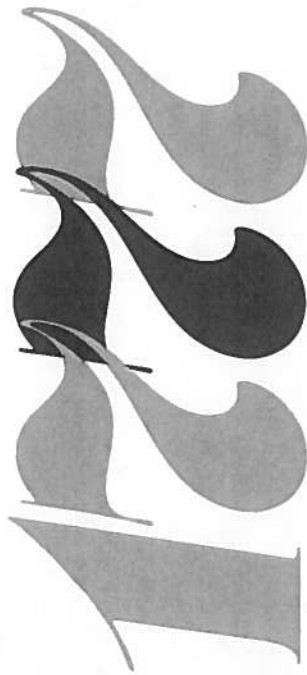


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The Political Revolution and New York's First Constitution

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

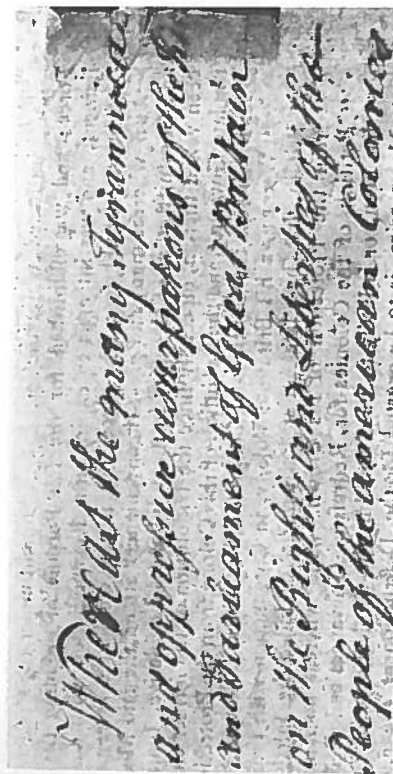
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William A. Polf
June 1977

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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.

Fourteen Revolutions

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



Robert R. Livingston



Abraham Yates, Jr.

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.

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 become 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 Committee stated further with reference
to their report of the 7th day of June at page 69,
that they had also received from the same source
the said objections agree to pass the same & shall
^{report} them.

To the effect of the said resolutions
together with the objections to send down to the House
of Commons 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 delay
for its further Consideration, 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 Senate,
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,

A Choice of Dishes

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 six parts, to wit
other Counties & Districts
as shall to them appear
necessary —

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 delegation 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 de-

creasing 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 tenants 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-

*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 ac-
crued to the Subjects of this State, by this Con-
stitution, 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 ele-

ments 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, hamstringing 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-

§. 37. And whereas it is of great Importance to the safety of this State, that Peace & Amity with the Indians within this State be maintained so 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 dissensions & 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 first 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. Vetoeed 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 ap-

pointments 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

Assembly Delegations by county (0)
Total = 70

Senatorial Districts
Senatorial Delegations
Total = 24 [0]
Counties in 1777 —

Six Nations of the Iroquois

Treaty line of 1768

Shaded area. Occupied by British, 1776-1783

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

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30

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
Exercise of Joyment
free Toleration of Religious Profession and
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, President Pro Tem.

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 attorneys, he lectured Morris and Livingston, "will fill every County in the State with a Swarm of Signing 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 conjunction [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 irreconcilable [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 foregoing 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 revival 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 whichever 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 increased 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 inconveniences 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 marshal of the court of admiralty, by the Judge of the admiralty.----The said marshal, 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 affirmation 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, and of the acts of the legislature 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 nineteenth [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.

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A POLITICAL HISTORY
OF THE
STATE OF NEW YORK

BY
DEALVA STANWOOD ALEXANDER, A.M.
*Member of Congress, Formerly United States Attorney
for the Northern District of New York*

VOL. I
1774-1832



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A POLITICAL HISTORY OF THE STATE OF NEW YORK

CHAPTER I

A COLONY BECOMES A STATE

ON THE 16th of May, 1776, the second Continental Congress, preparing the way for the Declaration of Independence, recommended that those Colonies which were without a suitable form of government, should, to meet the demands of war, adopt some sufficient organisation. The patriot government of New York had not been wholly satisfactory. It never lacked in the spirit of resistance to England's misrule, but it had failed to justify the confident prophecies of those who had been instrumental in its formation.

For nearly a year New York City saw with wonder the spectacle of a few fearless radicals, organised into a vigilance committee of fifty, closing the doors of a custom-house, guarding the gates of an arsenal, embargoing vessels laden with supplies for British troops, and removing cannon from the Battery, while an English fleet, well officered and manned, rode idly at anchor in New York harbour. Inspiring as the spectacle was, however, it did not appreciably help matters. On the contrary, it created so much friction among the people that the conservative business men—resenting involuntary taxation, yet wanting, if possible with

honour, reconciliation and peace with the mother country—organised, in May, 1774, a body of their own known as the Committee of Fifty-one, which thought the time had come to interrupt the assumed leadership of the Committee of Fifty. This usurpation by one committee of powers that had been exercised by another, caused the liveliest indignation.

The trouble between England and America had grown out of the need for a continental revenue and the lack of a continental government with taxing power—a weakness experienced throughout the Revolution and under the Confederation. In the absence of such a government, Parliament undertook to supply the place of such a power; but the Americans blocked the way by an appeal to the principle that had been asserted by Simon de Montford's Parliament in 1265 and admitted by Edward I. in 1301—"No taxation without representation." So the Stamp Act of 1765 was repealed. The necessity for a continental revenue, nevertheless, remained, and in the effort to adopt some expedient, like the duty on tea, Crown and Colonies became involved in bitter disputes. The idea of independence, however, had, in May, 1774, scarcely entered the mind of the wildest New York radical. In their instructions to delegates to the first Continental Congress, convened in September, 1774, the Colonies made no mention of it. Even in May, 1775, the Sons of Liberty in Philadelphia cautioned John Adams not to use the word, since "it is as unpopular in all the Middle States as the Stamp Act itself."¹ Washington wrote from the Congress that independence was then not "desired by any thinking man in America."²

The differences, therefore, between the Committees of Fifty and Fifty-one were merely political. One favoured agitation for the purpose of arousing resistance to the King's summary methods—the other preferred a more orderly but not less forceful way of making known their oppo-

¹ E. B. Andrews, *History of the United States*, Vol. 1, p. 172.

² *Ibid.*, p. 172.

sition. Members of both highest and best sense, yet only patriotic, public spir-

It was during these years that Alexander Hamilton, then a lad of fifteen, took part at the historic meeting "of his arguments and the tated eloquence while de- which closed the port of New York. It had been a year in America and a grammar school, conducted by James Hamilton, soon to become Governor of New Jersey. This experience led him into the vexed relations between England and the Colonies and shattered his English prejudices. His young minds that Burke thought were not ready. A visit to Boston shortly after the war had the effect of deepening and significantly increasing the liberty, which were soon to be the first utterance.

The remarkable paragraph of the younger Pitt begins in the schoolroom. Hamilton, a member of the bar of the House of Lords, showed ripe intelligence and rare powers in the debate, and the result was a fully formulated answer to the wiggled and the tuition of his country for the House of Commons. He had been at Exeter and Andover before becoming of age. He was different. At twelve years of age he entered a grammar school.

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e *United States*, Vol. 1, p. 172.

sition. Members of both committees were patriots in the highest and best sense, yet each faction fancied itself the only patriotic, public spirited and independent party.

It was during these months of discord that Alexander Hamilton, then a lad of seventeen, astonished his listeners at the historic meeting "in the Fields,"³ with the cogency of his arguments and the wonderful flights of an unpremeditated eloquence while denouncing the act of Parliament which closed the port of Boston. Hamilton had already been a year in America attending the Elizabethtown grammar school, conducted under the patronage of William Livingston, soon to become the famous war governor of New Jersey. This experience quickened the young man's insight into the vexed relations between the Colonies and the Crown, and shattered his English predilections in favour of the little minds that Burke thought so ill-suited to a great empire. A visit to Boston shortly after the "tea party" seems also to have had the effect of crowding his mind with thoughts, deeply and significantly freighted with the sentiment of liberty, which were soon to make memorable the occasion of their first utterance.

The remarkable parallel between Hamilton and the younger Pitt begins in this year, while both are in the schoolroom. Hamilton "in the Fields" recalls Pitt at the bar of the House of Lords, amazing his companions with the ripe intelligence and rare sagacity with which he followed the debate, and the readiness with which he skillfully formulated answers to the stately arguments of the wigged and powdered nobles. Pitt, under the tuition of his distinguished father, was fitted for the House of Commons as boys are fitted for college at Exeter and Andover, and he entered Parliament before becoming of age. Hamilton's preparation had been different. At twelve years of age he was a clerk in a counting house on the island of Nevis in the West Indies; at sixteen he entered a grammar school in New Jersey; at seventeen he

³ City Hall Park.

became a sophomore at King's College. It is then that he spoke "in the Fields"—not as a sophomore, not as a precocious youth with unripe thoughts, not as a boy orator—but as a man speaking with the wisdom of genius.

After the meeting "in the Fields" patriotism proved stronger than prejudice, and in November, 1774, the Committee of Fifty-one gave place to a Committee of Sixty, charged with carrying out recommendations of the Continental Congress. Soon after a Committee of One Hundred, composed of members of the Committees of Fifty and Fifty-one, assumed the functions of a municipal government. Finally, in May, 1775, representatives were chosen from the several counties to organise a Provincial Congress to take the place of the long established legislature of the Colony, which had become so steeped in toryism that it refused to recognise the action of any body of men who resented the tyranny of Parliament. Thus, in the brief space of eighteen months, the government of the Crown had been turned into a government of the people.

For several months, however, the patriots of New York had desired a more complete state government. All admitted that the revolutionary committees were essentially local and temporary. Even the hottest Son of Liberty came to fear the licentiousness of the people on the one hand, and the danger from the army on the other. Nevertheless, the Provincial Congress, whose members had been trained by harsh experience to be stubborn in defence and sturdy in defiance, declined to assume the responsibility of forming such a government as the Continental Congress recommended. That body had itself come into existence as a revolutionary legislature after the Provincial Assembly had refused either to approve the proceedings of the first Continental Congress, or to appoint delegates to the second; and, although it did not hesitate to usurp temporarily the functions of the Tory Assembly, to its great credit it believed the right of creating and framing a new civil government belonged to the people; and, accordingly, on May 24, 1776, it recommended the elec-

tion of new representatives who were to be authorised to form a government for the Colony.

The members of this new body were chosen from the ranks of the patriots in New York's history for the first time. Among them were John Jay, Philip Livingston, Philip Schuyler, and John Adams. The same men appeared at the birth of the state government. The helplessness of the Confederates, the bitterness of the Federal Constitution, and the helplessness of the Confederates with them were James Clinton, John Willett, John Morin Scott, Sloss Hobart, the Yateses, and the Van Cortlandts, James, Richard, Lewis and Gouverneur Morris. Only two illustrious names were missing from the patriotic lists, but already Alexander Hamilton had taken heart of the people by his eloquence, and Aaron Burr, a comely youth, graceful as a girl, with the refinement of his education and the refinement of his manners, had thrown away his books to join the patriots. These men passed into history behind his own trail of light and shadow. The duties demanded prudence and courage of patriots appeared in column after column in answer to the roll-call of names. The vote set the pace which achieved the end.

The new Provincial Congress met at White Plains on July 9, 1776, and declared from the old institutions of the "Convention of the New York." As further evidence it declared that New York was a free and independent state April 20, 1775. It also declared that such parts of the common law were in force in the Colony

College. It is then that he is a sophomore, not as a preceptor, not as a boy orator—but a man of genius.

Fields' patriotism proved that on November, 1774, the Committee of Sixty, the recommendations of the Continental Committee of One Hundred, the Committees of Fifty and Fifty-five for municipal government. Fifties were chosen from the Provincial Congress to take the legislature of the Colony, a Toryism that it refused to rely on men who resented the Crown in the brief space of eighteen months had been turned into

the patriots of New York government. All admitted were essentially local and on of Liberty came to fear on the one hand, and the other. Nevertheless, the Patriots had been trained by harsh discipline and sturdy in defiance, ability of forming such a government Congress recommended. That as a revolutionary legislature had refused either to support the Continental Congress, or to do; and, although it did not perform the functions of the Tory Assembly, the right of creating government belonged to the people; in 1776, it recommended the elec-

tion of new representatives who should be specially authorized to form a government for New York.

The members of this new body were conspicuous characters in New York's history for the next third of a century. Among them were John Jay, George Clinton, James Duane, Philip Livingston, Philip Schuyler, and Robert R. Livingston. The same men appeared in the Committee of Safety, at the birth of the state government, as witnesses of the helplessness of the Confederation, and as backers or backbiters of the Federal Constitution. Among those associated with them were James Clinton, Ezra L'Hommedieu, Marinus Willett, John Morin Scott, Alexander McDougall, John Sloss Hobart, the Yateses, Abraham, Richard and Robert; the Van Cortlandts, James, John and Philip; the Morrisses, Richard, Lewis and Gouverneur, and all the Livingstons. Only two illustrious names are absent from these early patriotic lists, but already Alexander Hamilton had won the heart of the people by his wonderful eloquence and logic, and Aaron Burr, a comely lad of nineteen, slender and graceful as a girl, with the features of his beautiful mother and the refinement of his distinguished grandfather, had thrown away his books to join Arnold on his way to Quebec. These men passed into history in companies, but each left behind his own trail of light. Where danger called, or civic duties demanded prudence and profound sagacity, this band of patriots appeared in council and in the camp, ready to answer to the roll-call of their country, and by voice and vote set the pace which achieved independence.

The new Provincial Congress met at the courthouse in White Plains on July 9, 1776, and, as evidence of the change from the old institutions to the new, it adopted the name of the "Convention of the Representatives of the State of New York." As further evidence of the new order of things it declared that New York began its existence as a State on April 20, 1775. It also adopted as the law of the State such parts of the common and statute law of England as were in force in the Colony of New York on April 19, 1775.

By this time the British forces had become so active in the vicinity of New York that the convention thought it advisable to postpone the novel and romantic work of state-making until the threatened danger had passed; but, before its hasty adjournment, by requesting officers of justice to issue all processes and pleadings under the authority and in the name of the State of New York, it served notice that King and Parliament were no longer recognised as the source of political authority. This appears to have been the first official mention of the new title of the future government.⁴ When the convention reassembled on the first day of the following August it appointed John Jay chairman of a committee to report the draft of a state constitution.

Jay was then thirty-one years old, a cautious, clever lawyer whose abilities were to make a great impression upon the history of his country. He belonged to a family of Huguenot merchants. The Jays lived at La Rochelle until the revocation of the Edict of Nantes drove the great-grandfather to England, where the family continued until 1686, when Augustus, the grandfather, settled in New York. It was not a family of aristocrats; but for more than a century the Jays had ranked among the gentry of New York City, intermarrying with the Bayards, the Stuyvesants, the Van Cortlandts and the Philipses. To these historic families John Jay added another, taking for his wife Sarah Livingston, the sister of Brockholst, who later adorned the Supreme Court of the United States, and the daughter of William, New Jersey's coming war governor, already famous as a writer of poems and essays.

Jay's public career had begun two years before in connection with the revolutionary Committee of Fifty-one. He did not accept office because he loved it. He went into politics as he might have travelled on a stage-coach at the invitation of a few congenial friends, for their sake, not for his own. When he took up the work of organisation, therefore, it was with no wish to become a leader; he simply desired

⁴ *Memorial History of the City of New York*, Vol. 2, p. 608.

to guide the spirit of resolutions. But soon he held back. In drafting a resolution at a town meeting, he suggested to which should be referred to the people. This suggestion of a general Convention at the head of the Revolution which meant broader organic measures, an enlistment of the people and one official head for the separated colonies—gradually sending the young writer to the Continental Congress.

It was in this Congress that Jay became a constitution-maker. Of a young and brilliant age, no one advanced with more knowledge and favour. In the people of Canada, his great-grandfather, after he composed the famous circular letter to the people of the colonies, the famous circular letter to the people of the colonies, frequently drawn upon for advice; but he may be said to have begun when he drafted the address to the people. While still ignorant of the full scope of the Revolution, "a production of the first

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of New York, Vol. 2, p. 608.

to guide the spirit of resistance along orderly and forceful
lines. But soon he held the reins and had his foot on the
brake. In drafting a reply to resolutions from a Boston
town meeting, he suggested a Congress of all the Colonies,
to which should be referred the disturbing question of non-
importation. This letter was not only the first serious sug-
gestion of a general Congress, placing its author intellectu-
ally at the head of the Revolutionary leaders; but the plan—
which meant broader organisation, more carefully concerted
measures, an enlistment of all the conservative elements,
and one official head for thirteen distinct and widely sep-
arated colonies—gradually found favour, and resulted in
sending the young writer as a delegate to the first Continen-
tal Congress.

It was in this Congress that Jay won the right to become a
constitution-maker. Of all the men of that busy and bril-
liant age, no one advanced more steadily in the general
knowledge and favour. When he wrote the address to the peo-
ple of Canada, his great ability was recognised at once; and
after he composed the appeal to Ireland and to Jamaica,
the famous circular letter to the Colonies, and the patriotic
address to the people of his own State, his wisdom was more
frequently drawn upon and more widely appreciated than
ever; but he may be said to have leaped into national fame
when he drafted the address to the people of Great Britain.
While still ignorant of its authorship, Jefferson declared it
"a production of the finest pen in America."

CHAPTER II

MAKING A STATE CONSTITUTION

1777

IT WAS early spring in 1777 before John Jay, withdrawing to the country, began the work of drafting a constitution. His retirement recalls Cowper's sigh for

" a lodge in some vast wilderness,
Some boundless contiguity of shade,
Where rumours of oppression and deceit,
Of unsuccessful and successful war,
Might never reach me more."

Too much and too little credit has been given Jay for his part in the work. One writer says he "entered an almost unexplored field." On the other hand, John Adams wrote Jefferson that Jay's "model and foundation" was his own letter to George Wythe of Virginia. Neither is true. The field was not unexplored, nor did John Adams' letter contain a suggestion of anything not already in existence, except the election of a Council of Appointment, with whose consent the governor should appoint all officers. His plan of letting the people elect a governor came later. "We have a government to form, you know," wrote Jay, "and God knows what it will resemble. Our politicians, like some guests at a feast, are perplexed and undetermined which dish to prefer;"¹ but Jay evidently preferred the old home dishes, and it is interesting to note how easily he adapted the laws and customs of the provincial government to the needs of an independent State.

¹ John Jay, *Correspondence and Public Papers*, Vol. 1, p. 68.

1777]

A RESTRICTED

The legislative branch consisted of two separate and distinct bodies, the Senate and the Assembly. The first Congress elected each year; the second elected every fourth year. The members were proportioned to the number of qualified voters, the State was divided into districts, the eastern being allowed three, the middle six and the western nine. The powers and privileges of the Senate and Assembly of the Colony of New York. In 1777 introduced no new feature. The lower house, and the former of the Province, which exercised the powers for the Senate.² In their legislative bodies were indistinguishable.

The qualifications of the members of the Legislature greatly increased. Every patriot believed in the first article of the Constitution shall, on any pretence whatsoever, of the State, but such as shall be by them." This high-sound of popular sovereignty; but the Constitution, fearing the power as the tyranny of kings, placed the hands of a few. A man freehold of the value of two hundred pounds, and one possessed of the yearly value of forty pounds, and one possessed of the yearly value of forty pounds, free from taxes.

But even these drastic measures of the draftsman of the Constitution.

² *Memorial History of the State of New York*, Vol. 1, p. 610.

³ *Ibid.*, Vol. 2, p. 610.

The legislative branch of the government was vested in two separate and distinct bodies, called the Assembly and the Senate. The first consisted of seventy members to be elected each year; the second of twenty-four members, one-fourth to be elected every four years. Members of the Assembly were proportioned to the fourteen counties according to the number of qualified voters. For the election of senators, the State was divided into "four great districts," the eastern being allowed three members, the southern nine, the middle six and the western six. To each house was given the powers and privileges of the Provincial Assembly of the Colony of New York. In creating this Legislature, Jay introduced no new feature. The old Assembly suggested the lower house, and the former Council or upper house of the Province, which exercised legislative powers, made a model for the Senate.² In their functions and operations the two bodies were indistinguishable.³

The qualifications of those who might vote for members of the Legislature greatly restricted suffrage. Theoretically every patriot believed in the liberties of the people, and the first article of the Constitution declared that "no authority shall, on any pretence whatever, be exercised over the people of the State, but such as shall be derived from and granted by them." This high-sounding exordium promised the rights of popular sovereignty; but in practice the makers of the Constitution, fearing the passions of the multitude as much as the tyranny of kings, deemed it wise to keep power in the hands of a few. A male citizen of full age, possessing a freehold of the value of twenty pounds, or renting a tenement of the yearly value of forty shillings, could vote for an assemblyman, and one possessing a freehold of the value of one hundred pounds, free from all debts, could vote for a senator.

But even these drastic conditions did not satisfy the draftsman of the Constitution. The legislators themselves,

² *Memorial History of the City of New York*, Vol. 2, p. 610.

³ *Ibid.*, Vol. 2, p. 610.

IR II

CONSTITUTION

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although thus carefully selected, might prove inefficient, and so, lest "laws inconsistent with the spirit of this Constitution, or with the public good, may be hastily or unadvisedly passed," a Council of Revision was created, composed of the governor, chancellor, and the three judges of the Supreme Court, or any two of them acting with the governor, who "shall revise all bills about to be passed into laws by the Legislature." If the Council failed to act within ten days after having possession of the bill, or if two-thirds of each house approved it after the Council disapproved it, the bill became law. This Council seems to have been suggested by the veto power possessed by the King's Privy Council.

The supreme executive power and authority of the State were vested in a governor, who must be a freeholder and chosen by the ballots of freeholders possessed of one hundred pounds above all debts. His term of office was three years, and his powers similar to those of preceding Crown governors. He was commander-in-chief of the army, and admiral of the navy. He had power to convene the Legislature in extraordinary session; to prorogue it not to exceed sixty days in any one year; and to grant pardons and reprieves to persons convicted of crimes other than treason and murder, in which cases he might suspend sentence until the Legislature acted. In accordance with the custom of his predecessors, he was also expected to deliver a message to the Legislature whenever it convened. To aid him in his duties, the Constitution provided for the election of a lieutenant-governor, who was made the presiding officer of the Senate.

The proposition that no authority should be exercised over the people except such as came from the people necessarily opened the door to an election of the governor by the people; but how to restrict his power seems to have taxed Jay's ingenuity. He had reduced the number of voters to its lowest terms, and put a curb on the Legislature, as well as the governor, by the creation of the Council of Revision; but how to curtail the chief executive's power in making appoint-

ments, presented a problem to the governor, good reason to regret.

The only governors with whom we are acquainted were British governors, and the story of astonishing mistakes goes no farther back than Lord of Queen Anne, not one in the century, exhibited gifts fitting spirited and intelligent people. The disposition for good either for the disposition was to be despotic in such arbitrary conduct, Jay's power in making appointments.

The new Constitution provided for sheriffs, mayors of cities, district treasurers, and all other officers. Some members of the convention made these appointments; others by the Legislature's right to both methods. The first two had power; the latter would trouble. To reconcile these different "Article XXIII. That all officers of this Constitution, are direct shall be appointed in the next Assembly shall, once in every year appoint one of the senators. The senators shall form a Council of said officers, of which the governor shall have a casting vote, but no more and consent of the said Council officers."⁴

⁴"The clause directing the governor to call the Legislature for their approbation was generally disapproved. Many other members, and mentioned to the convention several myself, and

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ments, presented a problem which gave Jay himself, when
governor, good reason to regret the manner of its solution.

The only governors with whom Jay had had any experi-
ence were British governors, and the story of their rule was
a story of astonishing mistakes and vexing stupidities. To
go no farther back than Lord Cornbury, the dissolute cousin
of Queen Anne, not one in the long list, covering nearly a
century, exhibited gifts fitting him for the government of a
spirited and intelligent people, or made the slightest impres-
sion for good either for the Crown or the Colony. Their
disposition was to be despotic, and to prevent a repetition of
such arbitrary conduct, Jay sought to restrict the governor's
power in making appointments to civil office.

The new Constitution provided for the appointment of
sheriffs, mayors of cities, district attorneys, coroners, county
treasurers, and all other officers in the State save gov-
ernor, lieutenant-governor, state treasurer and town officers.
Some members of the convention wished the governor to
make these appointments; others wanted his power limited
by the Legislature's right to confirm. Jay saw objections to
both methods. The first would give the governor too much
power; the latter would transfer too much to the Legisla-
ture. To reconcile these differences, therefore, he proposed
"Article 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 shall be president and
have a casting vote, but no other vote; and with the advice
and consent of the said Council shall appoint all of the said
officers."⁴

*"The clause directing the governor to *nominate* officers to the
Legislature for their approbation being read and debated, was gen-
erally disapproved. Many other methods were devised by different
members, and mentioned to the house merely for consideration. I
mentioned several myself, and told the convention at the time,

This provision was simply, as the sequel showed, a bungling compromise. Jay intended that the governor should nominate and the Council confirm, and in the event of a tie the governor should have the casting vote. But in practice it subordinated the governor to the Council whenever a majority of the Assembly was politically opposed to him, and the annual election of the Council greatly increased the chances of such opposition. When, finally, the Council of Appointment set up the claim that the right to nominate was vested concurrently in the governor and in each of the four senators, it practically stripped the chief executive of power.

The anomaly of the Constitution was the absence of provision for the judicature, the third co-ordinate branch of the government. One court was created for the trial of impeachments and the correction of errors, but the great courts of original jurisdiction, the Supreme Court and the Court of Chancery, as well as the probate court, the county court, and the court of admiralty, were not mentioned except incidentally in sections limiting the ages of the judges, the offices each might hold, and the appointment of clerks. Instead of recreating these courts, the Constitution simply recognised them as existing. The new court established, known as the Court of Errors and Impeachment, consisted of the president of the Senate, the senators, the chancellor, and the three judges of the Supreme Court, or a major part of them. The conception of vesting supreme appellate jurisdiction in the upper legislative house was derived from the former practice of appeals to the Council of the Province,⁵ which possessed

that, however I might then incline to adopt them, I was not certain, but that after considering them, I should vote for their rejection. While the minds of the members were thus fluctuating between various opinions, I spent the evening of that day with Mr. Morris at your lodgings, in the course of which I proposed the plan for the institution of the Council as it now stands, and after conversing on the subject we agreed to bring it into the house the next day. It was moved and debated and carried."—John Jay, *Correspondence and Public Papers*, Vol. 1, p. 128. Letter of Jay to Robert R. Livingston and Gouverneur Morris, April 29, 1777.

⁵ *Memorial History of the City of New York*, Vol. 2, p. 612.

judicial as well as legislative followed the practice that judges could not vote in the Council, although they might be members, although they might be the same—a custom which existed from the earliest times.⁶

In like manner provincial laws, legal customs, and precedents had been in existence for a century, and the constitution simply provided, in the absence of such parts of the constitution, the common law of England and the constitution of the Colony. The legislature of the Colony was bound to obedience to the government, and could not establish any particular laws, nor could priests or ministers, who held civil or military office, be impeached for crimes committed in the exercise of their office, which had been abrogated, with the declaration of independence, work a corruption of the constitution.

The draft of the Constitution was reported to the convention on the following day the first section was read and began. Sixty-six members were present, a majority of whom, led by John Jay, were in favour of the people. The British guns never wanted to embargo vessels and now prepared to resist a simply to change the name of this feeling. "It is probable that it is democratic," says William Jay, "for I have heard the winch would have cried."

Jay was not without

⁶ *Duke's Laws*, Vol. 1,

⁷ William Jay, *Life of*

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Letter of Jay to Robert R. Living- pril 29, 1777.

of New York, Vol. 2, p. 612.

judicial as well as legislative power. The Constitution further followed the practice of the old Council by providing that judges could not vote on appeals from their own judgments, although they might deliver arguments in support of the same—a custom which had obtained in New York from the earliest times.⁶

In like manner provincial laws, grants of lands and charters, legal customs, and popular rights, most of which had been in existence for a century, were carried over. The Constitution simply provided, in a general way, for the continuance of such parts of the common law of England, the statute law of England and Great Britain, and the acts of the legislature of the Colony of New York, as did not yield obedience to the government exercised by Great Britain, or establish any particular denomination of Christians, or their priests or ministers, who were debarred from holding any civil or military office under the new State; but acts of attainder for crimes committed after the close of the war were abrogated, with the declaration that such acts should not work a corruption of the blood.

The draft of the Constitution in Jay's handwriting was reported to the convention on March 12, 1777, and on the following day the first section was accepted. Then the debate began. Sixty-six members constituted the convention, a majority of whom, led by John Morin Scott, believed in the reign of the people. The spirit that nerved a handful of men to embargo vessels and seize munitions of war covered by British guns never wanted courage, and this historic band now prepared to resist a conservatism that seemed disposed simply to change the name of their masters. Jay understood this feeling. "It is probable that the convention was ultra-democratic," says William Jay, in the biography of his father, "for I have heard him observe that another turn of the winch would have cracked the cord."⁷

Jay was not without supporters. Conservatives like the

⁶ *Duke's Laws*, Vol. 1, Chap. 14.

⁷ William Jay, *Life of John Jay; Jay MSS.*, Vol. 1, p. 72.

Livingstons, the Morrisises, and the Yateses never acted with the recklessness of despair. They had well-formed notions of a popular government, and their replies to proposed changes broke the force of the opposition. But Jay, relying more upon his own policy, prudently omitted several provisions that seemed to him important, and when discussion developed their need, he shrewdly introduced them as amendments. Upon one question, however, a prolonged and spirited debate occurred. This centred upon the freedom of conscience. The Dutch of New Netherland, almost alone among the Colonies, had never indulged in fanaticism, and the Constitution, breathing the spirit of their toleration, declared that "the free exercise and enjoyment of religious profession and worship without diminution or preference shall forever hereafter be allowed within the State to all mankind." Jay did not dissent from this sentiment; but, as a descendant of the persecuted Huguenots, he wished to except Roman Catholics until they should deny the Pope's authority to absolve citizens from their allegiance and to grant spiritual absolution, and he forcefully insisted upon and secured the restriction that "the liberty of conscience hereby granted shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the safety of the State." The question of the naturalisation of foreigners renewed the contention. Jay's Huguenot blood was still hot, and again he exacted the limitation that all persons, before naturalisation, shall "abjure and renounce all allegiance to all and every foreign king, prince, potentate, and state, in all matters ecclesiastical as well as civil."

Jay intended reporting other amendments—one requiring a similar renunciation on the part of all persons holding office, and one abolishing domestic slavery. But before the convention adjourned he was, unfortunately, summoned to the bedside of his dying mother. Otherwise, New York would probably have had the distinction of being first to set the example of freedom. "I should have been for a clause

against the continuance of it in a letter objecting to his retirement.⁸

Although the Constitution was not adopted more than a month, haste in the convention's deliberations. Jay seemed eager to get away, and the Constitution was adopted. Jay left it, and a committee appointed for establishing a government under the Constitution of Massachusetts, it was not a fiction. The fact that the Constitution was elected by the people seemed to give its passage, the secretary of the convention a barrel in front of the convention to the world by reading it to be present. As it became a reality, it was cordially approved as the first American constitution. "The land," wrote Jay, "where credit."

The absence of violent opposition to the Constitution's remarkable character in the Revolution, framed to the spirit of that great event, its general conservative. The right of suffrage was late as 1790 only 1303 of the population of New York City possessed sufficient property to vote for governor. Even in the undisturbed, notwithstanding its opposition to the wish of the people, despite popular dissatisfaction, earnest prayers and ugly p

⁸ John Jay, *Correspondence and Papers*, vol. 1, p. 140. A recommendation was introduced but subsequently omitted.

⁹ *Ibid.*, p. 140.

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against the continuance of domestic slavery," he said,
 in a letter objecting to what occurred after his forced
 retirement.⁸

Although the Constitution was under consideration for
 more than a month, haste characterised the close of the
 convention's deliberations. As soon as Jay left, every one
 seemed eager to get away, and on Sunday, April 20, 1777,
 the Constitution was adopted as a whole practically as he
 left it, and a committee appointed to report a plan for es-
 tablishing a government under it. Unlike the Constitution
 of Massachusetts, it was not submitted to the voters for rati-
 fication. The fact that the delegates themselves had been
 elected by the people seemed sufficient, and two days after
 its passage, the secretary of the convention, standing upon
 a barrel in front of the courthouse at Kingston, published
 it to the world by reading it aloud to those who happened
 to be present. As it became known to the country, it was
 cordially approved as the most excellent and liberal of the
 American constitutions. "It is approved even in New Eng-
 land," wrote Jay, "where few New York productions have
 credit."⁹

The absence of violent democratic innovations was the
 Constitution's remarkable feature. Although a product of
 the Revolution, framed to meet the necessities growing out
 of that great event, its general provisions were decidedly
 conservative. The right of suffrage was so restricted that as
 late as 1790 only 1303 of the 13,330 male residents of New
 York City possessed sufficient property to entitle them to
 vote for governor. Even the Court of Chancery remained
 undisturbed, notwithstanding royal governors had created
 it in opposition to the wishes of the popular assembly. But
 despite popular dissatisfaction, which evidenced itself in
 earnest prayers and ugly protests, the instrument, so rudely

⁸ John Jay, *Correspondence and Public Papers*, Vol. 1, p. 126. "Such
 a recommendation was introduced by Gouverneur Morris and passed,
 but subsequently omitted."—*Ibid.*, p. 136, note.

⁹ *Ibid.*, p. 140.

and hastily published on April 22, 1777, remained the supreme law of the State for forty-four years.

Before adjournment the convention, adopting the report of its committee for the organisation of a state government, appointed Robert R. Livingston, chancellor; John Jay, chief justice of the Supreme Court; Robert Yates, Jr., and John Sloss Hobart, justices of the Supreme Court, and Egbert Benson, attorney-general. To a Council of Safety, composed of fifteen delegates, with John Morin Scott, chairman, were confided all the powers of the State until superseded by a regularly elected governor.

CH

GEORGE CLINTON

AFTER the constitution of 1777, the Council of Safety elected a governor, lieutenant-governor, and legislature. The selection was made by the people. Although free only a small part of the class rejoiced in the success across the sea. And all regarded as fittest as well as John Morin Scott, John Schuyler, and John Jay. Just then Schuyler, watching British troops in the province, watching British troops in the invasion of the Mohawk valley, and the command on the Hudson, the movements of Sir Henry Clinton, meant the destruction of the lower entrance to the river, as members of the Council of Safety, the government of the new State.

Schuyler's public career in the assembly of New York in 1765 was marked by great boldness. He thanked the delegates of the assembly and appointed others to a session of the Provincial Congress, the assembly's functions and people. Chancellor Kent

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CHAPTER III

GEORGE CLINTON ELECTED GOVERNOR

1777

AFTER the constitutional convention adjourned in May, 1777, the Council of Safety immediately ordered the election of a governor, lieutenant-governor, and members of the Legislature. The selection of a governor by ballot interested the people. Although freeholders who could vote represented only a small part of the male population, patriots of every class rejoiced in the substitution of a neighbour for a lord across the sea. And all had a decided choice. Of those suggested as fittest as well as most experienced Philip Schuyler, John Morin Scott, John Jay and George Clinton were the favourites. Just then Schuyler was in the northern part of the province, watching Burgoyne and making provision to meet the invasion of the Mohawk Valley; George Clinton, in command on the Hudson, was equally watchful of the movements of Sir Henry Clinton, whose junction with Burgoyne meant the destruction of Forts Clinton and Montgomery at the lower entrance to the Highlands; while Scott and Jay, as members of the Council of Safety, were directing the government of the new State.

Schuyler's public career began in the Provincial Assembly of New York in 1768. He represented the people's interests with great boldness, and when the Assembly refused to thank the delegates of the first Continental Congress, or to appoint others to a second Congress, he aided in the organisation of the Provincial Congress which usurped the Assembly's functions and put all power into the hands of the people. Chancellor Kent thought that "in acuteness of intellect,

profound thought, indefatigable activity, exhaustless energy, pure patriotism, and persevering and intrepid public efforts, Schuyler had no superior;" and Daniel Webster declared him "second only to Washington in the services he rendered the country."¹ But there was in Schuyler's make-up a touch of arrogance that displayed itself in letters as well as in manners. The soldierly qualities that made him a commander did not qualify him for public place dependent upon the suffrage of men. People respected but did not love him. If they were indignant that Gates succeeded him, they did not want him to govern them, however much it may have been in his heart to serve them faithfully.

John Morin Scott represented the radical element among the patriots. By profession he was an able and wealthy lawyer; by occupation a patriotic agitator. John Adams, who breakfasted with him, speaks of his country residence three miles out of town as "an elegant seat, with the Hudson just behind the house, and a rural prospect all around him." But the table seems to have made a deeper impression upon the Yankee patriot than the picturesque scenery of the river. "A more elegant breakfast I never saw—rich plate, a very large silver coffee-pot, a very large silver teapot, napkins of the very finest materials, toast and bread and butter in great perfection. Afterwards a plate of beautiful peaches, another of pears, another of plums, and a musk melon." As a parting salute, this lover of good things spoke of his host as "a sensible man, one of the readiest speakers upon the continent, but not very polite."² This is what the Tories thought. According to Jones, the Tory historian, Scott had the misfortune to graduate at Yale—"a college remarkable for its

¹ While in command of the northern department, embracing the province of New York, Schuyler was known as "Great Eye," so watchful did he become of the enemy's movements; and although subsequently, through slander and intrigue, superseded by Horatio Gates, history has credited Burgoyne's surrender largely to his wisdom and patriotism, and has branded Gates with incompetency, in spite of the latter's gold medal and the thanks of Congress.

² John Adams, *Life and Works*, Vol. 2, p. 349 (Diary).

republican principles and to belong to a triumph down church and state, upon the ruins."³

Scott, no doubt, was in a course to pursue, but he was in view, and his point of view was misrule. Whatever he did, the energy of a man still in his ancestry. His great-great-grandfather, of Ancrum, Scotland, came to the revolution of 1688, and came to New York in 1701. His stronghold on the Mohawk was Tory blood was foreign to the air of independence. His property depend upon the pleasure of the ministry, or to be excluded from his neighbours, or of the state. In 1775 he went to the Provincial Congress. He participated in the Revolution as brigadier-general. After the Revolution he became secretary. In 1783 served in the Congress. He was old enough to see his country ended at fifty-four.

George Clinton possessed more of either Schuyler or Scott than any other men in New York to in comparison with George Clinton. He was more bitter in his feelings than any other uncompromising in his principles. A typical Irishman—intolerant, petulant, and occasionally vindictive. He was magnetic and generous.

³ Thomas Jones, *Life of George Clinton*, p. 100.

activity, exhaustless energy, and intrepid public efforts, Daniel Webster declared in the services he rendered Schuyler's make-up a touch of letters as well as in that made him a commander in the service dependent upon the success but did not love him. If he succeeded him, they did not care much it may have been a failure.

the radical element among them was an able and wealthy political agitator. John Adams, as of his country residence, a magnificent seat, with the Hudson River prospect all around him." "a deeper impression upon the picturesque scenery of the river. never saw—rich plate, a very fine silver teapot, napkins of gold bread and butter in great quantities of beautiful peaches, another musk melon." As a party-giver spoke of his host as "a great speaker upon the continent is what the Tories thought. For example, Scott had the misfortune to be college remarkable for its military department, embracing the services known as "Great Eye," so of the movements; and although a trigue, superseded by Horatio Gates's surrender largely to his defeat of Gates with incompetency, and the thanks of Congress. 2, p. 349 (Diary).

republican principles and religious intolerance," he says, and to belong to a triumvirate whose purpose was "to pull down church and state, and to raise their own government upon the ruins."³

Scott, no doubt, was sometimes mistaken in the proper course to pursue, but he was always right from his point of view, and his point of view was bitter hostility to English misrule. Whatever he did he did with all the resistless energy of a man still in his forties. He was of distinguished ancestry. His great-great-grandfather, Sir John Scott, baronet, of Ancrum, Scotland, had been a stalwart Whig before the revolution of 1688, and his grandfather, John Scott, coming to New York in 1702, had commanded Fort Hunter, a stronghold on the Mohawk. Both were remarkable men. Tory blood was foreign to their veins. Young John, breathing the air of independence, scorned to let his life and property depend upon the pleasure of British lords and a British ministry, or to be excluded from the right of trial by a jury of his neighbours, or of taxation by his own representatives. In 1775 he went to the Continental Congress; in 1776, to the Provincial Congress of New York; and later he participated in the battle of Long Island as a brigadier-general. After the adoption of the State Constitution he became secretary of state, and from 1780 to 1783 served in the Continental Congress. He lived long enough to see his country free, although his strenuous life ended at fifty-four.

George Clinton possessed more popular manners than either Schuyler or Scott. Indeed, it has been given to few men in New York to inspire more passionate personal attachment than George Clinton. A patriot never lived who was more bitter in his hostility to English misrule, or more uncompromising in his opposition to toryism. He was a typical Irishman—intolerant, often domineering, sometimes petulant, and occasionally too quick to take offence, but he was magnetic and generous, easily putting himself in touch

³ Thomas Jones, *History of New York*, Vol. 1, p. 3.

with those about him, and ready, without hesitation, to help the poorest and carry the weakest. This was the kind of man the people wanted for governor.

Clinton came of a good family. His great-grandfather, a too devoted adherent of Charles I., found it healthful to wander about Europe, and finally to settle in the north of Ireland, out of reach of Cromwell's soldiers, and out of sight of his ancestral patrimony. By the time Charles II. came to the throne, the estate was lost, and this friend of the Stuarts lived on in the quiet of his secluded home, and after him, his son; but the grandson, stirred by the blood of a Puritan mother, exchanged the North Sea shore for the banks of the Hudson, where his son breathed the air that made him a leading spirit in the war for American independence. Clinton's youth is one record of precocity. Before the war began he passed through a long, a varied; even a brilliant career, climbing to the highest position in the State before he had reached the age when most men begin to fill responsible places. At fifteen he manned an American privateer; at sixteen, as a lieutenant, he accompanied his father in a successful assault upon Fort Frontenac; at twenty-six, in the colonial legislature, he became the rival of Philip Schuyler in the leadership and influence that enabled a patriotic minority to resist the aggressions of Great Britain; at thirty-six, holding a seat in the Second Continental Congress, he voted for the Declaration of Independence, and commanded a brigade of Ulster County militia.

The election which occurred in June was not preceded by a campaign of speaking. People were too busy fighting to supplement a campaign of bullets with one of words. But Jay sent out an electioneering letter recommending Philip Schuyler for governor and George Clinton for lieutenant-governor. This was sufficient to secure for these candidates the conservative vote. It showed, too, Jay's unconcern for high place. He was modest even to diffidence, an infirmity that seems to have depressed him at times as much as it did Nathaniel Hawthorne in a later day.

The returns were made to the carefully scanned them as they wrote Schuyler: "The elections taken such a turn as that, if a to should prevail in the upper co doubt of having, ere long, the hon your excellency. Clinton, being have neither; he has many votes for the second. Scott, however, him, and you are by no means rely on receiving by express the alluded to."⁴ When the voters f ern counties came in, however, sult did not follow the line ei suggestions. On the contrary, offices by a considerable pluralit

The result of the election p something of a humiliation to Clinton, I am informed, has : Chair," Schuyler wrote to Jay played his cards better than v later, after confirmation of the erable feeling. "Clinton's fan entitle him to so distinguished showing that Revolutionary l into more democratic and less aristocratic and less aristocra was still in the mind rather th

⁴ John Jay, *Correspondence and*

⁵ A fragment of the canvass c Albany, Cumberland, Dutchess, lows: Clinton, 865; Scott, 386; Sc ingston, 5; Robert R. Livingston, other southern counties gave the *State of New York* (1886), p. 164. S met at Kingston on September 1, of the Senate performed the duti

⁶ John Jay, *Correspondence and*

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The returns were made to the Council of Safety, and Jay
carefully scanned them as they came in. On June 20 he
wrote Schuyler: "The elections in the middle district have
taken such a turn as that, if a tolerable degree of unanimity
should prevail in the upper counties, there will be little
doubt of having, ere long, the honour of addressing a letter to
your excellency. Clinton, being pushed for both offices, may
have neither; he has many votes for the first and not a few
for the second. Scott, however, has carried a number from
him, and you are by no means without a share. You may
rely on receiving by express the earliest notice of the event
alluded to."⁴ When the voters from Orange and other south-
ern counties came in, however, Jay discovered that the re-
sult did not follow the line either of his wishes or of his
suggestions. On the contrary, Clinton was elected to both
offices by a considerable plurality.⁵

The result of the election proved a great surprise and
something of a humiliation to the ruling classes. "Gen.
Clinton, I am informed, has a majority of votes for the
Chair," Schuyler wrote to Jay, on June 30. "If so he has
played his cards better than was expected."⁶ A few days
later, after confirmation of the rumour, he betrayed consid-
erable feeling. "Clinton's family and connections do not
entitle him to so distinguished a pre-eminence," he wrote,
showing that Revolutionary heroes were already divided
into more democratic and less democratic whigs, and more
aristocratic and less aristocratic patriots; but the division
was still in the mind rather than in any settled policy. "He

⁴ John Jay, *Correspondence and Public Papers*, Vol. 1, p. 142.

⁵ A fragment of the canvass of 1777 shows the returns from
Albany, Cumberland, Dutchess, Tryon, and Westchester, as fol-
lows: Clinton, 865; Scott, 386; Schuyler 1012; Jay, 367; Philip Liv-
ingston, 5; Robert R. Livingston, 7. The votes from Orange and
other southern counties gave the election to Clinton."—*Civil List*,
State of New York (1886), p. 164. Subsequently, when the Legislature
met at Kingston on September 1, Pierre Van Cortlandt as president
of the Senate performed the duties of lieutenant-governor.

⁶ John Jay, *Correspondence and Public Papers*, Vol. 1, p. 144.

ntry," added Schuyler, in the
l is brave, and I hope he will
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urred on July 30, 1777. He
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e, burned Kingston to the
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at. Among the captured pa-
y, the Governor's brother-in-
George?" asked Sir Henry.
iel, "he is safe and beyond the

Public Papers, Vol. 1, p. 146.

CHAPTER IV

CLINTON AND HAMILTON

1777-1789

DURING the war Governor Clinton's duties were largely military. Every important measure of the Legislature dealt with the public defence, and the time of the Executive was fully employed in carrying out its enactments and performing the work of commander-in-chief of the militia. A large proportion of the population of the State was either avowedly loyal to the Crown or secretly indisposed to the cause of independence. "Of all the Colonies," wrote William Jay, "New York was probably the least unanimous in the assertion and defence of the principles of the Revolution. The spirit of disaffection was most extensive on Long Island, and had probably tainted a large majority of its inhabitants. In Queens County, in particular, the people had, by a formal vote, refused to send representatives to the colonial congress or convention, and had declared themselves neutral in the present crisis."¹

The Governor sought to crush this spirit by methods much in vogue in the eighteenth century. At the outset of his career he declared that he had "rather roast in hell to all eternity than be dependent upon Great Britain or show mercy to a damned Tory." To add to his fame, he enforced this judgment with heavy fines, long imprisonments, summary banishments, and frequent coats of tar and feathers.

Very soon after the adoption of the Constitution, the Legislature passed a law requiring an oath of allegiance to the

¹ William Jay, *Life of John Jay*, Vol. 1, p. 41.

State; and under the vigorous enforcement of this act the Governor sent many Tories from the rural districts into the city of New York or expelled them from the State. Others were required to give a pledge, with security, to reside within prescribed limits. At times even the churches were filled with prisoners, some of whom were sent to jails in Connecticut, or exchanged for prisoners of war. In 1779 the Legislature increased the penalty of disloyalty to the State, by passing the Confiscation Act, declaring "the forfeiture and sale of the estates of persons who had adhered to the enemy."

Up to this time only one political party had existed among the Whig colonists. The passage of the Confiscation Act, however, encountered the opposition of many sincere lovers of the cause of independence, who favoured a more moderate policy toward loyalists, since they were probably as sincere in their opinions as those opposed to them. Besides, a generous and magnanimous course, it was argued, would induce the return of many desirable citizens after hostilities had ceased. To this the ultra-Whigs replied that the law of self-preservation made a severe policy necessary, and if any one suffered by its operation he must look to the government of his choice for comfort and reimbursement. As for the return of the Tories, the ultras declared that only citizens sincerely loyal to an independent country would be acceptable.

This division into moderate and ultra Whigs was emphasised in 1781 by the legislative grant to Congress of such import duties as accrued at the port of New York, to be levied and collected "under such penalties and regulations, and by such officers, as Congress should from time to time make, order, and appoint." Governor Clinton did not cordially approve the act at the time of its passage, and as the money began flowing into the national treasury, he opposed the method of its surrender. In his opinion, the State, as an independent sovereignty, had associated itself with other Colonies only for mutual protection, and not for their support. At his instance, therefore, the Legislature substituted

for the law of 1781 the assignment of such duties to Congress, but directed that the duties of the State be collected by the Governor. Although this made the collectors amenable to the State, as in the case of the law of 1781, the Governor was authorized to levy and collect the duties, and to call a special session of the Legislature if he refused to do so.

Governor Clinton understood the importance of New York's geographic position, enhanced by the navigation treaty which had made New York the chief port of the region east of the Delaware. The revenue so marvellous as to have made the State's wealth which a century, before the Revolution, did little more than maintain, could survive without a union with New York, and it is not surprising that a majority of its people, under his influence, settled into a policy of union, and later to a national government.

The Governor had gradually become as stubborn as it was wise in his treatment of the British. Hamilton became an advocate of the British. Clinton recognised the centrifugal forces. Hamilton disinterested in the election of Governor Clinton out of Assembly and the conventions, but it did not prevent him while Governor Clinton was of government in the form of a secretary, a Washington, accepting suzerainty in his chief's judgment.

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for the law of 1781 the act of March, 1783, granting the
duties to Congress, but directing their collection by officers
of the State. Although this act was subsequently amended,
making collectors amenable to Congress, another law was
enacted in 1786 granting Congress the revenue, and reserv-
ing to the State, as in the law of 1783, "the sole power of
levying and collecting the duties." When Congress asked
the Governor to call a special session of the Legislature, that
the right to levy and collect might be yielded as before, he
refused to do so.

Governor Clinton understood the commercial advantages
of New York's geographical location, which were greatly
enhanced by the navigation acts of other States. The peace
treaty had made New York the port of entry for the whole
region east of the Delaware, and into its coffers poured a
revenue so marvellous as to excite hopes of a prospective
wealth which a century, remarkable as was its productive-
ness, did little more than realise. If any State, therefore,
could survive without a union with other Colonies, it was
New York, and it is not surprising that many, perhaps a
majority of its people, under the leadership of George Clin-
ton, settled into a policy unfriendly to a national revenue,
and later to a national government.

The Governor had gradually become mindful of an oppo-
sition as stubborn as it was persistent. He had encountered
it in his treatment of the Tories, but not until Alexander
Hamilton became an advocate of amnesty and oblivion, did
Clinton recognise the centre and future leader of the oppos-
ing forces. Hamilton did not appear among those inter-
ested in the election of governor in 1777. His youth shut
him out of Assembly and Congress, out of committees and
conventions, but it did not shut him out of the army; and
while Governor Clinton was wrestling with new problems
of government in the formation of a new State, Hamilton
was acting as secretary, aide, companion, and confidant of
Washington, accepting suggestions as commands, and ac-
quiescing in his chief's judgment with a fidelity born of love

and admiration. In the history of war nothing is more beautiful than the friendship existing between the acknowledged leader of his country and this brave young officer, spirited and impulsive, brilliant and able, yet frank and candid, without ostentation and without egotism. It recalls a later-day relationship between Ulysses S. Grant and John A. Rawlins, his chief of staff.

In July, 1781, Hamilton, in command of a corps, accompanied Washington in the forced march of the American army from New York to Yorktown. This afforded him the opportunity, so long and eagerly sought, of handling an independent command at a supreme moment of danger, and before the sun went down on the 14th of October, he had led his troops with fixed bayonets, under a heavy and constant fire, over abatis, ditch, and palisades; then, mounting the parapet, he leaped into the redoubt. Washington saw the impetuosity of the attack in the face of the murderous fire, the daring leap to the parapet with three of his soldiers, and the almost fatal spring into the redoubt. "Few cases," he says, "have exhibited greater proofs of intrepidity, coolness, and firmness." Three days later Cornwallis surrendered.

In the summer of 1782 Hamilton was admitted to the bar in Albany, but soon afterward settled in New York City, where he seems to have come into practice and into fame by defending the rights of Tories. For four years after the war ended, the treatment of British sympathisers was the dominant political issue in New York. Governor Clinton advocated disfranchisement and banishment, and the Legislature enacted into law what he advised; so that when the British troops, under the peace treaty, evacuated New York, in November, 1783, loyalists who had thus far escaped the wrath of this patriot Governor, flocked to Nova Scotia and New Brunswick like birds seeking a more congenial clime, recalling the flight of the Huguenots after the revocation of the Edict of Nantes one hundred years earlier. It is not easy to estimate the number who fled before this savage and violent action of the Legislature. Sir Guy Carleton, in com-

mand at New York, fixes the number of loyalists at ten thousand souls. For many years the "Loyalists' Day" was annually commemorated in the cemeteries of England and Scotland, and the stones of these unfortunate dead were turned to the wall.

It is likely Clinton was too intolerant that follows revolution. In the end, hand, became an early advocate of the new order, and, although public sentiment against him, he finally succeeded in changing the other. "Nothing but the love of liberty than for a free people in time of momentary passions by the Legislature which afterwards provides that the Legislature can disfranchise all the votes to a small number of aristocracy or an oligarchy; without hearing or trial, no liberty applied to such a gross violation of common sense."²

The differences between Clinton and Hamilton respecting the collection of duties led to conflict. A Hamilton into conflict. A Hamilton considered the question whether the State should collect its own taxes by its own authority. In Congress in 1783, he urged the establishment of an adequate federal system of revenue by the Legislature. Here he introduced an extended exposition of the importance of the subject.³ Under the leadership of Hamilton, the State was willing to surrender the collection to Congress.

² *Hamilton's Works*

³ *Republic*, Vol. 1,

⁴ *Madison Papers*,

⁵ *Works*, Vol. 2, p.

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mand at New York, fixes the emigration at one hundred thousand souls. For many years the "Landing of the Loyalists" was annually commemorated at St. John, and in the cemeteries of England and Scotland are found the tombstones of these unfortunate devotees of the mother country.

It is likely Clinton was too intolerant, but it was the intolerance that follows revolution. Hamilton, on the other hand, became an early advocate of amnesty and oblivion, and, although public sentiment and the Legislature were against him, he finally succeeded in modifying the one and changing the other. "Nothing is more common," he observed, "than for a free people in times of heat and violence to gratify momentary passions by letting in principles and precedents which afterwards prove fatal to themselves. If the Legislature can disfranchise at pleasure, it may soon confine all the votes to a small number of partisans, and establish an aristocracy or an oligarchy; if it may banish at discretion, without hearing or trial, no man can be safe. The name of liberty applied to such a government would be a mockery of common sense."²

The differences between Congress and the Legislature respecting the collection of duties also brought Clinton and Hamilton into conflict. As early as 1776 Hamilton had considered the question whether Congress ought not to collect its own taxes by its own agents,³ and, when a member of Congress in 1783, he urged it⁴ as one of the cardinal features of an adequate federal system. In 1787 he was a member of the Legislature. Here he insisted upon having the federal revenue system adopted by the State. His argument was an extended exposition of the facts which made such action important.⁵ Under the lead of Clinton, however, New York was willing to surrender the money, but not the power of collection to Congress.

² *Hamilton's Works* (Lodge), Vol. 3, p. 450.

³ *Republic*, Vol. 1, p. 122.

⁴ *Madison Papers*, Vol. 1, pp. 288, 291, 380.

⁵ *Works*, Vol. 2, p. 16.

ition to which the Confederation of a stronger central government and Hamilton seemed for long in harmony. In 1780 the Legislature the "defect of and, in 1781, John Sloss Howe representing New York at a conference recommendation empowering among the States in the ratio next year, Hamilton, although more, persuaded it to adopt reserving that the powers of the extended, and that it should sue for itself. To this end "it did the resolutions, "to propose to each State to adopt, the general convention of the States, and amend the Constitution." After, appealing for a stronger government Clinton sent a cordial resolution address to the Legislature in favor "to every measure which would Union, and to give to the nation which may be necessary for the

not always candid. His official utterances of a friend; but his acts of 1783 and 1786, reserving the levying and collecting duties, showed his country in a matter—a country divided, a country against the other, a country of trade agreements, a country of more important to Clinton than to other Com-equal sacrifices.

of New York and other middle (Lodge), Vol. 1, p. 277.

Atlantic States discovered that it was impossible under the impotent Articles of Confederation to regulate commerce in waters bordered by two or more States. Even when New York and New Jersey could agree, Pennsylvania, on the other side of New Jersey, was likely to withhold its consent. Friction of a similar character existed between Maryland and Virginia, North Carolina and Virginia, and Maryland and Pennsylvania. This compelled Congress to call the convention, to which commissioners from New York, New Jersey, Pennsylvania, Delaware, and Virginia, assembled at Annapolis in 1786, to consider the trade and commerce of the United States, and to suggest measures for the action of Congress. Hamilton and Egbert Benson were members of this body, the former of whom wrote the address, afterward adopted, which declared the federal government inefficient, and proposed a convention to revise the Articles of Confederation,⁷ in order to render them adequate to the exigencies of the Union. This was the resolution unanimously adopted by the New York Legislature in 1782, but to the surprise of Hamilton and the friends of a stronger government, the Legislature now disapproved such a convention. The idea did not please George Clinton. As Hamilton summed up the opposition, it meant disinclination to taxation, fear of the enforcement of debts, democratic jealousy of important officials, and the influence of foreign powers.⁸

In 1787, however, the Legislature adopted a joint resolution instructing members of Congress from the State to urge that a convention be held to amend the Articles of Confederation, and, when Congress issued the call,⁹ Robert Yates, John Lansing, Jr., and Alexander Hamilton were elected delegates "for the sole purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations as shall, when agreed to by Congress and confirmed by the several States, render the Federal

⁷ *Journal of Congress*, Vol. 12, p. 12.

⁸ *Hamilton's Works* (Lodge), Vol. 1, p. 401.

⁹ In *Madison Papers*, Vol. 2, Introductory to Debates of 1787, is a history of previous steps toward union.

Constitution adequate to the exigencies of government and the preservation of the Union." Hamilton's election to this convention was cited as proof of Clinton's disposition to treat fairly the opponents of state supremacy, since it was well understood that his presence at Philadelphia would add the ablest and most ultra exponent of a strong, central government. It was certainly in Clinton's power to defeat Hamilton as he did John Jay, but his liberality carried a high check-rein, for Robert Yates and John Lansing were selected to overcome Hamilton's vote.

Clinton's first choice for a delegate was Yates, whose criticism of the work of the convention manifests hostility to a Union. He seemed to have little conception of what would satisfy the real needs of a strong government, preferring the vague doctrines of the old Whigs in the early days of revolution. Lansing was clearer, and, perhaps, less extreme in his views; but he wanted nothing more than an amendment of the existing Confederation, known as the New Jersey plan.¹⁰ The moment, therefore, that a majority favoured the Virginia plan which contemplated a national government

¹⁰ "After an amendment of the first, so as to declare that 'the government of the United States ought to consist of a supreme legislative, judiciary, and executive,' Lansing moved a declaration 'that the powers of legislation be vested in the United States Congress.' He stated that if the Jersey plan was not adopted, it would produce the mischiefs they were convened to obviate. That the principles of that system were an equality of representation, and dependence of the members of Congress on the States. That as long as state distinctions exist, state prejudices would operate, whether the election be by the States or the people. If there was no interest to oppress, there was no need of an apportionment. What would be the effect of the other plan? Virginia would have sixteen, Delaware one representative. Will the general government have leisure to examine the state laws? Will it have the necessary information? Will the States agree to surrender? Let us meet public opinion, and hope the progress of sentiment will make future arrangements. He would like the system of his colleague (Hamilton) if it could be established, but it was a system without example."—*Hamilton's MSS. notes*. Vol. 6, p. 77. Lansing's motion was negatived by six to four States, Maryland being divided.

with an executive, legislative, and judicial departments, and with the approval of the States, and with the approbation of the people, drew¹¹ from the convention the Constitution after its adoption.¹²

Hamilton doubted if Madison could secure the object in view, of continuing a President and Senate, and giving the federal government the power of States and to veto state laws. In his speech presenting this plan he said it was "attainable," but thought it would be as near as possible to approach as near as possible to what had been preferred, however imperfect, and although he could not secure a majority of the State's ratification, he was privileged to sign the Constitution, and if he had done anything else, it was his name to that immortal

¹¹ Yates and Lansing retired.

¹² "That they acted in accordance with his department at this time. I think, that no good was to be derived from deliberations of this body; that the confusion by the measure. If the government were governed in ordinary cases by the same temper, when not unduly influenced, he was circumspect and without premeditation or design in his declarations, therefore, Hamilton would induce the confusion and to exhibit it before the public. He published a pointed animadversion upon him, and avowing a reconciliation. C. Hamilton, *Life of Alexander Hamilton*, pp. 371, 381, present plan. For fac-simile copy of the original, see *History of the Constitution* (a fac-simile copy), p. 771.

¹³ *Works*, Vol. 1, p. 357. G. Hamilton, *Life of Alexander Hamilton*, pp. 371, 381, present plan. For fac-simile copy of the original, see *History of the Constitution* (a fac-simile copy), p. 771.

agencies of government and Hamilton's election to this of Clinton's disposition to state supremacy, since it was at Philadelphia would add to the power of a strong, central government.

Clinton's power to defeat but his liberality carried a vote and John Lansing were a vote.

Yates, whose criticism manifests hostility to a conception of what would be a government, preferring the plan in the early days of revolution, perhaps, less extreme in its more than an amendment known as the New Jersey plan, had a majority favoured the plan for a national government.

so as to declare that 'the government to consist of a supreme legislature moved a declaration 'that in the United States Congress.' was not adopted, it would produce no obviated. That the principles of representation, and dependence on the States. That as long as state government would operate, whether the plan. If there was no interest to proportionment. What would be the result? Pennsylvania would have sixteen, Delaware would have leisure to have the necessary information? Let us meet public opinion, will make future arrangements. My colleague (Hamilton) if it could be without example."—Hamilton's motion was negatived by six to four.

with an executive, legislature, and judiciary of its own, Lansing and Yates, regarding it a violation of their instructions, and with the approval of Governor Clinton, withdrew¹¹ from the convention and refused to sign the Constitution after its adoption.¹²

Hamilton doubted if Madison's plan was strong enough to secure the object in view. He suggested a scheme continuing a President and Senate during good behaviour, and giving the federal government power to appoint governors of States and to veto state legislation. In the notes of a speech presenting this plan, he disclaimed the belief that it was "attainable," but thought it "a model which we ought to approach as near as possible."¹³ After the Madison plan had been preferred, however, Hamilton gave it earnest support, and although he could not cast New York's vote, since a majority of the State's representatives had withdrawn, he was privileged to sign the Constitution. If he had never done anything else, it was glory enough to have subscribed his name to that immortal record. When Hamilton returned

¹¹ Yates and Lansing retired finally from the convention on July 10.

¹² "That they acted in accordance with Clinton was proved by his deportment at this time. Unreserved declarations were made by him, that no good was to be expected from the appointment or deliberations of this body; that the country would be thrown into confusion by the measure. Hamilton said 'Clinton was not a man governed in ordinary cases by sudden impulses; though of an irritable temper, when not under the immediate influence of irritation, he was circumspect and guarded, and seldom acted or spoke without premeditation or design.' When the Governor made such declarations, therefore, Hamilton feared that Clinton's conduct would induce the confusion he so confidently and openly predicted, and to exhibit it before the public in all its deformity, Hamilton published a pointed animadversion, charging these declarations upon him, and avowing a readiness to substantiate them."—John C. Hamilton, *Life of Alexander Hamilton*, Vol. 2, p. 528.

¹³ *Works*, Vol. 1, p. 357. G. T. Curtis, *Commentaries on the Constitution*, pp. 371, 381, presents a very careful analysis of Hamilton's plan. For fac-simile copy of Hamilton's plan, see *Documentary History of the Constitution* (a recent Government publication), Vol. 3, p. 771.

home, however, he found himself discredited by a majority of the people. "You were not authorised by the State," said Governor Clinton.¹⁴ Richard Morris, the chief justice, remarked to him: "You will find yourself, I fear, in a hornet's nest."¹⁵

On September 28, 1787, Congress transmitted a draft of the Constitution, which required the assent of nine of the thirteen States, to the several legislatures. At once it became the sole topic of discussion. In New York it was the occasion of riots, of mobs, and of violent contests. It was called the "triple-headed monster," and declared to be "as deep and wicked a conspiracy as ever was invented in the darkest ages against the liberties of a free people." Its opponents, numbering four-sevenths of the community—although their strength was mainly in the country¹⁶—and calling themselves Federal Republicans, organised a society and opened correspondence with leading men in other States. "All the old alarm about liberty was now revived," says W. G. Sumner, "and all the elements of anarchy and repudiation which had been growing so strong for twenty years were arrayed in hostility."¹⁷ But its bitterest opponent in the thirteen Colonies was George Clinton.¹⁸ "He preferred to remain the most powerful citizen of New York, rather than occupy a subordinate place under a national government in which his own State was not foremost."¹⁹ On the other hand, the *Federalist*, written largely by Hamilton, carried conviction to the minds of thousands who had previously doubted the wisdom of the plan. In the last number of the series, he said: "The system, though it may not be perfect in every part, is upon the whole a good one, is the best that the present views and circumstances will permit,

¹⁴ M. E. Lamb, *History of the City of New York*, Vol. 2, p. 318.

¹⁵ *Ibid.*, Vol. 2, p. 318.

¹⁶ W. G. Sumner, *Life of Hamilton*, p. 137.

¹⁷ *Ibid.*, p. 135.

¹⁸ John Fiske, *Critical Period of American History*, p. 340.

¹⁹ John Fiske, *Essays Historical and Literary*, Vol. 1, p. 118.

and is such an one as I which a reasonable people

When the Legislature of the usual speech or message everybody else was talking constitution was the only im four States had already under consideration; yet idea was for New York to Then, if the Union succeeded were expected to break it come in. Meantime, like posed another general possible, to consider amendment January, 1788, when Eg Legislature, offered a resolution to consider the federal blocked its way, and its things; but Benson persisted, the resolution was

Of the sixty-one delegates bled at the courthouse thirds were opposed to organised with Governor champions of the Constitution R. Livingston, Robert of New York, John Slo others of like character Melancthon Smith, and against it. Beginning on until July 28. Hamilton at times there was not an emphasised the public duty us with shame, that we

²⁰ *Works of Hamilton*, V

²¹ W. G. Sumner, *Life of*

²² M. E. Lamb, *History of*

self discredited by a majority authorised by the State," said Morris, the chief justice, remind yourself, I fear, in a hor-

gress transmitted a draft of red the assent of nine of the legislatures. At once it began. In New York it was the seed of violent contests. It was sterile," and declared to be "as far as ever was invented in the theories of a free people." Its opponents of the community—already in the country¹⁶—and call-licans, organised a society and leading men in other States. Liberty was now revived," says W. Deane of anarchy and repudiation; so strong for twenty years. But its bitterest opponent George Clinton.¹⁸ "He powerful citizen of New York, his place under a national state was not foremost."¹⁹ On the plan, written largely by Hamilton, thousands who had pre-ferred the plan. In the last number of the system, though it may not be the whole a good one, is the said circumstances will permit,

History of New York, Vol. 2, p. 318.

Clinton, p. 137.

¹⁶ *American History*, p. 340.

¹⁷ *Life and Literary*, Vol. 1, p. 118.

and is such an one as promises every species of security which a reasonable people can desire."²⁰

When the Legislature opened, Governor Clinton delivered the usual speech or message, but he said nothing of what everybody else was talking about. Consideration of the Constitution was the only important business before that body; four States had already ratified it, and three others had it under consideration; yet the Governor said not a word. His idea was for New York to hold off and let the others try it. Then, if the Union succeeded, although revenue difficulties were expected to break it up immediately,²¹ the State could come in. Meantime, like Patrick Henry of Virginia, he proposed another general convention, to be held as soon as possible, to consider amendments. Thus matters drifted until January, 1788, when Egbert Benson, now a member of the Legislature, offered a resolution for holding a state convention to consider the federal document. Dilatory motions blocked its way, and its friends began to despair of better things; but Benson persisted, until, at last, after great bitterness, the resolution was adopted.

Of the sixty-one delegates to this convention, which assembled at the courthouse in Poughkeepsie on June 17, two-thirds were opposed to the Constitution.²² The convention organised with Governor Clinton for president. Among the champions of the Constitution appeared Hamilton, Jay, Robert R. Livingston, Robert Morris, James Duane, then mayor of New York, John Sloss Hobart, Richard Harrison, and others of like character. Robert Yates, Samuel Jones, Melancthon Smith, and John Lansing, Jr., led the fight against it. Beginning on June 19, the discussion continued until July 28. Hamilton, his eloquence at its best, so that at times there was not a dry eye in the assembly,²³ especially emphasised the public debt. "It is a fact that should strike us with shame, that we are obliged to borrow money in order

²⁰ *Works of Hamilton*, Vol. 9, p. 548.

²¹ W. G. Sumner, *Life of Hamilton*, p. 137.

²² *Ibid.*, 137.

²³ M. E. Lamb, *History of the City of New York*, Vol. 2, p. 320.

Melancthon Smith was the ablest opponent of the Constitution. Familiar with political history, and one of the ablest debaters in the country, he proved himself no mean antagonist even for Hamilton. "He must have been a man of rare candour, too," says John Fiske, "for after weeks of debate he owned himself convinced."²⁷ Whatever could be said against the Constitution, Smith voiced it; and there was apparent merit in some of his objections. To a majority of the people, New York appeared to be surrendering natural advantages in much larger measure than other Commonwealths, while its concession of political power struck them as not unlikely to endanger the personal liberty of the citizen and the independence of the State. They disliked the idea of a far-off government, with many officers drawing large salaries, administering the army, the navy, and the diplomatic relations with nations of the Old World. It was so different from anything experienced since their separation from England, that they dreaded this centralised power;

²⁷ John Fiske, *Essays Historical and Literary*, Vol. 1, p. 125.

Hamilton, however, did arranged for news of the ventions, and while Clinton ditional ratification, still Hampshire, by a system story that the requisite 1 This reduced the question days later it was learned majority. The support of strength to Governor Clinton's fear that New

²⁸ *Hamilton's Works*, Vol.

It is a fact that these debts compound interest."²⁴ Indeed, the idea of liberty alone was equally important, strength and stability in the , and of vigour in its operation. His admirable biography, expressed about debts in the *Federalist* about the Supreme Court. He says, "in view of the subsequently 'sleeping giant' in the Constitution, the power of the Supreme Court, the rationality of laws. It does not seem anybody else foresaw that this would build upon the written constitutional law."²⁶

His ablest opponent of the Constitution in history, and one of the few who proved himself no mean

"He must have been a man," said Fiske, "for after weeks of discussion, he was silenced."²⁷ Whatever could be said in its favour was voiced; and there was no room for objections. To a majority of the States it seemed a measure to be surrendering rather than other. The concentration of political power struck at the personal liberty of the people of the State. They disliked the centralisation with many officers drawing from the army, the navy, and the revenues of the Old World. It was feared since their separation had created this centralised power;

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Hamilton, p. 139.
Political and Literary, Vol. 1, p. 125.

and, to minimise it, they proposed several amendments, among them one that no person should be eligible to the office of President for a third term. Time has demonstrated the wisdom of some of these suggestions; but commendable as they now appear after the lapse of more than a century, they were of trifling importance compared to the necessity for a closer, stronger union of the States in 1787.

Federalists were much alarmed over the failure of New York to ratify. Although the State ranked only fifth in population, commercially it was the centre of the Union. From the standpoint of military movements, too, it had been supremely important in the days of Montcalm and Burgoyne, and it was felt that a Federal Union cut in twain by the Mohawk and Hudson valleys must have a short life. "For my own part," said Hamilton, "the more I can penetrate the views of the anti-federal party in this State, the more I dread the consequences of the non-adoption of the Constitution by any of the other States—the more I fear eventual disunion and civil war."²⁸ His fear bred an apparent willingness to agree to a conditional ratification,²⁹ until Madison settled the question that there could be no such thing as conditional ratification since constitutional secession would be absurd. On July 11 Jay moved that "the Constitution be ratified, and that whatever amendments might be deemed expedient should be recommended." This, however, did not satisfy the opposition, and the discussion continued.

Hamilton, however, did not rely upon argument alone. He arranged for news of the Virginia and New Hampshire conventions, and while Clinton, clinging to his demand for conditional ratification, still hesitated, word came from New Hampshire, by a system of horse expresses, telling the glad story that the requisite number of States had been secured. This reduced the question to ratification or secession. A few days later it was learned that Virginia had also joined the majority. The support of Patrick Henry had been a tower of strength to Governor Clinton, and his defeat exaggerated Clinton's fear that New York City and the southern counties

²⁸ *Hamilton's Works*, Vol. 8, p. 187.

²⁹ *Ibid.*, p. 191.

which favoured the Constitution might now execute their threat to split off unless New York ratified. Then came Melancthon Smith's change to the federalist side. This was like crushing the centre of a hostile army. Finally, on July 28, a resolution "that the Constitution be ratified *in full confidence* that the amendments proposed by this convention will be adopted," received a vote of thirty to twenty-seven. Governor Clinton did not vote, but it was known that he advised several of his friends to favour the resolution. On September 13, he officially proclaimed the Federal Constitution as the fundamental law of the Republic.

Posterity has never severely criticised George Clinton's opposition to national development. His sincerity and patriotism have been accepted. To Washington and Hamilton, however, his conduct seemed like a cold and selfish desertion of his country at the moment of its utmost peril. "The men who oppose a strong and energetic government," wrote Washington to Hamilton on July 10, 1787, the day of Yates' and Lansing's retirement from the Philadelphia convention, "are, in my opinion, narrow-minded politicians, or are under the influence of local views." This reference to "local views" meant George Clinton, upon whose advice Yates and Lansing acted, and who declared unreservedly that only confusion could come to the country from a convention and a measure wholly unnecessary, since the Confederation, if given sufficient trial, would probably answer all the purposes of the Union.

The march of events has so clearly proved the wisdom of Hamilton and the unwisdom of Clinton, that the name of one, joined inseparably with that of Washington, has grown with the century, until it is as much a part of the history of the Union as the Constitution itself. The name of George Clinton, on the contrary, is little known beyond the limits of his native State. It remained for DeWitt Clinton, the Governor's distinguished nephew, to link the family with an historic enterprise which should bring it down through the ages with increasing respect and admiration.

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CLINTON'S I

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At each triennial election adoption of the State Const had been chosen governor. been seriously talked of, saw Clinton derived some advantages, which multiplied inence as term succeeded term spiration from sources other rugged character, and a ger their roots deeply into the who supported their favour friendship.

The time had, however, c to continue as governor w encounter with the New Yo stitution had been vigorous to stand with one's State in opposition had behind it tl the persuasive Clinton arg the substitution of experir change of a superior for an a splendid stubbornness to the desperate odds arrayed man who wanted to curry : strike at Hamilton, and t Very likely his attitude wa of angry opponents. He d