# The Constitution of 1776

RICHARD J. CONNORS

New Jersey Historical Commission

NEW JERSEY'S REVOLUTIONARY EXPERIENCE

Larry R. Gerlach, *Editor*

*This series of publications is dedicated to the memory of Alfred E. Driscoll, governor of New Jersey from 1947 to 1954, in grateful tribute to his lifelong support of the study and teaching of the history of New Jersey and the United States. He was a member of the New Jersey Historical Commission from 1970 until his death on March 9, 1975.*

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**Library of Congress Cataloging in Publication Data**
Connors, Richard J. 1927-
The Constitution of 1776.
(New Jersey's Revolutionary experience; 15)
Bibliography: p.
1. New Jersey—Constitutional history. 2. New Jersey—Politics and government—Revolution, 1775-1783. I. Title. II. Series. E263.N5N78 no. 15[KFN2201.5]974.9'03s[342'.749'029]75-41468

Price: $.50

Designed by Peggy Lewis and Lee R. Parks
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**THE NEW JERSEY AMERICAN REVOLUTION BICENTENNIAL CELEBRATION COMMISSION**

# Foreword

*New Jersey's Revolutionary Experience* is a Bicentennial pamphlet series published by the New Jersey Historical Commission with a grant from the New Jersey Bicentennial Commission. The twenty-six numbers and two teachers' guides are intended to acquaint secondary school students and the general public with the state's history during the era of the American Revolution. Some titles treat aspects of the Revolution in New Jersey, while others show how important themes of the colonial period developed during the revolutionary years; some bring together the results of existing scholarship, while others present the findings of original research; some are written by professional historians, and others by laymen whose investigations of Jersey history exceed avocation. Because the series is directed to a general audience, the pamphlets have no footnotes but contain bibliographical essays which offer suggestions for further reading.

*New Jersey's Revolutionary Experience* is the product of a cooperative venture by numerous individuals and agencies. On my behalf and that of the pamphlets' readers, I accord recognition and appreciation to the individual authors for their contributions to New Jersey history, to the New Jersey American Revolution Bicentennial Celebration Commission and the New Jersey Historical Commission for their support of the project, to Hank Simon, president, Trentypo, Inc., for his invaluable suggestions and cooperation in producing the series, and to the staff of the Historical Commission: Richard Waldron, Public Programs Coordinator, who as project director supervised the series from commencement to completion; Peggy Lewis, Chief of Publications and Information, and Lee R. Parks, Assistant Editor, who edited and designed each number; and William C. Wright, Associate Director, who contributed valuable suggestions at every stage of production.

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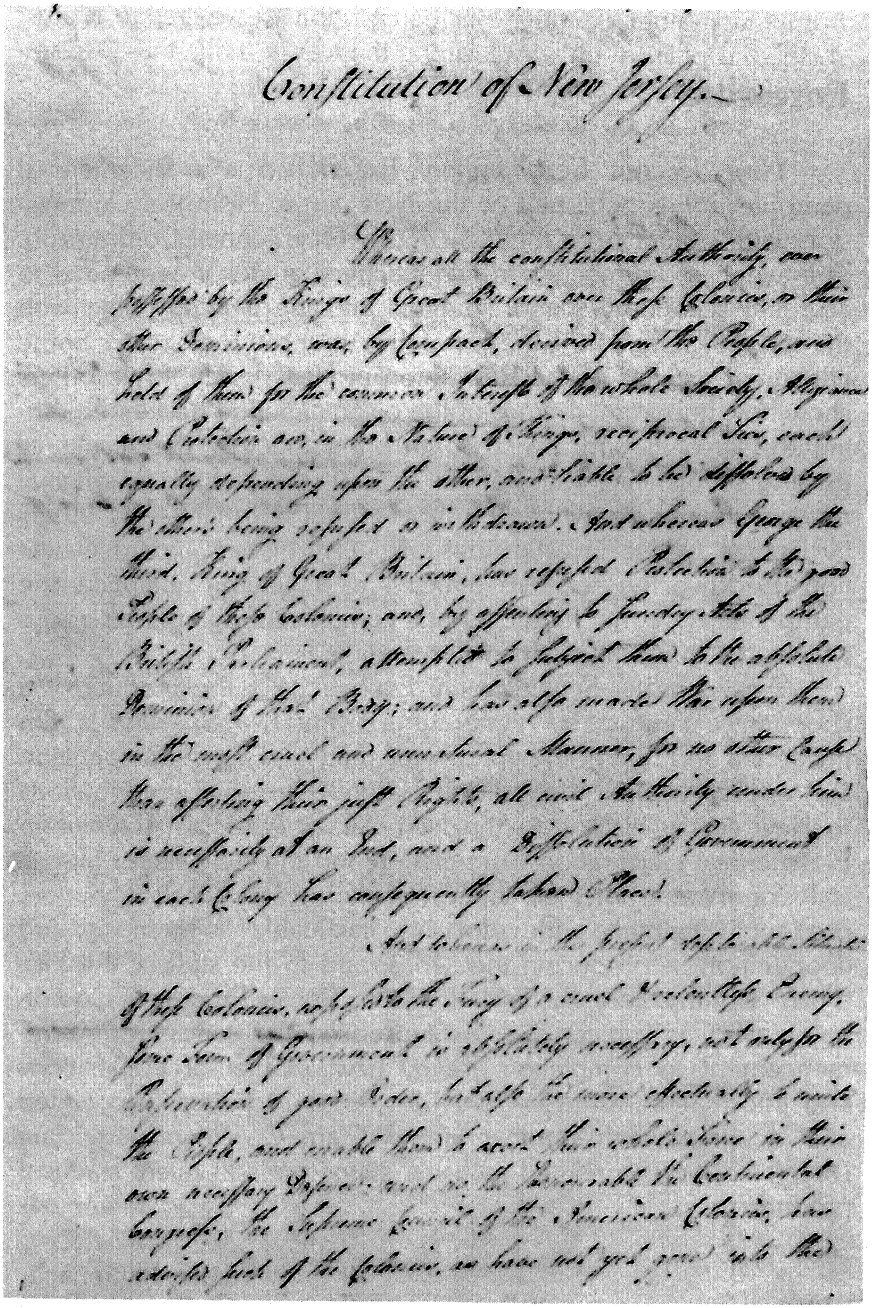

Constitution of New Jersey.

Whereas all the constitutional Authority, exercised by the Kings of Great Britain over these Colonies, or their other Dominions, was, by Compact, derived from the People, and held of them for the common Interest of the whole Society, Allegiance and Protection are, in the Nature of things, reciprocal Ties, each equally depending upon the other, and liable to be dissolved by the other being refused or withdrawn. And whereas George the third, King of Great Britain, has refused Protection to the good People of these Colonies; and, by assuming to himself Rights of the Civil Government, attempted to subject them to the absolute Dominion of that Body; and has also invaded their rights in the most cruel and unnatural Manner, for no other Purpose than asserting their just Rights, all civil Authority under him is necessarily at an End, and a Dissolution of Government in each Colony has consequently taken Place.

And whereas in the present State of these Colonies, no Application to the King of a cruel Prevailing Enemy, for Leave to form Governments is absolutely necessary, and inconsistent with the Preservation of good Order, he takes the more effectually to invite the People, and enable them to accept his gracious Grant in Preference to every necessary Defence and in the deservable the Continental Congress, the Supreme Council of the American Colonies, have advised that all the Colonies, as have not yet gone into the

First page of the New Jersey Constitution of 1776. Courtesy New Jersey State Library, Archives and History Bureau. Photograph by Joseph Crilley.

In the spring of 1776, Burlington was a pleasant New Jersey village of more than one hundred homes, situated on the Delaware River some twenty miles north of Philadelphia. Burlington traditionally engaged in a brisk trade with that city and provided merchants and artisans to service nearby farms. Adding to its luster was its status as one of New Jersey's two provincial capitals. Since 1702 (when the provinces of East and West Jersey were reunited), the governor and colonial legislature, consisting of Provincial Council and assembly, met alternately at Burlington and Perth Amboy to receive petitions, decide upon the laws, and levy taxes for the support of His Majesty's provincial government.

That government, however, had almost ceased to function by the spring of 1776. Governor William Franklin (son of the famous inventor, Benjamin) had been under virtual house arrest in his Perth Amboy mansion since March. The effective government in New Jersey was extralegal — a revolutionary apparatus built around local committees of correspondence and observation, a Provincial Congress and a Committee of Safety. These agencies had begun to emerge in the middle of 1774, first as mechanisms of protest against crown policies, then as instruments to develop and implement their own programs. Through their efforts economic sanctions had been enforced against Great Britain and then, following the battles of Lexington and Concord, a New Jersey militia had been formed and financed. The Provincial Congress also became the body that selected delegates to the intercolonial Continental Congress.

Late in May 1776, voters in each of New Jersey's thirteen counties elected new representatives to the Provincial Congress.

These men — five per county — began gathering in Burlington early in June. It was not until the afternoon of the eleventh, however, that a quorum was present and the delegates could turn to a crowded agenda. Problems of provincial defense were paramount: a British fleet lay off Staten Island, and there were recurrent rumors of invasion by General William Howe's legions. Therefore, one of the first acts of the Provincial Congress was an ordinance to raise another thirty-three hundred militiamen. The question of independence also took center stage, as it did at the Continental Congress meeting downstream in Philadelphia. New Jersey opted for liberty. On June 22 the Provincial Congress elected five new delegates to the Continental Congress, instructing them

> to join with the delegates of the other colonies . . . in the most vigorous measures for supporting the just rights and liberties of America. And, if you shall judge it necessary and expedient for this purpose, we empower you to join with them in declaring the United Colonies independent of Great Britain.

The Provincial Congress also faced the task of setting New Jersey's governmental house in order. The first part of the job was to end all traces of royal authority in New Jersey, and this meant dealing with Governor Franklin. In a last, desperate attempt to maintain some semblance of his power, Franklin had issued a call to the members of the colonial assembly, asking that they meet with him in Perth Amboy. The Provincial Congress countered with its own message to the assemblymen, warning them not to convene, and it ordered Franklin brought under guard to Burlington. The governor appeared before a session of the congress, but denounced it and refused to answer any questions. A few days later, upon receiving directions from Philadelphia, the Provincial Congress sent Franklin to Connecticut. Royal government in New Jersey was over.

On June 24, the task of developing a new government for New Jersey was entrusted to a ten-man committee, headed by the Reverend Jacob Green. Prominent among the committee members was John Dickinson Sergeant, who came from Philadelphia after serving as a delegate to the Continental Congress. Some historians have surmised that Sergeant brought with him the draft of a constitution for New Jersey. At the very least he brought to the committee's deliberations the ideas John Adams and other colonial

leaders propounded at Philadelphia.

These ideas reflected the colonists' disenchantment with major British institutions and the conceptual framework that idealized them. Prior to the 1770s most Americans believed that the British "mixed constitution" — with its king and Parliament composed of the Houses of Lords and Commons — its monarchic, aristocratic, and democratic elements — was the best of all governmental worlds. But they had also breathed the air of conspiracy that permeated English politics in the eighteenth century. British writers saw their beloved constitution under constant threat of subversion by power-seeking prime ministers, corrupt parties and officials. Similar fears surfaced in the colonies during the years of ferment and discord that followed the French and Indian War (1756-1763). Americans at first saw British officialdom as the subverter of their constitutional liberties, with colonial governors acting as London's scheming puppets. Eventually the colonists turned against the monarch himself and, as the Declaration of Independence showed, labeled him as the archconspirator.

Since the monarchy was the keystone of the British constitution and since an hereditary aristocracy had not been established on American shores, the mixed constitution, English version, no longer had much importance for the colonists. The replacement being promoted at Philadelphia was republicanism, especially by John Adams in his influential tract, "Thoughts on Government." In that brief work Adams argued "there is no good government but what is republican," with all political institutions dependent upon the people. And it was this principle — republicanism — which thrust its way into the deliberations of the Reverend Green and his colleagues at Burlington.

Within three days Green's committee drafted and presented a proposed constitution to the Provincial Congress. Four days of debate followed, but, unfortunately, we have no transcript of those proceedings nor even notes comparable to those James Madison made during the federal Constitutional Convention of 1787. We have only the official minutes of the congress, which show that the constitution was adopted on July 2 by a vote of 26 to 9. This was a considerable drop from the 54 to 3 vote on June 21, in which the congress accepted responsibility for forming a new government. Some delegates' early departures to their homes, quarrels over

documentary details, and unhappiness with the constitution's concluding paragraph, which declared that "this charter shall be null and void" in case of reconciliation with Britain, appear logical explanations of the low vote. But low vote or not, the die was cast. The constitution adopted so swiftly that summer would remain in force for sixty-eight years, with some of its principles effective today.

## THE CONSTITUTION OF 1776 – Nature and Contents

Twentieth century New Jerseyans can readily define and describe a "state constitution." To us it is a written document that delineates the rights of the people, outlines the structure and details the powers of government, prescribes how the citizens control that government, and provides ways in which the document itself can be amended and revised. Having such sophisticated notions, we are apt to read the constitution of 1776 with a feeling of disappointment. The document contains no Bill of Rights, and in less than twenty-five hundred words covers little but the qualifications, selection, and tenure of the principal officials of the new government. But we must remember that our ideas about the nature and contents of a constitution reflect two hundred years of state history. The men at Burlington, on the other hand, were spading comparatively new ground. They had been governed by documents which were developed by London bureaucrats, not produced by their own discussion and deliberation. Only New Hampshire (January 1776) and South Carolina (March) preceded New Jersey in drafting constitutions. Rhode Island and Connecticut merely readopted their colonial charters, Virginia developed a constitution at about the same time as New Jersey, and the other colonies waited until after the Declaration of Independence. Thus few "models" existed for our Founding Fathers. Further, the conclave at Burlington had little time to debate political philosophy and argue the fine points of documentary style. Rather, the Provincial Congress operated under great pressure, and constitution making was but one of its tasks. Viewed from this perspective, the nature of the first New Jersey constitution—a brief, unsophisticated document that does little more than sketch out a governmental system—becomes understandable.

What sort of fabric was provided? Our Founding Fathers rejected the revolutionary apparatus that had evolved between 1774 and 1776, i.e., a unicameral legislature, a plural executive (the

Committee of Safety), a network of local committees. Instead, the constitution's authors reworked and relegitimized the political fabric that had served New Jersey during the colonial period. Even some of the names remained the same. Governor, assembly, courts of common law and equity: all were continued. The Provincial Council reappeared as the Legislative Council. In brief, the Provincial Congress felt constrained to utilize familiar institutions during the years of stress and peril that lay ahead.

But the decision to sever New Jersey's ties with the crown necessitated changes. As a royal province, 1702-1776, New Jersey had been under London's thumb. The crown appointed governor and council, exercised a veto over provincial legislation, and limited the legislature's fiscal powers. The constitution makers of Burlington excised royal power from the system and replaced it with popular power. The monarchical principle was rejected; the republican principle — lauded in tract and pamphlet throughout the colonies — took its place. Thus the number of elected officials increased dramatically. Republicanism also meant a major shift in the power structure within the central government. The crown had emphasized the position of the governor, who was viewed as royal agent. The constitution of 1776 emphasized the position of the legislature, which was viewed as the people's agency. The new constitution thus provided institutions of government both in continuity with and deviating from the colonial order.

## The Governor

During her years as a royal province the "commissions and instructions" issued to a succession of royal governors dictated the fabric and functions of New Jersey's government. These individuals were appointees, serving at the pleasure of the crown. William Franklin, for example, served from 1763 until ousted by the colonists in 1776.

The governor's office was not simply what we think of today as an executive or administrative office. It was an office of diverse responsibilities, of commingled powers. The governor was judge, legislator, administrator, and military commander. He also had considerable discretionary authority, exercising what in Britain was called prerogative power. Thus the royal governor could summon the legislature to meet whenever he chose, could dismiss it, veto (disallow) its laws, grant pardons (except in cases of treason or

murder), and remit fines of £10 or less levied by the provincial courts. Above the governor was the broader prerogative of the crown which, for example, could grant pardons and remit fines in any case, and could also veto acts approved by the provincial legislature.

What impact did the constitution of 1776 have on the governor? He became an elected official, chosen by the legislature in a joint meeting of the councillors and assemblymen. His brief term, set at one year, and legislative election were in accord with republican doctrines of the time, especially as propounded by John Adams. There was no ban, however, on a governor's serving more than one term. Our first state governor, William Livingston, served fourteen straight terms from 1776 through 1790.

The governor continued to function as a legislator. He remained the presiding officer of the council, or upper house, able to cast the deciding vote in case of a tie. But he lost most of his legislative prerogatives. The legislature would no longer meet at his pleasure but was constitutionally required to convene two weeks after the annual October elections. Each house decided when it should adjourn. The governor's veto power was eliminated. Once a bill was approved by both houses, his role was simply to promulgate it. The New Jersey governor, in brief, remained a participant in the legislative process with greatly reduced powers. The story was similar in the other states: only Massachusetts continued to allow its governor a veto power.

The New Jersey governor was reassigned his other familiar roles, but again with reductions in power. He remained chief judge, with the titles of chancellor (responsible for the field of equity — that branch of law serving to supplement and remedy the inflexibilities and limitations of common law) and surrogate general (responsible for wills and estates). The council continued as New Jersey's court of last resort. The governor, as its presiding officer, was thus presiding judge when the council heard cases on appeal. The governor's principal loss of power was in the area of patronage. In colonial times he selected all judges; henceforth they were to be chosen by the legislature in joint meeting. In other words, in the future judicial politics would focus on the halls of the legislature rather than the governor's office. The latter also saw its clemency power checked somewhat. The constitution of 1776 assigned the

power to pardon to the governor and council as a collective body.

The governor remained commander in chief of the New Jersey militia. But once more his office was shorn of substantial patronage. The selection of generals and field grade officers (colonels, majors) was taken from his hands and given to the legislature. Militia companies in the various counties were empowered to select their own captains and lesser officers. The elective principle, felt to be consistent with the nature of a "republican" army, was quite popular among militiamen throughout the colonies at the time.

Finally, the governor was designated the "supreme executive" of New Jersey although there was no constitutional definition of what this title implied. If one assumes that it meant an obligation to maintain law and order throughout the state, the governor's ability to carry out such a duty was weakened by the fact that the attorney general and other key state officials were now legislative rather than gubernatorial appointees. Moreover, the constitution ended the governor's power to appoint county sheriffs; from 1776 on they were to be chosen by the voters of each county. The long range implication of this change was the inclination to decentralize the police function in New Jersey.

As refashioned at Burlington the office of governor retained many of its former functions but was substantially reduced in power. Its loss of prerogative and appointment powers seem to have lessened the ability of an incumbent to carry out the duties delegated to the office by the constitution. Whether a governor could develop alternative sources of influence — through the power of custom or the power of party — would be for the future to determine.

**The Legislature**

As has been indicated, the new constitution retained the bicameral principle with an upper house (Legislative Council) and lower house (assembly). New Jersey's decision was in line with practice in the other states. Every state that had had a bicameral legislature in colonial times continued it under its first constitution. The Pennsylvania legislature, on the other hand, was unicameral as it had been before independence.

In colonial New Jersey, the Provincial Council had consisted of

twelve crown appointees (hence in the governor's commission and instructions it was referred to as "our" council) serving at pleasure, plus two persons serving *ex officio*. These were the deputy governor — an office rarely filled — and the surveyor general of the customs. In practice, the council was dominated by wealthy merchants, landowners, and lawyers from such centers as Perth Amboy, Elizabethtown (modern Elizabeth), Burlington, and Trenton. The spirit of republicanism embodied in the constitution of 1776 brought change here. The Legislative Council was comprised of one elected representative per county, a total of thirteen members, serving terms of one year. The new upper house, therefore, was geographically more representative of New Jersey society. No longer would a few towns monopolize its membership. To our Founding Fathers, nonetheless, republicanism did not mean plebeian power. Councillors were expected to be men of substance, and the constitution itself prescribed qualifications for the office. A councillor had to be a Protestant and a resident of his county for at least one year and he had to have an estate or personal property worth at least £1,000 proclamation money (colonial currency).

The phrase "Legislative Council" has connotations that tend to confuse the twentieth century reader. Hence it must be emphasized that the council of 1776 was a multipurpose institution, not just a participant in the lawmaking process. It was functionally closer to the old colonial council than to the state senates that followed under the constitutions of 1844 and 1947. Prior to independence the council had formed an advisory body and became an important court. Under the constitution of 1776 it retained these responsibilities. The new upper house functioned as a privy council to the governor and sat with him as the state's court of last resort.

The council gained the power of appointment, which it was to share with the assembly in joint meetings. Comprising but one-quarter of the membership of such a meeting, however, the council was hardly the assembly's equal in the appointing process. (The assembly initially consisted of thirty-nine members.) There was more equality in the lawmaking process. To be passed into law a bill had to receive affirmative votes from a majority of the members of each house, with the exception of money bills. The assembly alone had the right to initiate tax or appropriation measures, and these

the council could only vote to approve or disapprove, not to amend. Here the constitution makers of 1776 attempted to eliminate an old source of political controversy in New Jersey. As the people's, i.e., the taxpayers' agent, the colonial assembly had repeatedly protested against the fiscal pretensions of the council, which was felt to be under the governor's thumb. Although the council became a republican institution under the new constitution, its colonial image thus cost it equality of power in financial affairs.

The council was allowed to elect its own vice-president (the governor acted as president), who was to assume the responsibilities of the governor in case of his absence from the state. During its years as a royal province, New Jersey had only been assigned a deputy governor on two occasions. The crown at other times allowed the presiding officer of the council (usually the senior councillor) to fill that role. In view of this history, our Founding Fathers saw no need to continue the office of deputy governor beyond 1776. It has never been revived.

The assembly's new base of representation was exclusively the county. Its predecessor, the provincial assembly, had included delegates from the capitals of Burlington and Perth Amboy. (The 1776 Constitution did not provide for a state capital: the legislature determined on Trenton in 1790.) This special treatment was ended. The constitution allocated three assembly seats to each county, but authorized future legislatures to reassign those seats and/or add to the size of the assembly to take population changes into account. As things turned out, both mechanisms were used as population increased and new counties were created. By 1844, when a revised constitution was adopted, the assembly consisted of fifty-eight members, with county allocations ranging from one to seven seats.

Eligibility for membership in the assembly was restricted to those Protestants worth at least £500 proclamation money. This was a modest liberalization of the crown's requirement that an assemblyman be a freeholder (landowner) with an estate of one-thousand acres, or that he be worth £500 sterling (British currency). The constitution also mandated county residency of one year for an assemblyman. With such a stipulation New Jersey — like her sister states — ruled out the system of representation that prevailed for the House of Commons. A British subject could "stand for election" in a constituency even if he did not live there.

## CONSTITUTION OF NEW-JERSEY.

WHEREAS all the constitutional authority, ever possessed by the Kings of Great-Britain over their colonies, or their other dominions, was, by compact, derived from the people, and held of them for the common interest of the whole society; allegiance and protection are, in the nature of things, reciprocal ties, each equally depending upon the other, and liable to be dissolved by the other's being refused or withdrawn. And whereas George the Third, King of Great-Britain, has refused protection to the good people of these Colonies; and, by assenting to sundry acts of the British Parliament, attempted to subject them to the absolute dominion of that body; and has also made war upon them in the most cruel and unnatural manner, for no other cause than asserting their just rights, all civil authority under him is necessarily at an end, and a dissolution of government in each Colony has consequently taken place.

And whereas in the present deplorable situation of these Colonies, exposed to the fury of a cruel and relentless enemy, some form of government is absolutely necessary, not only for the preservation of good order, but also the more effectually to unite the people, and enable them to exert their whole force in their own necessary defence; and as the honourable the Continental Congress, the supreme Council of the American Colonies, has advised such of the Colonies, as have not yet gone into the measure, to adopt for themselves respectively such government, as shall best conduce to their own happiness and safety, and the well-being of America in general; We, the representatives of the Colony of New-Jersey, having been elected by all the counties in the freest manner and in Congress assembled, have, after mature deliberation, agreed upon a set of Charter-Rights, and the form of a Constitution, in manner following, viz.

I. That the Government of this province shall be vested in a Governor, Legislative Council, and General Assembly.

II. That the said Legislative Council and Assembly shall be chosen, for the first time, on the second Tuesday of August next; the members whereof shall be the same in number and qualifications as is herein after mentioned; and shall be and remain vested with all the powers and authority to be held by any future Legislative Council and Assembly of this Colony, until the second Tuesday in October, which will be in the year of our Lord one thousand seven hundred and seventy-seven.

III. That on the said second Tuesday in October, yearly and every year for-ever (with the privilege of adjourning from day to day as occasion may require) the counties shall severally choose one person to be a member of the Legislative Council of this Colony, who shall be and have been for one whole year next before the election, an inhabitant and freeholder in the county in which he is chosen, and worth at least *One Thousand Pounds*, Proclamation Money, of real and personal estate within the same county: That, at the same time, each county shall also choose three members of Assembly; provided, that no person shall be entitled to a seat in the said Assembly, unless he be and have been for one whole year next before the election, an inhabitant of the county he is to represent, and worth *Five Hundred Pounds* Proclamation Money in real and personal estate in the same county: That, on the second Tuesday next after the day of election, the Council and Assembly shall separately meet, and that the consent of both houses shall be necessary to every law, provided that seven shall be a quorum of the Council for doing business; and that no law shall pass, unless there be a majority of all the representatives of each body personally present and agreeing thereto. Provided always, That if a majority of the representatives of this province in Council and General Assembly convened, shall, at any time or times hereafter, judge it equitable and proper to add to or diminish the number or proportion of the members of the Assembly for any county or counties in this Colony, then, and in such case, the same may, on the principles of more equal representation, be lawfully done, any thing in this Charter to the contrary notwithstanding; so that the whole number of representatives in Assembly shall not at any time be less than thirty-nine.

IV. That all inhabitants of this Colony of full age, who are worth *Fifty Pounds*, Proclamation Money, clear estate in the same, and have resided within the county in which they claim a vote for twelve months immediately preceeding the election, shall be entitled to vote for representatives in Council and Assembly; and also for all other public officers that shall be elected by the people of the county at large.

V. That the Assembly, when met, shall have power to choose a Speaker, and other their officers; to be judges of the qualifications and elections of their own members; sit upon their own adjournments, prepare bills to be passed into laws, and to empower their Speaker to convene them, whenever any extraordinary occurrence shall render it necessary.

VI. That the Council shall also have power to prepare bills to pass into laws, and have other like powers as the Assembly, and in all respects be a free and independant branch of the legislature of this Colony; save only that they shall not prepare or alter any money bill, which shall be the privilege of the Assembly; that the Council shall, from time to time, be convened by the Governor or Vice-President, but must be convened at all times when the Assembly sits; for which purpose the Speaker of the House of Assembly shall always immediately after an adjournment give notice to the Governor or Vice-President of the time and place to which the House is adjourned.

VII. That the Council and Assembly jointly at their first meeting, after each annual election, shall, by a majority of votes, elect some fit person within the Colony to be a Governor for one year, who shall be constant president of the Council, and have a casting vote in their proceedings; and that the Council themselves shall choose a Vice-President, who shall act as such in the absence of the Governor.

VIII. That the Governor, or, in his absence, the Vice-President of the Council, shall have the supreme executive power, be Chancellor of the Colony, and act as Captain-General and Commander in Chief of all the militia, and other military force in this Colony; and that any three or more of the Council shall, at all times, be a Privy Council to advise the Governor in all cases, where he may find it necessary to consult them; and that the Governor be Ordinary or Surrogate General.

IX. That the Governor and Council (seven whereof shall be a quorum) be the court of appeals in the last resort in all causes of law as heretofore; and that they possess the power of granting pardons to criminals after condemnation in all cases of treason, felony, or other offences.

X. That captains, and all other inferior officers of the militia, shall be chosen by the companies in the respective counties; but field and general officers by the Council and Assembly.

XI. That the Council and Assembly shall have power to make the Great Seal of this Colony, which shall be kept by the Governor, or, in his absence, by the Vice President of the Council, to be used by them as occasion may require; and it shall be called, *The Great Seal of the Colony of New-Jersey.*

XII. That the Judges of the Supreme Court shall continue in office for seven years, the Judges of the Inferior Court of Common Pleas in the several counties, Justices of the Peace, Clerks of the Supreme Court, Clerks of the Inferior Courts of Common Pleas, and Quarter-Sessions, the Attorney-General and Provincial Secretary, shall continue in office for five years; and the Provincial Treasurer shall continue in office for one year; and that they shall be severally appointed by the Council and Assembly in manner aforesaid, and commissioned by the Governor, or, in his absence, by the Vice-President of the Council. *Provided always*, That the said officers severally shall be capable of being re-appointed at the end of the terms severally before limited; and that any of the said officers shall be liable to be dismissed, when adjudged guilty of misbehaviour by the Council, on an impeachment of the Assembly.

XIII. That the inhabitants of each county, qualified to vote as aforesaid, shall, at the time and place of electing their Representatives, annually elect one Sheriff, and one or more Coroners; and that they may re-elect the same person to such offices, until he shall have served three years, but no longer; after which, three years shall elapse before the same person is capable of being elected again. When the election is certified to the Governor or Vice-President, under the hands of six freeholders of the county for which they were elected, they shall be immediately commissioned to serve in their respective offices.

XIV. That the townships, at their annual town-meetings for electing other officers, shall choose Constables for the districts respectively; and also three or more judicious freeholders of good character to hear and finally determine all appeals relative to unjust assessments in cases of public taxation; which Commissioners of Appeal shall, for that purpose, fix at some suitable time or times to be by them appointed, and made known to the people by advertisements.

XV. That the Laws of this Colony shall begin in the following stile, viz. *Be it enacted by the Council and General Assembly of this Colony, and it is hereby enacted by the authority of the same:* That all commissions, granted by the Governor or Vice-President, shall run thus—*The Colony of New-Jersey to A. B. &c. Greeting:* And that all writs shall likewise run in the name of the Colony: And that all indictments shall conclude in the following manner, viz. *against the peace of this Colony, the government, and dignity of the same.*

XVI. That all criminals shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are or shall be entitled to.

XVII. That the estates of such persons as shall destroy their own lives, shall not, for that offence, be forfeited; but shall descend in the same manner as they would have done had such persons died in a natural way; nor shall any article, which may occasion accidentally the death of any one, be henceforth deemed a deodand, or is anywise forfeited on account of such misfortune.

XVIII. That no person shall ever, within this Colony, be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conicience; nor under any pretence whatsoever compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person, within this Colony, ever be obliged to pay tithes, taxes, or any other rates, for the purpose of building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately or voluntarily engaged himself to perform.

XIX. That there shall be no establishment of any one religious sect in this Province in preference to another; and that no *Protestant inhabitant* of this Colony shall be denied the enjoyment of any civil right merely on account of his religious principles; but that all persons, professing a belief in the faith of any Protestant sect, who shall demean themselves peaceably under the government as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature, and shall fully and freely enjoy every privilege and immunity enjoyed by others their fellow subjects.

XX. That the legislative department of this Colony may, as much as possible, be preserved from all suspicion of corruption, none of the Judges of the Supreme or other Courts, Sheriffs, or any other person or persons possessed of any post of profit under the government, other than Justices of the Peace, shall be entitled to a seat in Assembly; but that, on his being elected and taking his seat, his office or post shall be considered as vacant.

XXI. That all the laws of this Province, contained in the edition lately published by Mr. Allinson, shall be and remain in full force, until altered by the Legislature of this Colony, (such only excepted as are incompatible with this charter) and shall be, according as heretofore, regarded in all respects by all civil officers, and others, the good people of this Province.

XXII. That the Common Law of England, as well as so much of the Statute-Law, as have been heretofore practised in this Colony, shall still remain in force, until they shall be altered by a future law of the Legislature; such parts only excepted as are repugnant to the rights and privileges contained in this charter; and that the inestimable right of trial by jury shall remain confirmed, as a part of the Law of this Colony without repeal for ever.

XXIII. That every person who shall be elected as aforesaid to be a member of the Legislative Council or House of Assembly, shall, previous to his taking his seat in Council or Assembly, take the following oath or affirmation, viz. *I A. B. do solemnly declare, that, as a member of the legislative Council (or Assembly, as the case may be) of the Colony of New-Jersey, I will not assent to any law, vote or proceeding, which shall appear to me injurious to the public welfare of said Colony; nor that shall annul or repeal that part of the third section in the charter of this Colony, which establishes that the elections of members of the Legislative Council and Assembly shall be annual, nor that part of the twenty-second section in said charter respecting the trial by jury, nor that shall annul, repeal or alter any part or parts of the eighteenth or nineteenth sections of the same.* And any person or persons, who shall be elected as aforesaid, is hereby empowered to administer to the said members the said oath or affirmation.

*Provided always, and it is the true intent and meaning of this Congress*, That if a reconciliation between Great-Britain and these Colonies should take place, and the latter be again taken under the protection and government of the Crown of Great-Britain, this charter shall be null and void, otherwise to remain firm and inviolable.

*In Provincial Congress, New-Jersey,*
*Burlington, July 2, 1776.*
*By order of Congress,*
SAMUEL TUCKER, President.

*Extract from the Minutes,*
WILLIAM PATERSON, *Sec.*

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NEW-PORT, *June 24.*

CAPT. Campbell, lately from Antigua, via St. Eustatia, informs, that a little before he left Antigua, a vessel from Georgia, belonging to Mr. Samuel Brenton of this place, was seized there by a man of war, with all her cargo, consisting of lumber, indigo, &c. Mr. Brenton, then present, urged his being a friend to government as a reason for his being favoured, but the Admiral told him the act of Parliament by which he was seized, made no provision for friends to government! He then pleaded the same to the Marshall for being indulged in buying the indigo at a moderate price; but the Marshall said it was difficult to determine who were friends to government, or to that purport, and that he should buy the indigo himself to ship to England. Just so would all American Tories fare, should this country be conquered agreeable to their wishes; but be assured the sun, moon and stars shall fall, the ocean cease to roll, and all nature change its course, before a few English, Scotch and German slaves shall conquer this vast continent.

HARTFORD, *July 8.*

LAST Wednesday passed through this place Governor Franklin of New Jersey, on his way to Governor Trumbull at Lebanon, and last Saturday he returned from Lebanon to Wallingford, where he is stationed.

NEW-YORK, *July 11.*

Since our last several of the new raised regiments of Connecticut troops have arrived in town, and appear to be as fine a body of men as any engaged in the present

*Text of New Jersey Constitution of 1776, printed in* Dunlap's Pennsylvania Packet or the General Advertiser *(Philadelphia), July 15, 1776. Courtesy New Jersey State Library, Archives and History Bureau.*

Voting requirements, which had varied during the colonial period, generally included a property qualification. The constitution of 1776 adopted the basic terms set for the electorate by the Provincial Congress the preceding February. To vote for an assemblyman (or councillor) one had to be an adult "inhabitant" of New Jersey and a county resident for one year, and had to possess land or other valuables aggregating at least £50 proclamation money in value. Of singular interest is the fact that the constitution did not prohibit voting by blacks and women, who voted until excluded by statute in 1807. This was a reasonably generous franchise, probably allowing most farmers and artisans to vote. But it was not "democratic," as we would define the term today. New Jersey's constitution makers saw no need to give the hired hand, the transient, or the village hanger-on a share of political power. Nor did her sister states. All the constitutions of the thirteen original states contained taxpaying or property qualifications for voters.

Despite setting qualifications for members and voters, our Founding Fathers still considered the assembly as distinctively the "people's house," continuing the colonial tradition. The assembly's larger size, its power to bring more people to its deliberations, and its special powers in the financial area illustrate this outlook. As has been noted, only the assembly could initiate a tax or appropriation bill. The desire to protect the popular character of the assembly explains the constitution's ban on sheriffs, judges, or those holding other offices of profit (except that of justice of the peace) from serving therein. The draftsmen knew how English monarchs and prime ministers put "placemen" — persons holding offices at crown pleasure — in the House of Commons to maximize their political influence. New Jersey had formally banned this practice in 1730 via an ordinance stipulating that any assemblyman who accepted such an office vacated his seat. Although crown appointments were now a thing of the past, the constitution's writers deemed it wise policy to keep judges and bureaucrats out of the lower house.

Functionally, the New Jersey assembly was intended to share appointing and lawmaking powers with the Legislative Council, but not, as a general principle, the council's advisory and judicial operations. The assembly could, however, impeach (that is, bring formal charges against) judges or major civil officials in cases of misbehavior. The council conducted the trials of those so charged.

Prescribed constitutional limitations on the lawmaking powers of the assembly were few. This might appear strange, for we view a major responsibility of a written constitution as defining and limiting legislative power. But colonial experience largely formed the perspective of the men of 1776. They had long been irked by the limits the crown placed on colonial assemblies. Constitution making was thus an opportunity to liberate the legislature and enable it to serve the interests of the people of New Jersey. Our Founding Fathers placed the legislature on much the same plane as the British Parliament, a body possessing extensive powers. This is not to imply that they intended to create an institution of unlimited power; that would be contrary to the spirit of constitutionalism that was so ingrained in them. They were convinced that the mandated annual elections for assemblymen and councillors would hold the legislature in check.

This one-year term was the place where the constitutionalism of 1776 intersected with its republicanism. While a constitutional legislature was a limited legislature, a republican legislature was a responsive one: frequent elections insured both. John Adams expressed the colonial viewpoint when he wrote "Where annual elections end, there slavery begins." The thirteen original states heeded this aphorism in providing for elections to the lower house. Annual elections prevailed in all states but South Carolina. The terms of members of the upper house varied, ranging from one year in New Jersey to five years in Maryland. The long term, as in the latter state, aided the upper house in functioning as an aristocratic, stabilizing influence on the political system. New Jersey attempted to pursue the same goal via high property qualifications for the office of councillor.

## The Judiciary

The next set of constitutional provisions to examine are those dealing with the New Jersey courts which, during the eighteenth century, followed the basic pattern set down by the first royal governor, Edward Hyde Lord Cornbury, in 1704-1705. These courts, in turn, worked with the legal categories and forms of relief utilized in England at the time. Cases were regarded as civil (ordinary disputes between two or more parties) or criminal (in which the wrong was also deemed an affront or threat to the society). In civil cases, relief could be sought via actions at common

law or equity. An example of a common law suit would be an accusation of trespass, where the plaintiff sued the alleged wrongdoer because his property rights had been violated. The judge had to ascertain the law relevant to the particular case, often a precedent from the common law courts of England, and the jury had to determine the facts and render a verdict. The standard form of relief in a common law suit awarded money damages to the aggrieved party. In a typical case at equity, on the other hand, the judge sat alone. An example would be an action *quo warranto* (literally, "by what warrant") challenging the right to hold office of a sheriff whose appointment was of dubious legality. In an equity suit the relief sought was a court order that would remedy the situation.

The base of the provincial court system was the community judge — the justice of the peace. He was authorized to hear and decide by summary judgment (i.e., without a jury trial) minor actions of debt and trespass. He also settled petty disturbances (such as breaches of the peace) in the community. A justice of the peace combined with his fellow justices in the county as a court of general sessions of the peace, which heard appeals from the individual justices. A second county court, composed of judges specifically selected for the purpose by the royal governor (but in practice usually from among the justices of the peace) was the court of common pleas. It had original jurisdiction over major civil suits at common law.

The key provincial court, sort of a jack-of-all-trades, was the supreme court. Sitting at Perth Amboy each spring and at Burlington each autumn, it handled appeals from the county courts. But it also had broad original jurisdiction, both civil and criminal. In addition, each justice (there were typically three members of this court) could "ride circuit," that is, go out to a county seat, meet with two or more justices of the peace, and exercise the supreme court's broad jurisdiction there. Appeal from the supreme court lay to the Governor in Council (the governor sitting with the Provincial Council) and, if the matter was important enough, to the King in Council (the king sitting with the English Privy Council).

The royal governor was authorized to issue commissions of "oyer and terminer" (literally, "hear and decide"), documents which allowed the holder to bring to trial persons accused of major crimes, who were being held in jail. These commissions were usually issued

to supreme court justices when they rode circuit. Sitting with two county judges or justices of the peace, the supreme court justice would hold a court of oyer and terminer which, via jury trials, had the power to invoke the death penalty.

Residual judicial power during New Jersey's years as a royal province lay with the governor. He was the chancellor of the colony, which meant that he was its principal (at times its only) equity judge. The governor also had jurisdiction in cases involving wills, the custody of minor children, and disputes regarding the estates of the deceased. Such cases occurred with frequency, and the governors found it helpful to appoint "surrogates" — substitutes or deputies — to handle them. This is the origin of the office of county surrogate.

The constitution of 1776 did little to alter the court system outlined above. This was probably due more to the pressures of time at Burlington than to general satisfaction with the complex and cumbersome setup. (Jersey justice had occasioned more than one riot during the eighteenth century!) The colonial courts were not only relegitimized; even the personnel temporarily remained the same. A resolution of the Provincial Congress, dated July 4, stated that all judges and justices were to continue in office until the new state legislature was elected, "settled and perfected."

As this resolution indicates, the principal constitutional changes in the judicial area involved selection and tenure. The governor had previously chosen all judges, who served at crown pleasure. The constitution turned the appointing power over to joint meetings of the legislature. All judges, down through the office of justice of the peace, were to be selected in this way. Members of the supreme court were to serve terms of seven years; all other judges and justices, five years. Removal also became a legislative prerogative, either by failure to reappoint a sitting judge or by going through the process of impeachment. In this dramatic shift of power over court personnel from executive branch to legislative, one sees again how the republican principle held sway over the minds of our Founding Fathers. But they refused to move from there to a complete separation of powers and divorce the court system from the office of governor. Instead, they adhered to colonial practice. The governor was continued as the state's chief judge, with the constitution stipulating that he would be chancellor, surrogate

general, and presiding judge of the council when the latter sat as a court of appeals.

**Miscellaneous Provisions**

Saying little about the courts, the constitution of 1776 said even less about local government. In colonial New Jersey a two-tiered system of townships and counties had evolved to provide for the few governmental needs of an agricultural society. A handful of urban places existed, some (such as Perth Amboy and Burlington) with special "charters" from the crown, but they did little to upset the basic symmetry.

The New Jersey township, often sprawling over thousands of acres, had general responsibility for law and order, the construction and repair of roads and bridges, the care of orphans and the poor, the assessment and collection of taxes. Except for the justices of the peace, appointed by the governor, the officials who handled these tasks were selected at yearly township meetings. Local government in New Jersey thus closely paralleled that of New England, whence many of our settlers had come. The constitution dealt with the township in one brief paragraph. It provided for the continuance of township meetings and specifically gave them power to elect constables and local boards of assessment appeals, where an aggrieved landowner could appeal an unfair property assessment (valuation) to a local agency — to a committee of his peers. The significance of this lay in the fact that the colonial system of public finance was built on the property tax. Assuming correctly that the state would continue this practice, the constitution's draftsmen wrote the principle of local control into the document.

New Jersey's townships in 1776 were grouped into thirteen counties, which were primarily units of court and tax administration developed for the convenience of provincial authorities. Except for judges, sheriffs, coroners, and tax collectors, there was little in the way of "county government" at the time of the Revolution. When a problem arose — regarding the erection of a county jail, for example — a joint meeting of county judges and justices with township representatives took place. The latter agency, or "board of chosen freeholders," generally included two landowners from each township in the county, selected by the annual township meetings. These lay boards would emerge as the focuses of county government in the nineteenth century.

The only aspect of county government dealt with by the 1776 document was the selection of sheriffs and coroners. Formerly gubernatorial appointees, they became elected officials with terms of one year. A sheriff or coroner could be elected for three straight terms, after which he was ineligible for the office for another three years. This provision was a novelty promoted by John Adams in his 1776 pamphlet, *Thoughts on Government*, which sketched a model republican framework for the colonists. Interestingly, and perhaps a reflection of constitutional haste and untidiness, New Jersey adopted the suggestion for sheriffs and coroners but not for the office of governor, one for which Adams felt his proposal was quite pertinent.

Although our forefathers described their constitution as a "set of charter rights," they did not include in it a Bill of Rights — a comprehensive list of fundamental freedoms, in spite of the fact that the word "liberty" was on everyone's lips in the spring of 1776. True, liberty was a multifaceted concept. It meant freedom from harassment by British officialdom; to many it meant independence for the colonies as political units. But it was also a code word for the rights of the individual, conceived either as the "rights of man" enunciated by a fiery Tom Paine, or the traditional liberties propounded in the English Bill of Rights of 1689.

Given the importance of liberty as an ideal, that New Jersey did not develop a Bill of Rights — as did Virginia during those same June days — calls for an explanation. Unfortunately, history provides no clear answer. A possible explanation is the fact that the First Continental Congress had covered this ground quite thoroughly with its "Declaration and Resolves" of October 1774. This American Magna Carta proclaimed boldly what the colonists believed were their basic rights. Then again, our Founding Fathers might have felt they were covering the field by providing for the continuance of English common law in New Jersey. Such an explanation is supported by the general character and temperament of the constitution's draftsmen. Our Founding Fathers were not wild-eyed radicals seeking to foist new social or political schemes on the people but men of moderate stamp, to whom the very act of independence was a heady step. Since the institutional aspects of the constitution show them to have been traditionalists, persons generally satisfied with the current order of

things, they were probably traditionalists in the area of human liberties, content to reaffirm the pattern of government-individual relations that had been operative in the colonial period.

The draftsmen, nonetheless, inserted a few paragraphs that pointed up areas of special concern to New Jerseyans, giving most attention to religious liberty. This is understandable in a society which never had an established church and where, indeed, no one Protestant sect dominated the social scene. The constitution mandated separation of church and state, freedom of worship for all, and the enjoyment of civil and political rights for the members of any Protestant denomination. Church-state separation was legally more complete than in colonial days, for the constitution specifically forbade obligatory taxes for church support. Under the various gubernatorial instructions, this had been permitted. Catholics and Jews were henceforth to be allowed freedom of worship, again an advance from the provincial period. The document, however, refused to allow them full civil and political rights as citizens of New Jersey.

The constitution also covered the judicial process, always an area of concern to the colonists. It guaranteed the right to trial by jury and the right of the accused in a criminal case to counsel and witnesses. It forbade judges to declare forfeit to the state the property of suicides, or articles that might accidentally have caused someone's death, thus summarily abandoning two obsolete items of medieval English law.

## Constitutional Change

The precise nature and legal status of a state constitution was not clear in the minds of our forefathers. Hence, it is not surprising to find that the 1776 charter did not deal squarely with a key political problem — constitutional growth and change. It did not include an amending process nor provide for general revision or overhaul of the document. The constitution appeared to imply, however, that the legislature could make alterations. One paragraph required members of the council and assembly to pledge that they would never "repeal or annul" those sections dealing with trial by jury, freedom of religion, and annual legislative elections. It could be argued that the legislators were thus free to modify other clauses. This would be consistent with current theories of

# CONSTITUTION

OF

# NEW-JERSEY.

*BURLINGTON:*

Printed and Sold by *ISAAC COLLINS*, 1776.

*Title page of the first printed edition. There was no legal machinery for ratification by the people; instead, 1,000 copies of the constitution were published and distributed by order of the Provincial Congress. It quickly came to be regarded as the state's fundamental law. Courtesy New Jersey Historical Society.*

parliamentary power holding that the legislature was the supreme source of law in a society.

The question of constitutional change was never resolved during the life-span of the document. From time to time the legislature passed bills that appeared to make substantial changes. For example, the constitution gave the franchise to any "inhabitant" worth £50 proclamation money, opening up the vote to blacks and women. A law of 1807 restricted suffrage to free white males, twenty-one years of age and older, obviously constricting the broad language of the constitution. This legislative "interpretation" was not successfully challenged.

Running counter to the doctrine of legislative sovereignty was the assertion that the new constitution was "higher law," unalterable by simple act of the legislature. The corollary of constitutional supremacy was the doctrine of judicial review, arguing that the courts could — indeed, must — void acts contravening the terms of the constitution. Judicial review was practiced in New Jersey before the end of the revolutionary war. In the precedent-setting case of *Holmes v. Walton* (1780), the state supreme court struck down an act allowing six-man juries to decide cases involving traitorous trading with the enemy. The court said the lawmakers were constitutionally bound to respect the tenet of English common law that trial by jury meant twelve-man juries. Although the legislature acquiesced, it should be noted that jury trial was one of the three items marked out by the constitution as sacrosanct. The legislature, by accepting the decision, was thus not endorsing a broad power of judicial review.

This controversy over the nature of the constitution and the power of the legislature was never definitively settled. However, the doctrine of legislative sovereignty gradually lost favor with the public as the competing concepts of constitutional supremacy and judicial review became keystones of the nation's political philosophy.

## THE CONSTITUTION OF 1776: Retrospect and Prospect

New Jersey's first constitution was at once an act of defiance — complementing the Declaration of Independence — and a call for orderly government in the trying times ahead. New Jersey somewhat hesitantly joined the movement for formal separation

from the mother country. Her constitution was a hedge against social and political upheaval during the war to make that Declaration of Independence effective.

In form and content, the document was brief and simple, dealing in practical terms with the governmental needs of the day. Limiting itself generally to fundamentals, it set a precedent for the state's two later constitutions of 1844 and 1947. Unlike many of her sister states, New Jersey has never been burdened by a constitution that is a long-winded compendium of political trivia and policy viewpoints.

From an institutional perspective, the 1776 charter was distinctly conservative. If the 1770s were times to try men's souls, they were not considered times to try radical experiments in New Jersey government. Simplicity and conservatism in turn contributed to the long life of the constitution. States — such as New Hampshire and Pennsylvania — that were too innovative ran into all sorts of practical troubles with their first constitutions and soon abandoned them.

Nonetheless, the Burlington draftsmen were committed to the establishment of a republic. New Jersey, for generations a province dependent upon the pleasure of the crown, became an independent republic with a government springing, in all its parts, from the will of the people. Republicanism in turn meant legislative preeminence. Here our Founding Fathers were carrying New Jersey's governmental system in a direction already mapped out by the history of the mother country. One can, in fact, view our eighteenth century constitutional history as a rejection of the executive-focused approach envisioned by the crown and a sustained effort to substitute a parliamentary system for it. Legislative superiority was the institutional key.

The legislature was to be held in check by the bicameral principle, by frequent elections, and by qualifications for voting and holding office. Regular elections were intended to keep the legislature in tune with popular wishes. The various qualifications were to insure that only the "right kind" of people gained seats there. Our forefathers apparently saw no inconsistency in combining aristocratic qualifications with such a democratic mechanism as annual elections. Indeed, one contemporary definition of "republic" was a system that blended aristocratic with democratic influences.

Little provision was made for the sorts of checks promoted by the principle of separation of powers, such as a gubernatorial veto. That theory of structure and relations, although a major force in shaping the constitution of a state such as Virginia, had scant impact on our initial charter. Commingled powers had been the prevalent concept in colonial New Jersey, and it was retained by the statesmen at Burlington.

Our constitution makers, although republican in orientation, were unwilling to abandon completely the monarchical approach, i.e., a unified executive office. They marked out a strong constitutional position for the governor in the judicial area and lesser roles in administrative, legislative and military affairs. Our first state governor, William Livingston, took advantage of the circumstances of wartime to make his office pivotal in the system. It is doubtful that any royal governor held the reins of power as firmly as he. Only after the struggle for independence was over did the office slip back into the niche the constitution provided for it.

In altering the distribution of power between governor and legislature, the draftsmen made their major change in the governmental order of New Jersey. Otherwise, continuity was the key. They fully intended that the judiciary, county, and township government would carry on with the structure, operative principles, and procedures of colonial times.

Following adoption of the constitution on July 2, the Provincial Congress ordered a thousand copies printed and circulated throughout New Jersey. No provision was made for a popular referendum. The congress directed the existing officers of government to continue to function "under the authority of the people" until the new system became operative. After shifting its headquarters to Trenton, the congress acted as an interim government and supervised the state's first elections. Then, on August 31 at Nassau Hall in Princeton, the new councillors and assemblymen met in joint session and chose William Livingston as governor. With this act, government under the constitution of 1776 was set in motion; the transition from royal province to independent republic was complete.

As state and nation developed in freedom, society's picture of an ideal state constitution — quite formless and vague in 1776 — began to take shape. As this occurred, the first new Jersey

constitution fell more and more out of step. In its lack of a definitive Bill of Rights, its artistocratic overtones, and its lack of adequate separation of powers it particularly failed to satisfy the mood and temper of the nineteenth century. Eventually, in 1844, it was completely overhauled. But a fair assessment of the work of our forefathers must place heavy emphasis on the times in which they lived and on the pressures they faced those June days in Burlington. They were hurriedly launching a spartan ship of state into a troubled sea. Through their efforts thousands of people who were once British subjects became free citizens of the sovereign state of New Jersey. Those thousands have been followed by grateful millions.

## For Further Reading

The standard work on the constitution of 1776 is Charles Erdman, *The New Jersey Constitution of 1776* (Princeton: Princeton University Press, 1929). Erdman analyzes the document in detail, and then traces New Jersey constitutional history from the Revolution until the adoption of a new charter for the state in 1844.

For the general reader, the volumes in the "New Jersey Historical Series" are recommended as background and supplementary reading. This series was published by D. Van Nostrand (Princeton) in 1964 in honor of the three-hundredth anniversary of the founding of the colony of New Jersey. Of particular interest are Julian Boyd, *Fundamental Laws and Constitutions of New Jersey* and Richard P. McCormick, *New Jersey From Colony to State, 1609-1789.*

Older, but still valuable studies include Donald Kemmerer, *Path to Freedom: The Struggle for Self-Government in Colonial New Jersey, 1703-1776* (Princeton: Princeton University Press, 1940); Leonard Lundin, *Cockpit of the Revolution: The War for Independence in New Jersey* (Princeton: Princeton University Press, 1940; reprinted by Octagon Books, New York, 1972); and Allan Nevins, *The American States During and After the Revolution, 1775-1789* (New York: MacMillan, 1927).

Of more recent works on New Jersey, several deserve special mention. Larry R. Gerlach's, *Prologue to Independence: New*

*Jersey in the Coming of the American Revolution* (New Brunswick: Rutgers University Press, 1975) and *The Road to Revolution* (Trenton: New Jersey Historical Commission, 1975) provide descriptions of events leading to the Revolution in New Jersey. The latter, a companion pamphlet in this series, is more compressed. David Bernstein, in "New Jersey in the American Revolution: The Establishment of a Government Amid Civil and Military Disorder, 1770-1781" (Ph. D. diss., Rutgers University, 1970) and "William Livingston: The Role of the Executive in New Jersey's Revolutionary War," in William C. Wright, ed., *New Jersey in the American Revolution II* (Trenton: New Jersey Historical Commission, 1973) provides useful descriptions of the first years of government operation under the new constitution. Carl E. Prince, in *William Livingston: New Jersey's First Governor* (Trenton: New Jersey Historical Commission, 1975), describes Livingston's use of the wartime emergency to enhance the powers of his office. The Prince volume is also a pamphlet in this series.

Placing developments in New Jersey within broader frameworks are Bernard Bailyn, *The Origin of American Politics* (New York: A.A. Knopf, 1968); John Neuenschwander, *The Middle Colonies and the Coming of the American Revolution* (Port Washington, N.Y.: Kennikat Press, 1973); and Gordon Wood, *The Creation of the American Republic* (Chapel Hill, N.C.: University of North Carolina Press, 1969).

An excellent selection of documents dealing with colonial New Jersey is in volume 2 of W. Keith Kavenagh, *Foundations of Colonial America* (New York: Chelsea House, 1973). Larry R. Gerlach's *New Jersey in the American Revolution: A Documentary History, 1763-1783* (Trenton: New Jersey Historical Commission, 1975) also offers documentary insight into the genesis of the constitution of 1776.

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