, a Census of the electors and inhabitants in this State be taken, under the direction of the legislature. And if on such Census it shall appear, that the number of representatives in Assembly from the said counties, is not justly proportioned to the number of electors in the said counties respectively, that the legislature do adjust and apportion the same by that rule. And further, that once in every seven years, after the taking of the said first Census, a just account of the electors resident in each county shall be taken; and if it shall thereupon appear, that the number of electors in any county, shall have encreased or diminished one or more seventieth parts of the whole number of electors, which on the said first Census shall be found in this State, the number of representatives for such county shall be increased or diminished accordingly, that is to say, one representative for every seventieth part as aforesaid.

VI. AND WHEREAS, an opinion hath long prevailed among divers of the good people of this State, that voting at elections by Ballot, would tend more to preserve the li-

berty and equal freedom of the people, than voting *viva voce*. To the end therefore that a fair experiment be made, which of those two methods of voting is to be preferred:

BE IT ORDAINED, that as soon as may be, after the termination of the present war, between the United States of America and Great-Britain, an act, or acts be passed by the legislature of this State, for causing all elections thereafter to be held in this State for Senators and Representatives in assembly, to be by Ballot, and directing the manner in which the same shall be conducted. AND WHEREAS, it is possible, that after all the care of the legislature, in framing the said act or acts, certain inconveniencies and mischiefs, unforeseen at this day, may be found to attend the said mode of electing by Ballot:

IT IS FURTHER ORDAINED, that if after a full and fair experiment shall be made of voting by Ballot aforesaid, the same shall be found less conducive to the safety or interest of the State, than the method of voting *viva voce,* it shall be lawful and constitutional for the legislature to abolish the same; provided two thirds of the members present in each House, respectively shall concur therein: And further, that during the continuance of the present war, and until the legislature of this State shall provide for the election of Senators and Representatives in assembly by Ballot, the said elections shall be made *viva voce.*

VII. That every male inhabitant of full age, who shall have personally resided within one of the counties of this State, for six months immediately preceding the day of election, shall at such election, be entitled to vote for representatives of the said county in assembly; if during the time aforesaid, he shall have been a Freeholder, possessing a Freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this State: Provided always, that every person who now is a freeman of the city of Albany, or who was made a freeman of the city of New-York, on or before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities respectively, shall be entitled to vote for Representatives in assembly within his said place of residence.

VIII. That every elector before he is admitted to vote, shall, if required by the returning officer or either of the inspectors, take an oath, or if of the people called Quakers, an affirmation, of allegiance to the State.

IX. That the assembly thus constituted, shall chuse [sic] their own Speaker, be judges of their own members, and enjoy the same privileges and proceed in doing business, in like manner as the assemblies of the colony of New-York of *right* formerly did; and that a majority of the said members, shall, from time to time constitute a House to proceed upon business.

X. And this Convention doth further, in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that the Senate of the State of New-York, shall consist of twenty-four freeholders, to be chosen out of the body of the freeholders, and that they be chosen by the freeholders of this State, possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon.

XI. That the members of the Senate be elected for four years, and immediately after the first election, they be divided by lot into four classes, six in each class, and numbered one, two, three and four; that the seats of the members of the first class shall be vacated at the expiration of the first year, the second class the second year, and so on continually, to the end that the fourth part of the Senate, as nearly as possible, may be annually chosen.

XII. That the election of Senators shall be after this manner; that so much of this State as is now parcelled into counties, be divided into four great districts; the southern district to comprehend the city and county of New-York, Suffolk, Westchester, Kings, Queens and Richmond counties; the middle district to comprehend the counties of Dutchess, Ulster and Orange; the western district the city and county of Albany, and Tryon county; and the eastern district, the counties of Charlotte, Cumberland and Gloucester. That the Senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, *to wit,* in the southern district nine, in the

middle district six, in the western district six, and in the eastern district three. And BE IT ORDAINED, that a Census shall be taken as soon as may be, after the expiration of seven years from the termination of the present war, under the direction of the legislature: And if on such Census it shall appear, that the number of Senators is not justly proportioned to the several districts, that the legislature adjust the proportion as near as may be, to the number of freeholders qualified as aforesaid, in each district. That when the number of electors within any of the said districts, shall have increased one twenty-fourth part of the whole number of electors, which by the said Census, shall be found to be in this State, an additional Senator shall be chosen by the electors of such district. That a majority of the number of Senators to be chosen as aforesaid, shall be necessary to constitute a Senate, sufficient to proceed upon business, and that the Senate shall in like manner with the assembly, be the judges of its own members. And BE IT ORDAINED, that it shall be in the power of the future legislatures of this State for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts, as shall to them appear necessary.

XIII. And this Convention doth further, in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that no member of this State, shall be disfranchised, or deprived of any of the rights or privileges secured to the subjects of this State, by this constitution, unless by the law of the land, or the judgment of his peers.

XIV. That neither the assembly or the senate shall have power to adjourn themselves for any longer time than two days, without the mutual consent of both.

XV. That whenever the Assembly and Senate disagree, a conference shall be held in the presence of both, and be managed by Committees to be by them respectively chosen by ballot. That the doors both of the Senate and Assembly shall at all times be kept open to all persons, except when the welfare of the State shall require their debates to be kept secret. And the Journals of all their proceedings shall be kept in the manner heretofore accustomed by the General Assembly of the colony of New-York, and except such parts as

they shall as aforesaid, respectively determine not to make public, be from day to day (if the business of the legislature will permit) published.

XVI. It is nevertheless provided, that the number of Senators shall never exceed one hundred, nor the number of Assembly three hundred; but that whenever the number of Senators shall amount to one hundred, or of the Assembly to three hundred, then and in such case, the legislature shall from time to time thereafter, by laws for that purpose, apportion and distribute the said one hundred Senators and three hundred Representatives, among the great districts and counties of this State in proportion to the number of their respective electors; so that the representation of the good people of this State, both in the Senate and Assembly, shall for ever remain proportionate and adequate.

XVII. And this Convention doth further, in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that the supreme executive power, and authority of this State, shall be vested in a Governor; and that statedly once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this State, shall be by ballot elected Governor, by the freeholders of this State, qualified as before described to elect Senators; which elections shall be always held at the times and places of choosing representatives in assembly for each respective county; and that the person who hath the greatest number of votes within the said State, shall be Governor thereof.

XVIII. That the Governor shall continue in office three years, and shall, by virtue of his office, be General and Commander in Chief of all the militia, and Admiral of the Navy of this State; that he shall have power to convene the Assembly and Senate on extraordinary occasions, to prorogue them from time to time, provided such prorogations shall not exceed sixty days in the space of any one year; and at his discretion to grant reprieves and pardons to persons convicted of crimes, other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting;

and they shall either pardon or direct the execution of the criminal, or grant a further reprieve.

XIX. That it shall be the duty of the Governor to inform the legislature, at every sessions, of the condition of the State, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare and prosperity; to correspond with the Continental Congress, and other States; to transact all necessary business with the officers of government, civil and military; to take care that the laws are faithfully executed to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature.

XX. That a Lieutenant-Governor shall, at every election of a Governor, and as often as the Lieutenant-Governor shall die, resign, or be removed from office, be elected in the same manner with the Governor, to continue in office, until the next election of a Governor; and such Lieutenant-Governor shall, by virtue of his office, be President of the Senate, and, upon an equal division, have a casting voice in their decisions, but not vote on any other occasion.

And in case of the impeachment of the Governor, or his removal from office, death, resignation, or absence from the State, the Lieutenant-Governor shall exercise all the power and authority appertaining to the office of Governor, until another be chosen, or the Governor absent or impeached shall return, or be acquitted. Provided that where the Governor shall, with the consent of the legislature, be out of the State, in time of war, at the head of a military force thereof, he shall still continue in his command of all the military force of this State, both by sea and land.

XXI. That whenever the Government shall be administered by the Lieutenant-Governor, or he shall be unable to attend as President of the Senate, the senators shall have power to elect one of their own members to the office of President of the Senate, which he shall exercise *pro hac vice*. And if, during such vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or be absent from the State, the President of the

Senate, shall in like manner as the Lieutenant-Governor administer the government, until others shall be elected by the suffrage of the people at the succeeding election.

XXII. And this Convention doth further, in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that the Treasurer of this State shall be appointed by act of the legislature, to originate with the assembly: Provided that he shall not be elected out of either branch of the legislature.

XXIII. That all officers, other than those, who by this constitution are directed to be otherwise appointed, shall be appointed in the manner following, *to wit,* The assembly shall, once in every year, openly nominate and appoint one of the Senators from each great district, which Senators shall form a council for the appointment of the said officers, of which the Governor for the time being, or the Lieutenant-Governor, or the President of the Senate, when they shall respectively administer the government, shall be President, and have a casting voice, *but no other vote;* and with the advice and consent of the said council, shall appoint all the said officers; and that a majority of the said council be a quorum. And further, the said Senators shall not be eligible to the said council for two years successively.

XXIV. That all military officers be appointed during pleasure; that all commissioned officers civil and military, be commissioned by the Governor, and that the Chancellor, the Judges of the supreme court, and first Judge of the county court in every county, hold their offices during good behaviour, or until they shall have respectively attained the age of sixty years.

XXV. That the Chancellor and Judges of the supreme court, shall not at the same time hold any other office, excepting that of Delegate to the General Congress, upon special occasions; and that the first Judges of the county courts in the several counties, shall not at the same time hold any other office, excepting that of Senator, or Delegate to the General Congress: But if the Chancellor or either of the said Judges be elected or appointed to any other office, excepting as is before excepted, it shall be at his option in which to serve.

XXVI. That Sheriffs and Coroners be annually appointed; and that no person shall be capable of holding either of the said offices more than four years successively, nor the Sheriff of holding any other office at the same time.

XXVII. AND BE IT FURTHER ORDAINED, that the register and clerks in chancery be appointed by the Chancellor; the clerks of the supreme court by the Judges of the said court; the clerk of the court of probates, by the Judge of the said court; and the register and marshall of the court of admiralty, by the Judge of the admiralty.----The said marshall, registers and clerks, to continue in office during the pleasure of those, by whom they are to be appointed, as aforesaid.

And that all Attorneys, Solicitors and Counsellors at Law, hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court in which they shall respectively plead or practice; and be regulated by the rules and orders of the said courts.

XXVIII. AND BE IT FURTHER ORDAINED, that where by this Convention the duration of any office shall not be ascertained, such office shall be construed to be held during the pleasure of the Council of Appointment: Provided that new commissions shall be issued to judges of the county courts (other than to the first judge) and to justices of the peace, once at the least in every three years.

XXIX. That town clerks, supervisors, assessors, constables and collectors, and all other officers heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of legislature.

That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature.

XXX. That Delegates to represent this State, in the General Congress of the United States of America, be annually appointed as follows, *to wit,* The Senate and Assembly shall each openly nominate as many persons as shall be

equal to the whole number of Delegates to be appointed; after which nomination, they shall meet together, and those persons named in both lists shall be Delegates; and out of those persons whose names are not in both lists, one half shall be chosen by the joint ballot of the Senators and Members of Assembly, so met together as aforesaid.

XXXI. That the stile [sic] of all laws shall be as follows, *to wit,* BE IT ENACTED *by the people of the State of New-York, represented in Senate and Assembly.* And that all writs and other proceedings shall run in the name of *the people of the State of New-York,* and be tested in the name of the Chancellor or Chief Judge of the court from whence they shall issue.

XXXII. And this Convention doth further, in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that a court shall be instituted for the trial of Impeachments, and the Correction of Errors, under the regulations which shall be established by the legislature; and to consist of the President of the Senate, for the time being, and the Senators, Chancellor, and Judges of the Supreme Court, or the major part of them; except that when an impeachment shall be prosecuted against the Chancellor, or either of the Judges of the Supreme Court, the person so impeached shall be suspended from exercising his office, until his acquittal: And in like manner, when an appeal from a decree in equity shall be heard, the Chancellor shall inform the court of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error on a question of law, on a judgment in the Supreme Court, the Judges of that Court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

XXXIII. That the power of impeaching all officers of the State, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two third parts of the members present shall consent to and agree in such impeachment. That previous to the trial of every impeachment, the members of the said court shall respectively be sworn, truly and impartially to try and determine

the charge in question, according to evidence; and that no judgement of the said court shall be valid, unless it shall be assented to by two third parts of the members then present; nor shall it extend farther than to removal from office, and disqualification to hold or enjoy any place of honour, trust or profit, under this State. But the party so convicted, shall be, nevertheless, liable and subject to indictment, trial, judgment and punishment, according to the laws of the land.

XXXIV. AND IT IS FURTHER ORDAINED, that in every trial on impeachment or indictment for crimes or misdemeanors, the party impeached or indicted, shall be allowed counsel, as in civil actions.

XXXV. And this Convention doth further, in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that such parts of the common law of England, and of the statute law of England and Great-Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this State; subject to such alterations and provisions, as the legislature of this State shall, from time to time, make concerning the same. That such of the said acts as are temporary, shall expire at the times limited for their duration respectively. That all such parts of the said common law, and all such of the said statutes, and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of Christians, or their Ministers, or concern the allegiance heretofore yielded to, and the supremacy sovereignty, government or prerogatives, claimed or exercised by the King of Great-Britain and his predecessors, over the colony of New-York and its inhabitants, or are repugnant to this constitution, be, and they hereby are, abrogated and rejected. And this Convention doth farther ordain, that the resolves or resolutions of the Congresses of the colony of New-York, and of the Convention of the State of New-York, now in force, and not repugnant to the government established by this Constitution, shall be considered as making part of the laws of this State; subject, nevertheless to such alterations and provisions, as the legislature of this State may from time to time make concerning the same.

XXXVI. AND BE IT FURTHER ORDAINED, that all grants of land within this State, made by the King of Great-Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void: But that nothing in this constitution contained, shall be construed to affect any grants of land, within this State, made by the authority of the said King or his predecessors, or to annul any charters to bodies politic, by him or them or any of them, made prior to that day. And that none of the said charters, shall be adjudged to be void by reason of any non-user or mis-user of any of their respective rights or privileges, between the nineteeeth [sic] day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this constitution. And further, that all such of the officers described in the said charters respectively, as by the terms of the said charters, were to be appointed by the Governor of the colony of New-York, with or without the advice and consent of the Council of the said King, in the said colony, shall henceforth be appointed by the Council established by this constitution, for the appointment of officers in this State, until otherwise directed by the legislature.

XXXVII. AND WHEREAS it is of great importance to the safety of this State, that peace and amity with the Indians within the same, be at all times supported and maintained. AND WHEREAS, the frauds too often practised towards the said Indians, in contracts made for their lands, have in divers instances been productive of dangerous discontents and animosities; BE IT ORDAINED, that no purchases or contracts for the sale of lands made since the fourteenth day of October, in the year of our Lord, one thousand seven hundred and seventy-five, or which may hereafter be made with or of the said Indians, within the limits of this State, shall be binding on the said Indians, or deemed valid, unless made under the authority, and with the consent of the legislature of this State.

XXXVIII. AND WHEREAS we are required by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance, wherewith the bigotry and ambition

of weak and wicked priests and princes, have scourged mankind: This Convention doth further, in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever hereafter be allowed within this State to all mankind. Provided that the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

XXXIX. AND WHEREAS the ministers of the gospel, are by their profession dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function; therefore no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding any civil or military office or place, within this State.

XL. AND WHEREAS it is of the utmost importance to the safety of every State, that it should always be in a condition of defence; and it is the duty of every man, who enjoys the protection of society, to be prepared and willing to defend it; this Convention therefore, in the name and by the authority of the good people of this State, doth ORDAIN, DETERMINE and DECLARE, that the militia of this State, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service. That all such of the inhabitants of this State, being of the people called Quakers, as from scruples of conscience, may be averse to the bearing of arms, be therefrom excused by the legislature; and do pay to the State such sums of money in lieu of their personal service, as the same may, in the judgment of the legislature, be worth: And that a proper magazine of warlike stores, proportionate to the number of inhabitants, be, for ever hereafter, at the expence [sic] of this State, and by acts of the legislature, established, maintained, and continued in every county in this State.

XLI. And this Convention doth further ORDAIN, DETERMINE and DECLARE, in the name and by the authority of the good people of this State, that trial by jury, in all cases in which it hath heretofore been used in the colony

of New-York, shall be established, and remain inviolate forever. And that no acts of attainder shall be passed by the legislature of this State for crimes, other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood. And further, that the legislature of this State shall, at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law.

XLII. And this Convention doth further, in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that it shall be in the discretion of the legislature to naturalize all such persons, and in such manner as they shall think proper; provided all such of the persons, so to be by them naturalized, as being born in parts beyond sea, and out of the United States of America, shall come to settle in, and become subjects of this State, shall take an oath of allegiance to this State, and abjure and renounce all allegiance and subjection to all and every foreign King, Prince, Potentate and State, in all matters ecclesiastical as well as civil.

By order.

LEONARD GANSEVOORT, Pres. pro tem.

For Further Study

THE STANDARD REFERENCE WORK for New York's first constitution, and for New York's constitutional history until 1905, is Charles Z. Lincoln's *The Constitutional History of New York,* 5 vol. (1906). In addition to printing the text of the first constitution, Lincoln included two committee drafts, both of which were subsequently lost in the capitol fire of 1911. Bernard Mason's *The Road to Independence: The Revolutionary Movement in New York, 1773-1777* (University of Kentucky Press, 1966) contains a good discussion of the drafting and adoption of the constitution. The debate by the convention of representatives can be traced in the *Journals of the Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety of the State of New-York, 1775-1776-1777,* Vol. I (1842). Very few records of the drafting committee remain. There are two pages of minutes in the *Calendar of Historical Manuscripts Relating to the War of the Revolution in the Office of Secretary of State,* Vol. I (Albany, 1868), pp. 552-3, and the Abraham Yates, Jr., papers in the New York Public Library contain a somewhat scrambled committee draft. Other than these, and a few references in personal papers, there are only the two drafts printed by Lincoln to serve as a record of the committee's deliberations.

All the first state constitutions are compared in William C. Webster's "Comparative Study of the State Constitutions of the American Revolution," *Annals of the American Academy of Political and Social Science,* Vol. IX (1897), pp. 380-421. Gordon S. Wood's *The Creation of the American Republic, 1776-1787* (University of North Carolina Press, 1969) is the definitive study of the relationship of the state constitutions to the revolutionary political development of the United States.

Constitutional developments in New York from the Revolution to the twentieth century are discussed in Lincoln, cited above. In addition to the constitution of 1777, Lincoln prints the texts of the constitutions of 1822, 1846, and 1894, as well as all amendments. There is also a discussion of the abortive constitution of 1867. The 1938 New York State Constitutional Convention Committee's *New York State Constitution Annotated* explains constitutional developments between 1895 and 1937.

Copies of the state's current constitution are normally available for a small charge from the Department of State in Albany. Another source is the *Manual for the Use of the Legislature of the State of New York* (Department of State, 1975), which also contains a schedule of amendments to the 1846 and 1894 constitutions, all amendments adopted since 1801, and the vote on all proposed constitutions, conventions, and amendments since 1821.

Those interested in reading further about the state's constitutional history should consult Ernest Henry Breuer's *Constitutional Development in New York, 1777-1958: A Bibliography of Conventions and Constitutions with Selected References for Constitutional Research* (New York State Library, Bibliographical Bulletin 82, 1958). A subsequent volume covers the 1958-1967 period.