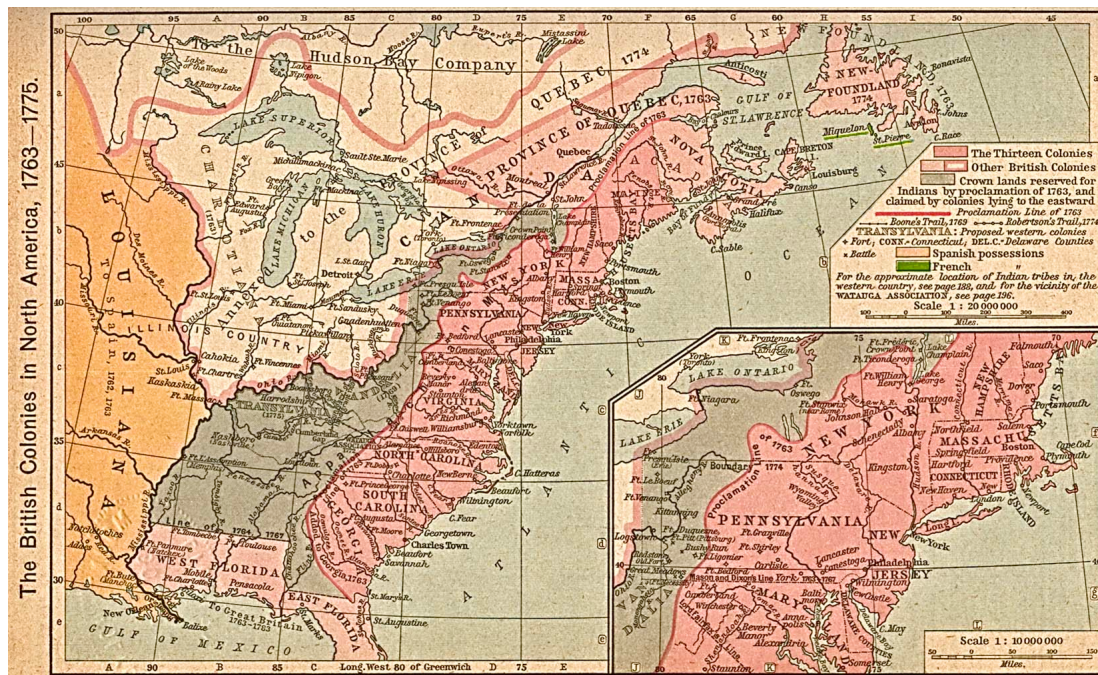


CHAPTER 2

The Constitutions of the Revolution – 1776-1780

The First Constitution of the Revolution – The First Declaration of Rights – The First Radical Constitution – The First Constitution Ratified by the People



http://upload.wikimedia.org/wikipedia/commons/f/f8/British_colonies_1763-76_shepherd1923.PNG

Map of the 13 British Colonies – 1763-1775

The American colonial period ended abruptly when, during the reign of George III, delegates from thirteen British colonies on the continent assembled in the city of Philadelphia for a convention known as The Second Continental Congress and, on the 4th of July of 1776, proclaimed their Unanimous Declaration of independence from the British Crown.

Until the middle of the 18th century, the relationship between the American colonies and Great Britain had been that of faithful subjects toward their respected monarch. Between 1764 and 1775, however, tensions built up between the colonies and the mother country as a consequence of the British Parliament enacting several laws – among them, those commonly known as the Sugar Act and the Stamp Act– which levied additional taxes on the Colonies. The intent of those taxes was to defray the enormous costs incurred by the Crown during the French and Indian War, which was the American appendage to the European conflict known as the Seven Years' War. Shouting the slogan “No taxation without representation!” settlers from many towns

and cities demonstrated violently against the fiscal policies imposed upon them.

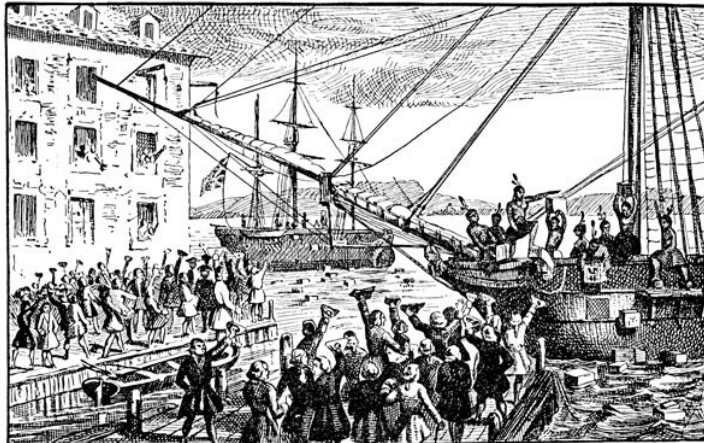
During the next ten years, tensions gradually built up between Great Britain and the colonies, and with the tensions grew the discontent of many settlers, turning into street violence, to the point that, in 1773, a protest against a further tax on the importation of tea, led a group of colonists to disguise themselves as Native Americans and board several British ships in the Boston harbor. There they threw the cargoes of tea overboard, into the harbor. Later on this incident became humorously known as the “Boston Tea Party.”



Bagley, William and Charles Beard. *The History of the American People*. Sacramento: California State Printing Department, 1920

British Stamps for the American Colonies

The response of the British Parliament to such insurrection was to enact in 1774 the Coercive Acts for the purpose of punishing the mutinous colonies, particularly Massachusetts, the most vociferous. The Coercive Acts limited the civil rights of the colonists and imposed heavy restrictions on commerce and access of shipping to Boston harbor, so the Americans labeled them as Intolerable Acts.



Hatzigeorgiou, Karen J. *U.S. History Images*. 2011. <<http://ushistoryimages.com>>
Pratt, Mara L. *American's Story for America's Children: The Early Colonies*. Boston: D.C. Heath & Company, 1901

The Boston Tea Party

monarch, asking him to revoke the Parliament’s Coercive Acts; but the delegates concurrently organized a plan for all the colonies to join together in a boycott of

George III (1738-1820) accessed the thrones of Great Britain and Ireland in 1760. When all the British kingdoms united in 1801, he became King of the United Kingdom. After defeating France in the Seven Years’ War, in 1782 George III lost the war of the American independence, which the revolutionaries had been fighting since 1775. In 1815 British troops defeated Napoleon in Waterloo. George’s health had already deteriorated and, from 1811 until his death, it was his son, the Prince of Wales, who acted as Regent. George III had a deep interest in development of agriculture and industry, and Great Britain started the industrial revolution during his reign.

imports coming from Great Britain, expecting to force the King into accepting the Petition, which he never did. Delegates to the Congress adjourned to their individual

Colonies while waiting for the King to reply, agreeing to meet again the following year to consider the result of their appeal to the Crown. Meanwhile civil mutiny and unrest continued and the British troops repressed them with various degrees of energy. But when in May of 1775 the Second Continental Congress convened in Philadelphia as had been agreed, the armed conflict between the colonists and the British troops had begun in earnest. On the 19th of April 1775, the battles of Lexington and Concord, in the Colony of Massachusetts, were fought between British troops and American minutemen. Consequently, the first decision of the Second Continental Congress was to form a “Continental Army” to fight on an equal footing against the British Army, and it named George Washington as its commander in chief.

Between May of 1775 and July of 1776, neither camp had any decisive military advantage over the other. On the one hand, the British troops had to leave Boston; but they were able to restore Royal control over parts of the colonies of New York, New Jersey and the Carolinas. In most of the colonies, however, governors and main officials resigned their posts, leaving the citizens without institutions for their administration and government. Popularly formed colonial assemblies requested from the Continental Congress advice on how to resolve the lack of such governing institutions. Since it had been assembled exclusively for the purpose of negotiating a common solution to the conflict with King and Parliament, the Continental Congress lacked jurisdiction to ordain the colonies any specific way to proceed. Congress, therefore, suggested that each colony should draft its own constitution, fixing in it the form of government most convenient to their particular circumstances.

The years of 1776 and 1777 saw a constitutional activity without precedent in the history of the Western world. In less than fifteen months, ten constitutions were drafted *ex novo*. For modern constitutionalism, this was “a rather integral



http://en.wikipedia.org/wiki/File:Surrender_of_Lord_Cornwallis.jpg
John Trumbull, 1820

Surrender of Lord Cornwallis

historical process, with its gradual developments and technical refinements, but also with its breakdowns” (Matteucci, p. 163). Partially forced by the collapse of the previous regime, and partially pushed by the will to create a new society, American patriots engaged passionately in the legislative task. In addition to the constitutions “an outpouring of political writings –pamphlets, letters, articles, sermons– that has never been equaled in the nation’s history” (Wood, p. 6) were published.

The first colony responding to the directions from the Continental Congress was New Hampshire, and on 5th January, 1776, its Assembly ratified a constitution. This was followed by the constitutions of South Carolina (March 26), Virginia (June 29), and New Jersey (July 2). In April of 1776, Georgia had ordained its concise Rules and Regulations that, to a point, could be considered a text of constitutional character. On

the 4th of July, the Continental Congress published “The unanimous Declaration of the thirteen united States of America,” formal title of the Declaration of Independence.

In the following months of 1776, the constitutions of Delaware, Pennsylvania, Maryland and North Carolina were drafted and ratified, and in 1777 Georgia, New York and Vermont (which was not yet a state of the Union) completed their work. In 1780, after a long and cumbersome process of popular endorsement, Massachusetts finally

George Washington (1732-1799), American soldier and politician, was the first President of the United States (under the Constitution of 1787), and he is considered as the Father of the country. Born in Virginia, in the tobacco plantation of a reasonably wealthy family, he worked as a surveyor and, during the French and Indian War of 1754-63, rose to rank of Colonel in the Virginia Regiment. His patriotic spirit and military knowledge acquired during that war meant that, when the Continental Army was organized in 1775, the delegates assembled in Congress decided to elect him as its commander-in-chief. His strategy on the battlefield and his ability to negotiate effectively with his own revolutionary colleagues, allowed him to bring about the eventual defeat of the British army in 1781. After the peace treaty with Great Britain was signed in 1783, George Washington resigned his military post and returned to his plantation in Virginia. When the Constitutional Convention was organized in 1787, Washington was first elected one of the Virginia delegates, and then was unanimously chosen President of the Convention. After the ratification of the new Constitution in 1789, George Washington was elected, again unanimously, the first President of the United States of America and then reelected for the following term. Washington did not run for a third term alleging that, as he explained in his farewell address, “every day the increasing weight of years admonishes me more and more that the shade of retirement is as necessary to me as it will be welcome.” His example was one of the reasons adduced in the 20th century to limit to two the Presidential terms.

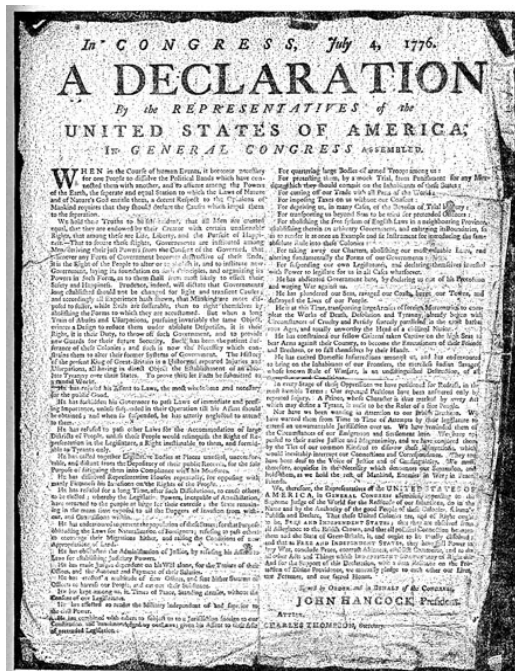
ratified its constitution (which text is still in force today).

When Prof. Fioravanti describes the differences between the French and the American Revolution, he points out that, in the American Revolution, “the right to resistance of the people, in those cases of tyranny and breakup of government, is understood as an instrument for restoring a breached legality and not as an instrument to launch a new and better political order” (Fioravanti 2007, p. 34). A good example of this can be found in the approach taken by the States of Connecticut and Rhode Island when, in 1776, they addressed their newly acquired independency. Both states decided not to draw new constitutions, but rather chose to keep their original Charters of the 17th century. These had not been drafted by the British King nor by the British Parliament, but by representatives of the colonist themselves, and had been simply sanctioned by the King. The colonists considered that, by removing any reference to the British monarch, these Charters were appropriate to their new condition as independent states.

During that revolutionary period of 1776 to 1783, all constitutions were drafted according to one of four possible models. Some constitutions were enacted directly by the existing legislative assemblies, via the colonial assemblies or their derivative institutions, without being authorized or ratified by the people. Such was the case for the 1776 constitutions of South Carolina, Virginia and New Jersey, which were drafted before the Declaration of Independence. In a second group, the constitutions of New Hampshire, Delaware, New York and Georgia, were drafted and approved by legislative assemblies specially authorized by the people, but the texts were not presented subsequently for popular ratification. In a third case, popularly authorized assemblies wrote constitutions that were later presented to the people for some kind of informal acceptance, such was the case of the constitutions of Maryland, Pennsylvania and North Carolina. This group was joined in 1778 by the constitutions of South Carolina and Massachusetts. In this last case, a subsequent constitutional convention, specifically elected and assembled, was given the mandate to write a constitutional text that was afterward presented to the people of Massachusetts for its ratification. In 1780, the Constitution of the Commonwealth of Massachusetts was finally completed.

Although it was the first example of such democratic procedure in this period, it was then replicated by New Hampshire in 1783, and later this has been the model adopted by most of the states for their subsequent constitutions.

Aside from those differences related to the body drafting the constitution, and of the processes used for its ratification, most of those early state-constitutions show similar characteristics. This is unsurprising because of the prevailing common philosophy among the American revolutionaries at the time, and because most of the people framing the different constitutions communicated frequently among themselves at the sessions of the Continental Congress. Their first common characteristic that can be observed is an expression of republicanism in which all offices were



Hatzigeorgiou, Karen J. *U.S. History Images*. 2011. <http://ushistoryimages.com> Bryant, William Cullen and Sydney Howard Gay. *A Popular History of the United States*. New York: Charles Scribner's Sons, 1881.

Broadside of the Declaration of Independence

elective and –with the exception of some judicial positions– were temporary. Following Montesquieu’s model (who, incidentally, was following himself a radical form of the British constitutional model), all constitutions proclaim a government formed by three separate powers. (The two most simple and earliest constitutions –New Hampshire and South Carolina– ignored the separation of powers altogether.) Like their colonial predecessors, the early texts of the New Jersey and Delaware constitutions assign to the Council the executive and legislative functions. With the exception of those of Pennsylvania and Georgia, all constitutions established a mixed legislative power, with



two Houses. The aim of these mixed governments was to avoid what at the time was considered to be the tyranny of democracy and the subjugation of minorities by the majority. All constitutions defined a popularly elected legislative branch and an executive headed by a governor or president, who was assisted by an executive Council, giving in most cases little information of the characteristics of the judicial power, being sometimes relegated to one administrative office more of the government.

Most of those constitutions recognized, either as a separate declaration or as an integral part of the constitution itself, a catalog of individual rights limiting the power of the established government. Finally, almost all of these constitutions included as a prerogative of the legislature the power to bring charges of impeachment against individuals who exceeded the authority of their office.

As Prof. Fioravanti points out, “the American Revolution [...] had no ancien regime to overthrow” and, thus, “definitively had no need to position itself against past times.” In America there were not “any estates to destroy; there was no need to sanction the supremacy of the law of the land over the ancient sources of the law [...]; there was not, definitely, any previous corporative form of representation to be obliterated” (Ibid., pp. 78-79). It is logical, therefore, to find various influences of the British government structure in the new American constitutions, such as the three powers of government –with the touch of Enlightenment given by Montesquieu– or a moderate government in which checks and balances control, mutually, each of its three branches to avoid, as in a wagon, the chance of overturning. The colonists clearly understood too that “without a written constitution –solidly founded on the constituent power of the sovereign people– to clearly prescribe the limits and the extension of each power, the constitutionalism was bound to become simply a quest for balances within a Parliament that the British themselves had already declared as sovereign” (Fioravanti 2001, p. 109).

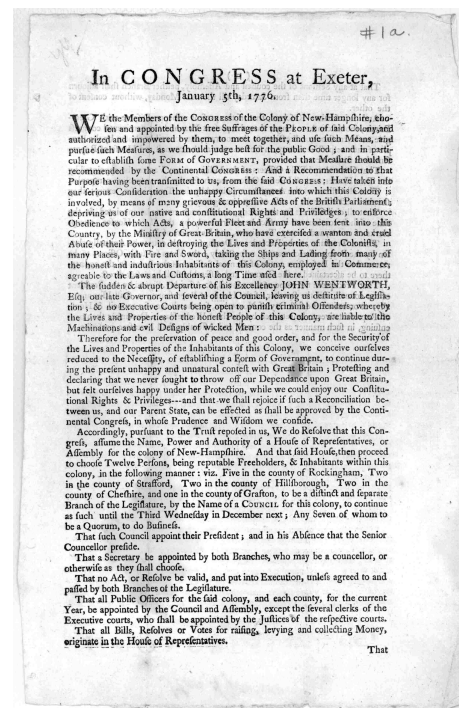
The main difference, however, between the English model of government described by Montesquieu and the new American constitutionalism was the recognition of a constituent power belonging to the People. In the British Parliament there is certainly a “balanced arrangement [...] of the three political estates in the kingdom [...] ensuring that none of them could become dominant and thus allot itself all the elements of the political model” (Fioravanti 2007, p. 34). But in 1776 there was in America “an element of the constitution understood as the absolute power of the People or the nation to devise a constitutional order subjected to the will of the citizens” (Ibid., p. 35). This characteristic can be materially seen in several of the constitutions written in that period (and especially in the federal Constitution of 1787 to be studied in the following chapter). Thus, “the members of the Congress of New-Hampshire Chosen and Appointed by the Free Suffrages of the People of said Colony, and Authorised and Empowered by them to meet together [...] to establish Some Form of Government” (Grau 2009, vol. III, p. 40); or “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 deliberations, agreed upon a set of charter rights and the form of a Constitution” (Ibid., p. 92); or “The Constitution, or System of Government, Agreed to and Resolved upon by the Representatives in Full Convention of the Delaware State, [...] the Said Representatives Being Chosen by the Freemen of the Said State for that Express Purpose” (Ibid., p. 128); etc. All the new states had

established a “constituent power,” understood as an original and fundamental power for individuals to decide the form and the course of their political relationship, to be their government. “This power will be the father of all political liberties –the ‘positive’– since it has the highest freedom of decision, which is the liberty to decide a certain and specific political order” (Fioravanti 2007, pp. 41-42).

The First Revolutionary Constitution

From a historical point of view, the main relevance of the first constitution of New Hampshire does not derive from being the first constitution drafted during the revolutionary period, but from the fact it encapsulates the circumstances in the gestation of the American Revolution. An independent spirit had not yet been engraved in the heart of the colonists and the disagreement with the metropolis was considered to be a passing problem, which with effort could be resolved. From a constitutionalist point of view, when compared with those that followed, the New Hampshire constitution allows us to see the quick progress that, in very few months, took place in the techniques for drafting this novel form of legal framework.

The text begins by proclaiming the legitimacy of the New Hampshire congress that had written it. Its members had been “Chosen and Appointed by the Free Suffrages of the People of said Colony, and Authorised and Impowered by them to meet together [...] And in Particular to establish Some Form of Government,” and in addition they were following “a Recommendation to that Purpose having been Transmitted to [them] From the Said [Continental] Congress.” It then went on to regret “the Unhappy Circumstances, into which this Colony is Involved by means of many Grievous and Oppressive Acts of the British Parliament, Depriving us of our Natural & Constitutional rights & Privileges.” The text claimed that things had been made worse by the British Parliament, “To Enforce Obedience to which Acts, A Powerful Fleet and Army have been Sent into this Country by the ministry of Great Britain, who have Exercised a Wanton & Cruel Abuse of their Power, in Destroying the Lives and Properties of the Colonists in many Places with Fire & Sword: Taking the Ships & Lading from many of the Honest and Industrious Inhabitants of this Colony Employed in Commerce, agreeable to the Laws & Customs a long time used here.” The text then explained the immediate reasons forcing them to take such a drastic action, that being “The Sudden & Abrupt Departure of his Excellency John Wentworth, Esqr., our Late Governor, and Several of the Council, Leaving us Destitute of Legislation, and no Executive Courts



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 Library of Congress

Broadside of the New Hampshire Constitution – 1776

being open to Punish Criminal Offenders, whereby the Lives and Propertys of the Honest People of this Colony are Liable to the Machinations & Evil Designs of wicked men.” The argument concluded that, “for the Preservation of Peace and good order, and for the Security of the Lives and Properties of the Inhabitants of this Colony. We Conceive ourselves Reduced to the Necessity of establishing A Form Of Government.”

But the document is not purporting a definitive and radically final solution. It is rather setting forth a formula for self-government “to Continue During the Present Unhappy and Unnatural Contest with Great Britain.” And the colonists reiterate their innocence regarding the “Unhappy Circumstances,” as well as their willingness and hope of reaching a “reconciliation between us and our Parent State can be Effected.” But at the same time, the colonists of New Hampshire recognized that this was not simply a problem between New Hampshire and the Kingdom of Great Britain, but between the motherland and all thirteen colonies, so any decision taken will be “as shall be Approved by the Continental Congress in whose Prudence and Wisdom we confide Accordingly” (Grau 2009, vol. III, pp. 40-42).

Then, the constitution describes a quite simple form of government, built exclusively around a bicameral (dual chamber) legislative that will elect government officers for the temporary conduct of the colony’s business; but leaving open a chance to have new elections and to make that government larger “if the Present unhappy Dispute with Great Britain Should Continue longer than this present year” (Ibid., p. 42). One should note the coincidences and similarities between this first Constitution of New Hampshire and the Fundamental Orders of Connecticut, which are easily recognizable.

As we know, the “unhappy Dispute with Great Britain” lasted more than “this present year,” so the simple form of government adopted at the beginning of 1776 became inadequate to the needs of a newly independent state. In 1778, a brand-new constitutional text was presented for the people’s ratification (the text of 1776 had not been so), but it was rejected. In 1781, New Hampshire prepared a constitution following the lines marked by the Massachusetts’ Constitution, which had been ratified by its people the year before, and in 1783 it was approved and ratified by the People of New Hampshire. The Constitution came into force the following year and it has been in use since then, with the addition of just a few amendments, making it the second oldest constitution currently in force.

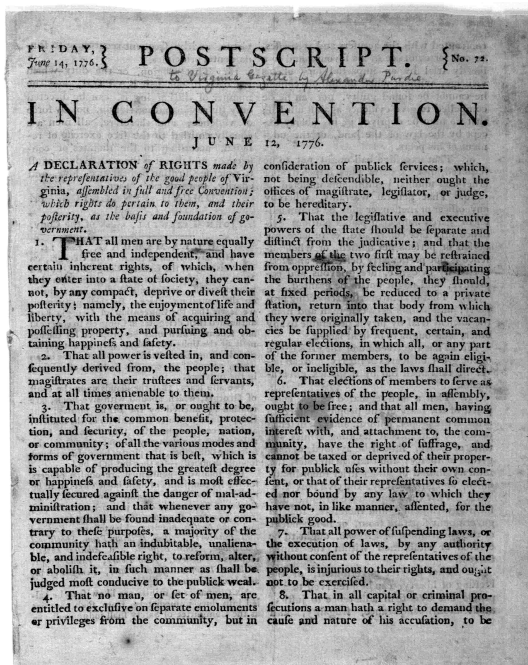
The First Declaration of Rights

Both the Declaration of Rights of Virginia and its constitution were unanimously approved in a General Convention of delegates and representatives of all counties and towns of what was then still a colony; but neither text was presented to the people for its ratification.

Although the Virginian Constitution was approved one week before the Continental Congress made its declaration of independence, its independent character is well reflected throughout the text. Whereas New Hampshire and South Carolina made references to “the Unhappy Circumstances” forcing them to organize new forms of government –but only “During the Present Unhappy and Unnatural Contest with

Great Britain,” or “until an accommodation of the differences between Great Britain and America shall take place”– (Ibid., p. 64), Virginia radically stated that “the government of this country, as formerly exercised under the crown of Great Britain, is totally dissolved” (Ibid., p. 78).

The significance of the Declaration of Rights and the constitution of Virginia resides not in their anticipation to the independence of the colonies, but in the fact that



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 Library of Congress

Virginia Declaration of Rights – 1776

and possessing property, and pursuing and obtaining happiness and safety” (Grau 2009, vol. III, p. 70).

In that Declaration and constitution of 1776, Virginia included several concepts that, for the first time, were written down and structurally considered in a fundamental norm. Virginia’s constitution was the first to proclaim the sovereignty of the People: “all power is vested in, and consequently derived from, the people.” And this declaration is not a simple statement of intent, empty of any specific meaning and power, but rather a definition of the place occupied by the government in the new constitutional order: “Magistrates are their trustees and servants, and at all times amenable to [the people]” (Ibid., p. 70). Virginia’s are the first texts to establish a clearly marked separation of powers, so “the Legislative and Executive powers of the state should be separate and distinct from the Judiciary” (Ibid., p. 70), and “The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time” (Ibid., p. 78).

The Constitution of the Commonwealth of Virginia created a form of government that was subsequently used by the other new states and even transmitted to the federal Constitution. It had a mixed –bicameral– legislative, renewed periodically through popular elections, and in which the origination of any “money bill”

they were the first two documents which recorded, for the first time, concepts and values that would eventually be included in the constitutions of the other states as well as in the subsequent federal Constitution and its Amendments. Those concepts and values have also been adopted in many of the modern constitutions of the Western world. As Prof. Matteucci says, “Virginia’s is the constitution most influential in all others of its kind” (Matteucci, p. 163). The first paragraph of its Declaration of Rights has become prototypical: “THAT all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and obtaining happiness and safety”

was limited to the branch of the most representative house. A governor or president headed the executive power. Election to the judicial branch was for life – “during good behaviour” – and provided the independent judges with “fixed and adequate salaries” to protect them from undue influences from the other branches of the government. The constitution established a republican order of government in which legislative and executive offices were elective and temporary, and in no way transmissible or hereditary, so those who occupy those offices “should at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain and regular elections” (Ibid., p. 70). The constitution also specifically defined the process of impeachment as a mechanism for the political control of public officials.

Together with its form of government, Virginia was the first state to establish a written list of “inherent rights” of the individual that should act “as the basis and foundation of Government.” Those rights included “the free exercise of religion” and “the freedom of the press;” the “right of suffrage” and of free elections; and that individuals could not be “deprived of their property for public uses” without adequate compensation. Its citizens were entitled “to a speedy trial by an impartial jury” with all due process, and they were protected from “cruel and unusual punishments.” Moreover, the constitution declared that the “military should be under strict subordination to, and governed by, the civil power,” and that an individual could not to be searched or seized, in his person or property, without a proper warrant (Ibid., pp. 70, 72).

All these concepts, then original but which today are taken almost for granted, appeared for the first time in the history of constitutionalism in the Constitution of Virginia of 1776 and its Declaration of Rights. Thereafter they were included, modified or adapted to the circumstances of the time, in other famous documents, such as the French *Déclaration des droits de l'homme et du citoyen*, or the Constitution of the United States itself and its Amendments. But we have to acknowledge that “the Representatives of the Good people of Virginia” were the first to show us how to establish a government founded on the sovereignty of the People and “instituted for the common benefit, protection, and security, of the people.”

The First Radical Constitution

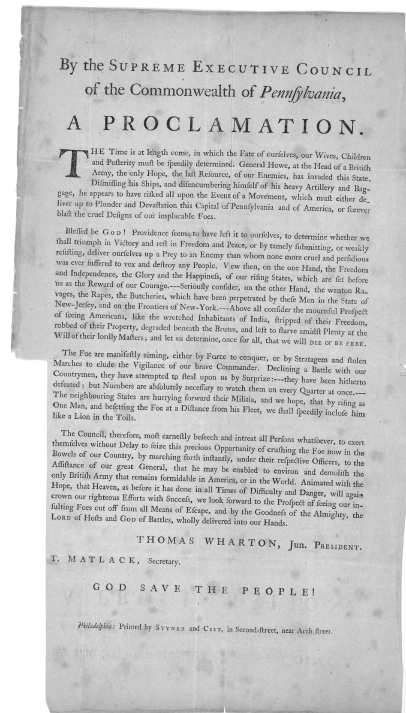
The Pennsylvania Constitution of 1776 is considered “the most radical and most democratic of the Revolutionary constitutions” (Wood, p. 438; similarly in Fioravanti 2007, pp. 87-88). Promulgated at the end of September, 1776, this constitution followed the lines set up by the Virginia Constitution, but added certain new concepts that make it different from the rest of the constitutions and justify the claim that it was “most radical and most democratic” in character.

Some of these new “radical and democratic” concepts had, in fact, actually been included in the preceding constitutions of New Jersey and Delaware. It should be reminded that both these states had, like Pennsylvania, an important Quaker influence. The ideas were primarily those of William Penn, by way of his *Concessions and Charter of Liberties* (Grau 2009, vol. II, pp. 323-331, 361-375). The similarities in the texts can

be observed, for example, in Section 2 of the Declaration of Rights of Delaware and the second paragraph of Chapter I in Pennsylvania's Constitution (Ibid., vol. III, pp. 120 and 148).

During the colonial period, only men of a minimum age and the owners of a sizable land property were allowed to vote. That prescriptive entitlement continued in most of the states after their independence. However, in accordance with its democratic spirit, Pennsylvania considered that the right of suffrage had to be extended to a much larger part of the citizenry. Thus, its Constitution reduced the minimum age required to vote from the 25 to the 21 years, and extended the right to all those male residents who had paid taxes in the state. As a result, many artisans and merchants, who previously could not vote because they did not own any land, now were entitled to vote. The right of suffrage was extended even to the sons, older than 21 years of age, of those landowners and other people who already paid taxes. This was due to the fact that Chapter I of the Constitution stated that, "all elections ought to be free, and that all free men, having a sufficient evident common interest with and attachment to the community, have a right to elect officers or to be elected into office" (Ibid., p. 150). Such "interest with" and "attachment to" the community were evidenced by the paying of taxes in the municipality where the voting right was exercised.

Other rights that appear for the first time in the Pennsylvania Constitution are "[t]hat the people have a right to bear arms for the defence of themselves, and the state," which years later was to be included almost literally in the federal Bill of Rights as the second Amendment; "[t]hat all men have a natural inherent right to emigrate from one state to another that will receive them, or to form a new state in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness," rights which, in this case, were to be expressly forbidden in the federal Constitution; or that "[a] school or schools shall be established in each county by the legislature for the convenient instruction of youth, with such salaries to the masters paid by the public as may enable them to instruct youth at low prices, [a]nd all useful learning shall be duly encouraged and promoted in one or more universities," concepts that will pass, again almost literally, into the constitutions of North Carolina and Georgia. (The interest for education was extensively developed in the Massachusetts Constitution of 1780, but there is no connection with Pennsylvania's.) Other significant rights that appear for the first time in the Pennsylvania constitution are "[t]hat the people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances by address, petition or remonstrance" (Ibid., pp.



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 Library of Congress

Pennsylvania Proclamation – 1777

150, 152, 170).

There are other rights in the Constitution of Pennsylvania which are now considered obsolete, but that clearly illustrate the subjects of interest in the society of the time. Thus, “[t]he inhabitants of this state shall have liberty to fowl and hunt in seasonable times on the lands they hold, and on all other lands therein not inclosed, and in like manner to fish in all boatable waters and others not private property,” examples again of democratic-radicalism in the constitution extending to all its citizens, a privilege that till now had been reserved to those few people in a privileged class.

The recognition of many of these rights was a prerequisite for the proper operation of other novel institutions that appear in the Pennsylvania Constitution for the first time, such as a unicameral (single house) legislature. Contrary to most of the

Thomas Paine (1737-1809) was a writer, pamphleteer and American revolutionary. Born in England, he is famous especially for his pamphlet *Common Sense*, published in January 1776, in which he vehemently urged the colonies to separate from Great Britain. For his contribution toward the independence of the United States, Paine is considered one of its Founding Fathers. Paine migrated to America in 1774, and immediately joined the American revolutionaries. In 1777, he was appointed Secretary of the Committee on Foreign Affairs of the Continental Congress, but because of his indiscretions he was expelled from the Committee two years later. Nevertheless, in 1781 Paine participated in a mission to France to get finance for the newly formed Union in their war of independence, and returned to the United States with a grant of several million pounds sterling. Congress rewarded Paine with \$3,000 for his services. In 1787, Paine returned to England, and two years later he moved to France to participate in the French Revolution. In spite of not speaking the language, in 1792 he was elected as deputy to the French National Convention. The next year, right in the middle of the Reign of Terror, Paine was arrested and narrowly escaped the guillotine. In 1802 he returned to the United States, remaining there until his death.

states, which followed the British model and had set up bicameral Assemblies, thus avoiding “the tyranny of the majorities” and contributing balance to the legislative process, Pennsylvania did not create a senior branch of the legislature. (Initially Georgia and Vermont follow Pennsylvania’s trend, and established unicameral legislative Assemblies. All three states now have bicameral legislatures.) The decision for a single House was another attempt to protect the Revolution’s democratic character in a society in which all citizens were equal. If the Revolution was to claim equal rights for all the Americans, that equality had to be reached “without Respect to the Dignity of the Persons concerned” (Wood, p. 83, citing Patrick Henry). If the old British governors and officers had been “a minority of rich men,” the Revolution could not turn to an “aristocratical junto” (Ibid., p. 86), such as an upper house would become, with even a fraction of the power from which they were dying to free themselves.

For the same reason of supporting truly democratic principles above all, the Pennsylvania Constitution did not grant veto power to the executive branch. No single person, not even the president or governor of the state, was given sufficient power to reject or obstruct the decisions made by the representatives of the People as a whole. In particular those representatives “shall consist of persons most noted for wisdom and

virtue” (Grau 2009, vol. III, p. 152). Only the People would be enabled to hold their representatives to account. To this end, Pennsylvania set up a complex process of legislative enactment, and before bills were ratified they had to be published so the people could read and analyze them; and then, using their right of assembly, they went on to “instruct their representatives” on how to vote on those bills.

As an ultimate exercise of control over the government, Pennsylvania created a Council of Censors, an institution that was no part of the Legislature, nor of the Executive, nor of the Judicial Power, but that had unlimited powers over those three. Its members “chosen, by ballot, by the freemen, [... their] duty [was] to enquire whether the constitution [had] been preserved inviolate in every part; and whether the legislative and executive branches of government [had] performed their duty, as guardians of the people, or assumed to themselves or exercised other or greater powers than they are entitled to by the constitution; they [were] also to enquire whether the public taxes have been justly laid and collected in all parts of this commonwealth, in what manner the public monies have been disposed of, and whether the laws have been duly executed.” [...] The said council of censors [had] power to call a convention [for] amending any article of the constitution, which may be defective, explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people” (Ibid., pp. 170, 172).

The radical elements in the Pennsylvania Constitution were, therefore, unique, and it had some other differences with the texts of the several states. Undoubtedly, the reasons for the differences can be found in the Quaker origin of the colony. As mentioned in the previous chapter, its initial proprietor, William Penn, and the majority of his fellow settlers belonged to the Religious Society of Friends. The principles of equality and democracy of this group became deeply engraved in the Pennsylvanians.

Many of the conventions discussing the future of the British colonies, as well as the Continental Congresses, took place in Philadelphia due to the fact that, by mid 18th century, it was the largest, most populous and prosperous city in America. Its geographic location, central to all the colonies also favored it as a place of meeting. As a result, the revolutionary delegates of the colonies gathered there, as did many radical pamphleteers, such as Thomas Paine, who published most of his works on egalitarianism there. Another reason for those radical attitudes was that, when the Continental Army was created, many of the rich, influential, and thus conservative, citizens of Pennsylvania took posts in it, thus leaving the General Assembly to other representatives less wealthy and more extreme in their opinions. These ingredients combined to give the Pennsylvania Constitution its radical character. Only in 1790, when the War of Independence had ended and the whole political process settled down under the federal Constitution, would Pennsylvania enact a much more conservative new constitution.

The First Constitution Ratified by the People

The Massachusetts Constitution ratified in 1780 is the oldest constitution in force and precedes the federal Constitution by nine years. Today, the original –obviously

amended— text remains the law of the state. (By November 2000, the constitution had received 120 amendments.) It is the only constitution of that period that was formally ratified by the people at large. (All previous state constitutions had been approved only by their constituent or regular assemblies.)

Due to its Puritan origins, the influence of town meetings played an important part in the democratic process of Massachusetts. Contrary to the Roman Catholic and the Church of England Churches, which were strictly hierarchical, many of the Puritan congregations were governed through the direct participation of their members at

John Adams (1735-1826) was an attorney and American politician, second President of the United States and one of the Founding Fathers. He was born in Massachusetts and graduated from Harvard College. After studying law in the office of a prominent local lawyer, he was admitted to the Bar in 1758. In 1765 he played an active role in the protests against the Stamp Act. Elected to the legislative assembly of the Massachusetts Colony in 1774, he later became one of its delegates to the Continental Congresses. John Adams was part of the committee that drafted the Declaration of Independence. In 1779, Adams and James Bowdoin drafted the text of the Massachusetts Constitution. Adams was one of the American delegates who, in 1782, negotiated the Peace Treaty with Great Britain. Subsequently, he was named Ambassador, first to The Netherlands and then to Great Britain. These assignments prevented him from participating in the drafting of the federal Constitution. John Adams was elected Vice-President in the two presidential terms of George Washington. After Washington's decision not to run for a third term, John Adams was elected President in 1796 as the candidate for the Federalist Party. In the forth-presidential elections, of 1800, John Adams was defeated by the candidate of the Democratic-Republican Party, Thomas Jefferson, whereupon Adams retired from politics and moved to Massachusetts, dying the 4th of July of 1826, the same day as Thomas Jefferson did.

church meetings. The Puritan churches had prospered in many of the towns in Massachusetts, so it was natural that the towns came to be governed through the same meetings as their churches. These town meetings were clear examples of a form of direct democracy, in which all the neighbors in the town participated personally and directly in the resolution of any community business.

When in 1776 Massachusetts had the need to draw a constitution to govern itself as an independent state, its General Assembly decided that the new constitutional text had to be ratified by the people. (One of the negative consequences of that decision was the delay until 1780 in the ratification.) Massachusetts finished the first draft of its constitution at the beginning of 1778, already two years behind the other states. It was then presented to the people for its ratification, but the text was rejected. The reason for that rejection was that it did not include a bill of rights, and, consequently, did not explicitly guarantee the natural and inalienable rights of the People. Neither did it include a clearly marked separation of powers, because the executive powers were not vested exclusively in the governor; he was at the same time President of the Senate and shared powers with it. Moreover, the draft proposed for ratification had not been written by a constituent convention, elected specifically to that end, but rather by a committee of the General Assembly, thus the legitimacy of the drafting convention was limited, and the independence of the draft was therefore compromised (Bradford, p.

278). As a result of the rejection, a convention of representatives was specially elected to write the new constitution.

The constitutional convention met for the first time on September 1st, 1779. John Adams and James Bowdoin are credited with writing the new draft. After innumerable changes forced by the town assemblies, on March 2nd, 1789, the Convention considered the text done and complete, and sent it to the towns for ratification. After two thirds of the people accepted it in June of that year, the democratic process was completed and the new constitution took effect by the end of the following October.

Compared to preceding bills of rights, Massachusetts' Declaration of Rights does not add any concept that could be considered genuinely novel or original. But although it does not confer any new right beyond the previous constitution, it presents those rights in a more structured and detailed way, sometimes even verbosely. Taking, as an

James Bowdoin (1726-1790) was an American politician and revolutionary. Born in Boston, Massachusetts, to a wealthy family, he graduated from Harvard University and, in 1753, was elected to the House of Representatives of Massachusetts. Later, in 1756, he was elected to the colonial Council becoming deputy to the first Continental Congress, but he declined to participate in its work, owing to poor health. In 1779, Bowdoin was elected President of the Convention assembled to draft the Massachusetts Constitution. In 1785, he was elected Governor of Massachusetts for a two-year term.

example, the right to religious liberty, Virginia's Declaration of Rights describes it in a direct and succinct way –"all men are equally entitled to the free exercise of religion, according to the dictates of conscience"– while Massachusetts adds special emphasis on the details of the practice of religion and turns it from a right into an obligation: "II. – It is the right as well as the duty, of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship." And to it Massachusetts adds another long section imposing the public teaching of religion: "III. – As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of GOD, and of public instructions in piety, religion, and morality. Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their Legislature with power to authorize and require, and the Legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of GOD, and for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily" (Grau 2009, vol. III, pp. 72, 392). (It should be noted that these two articles were later on amended. The text of article III was replaced in 1833 by Amendment XI that eliminated all references "to enjoin upon all the

subjects, an attendance upon” religious teachings, although retaining their importance: “As the public worship of God and instructions in piety, religion and morality, promote the happiness and prosperity of a people and the security of a republican government; – therefore, the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society, a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made, or entered into by such society: – and all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.” Equally, in 1917, article II was softened by several Amendments, especially Amendment XLVI, which Section 1 simply states: “No law shall be passed prohibiting the free exercise of religion.”)

What distinguishes the Massachusetts Constitution (in its 1780 version, before the Amendments that moderate it) is its defense of the property rights and recognition of the distinctions between classes. In Pennsylvania, as we saw above, the distinctive feature of its constitution of 1776 was its radical and democratic nature. The requirements regarding voters or electors in Massachusetts were that they had to be a “freemen of the full age of twenty-one years, having resided in this state for the space of one whole year next before the day of election for representatives, and paid public taxes during that time” (or be the son of who had paid them). To be elected representatives, it was required that “persons [be] most noted for wisdom and virtue” and have resided two years in the district represented. In Pennsylvania, to be an elected representative it was not required to own a minimum of property. In fact, taking literally the constitutional text, elected representatives of the freemen did not need to be freemen themselves, nor to have a minimum age, not even to have paid taxes in the district where they were elected. All those requirements were replaced for “wisdom and virtue.”

In Pennsylvania, the number of representatives (of the single legislative House) assigned to a district was determined by the number of freemen paying taxes in that district. In Massachusetts, anyone standing for election required a minimum of property, the value of the property increasing proportionally accordingly to the rank of office sought. The Massachusetts Constitution also required that people eligible to vote be not only freemen, but also freeholders or holders of a significant estate. In Massachusetts too, the number of senators for a district was not determined by the number of its inhabitants, but by the amount of taxes paid in that district; thus, wealthier districts had more senators, so the wealthier citizens had a larger representation in the Senate. To be eligible to vote, it was required to be a “male inhabitant of twenty-one years of age and upwards, having a freehold estate within the Commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds.” To be elected a Senator, it was required to be “seized in his own right of a freehold within this Commonwealth, of the value of three hundred pounds at least, or

possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and who has [...] been an inhabitant of this Commonwealth for the space of five years immediately preceding his election, and, at the time of his election, he shall be an inhabitant in the district for which he shall be chosen.” In the second House, the number of Representatives in every district was not determined by the number of its inhabitants but of its “rateable polls,” that is, number of properties paying taxes. To be elected, every Representative, “for one year at least next preceding his election, shall have been an inhabitant of, and have been seized in his own right of a freehold of the value of one hundred pounds within the town he shall be chosen to represent, or any rateable estate to the value of two hundred pounds.” Not only had the Representative to have that property when elected, but also he needed to keep it to be able to hold the seat, since “he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.” (Ibid., pp. 406, 410, 412-414.)

Although they had to be at least three times wealthier than representatives, once elected, senators did not need to keep their wealth to hold their seats.

A similar favorable attitude toward the upper classes can be seen in the pomp and circumstance section of the Massachusetts Constitution. The egalitarian spirit of the American Revolution required that “nor shall the united states in congress assembled, or any of them, grant any title of nobility”



<http://www.loc.gov/pictures/item/96522959/>
 Library of Congress

View of the Port of Boston – 1770

(in *Articles of Confederation*, Ibid., p. 372). Massachusetts, however, is the first state to address its governors as “His Excellency” and its lieutenant-governors as “His Honour” (Ibid., pp. 416, 424). To be elected for either office, the candidate “shall have been an inhabitant of this Commonwealth for seven years next preceding; and unless he shall, at the same time, be seized in his own right of a freehold within the Commonwealth, of the value of one thousand pounds; and unless he shall declare himself to be of the Christian religion” (Ibid., p. 416).

Finally, Massachusetts made extensive provisions for education, the social value of which had already been recognized in previous constitutions in other states (Sec. 44 of Pennsylvania’s, Sec. 41 of North Carolina’s, Sec. LIV of Georgia’s, Sec. XL of Vermont’s of 1777). But the Massachusetts Constitution reserves its whole Chapter v to praise the importance of education and, specifically, to the Harvard University (Ibid., p. 430). Although maintaining the values sustained in the original text, Massachusetts has eliminated, by way of amendments, the direct influence of the government over private institutions, including the University itself. Support for the excellence in learning in its

original constitution made it possible for Massachusetts to house today some of the most prestigious academic institutions in the world.



Map of Treaty of Peace – 1783