

NEW JERSEY IN THE AMERICAN REVOLUTION

6. Actually, the delegates were instructed to vote in favor of the momentous three-part motion offered by Richard Henry Lee of Virginia on June 7: "That these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved. That it is expedient forthwith to take the most effectual measures for forming foreign Alliances. That a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation." Worthington C. Ford, et al., eds., *Journals of the Continental Congress, 1774-1789* (34 vols., Washington, D.C., 1904-1937) 5:425.

6 The Constitution of the State of New Jersey

[Julian P. Boyd, ed., *Fundamental Laws and Constitutions of New Jersey, 1664-1964* (Princeton, 1964), 156-63. In his definitive edition of the state constitution, Boyd collated the attested copy of the document located in Liber AB, Commissions, f. 187, New Jersey State Library, with the official printed version published by Isaac Collins at Burlington in 1777.]

The state constitution of 1776 was a hastily formulated document designed to meet the governmental emergencies brought about by the demise of royal authority and the onset of independence. On June 21 the Provincial Congress resolved by a vote of 54-3 "That a government be formed for the regulating the internal police of this Colony." On the twenty-fourth a ten-member committee headed by the Reverend Jacob Green of Hanover was instructed to draft a constitution; two days later the committee produced the finished document, apparently written largely in advance by Jonathan Dickinson Sergeant. During the ensuing debate, delegates for reasons unknown departed in droves so that when the final vote came on July 2 only slightly more than half (35 of 65) of the congressmen were on hand to adopt the new instrument of government by a margin of 26-9. Although there is no record of the discussions on the various parts of the frame of government, the constitution as a whole surely embodied the political views common to Jersey Whigs, since the document was intended to meet with the approval of the widest possible segment of the population. Presented with a rare opportunity to fashion their own constitutional-legal environment, the congressmen used the constitution as a medium to express current philosophies of government and politics and establish the most efficacious governmental structure. In so doing they were guided by time-honored beliefs and practices as well as the exigencies of the time and the lessons derived from the past decade of jurisdictional disputes with England.

VII FROM COLONY TO STATE

In Provincial Congress, New Jersey Burlington, July 2d, 1776

Whereas all the constitutional Authority, ever possessed 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'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;¹ 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,² viz.

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

2d. 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.

3d. That on the said second Tuesday in October yearly and every Year forever, (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,³ 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;⁴ 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

NEW JERSEY IN THE AMERICAN REVOLUTION

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.

4. 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 preceding the Election, shall be entitled to vote for Representatives in Council and Assembly; and also for all other publick Officers that shall be elected by the People of the County at Large.⁵

5thly. 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.

6thly. 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.

7. 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.

8. 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.⁶

9. 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.

10. 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.

11. That the Council and Assembly shall have Power to make the Great Seal of

VII FROM COLONY TO STATE

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.

12. 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.⁷

13. 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.⁸

14. 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 publick Taxation; which Commissioners of Appeal shall, for that Purpose, sit at some suitable Time or Times to be by them appointed, and made known to the People by Advertisements.

15. 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.*

16. That all Criminals shall be admitted to the same Privileges of Witnesses and Counsel, as their Prosecutors are or shall be entitled to.

17. 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 anyone, be henceforth deemed a Deodand,⁹ or in any wise forfeited on Account of such Misfortune.

18. 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 Conscience; 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

NEW JERSEY IN THE AMERICAN REVOLUTION

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.

19. 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.¹⁰

20. 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.¹¹

21. That all the Laws of this Province, contained in the Edition lately published by Mr. Allinson,¹² 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.

22. 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.

23. 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't. 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 publick 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.¹³

VII FROM COLONY TO STATE

1. That is, in compliance with the congressional resolution of May 15, 1776. In fact, the preamble of the constitution is modeled upon the resolution.

2. Notice should be taken of the extraordinary authority assumed by the congressmen in declaring themselves to be the legitimate representatives of the people, in adopting a constitution for the state without authorization, and in implementing the provisions of the charter without the consent of the people through any ratification process.

3. The members of the royal council were appointed by the crown upon recommendation from the governor.

4. Under royal government each county elected two representatives, as did the capitals of Perth Amboy and Burlington.

5. This liberal franchise provision went further than the framers intended, for it granted suffrage not just to Caucasian males but also to women, blacks, Indians, and others (such as prisoners) excluded by colonial law. Later legislation restricted voting to white adult males.

6. The powers of the governor are minimal, reflecting the concern with executive tyranny that had played an important role in the coming of the Revolution. The governor was less a chief executive than a presiding officer. However, a magistrate who possessed a strong personality and political skill could, and in the case of William Livingston did, become a strong executive.

7. Colonial judges had been appointed by the crown and held their posts at the pleasure of the monarch; other royal officials held similar tenures.

8. The posts of sheriff and coroner were appointed by the governor in the colonial period and were generally occupied by the same individual for many years.

9. Deodand: in English law, chattel property which, because it had been the immediate cause of the death of a human being, was forfeited to God — i.e., to the crown to be used for pious (charitable) purposes.

10. Despite the apparent liberal attitude toward religion expressed in the eighteenth section, Jerseymen shared the bigotries of the day: as Englishmen they detested Catholics and as Christians they despised nonbelievers. The people of New Jersey could worship as they pleased, but those not a part of the Protestant establishment paid a political price for their faith.

11. Multiple officeholding, a common practice during the colonial era, fired the fears of corruption on the part of government officials that helped discredit the royal regimes.

12. Samuel Allinson, comp., *Acts of the General Assembly of the Province of New Jersey, 1702-1775* (Burlington, 1776).

13. This controversial paragraph, hotly debated in the Congress, attests to the uncertainties of the time and the hopes of some that reconciliation with Britain might still be achieved even as a new government was created. Significantly, the term "state" never appears in the constitution; New Jersey is always referred to as a "colony."