

U.M.

"The Transition from a Provincial to a State
Government in New Hampshire."

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The Transition from a Provincial to a State Govern-
ment in New Hampshire.

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I- Introduction: Constitutional History Previous
to the Stamp Act Period.

From the very beginning, the history of New Hampshire possessed features which made its constitutional development unique. The germ of its government was not in a charter granting an extensive territory to a company, nor in a patent giving proprietary rights to an individual. The colony grew from four isolated settlements, three of them for a long time virtually independent little republics, working out their own municipal salvation. Little Harbor (Portsmouth) was settled by David Thomson in 1623, and Hilton's Point (Dover) a few years later. Exeter was granted to Wheelwright by the Indians in 1638. These settlements, it is true, were within the patent granted to John Mason, but he had never been granted any civil authority, and he died in 1635, leaving the Province without a head. In the six years succeeding this event, the inhabitants of the three towns made their first unhampered trials at self-government. Possibly in these trials might be found a prophecy of the caution exhibited by their ancestors in testing constitutions when New Hampshire became a State. Hampton, the fourth of the settlements, was incorporated by the general Court of Massachusetts, in 1639, and hence cannot be regarded as one of the absolutely independent factors in the

the limits of New Hampshire.

In two of these towns the foundation of government rested on agreements similar to the "Magna Carta". The "Charter" of Exeter was a civil compact drawn up by the citizens in 1339 in which the subscribers were bound to "submit themselves to such godly and Christian laws as are established in the realm of England to our best knowledge, and to all other such laws which shall hereafter be made and enacted amongst us." (1)

The first "combination" at Dover was made in 1339, and another in 1340. The essential content of these was the same as that of Exeter. (2) In these towns during the years from their settlements to 1641, no authority on earth was recognized except his "excellent Majesty." They held their own courts, enacted laws, and elected their officers. The franchise was in general to freemen. In 1641, when the manifest necessity of a higher government than a municipality caused their voluntary subjection to Massachusetts Bay, there was but little change in local government. Concessions were made to these towns which differentiated them from those within Massachusetts proper, and for forty years more they remained practically independent. A half century of self-government in the region of the Piscataqua before it became a royal Province, could not fail to strongly influence its future political history. In a Centennial Oration delivered in Dover in 1876, Dr.

1. History of Exeter, by C. C. Bell, p. 18.

2. The text of Dover's "magna charta" is given in Historical Memoranda of Ancient Dover, N.H. by A. N. Quint, p. 20.

Quint, though displaying a slight natural admixture of local patriotism, states the unique character of the situation admirably. "The political history of Dover, and in fact of New Hampshire did not begin with a general government, and then a subdivision into townships. The townships were first; they were independent of each other, a democracy on the falls of the Strawson, a democracy on Strawberry Bank, a democracy on the upper Piscataqua. Experience showed the necessity of union, but when they united, and when they all came under the government whose seat was at Boston, they retained almost all their independence. Dover transacted its own affairs in its own town meetings. It granted the land within its borders and its citizens held these lands in fee simple. It levied and collected its own taxes.-- Thus we see that our own local government--was a voluntary democracy, and that in its union with Massachusetts, was also a voluntary act, and utterly ignoring royal authority, it reserved local self-government and local liberties. (1)

1. Ibid p. 21

1679 In 1679, Charles II appointed a commission to govern New Hampshire, consisting of a governor and Council and so it took its place among the charter governments of America. The first ten years of Provincial government were not such as to impress the people with its benefits. In 1682, Edward Cranfield was commissioned Lieutenant-Governor, with power to veto all acts of the Council, and to appoint Justices and other officers

2. Laws of N.H. Vol. I, Introduction, p. XLIX commission given in full p. 48

These powers and others which we assumed, he exercised with a despotic hand. The Assembly became a mere sham.

1684 In 1684, the people appointed Nathaniel Sears, ancestor of those other of the same name, who was the central figure of the State a century later, to present a petition of remonstrance to the King, and as a result, Bowdoin was removed. From 1688-9, the Province was merged with the rest of New England under the administration of Andros. But with the Revolution of William and Mary, the administration of Andros ceased, and the Province found itself again without any governing head. In this crisis, delegates from the four towns met at Portsmouth in January 1689, and made their first experiment in drawing up a form of government, for the Province, independent of royal authority. But the people, exhibiting thus early the independence which distinguished their descendants in future experiments on constitutions refused to adopt it, and once again, the Province petitioned to be taken under the wing of Massachusetts. The amalgamation took place, and until 1741 the affairs of the two colonies were administered by a single executive.

1741 In that year, Benning Wentworth, son of a former Lieutenant Governor, became Governor of the Province, which had been definitely marked off from Massachusetts, and bounded by a royal survey only the year before. For more than twenty-five years, his "family government" (1) continued. This quarter of a century was practically the only period before the Revolution in which New Hampshire had unhampered opportunity for

1. This term was applied to his administration, because of his famous tendency to nepotism. See Whiton's Hist. of N.H. p. 85

growth as an individual colony. When Bending Wentworth put on the gubernatorial robes, Massachusetts had scarcely awakened to the humiliation of the loss of territory, and when he passed them on to his nephew, that controversy was still unsettled, and the revolutionary objects of the Revolution were already visible.

From this preliminary survey, one conclusion at least may be drawn. During more than one third of the period previous to the Stamp Act, the commonwealth had been under what was to say the least, a very democratic ^{form} _{CA}

1622-1680 of government. This could not but place its stamp on the future history of the colony. When the crises came, the people were not wholly unprepared to meet them. However, they had been closely affiliated with Massachusetts for a full century, and this also was influential to a marked extent in their later history.

1641-1741

II. The Stamp Act Period.

In the first period of revolutionary activity caused by the passage and attempted enforcement of the Stamp Act, New Hampshire occupied a less prominent position than most of the other colonies. The first action taken by the Assembly was in June, 1765.

1765 June 29 On the twenty-ninth of that month, the speaker laid before the House of Representatives, a letter from the speaker of the Massachusetts House, urging a meeting of committees from the several colonies, at New York, in order unitedly to implore His Majesty and Parliament

For relief from their oppressed circumstances. In response to this appeal, the House resolved as follows: "Notwithstanding we are sensible such representation ought to be made and approve of the proposed method for obtaining thereof, yet the present situation of our government affairs will not permit us to appoint a committee to attend such meeting, but shall be ready to join in any address to His Majesty and the Parliament we may be honored with the knowledge of, probable to answer the proposed end." (1)

1. New Hampshire Provincial Papers, VII:81

But "the present situation of our government affairs" was, that prevented New Hampshire's representation to the Stamp Act Congress, is a matter of conjecture, but we have no reason to doubt the sincerity of the sympathy expressed for the movement. For after the Congress had done its work and sent copies of its resolves to the New Hampshire Assembly, approval of them was "resolved and voted unanimously" and a committee appointed to sign them. (2)

2. *ibid* p.92

Nov. 22

1766
Jan. 9

Six weeks later, they were re-read and made a part of the official records of the province. (3)

3. *ibid* p.96

Even though New Hampshire was not characterized by such a violent spirit of liberty as her southern neighbors, the attempted enforcement of the Stamp Act was not unattended with public demonstrations. At least, no question can be raised as to the extreme caution with which it protected its rights in this period, or at any other time in the succeeding history of the Revolution, for that matter.

1765 George Meserve, the collector appointed for New Hampshire was a native of Portsmouth, but residing in England at that time. He arrived in Boston on the ninth Sept. of Sept. in 1765. While it is true, as before stated 9th that the hot blood of the south did not flow in the veins of the New Hampshire's citizens, it is just as certain that the resignation of no collector in the thirteen colonies was so often and so well endorsed as Meserve's. Upon the recommendation of friends, he was wise enough to resign his office before he landed. But, this fact did not soon become generally known at Portsmouth. On the twelfth of Sept^{ber} there took place 12th. Sept. there the burning of effigies, such as marked the arrival of Stamp masters in other colonies. In this case it was three-fold: the effigy of Meserve was accompanied by those of Lord Bute and the Devil:--respectively, the executioner, the human instrument and the generally acknowledged instigator of the iniquitous act. When Meserve arrived on the eighteenth, he was immediately Sept. surrounded by the people, and to pacify them, he again 18th. resigned.

Nov. 1/ On the first day of ~~Nov.~~ ^{November} the Stamp Act was to go into effect. The New Hampshire Gazette had appeared the night before with a black border, in mourning for Liberty, and announced the suspension of its publication, as it would not submit to be stamped. Funeral obsequies were popular. Bells were tolled, flags on the vessels were at half mast. In the afternoon, the supposedly lifeless form of Liberty herself was borne through the streets in a coffin, bearing the inscrip-

tion "Liberty, aged 145, Stamp." But at the place of interment, "some signs of life appearing, Liberty was not deposited in the grave; it was rescued by a number of her sons, the motto changed to "Liberty revived" (1) and carried off in triumph; the detestable act was buried in its stead, and the cloths of the vallet were laid upon it; the bells changed their welauchly sound to a more joyful tone."

1766 But Maserye's troubles were not yet over. His commission had been delayed, and was not received until January. The people were alarmed again. To make assurance doubly sure, and forever put an end to all doubt as to his intentions, they assembled on the 9th of that month, and demanded his instructions and commission. These being handed over, he was publicly put on oath that he would not make any attempt to perform the duties of his office. Then that ^{horred}shorred commission was launched on its interesting career. It was first borne through the streets on the point of a sword. Afterward it was sent to the agent of the Province in England, to be disposed of at his discretion. These cautious northern sons of Liberty were still so fearful of trickery that they made the master of the ship which carried it take oath to deliver it according to directions. (2) At first they had conceived the idea of boldly returning the document to the

D. Adams: Annals of Portsmouth p. 213. A quaint account of the whole period of the Stamp Act is given pp. 211-19

stamp commissioner himself at London. Fortunately this defiant purpose was not carried out, for when the agent received the commission, the repeal of the act was imminent. He succeeded in suppressing the news of the receipt of the packet. (1)

The unfortunate Neserve should have been left in peace after this, but we may infer that he was viewed with suspicion through the years of the rising storm, for in 1775, the Portsmouth Committee of Safety warned the Committee for the Colony against him as an "enemy of the liberties of America." (2)

On the whole, authority was held in respect and order preserved during these troubled months. The tendency to riot was checked in the larger towns by associations to support the magistrate. Governor Bening Wentworth had been as non-committal as possible. In coming before the Assembly a letter from Secretary Conway, which recommended that compensation be made for damages done in riots over the attempted enforcement of the Stamp Act, he told them "with pleasure and satisfaction that he had no requisition to make", and added "happy would it have been for the other colonies had they been in our situation." (3)

The exuberance of joy over the repeal of the Act is detailed by Nathaniel Adams in the Annals of Ports-

I. Belknap:
History of New
Hampshire.

II. 329, Adams
Annals, etc.
316

2. New Hamp-
shire. Provin-
cial Papers

3. *ibid* 100

mouth. "At early dawn, all the bells began to ring; a discharge of cannon saluted the rising sun--the ships in the harbor were decorated with their colours; drums and military music contributed to the hilarity of the day. At twelve o'clock a royal salute was fired at Castle William and Fort Mifflin by order of the Governor, which was answered by the batteries in town.--In the afternoon a grand procession was made through the principal streets, and a salute was fired at each of the public buildings as they passed.--The bells continued ringing through the day. In the evening a bon fire was

kindled on windmill hill." (1) And so on. He observes however, that "the whole transaction was conducted with

decorum, sobriety, and innocent mirth." (2) But Belknap

in commenting on the same subject sagely remarks that

these rejoicings were "extravagantly disproportioned to the object. We felt a transient relief from an intolerable burden; but the claim of sovereign power, in our fellow-subjects, to take our property, and abridge our liberty at their pleasure, was established by law. Our only hope was, that they would profit by their recent experience; and whilst they enjoyed the pride of seeing their claim exist on paper, would suspend the exercise of it in future." (3) The Assembly

in their address to the Governor, July 1, 1766, expressed their heartfelt gratitude to "the best of Kings for the repeal. (4)

1. Adams: Annals of Portsmouth 218

2. Ibid

3. Belknap. Hist. of New Hampshire II:335

4. New Hampshire Provincial Papers. VII:104

1766

July 1st

One of the most notable evidences of the general law-abiding spirit of the people was the lack of damage claims following these events. Only two are found in the records of the House. The first was by the collector, George Meserve, himself, which was presented on July 1st, 1776. (1) On the ninth of July the committee to whom the petition was referred reported that no damage had been done to the body or estate of the claimant, and the petition was dismissed. (2) The other was presented by Nathaniel Barrel, for damages done to "Nathaniel Barrel and others" by mob violence, on July 11, but no action thereon is recorded. (3)

1. Ibid

2. Ibid p.110

3. Ibid p.112

1776
July
11

III. From Stamp Act Period to Rupture between the Governor and the Assembly.

When the Assembly adjourned in May 1747, the administration of Beeding Wentworth came to an end. We have reason to believe that the resolution wherein the House expressed their regret at his removal, aside from the flourishes incidental to such a document, is fairly indicative of the real sentiment of the Province. (4) His career had been marked by the "family Government" before mentioned, and by his manifest ambition to increase his personal fortune without always regarding the measure used. But perhaps the closing words of a message sent to the Assembly in 1745, best express his

1747
May

4. "Upon this information, the House in the name and behalf of their constituents would express their gratitude and give you hearty thanks for all the signal service you have done this Province, -- for the steady administration of justice, the quiet enjoyment of

true policy--and that of many another royal governor as well. "My firm attachment to his Majesty's person, family and government, challenges my fixed attention--and my next pursuit shall be the peace and prosperity of his Majesty's good subjects of this Province." (1)

For seven years, the administration of the new incumbent, John Wentworth, a nephew of the retiring governor, was comparatively uneventful. Three Assemblies only merit particular attention, those of 1768, 1770, and 1773.

1768
Apr.
27. On August 27, 1768, a petition to the King was presented to the house by the committee for that purpose appointed. (2) The address, like many of its kind sent from the colonies during these times, was a declaration of grievances and petition for release. The expression of allegiance was foremost. "We most heartily and sincerely profess our allegiance to your Majesty, of which we trust our conduct and behaviour has always given the clearest evidence; the obedience and affection of the people of this Province to your Majesty and your royal predecessors, has, we apprehend, never been called in question, or in any measure doubted." (3) Moreover, the authority of Parliament is not brought into question: "We by no means dispute the authority of the British

property, the civil and religious liberties and privileges, his Majesty's good subjects of the Province have experienced and possessed during this period."

N. H. Prov. Papers VII:116

1. *ibid.* v: 753

2. N.H. Prov. Papers VII:187
For reasons which have not been ascertained, the passage was not sent until April 1770 but as it reflects the sentiments of the Colony at this time, it seems advisable to present it here.
See p. 248.

3. *ibid.*

Legislature. We have ever been and still are obedient to all acts of Parliament, regulating the affairs of your Majesty's subjects in general, and the due administration of justice without complaint." But the complaint that is made¹⁵ on the ground that the late revenue acts "tax us without our own consent." This is the single theme of the message. Internal taxes, they claim may only be justly levied by their own representatives and not by Parliament, in which "we are not nor can be represented." Moreover, they are fully conscious of the fact that these are the sentiments that are held in general throughout the American colonies. "It affords high satisfaction to this House" a letter to the Virginia Burgesses had said, "that they entertain the same views of the late grievous acts of parliament with the rest of their American Brethren." (1)

But this message was not sent until a year and a half later, and the letter to New Hampshire's London agent, which accompanied it, indicated that they feared lest they should be thought less awake to the situation than the other colonies. It is not improbable that the other colonies had been stirring them up. At any rate, they hoped that its receipt might at least "demonstrate that we have sensibility to feel the oppression and are much aggrieved as well as

1. W. U. Prov.
Papers.
VII: 189

others with the weight of the general burden, and hope it may serve as a remembrance that we acted in concert with our neighbors to obtain a removal of the burdens under which we groan." (1)

I. *ibid* 250

It was in May 1773, in accordance with suggestions from the House of Virginia and Rhode Island that the New Hampshire House appointed its first Committee of Correspondence, the purpose thereof being, as in the other colonies, to keep informed in regard to the proceedings of Parliament as they related to the American colonies, and to maintain a correspondence with the sister colonies upon the subject. (2) Town committees had been and continued to be appointed from time to time to serve similar purposes locally. (3) There is no record of any activity on the part of the colonial committee until the appointment of its successor, precisely a year later.

2. *ibid* 331

3. *ibid* 444,
445, 473 et al

Although the ferment produced in America by the Townshend Acts, and, after their repeal, by the tax on tea, was scarcely noticeable in New Hampshire, situated as it was on the border of a colony whose bold action procured for it imperishable fame, its conduct was nevertheless firm and unyielding. On Dec. 16, 1773 the inhabitants of Portsmouth, in a town meeting, protested against the tax, as subversive of American liberties, having a "direct tendency to subvert our constitution, render our assemblies useless and the

Dec.
16

.ibid 333

government arbitrary." (1) It was made tersely clear that "every necessary method" would be used to prevent the landing of any tea at that port. A month later, the Governor's message to the House took note of "infections and pestilential disorders being spread among the inhabitants, especially of Portsmouth." (2)

. ibid 335

Only two shipments of tea were made to New Hampshire, both consigned to a citizen of Portsmouth. The firm deliberateness of the action taken in this regard was notable. The first consignment arrived on June 25, 1774, was landed and stored in the custom house before the people could assemble to prevent it. By the order of the town, a guard was appointed to watch the custom house. The consignee was permitted to pay the duty, but readily consented to reship the cargo to Halifax. The receipt of the second cargo in September was not attended with such peaceable circumstances. The consignee was the same as in the first case, and his house was attacked and damaged by a mob. (3) Under stress of circumstances he again consented to reship the tea to Halifax, after it had been duly entered, and the duty paid upon it. The committee of the Council, appointed to investigate the affair reported that the mob violence had been largely due to negroes and boys and that the town was quiet. (4)

.Belknap:
History of
N.H. II:366seq.

.N.H.Prov.
Papers.
VII:416

If the spontaneous sympathy and spirit of co-operation aroused by the passage of the bill which closed

1774 The port of Boston, in the attempt to throttle Liberty
May 19. Party submission, Portsmouth bore its part. A commit-
tee of the town on May 19, sent a message of hearty
sympathy for their oppressed neighbors. (1)

In February of 1774, the House in response to a
letter from Massachusetts, assured them of their "as-
sistance in promoting a general union through the col-
onies, which we hope will be so strongly cemented as
not to be easily dissolved." (2) It was the spirit
which inculcated such sentiments as these throughout
America, which made possible, when the crisis came,
the united action which cast off the royal yoke.

Relations between Governor Wentworth and the As-
sembly had thus far been comparatively amicable. But
sentiments which expressed the increasing embarrassment
of his position are found in his letters of this time.
The Assembly which sat on April 7, was destined to come
to the parting of ^{the} ways where the representatives of
royalty and the representatives of democracy must take
diverse paths. This was due to the passage of the
Boston Port Bill, local action in reference to which
has already been noted. A Committee of Correspondence

1774
May
28. was appointed by the House on May 28th. (3) The
committee appointed a year before had excited no at-
tention, but this one was more ominous. It was vir-
tually the New Hampshire link in the colonial chain
which that unfortunate bill was forging, and which was

1. American
Archives
4th Series
vol. 1:338

2. J.H. Bray.
Papers. III:355

3. Ibid 366

threatening to manacle and render powerless the might of the Empire in the Western world. The governor, by adjourning the Assembly from day to day attempted to obtain a suspension of the committee. But when he learned that letters ~~for~~ for the speaker were in town reported to contain a call for a General Congress, he decided that the hour had come for a summary check upon the rising spirit of insubordination, and dissolved the Assembly. (1)

The governor's manifest expectation that the Committee of Correspondence would dissolve, along with the Assembly, was disappointed. With the utmost boldness and assumption of authority, they issued summons to the dispersed representatives, and they reconvened in their own chamber. (2)

1. Letter from Gov. Wentworth to the Earl of Dartmouth, June 8, 1774, *ibid* 369. The resolution itself: "as I look upon the measures entered upon by the House of Assembly to be inconsistent with his Majesty's service and the good of this government, it is my duty as far as in me lies to prevent any detriment that might arise from such proceedings. I do therefore, hereby dissolve the General Assembly--"

ibid.

2. The statement made by J.B. Walker in M.H. Five Provincial Congresses, that they continued to sit, is incorrect. *ibid* 399-400

1774 The Governor, accompanied by the Sheriff, came and declared the meeting illegal, and ordered it dispersed(1) When he had taken his departure, they adjourned to another house, and determined to send letters to all the towns in the province, requesting them to send deputies to a convention at Exeter, for the purpose of appointing delegates to a General Congress. Each town was allotted a certain amount, to help defray the expenses of the delegates to the Continental Congress. This was the first movement to unite New Hampshire for the long struggle, although there is not the slightest indication of any consciousness of the character of the superstructure that was to be built upon this foundation. Indeed, the letter states the purpose of the convention to be the consideration of means to restore "Union between the mother country and the colonies." (2) It took the rapid revolutionary development of two years to reverse this sentiment.

July
8

The open rupture had come and as in the days of the revolution of William and Mary, (3) the people of the colony were thrown on their own resources. The student of the succeeding decade may observe the absorbing spectacle of the unfolding of democratic constitutional liberty in New Hampshire. It may not be unfitting to review briefly at this juncture, the spirit which the province had manifested during the preliminaries of the Revolution.

1. The speech brands the assemblage as defiantly illegal in very strong terms. ibid 400

2. ibid

3. p. 5

Conservatism was written on the face of every document, and was at the root of nearly every act of the people. Where a course contrary to the dictates of Decency seemed necessary, it was taken with firmness, but never rashly. Adams asserted that even the extravagant joy manifest at the repeal of the Stamp Act was marked by decorum. The manner in which the shipments of tea were turned away from Portsmouth has been noted. Even the revolutionary re-assembly of the July dissolved House in July of 1774 remembered the gravity of its character, and received the speech of the Governor, standing and in silence as their former custom had been. Instances will be observed in the subsequent history where this conservatism almost degenerated into timorousness.

No unmixed cause can be assigned for this law abiding and cautious spirit. The reason was twofold. There need be no hesitation in asserting that the primary cause was in the general character of the people. The first settlements were made by fishermen and salt-makers; hardy, independent, belonging to the home-spun class. And during a century and a half they had maintained that character. But there was another cause which was more than once discernible. The holders of important offices for a long time formed almost an aristocratic close corporation. The Wentworth family and their connections extended their ram-

ifications into political and commercial life to such an extent as to be a most effectual brake on the momentum of public sentiment. This was most notable in the delay in a non-importation agreement in Portsmouth. Such agreements seemed to spring into existence almost like involuntary reactions, after the Townshend Acts, but in Portsmouth the Wentworth-Atkinson merchant connections delayed action until the other colonies threatened to boycott the town:(1) in 1770, however such an agreement was finally taken. In 1774, the Grand American Association promulgated by the Continental Congress, met a ready response, in a resolution by a Portsmouth town meeting. (2)

This spirit was not without recognition on the part of those high in authority. Wentworth, writing to Lord Dartmouth Aug. 29, 1774, said "I think the Province is much more moderate than any other to the southward, although the spirit of enthusiasm is spreading and requires the utmost vigilance and prudence ^{to restrain it} from violent excess." (3) In July, 1758, Hillsborough, then in charge of colonial affairs,

wrote to Wentworth that the "steady resolution" of the people of New Hampshire "in refusing to accede to the measures and proposals which have been urged with so much indecent warmth in other Colonies, cannot fail to commend them to his royal favor and countenance."(4)

1. "We cannot depend on the countenance of many persons of the first rank here; for royal commissions and family connections influence the principal gentlemen among us, at least to keep silence in these evil times. The press has never been openly attacked; but the printer remembers what he once suffered at Boston, and is easily kept in awe by more private rebukes." Letter of the Sons of Liberty, in Portsmouth, to those in Boston. Cited in Belknap, History of New Hampshire II: p. 347 n.

2. American Archives I:1233

3. New Hampshire Provincial Papers VII:411

4. Ibid 192

IV. Dissolution of the Royal Government.

On the twenty-first of July, eighty-five Deputies representing probably nearly as many towns, assembled at Exeter, in New Hampshire's First Provincial Congress. The presence of that number of Deputies was in itself very significant. The Assembly had consisted of thirty-five representatives from as many towns, less than one-quarter of the number in the colony. The principle which the colonies had recently strenuously maintained in their contention with Great Britain, was that communities could only be taxed by council in which they were represented, but in New Hampshire itself the majority of towns had been unrepresented. From the time of this first Congress, the equity of this principle was constantly kept in view.

The business transacted was inconsiderable in amount, and the convention probably adjourned on the same day that it assembled. The important items were only three in number. John Sullivan and Nathaniel Folsom were elected delegates to the Continental Congress. A committee was appointed to prepare instructions for them, and a recommendation of aid to Boston was voted. (1)

Between the session of this and the Second Congress, two events of importance occurred. General Gage, finding it impossible to engage local artificers to build the barracks requisite for his troops

1.Prov. Papers VII:407-8

in Boston; was forced to send an appeal for aid to neighboring governors. The manner in which Governor Wentworth responded makes one of the most disgraceful incidents in his otherwise fairly popular career. Realizing that it would be impossible to succeed in hiring cartridges openly in Portsmouth, he attempted to do it secretly. But the underhanded effort soon became a matter of public knowledge, and the Portsmouth Committee of Correspondence of whom his own uncle, Hunking Wentworth, was the head publicly censured him.⁽¹⁾ The agent whom he had employed made a humble acknowledgement to the committee and was dismissed. But the act was a lasting blemish of weakness on the character of an excellent governor.

1774

If New Hampshire had hitherto erred in the way of too much deliberation, an event which took place in December of 1774, might be considered to cover a multitude of such sins. The King had passed an order in Council, prohibiting the exportation of powder to America. Upon the receipt of this information, which was brought to the Portsmouth committee from Boston by Paul Revere, of famous name, a company was collected with great dispatch, and had marched to Fort William and Mary which commanded the harbor, and attacked it before the Governor was awake to the situation. The small garrison was captured and one hundred barrels of powder removed. The next day most of the

Dec.
14-

15

1- Belknap II: 276

cannon and small arms were removed. The leading figures in this daring coup de main were John Sullivan and John Langdon, both noted figures from this time forth in New Hampshire history. These events took place on the 14th and 15th of December. (1) Winterians are not accustomed to relate great events to small causes, and none would give a place to this even among the immediate causes of the Revolution, but it has been asserted with considerable confidence that it was the last straw in the balance in which hung the King's patience. Dr. Quint, in the Centennial Oration, before quoted, (2) speaks of it as follows. "It was four months before Lexington, and Lexington was a resistance to attack, while this was a deliberate assault. I fail to find anywhere in the Colonies, so early an armed assault upon royal authority. So far, it must be held that the first action in arms, of the Revolutionary War was in New Hampshire and by New Hampshire patriots. This attack was treason. It exposed every man concerned in it to the penalty of treason. When the King heard of this capture, it so embittered him that all hope of concessions was at an end. It made war inevitable." The statements appear to have some foundation. Brewster states that this attack was recorded in the British Annals as the first armed resistance of the colonists. (3)

1. This action was taken just in the nick of time. The King's vessels were in the Harbor in a few days. Belknap II:376

2. Granite Monthly, Vol. I:191

3. In his Annals of Portsmouth, 219. I was unable to verify this statement, not having access to the authority quoted. Hancock says that the news of this exploit reached the King on the day on which Parliament's petition to declare Massachusetts in rebellion was presented to him, and that the news influenced his

* Hist of the U.S. Vol. 4, p. 469 (1782)

The governor was impotent. The utmost he could do was to issue a proclamation demanding the apprehension of the participants. The captured munitions were scattered in hiding places throughout the adjacent country, and the leaders of the attack became public heroes.

Whether or not ^{as} a result of this event, military companies were formed and drilled in the towns in the succeeding months. The Portsmouth Volunteers were organized on Dec. 20, with rules providing for regular drill periods and necessary officers. A company was also formed at Durham under the leadership of Major John Sullivan. (1)

The thorough dissemination of the purest is further noticeable in the variety of local congresses. County congresses were numerous. The records of one of these conventions, held at Amherst, Hillsborough County, are illustrative of the rest. (2) We find thirty delegates present representing fifteen towns. They voted to adopt the resolves of Continental Congress. (3) One of the most emphatic recommendations is in regard to the training of military companies.

The second Provincial Congress met at Exeter, January 25, 1775. The manner of its call is not recorded. There were present at the first meeting one hundred and forty-four deputies. They approved the action of the Continental Congress and appointed dele-

1. Prov. Papers VII:422, 446
Some interesting correspondence relating to the Durham company is given in American Archives 4 ser. Vol. II:31, 32

2. Ibid 447

3. Representatives from two towns (Frances-town and New Boston) objected.

1774

Dec. 20

1775

April

Jan. 25

1775 gates to the next: John Sullivan and John Langdon of recent local fame in the powder seizure. The power given them in their instructions was very broad: to "agree to all measures which said Congress should deem necessary to obtain redress of American Grievances." (1) A committee of Correspondence was appointed with power to call another Congress, should the situation require it. The records of this, as of the first Congress, are incomplete, and the only other matter of business recorded was the preparation of an address to the citizens of New Hampshire. A large portion was given to a gloomy view of the situation of the people, who had not met in legal Assembly for eight months, over whom were "lowering clouds charged with ministerial vengeance" and to whom, either success or defeat in a war with brothers, seemed "dreadful even in contemplation." Twelve recommendations were made, chiefly in regard to abiding by the law of the Province and the resolutions of Congress, (2) to avoid, if possible, this calamity. Town meetings and committees, where democratic sentiment was in its element, are found expressing like sentiments in the opening months of 1775. (3) Indeed the Provincial Congresses did little more than bind together the actions of town meetings into a Provincial union.

If the affair at Fort William and Mary was the

1. Ibid 442

2. Ibid 443

3. Experiments of tar and feathers for the refractory are mentioned in some of these. Epsom resolves suggest "a new suit agreeable to the modern mode." Ibid

1775 signal for British action, the engagements of April 19th, at Lexington and Concord were the spark to the revolution in America. It did not take many hours for the news to reach the New Hampshire Committee, and in two days the Third Congress met at their call in Exeter, with sixty-eight deputies present. Ten thousand troops were already on the march toward storm-tossed Boston, and the first act of the Congress was to place Col. Folsom in command of these and others who would set out for the scene of action. After a four days adjournment, the Convention again met with one hundred and nine deputies present from more than seventy towns. This was twice the number represented in the last Assembly, but nevertheless, it was on the plea of incomplete representation that the Convention voted not to take conclusive action in response to the appeal for a large armed force from Massachusetts. Such was the careful spirit of democracy already manifest in the non legal gatherings of the people. The towns, however, were recommended to have men equipped for immediate marching on emergency. The time of adjournment is not recorded.

Gov. Wentworth at last called a new Assembly to May 4 meet on May 4th. For eleven months the people of the Province had not assembled in an authoritative body. Had they done so, it is probable that the end of royal government would have only come the sooner--for this

1775 Assembly" marked the end. There were present 37 representatives instead of the 34 of the last Assembly. The difference was due to the arbitrary addition by the Governor of three recently incorporated towns to the list of those to whom precepts had been sent. This created a furor. In the first place, many older towns were unrepresented; more important still, the House had reserved to itself the right to send out new writs. A committee was appointed to investigate. On the sixth after two petitions, the latter of which expressed a desire to more fully consult their constituents "concerning the several weighty matters necessary to be considered by the House," (1) the Governor adjourned the Assembly until June 12.

1. ibid 374

June 7th There were good reasons for the Governor's first refusal to grant adjournment. For several weeks, summons had been out for a Fourth Provincial Congress, to meet on May 17th. He feared that most of the consulting of "constituents" would be done in the house at Exeter where this body was to meet. On June 7th, five days before the Assembly again gathered at Portsmouth, the revolutionary body resolved that the persons called by the Governor from the new towns without the consent of the Legislature ought not to be allowed the possession of their seats. (2) In addition to the other objections the people probably rightly suspected that the Governor intended to increase the Tory sentiment in the

1. ibid 506

1775 House by the additional members. In addition to this, the Congress voted some very important measures before the Assembly again convened. The entire tone of proceedings had changed. The representation at this Congress was fuller than any hitherto: 133 delegates were present from 101 towns. The organization was more careful, and like that of a legal Assembly. There were no more elaborate addresses, forecasting the gloomy outlook. The time for that had passed. The time for action had come. There was an air of dignity and seriousness about their proceedings. It was as if they felt already the burden of self-government upon them. The letter sent to Congress was very significant. Months later, the Congress still expressed sentiments of loyalty to the mother country, but does not language like this, though not wholly without ambiguity, contain a gleam of prophecy? "Although we ardently wish that if possible a connection may yet be preserved between Great Britain and these Colonies, founded on the invincible principles of justice, and the general principles of the British Constitution, yet we are entirely disposed to respect and willing to submit to any plan of further uniting the Colonies, for the purpose of common security and defense.

We cannot conceal that many among us are disposed to conclude, that the voice of God and Nature to us, since the late hostile design and conduct of Great

1775 Britain, is that we are bound to look to our whole political affairs."(1)

1. Ibid. 463

Their first act after organization was to make provision for a postoffice and post-riders at Portsmouth. On May 20th, two important measures were voted, the raising and equipping of a force of two thousand men, and the appointment of a Committee of Safety, whose instructions were deferred to a later day.

At the adjourned meeting of the Assembly, the influence of the Congress was marked. The new members in question were rejected. Thereupon the Governor adjourned the Assembly. On the day following, five of the expelled members called on the Governor, and while there, a mob besieged the House and demanded the unfortunate deputy. He was finally obliged to surrender himself, and the Governor betook himself for safety to Fort William and Mary, and never was he to set foot in the House of Assembly again. When the House reassembled, the Governor, in a message, recommended the rescinding of the offending vote. The House unanimously refused to do this, and in consequence was adjourned until September 28th. But it had held its last session. In September, a proclamation, pro-roguing the Assembly till the following April, was issued, and before that date New Hampshire was operating under its own Constitution.

1775 "The unended royal government in New Hampshire. Its power had vanished a year before, but it died a lingering death. "That Assembly with the Governor, represented legality, regularity, formality, legitimacy, the majesty of the King, and the majesty of the law, but the faintest whisper of a wish emanating from the Provincial Congress at Exeter was more powerful than the most absolute commands of the assembly, and governor and king, blundered forth in manner imperative, and by royal proclamation." (1)

The character of New Hampshire's last royal governor deserves something more than the incidental notice that has been given it. He was the third of the name, who had governed the colony, and came of aristocratic progenitors. He was of the same blood with the Earl of Strafford, beheaded in the days of Charles I, and less directly connected with the Marquis of Rockingham. Throughout his early administration he had been popular. A "Spectator" in publicly commenting upon his change of attitude in 1775, pays him this initial tribute: "No man in your station could be more honored and revered; no person could exert himself more in favor of the Province, or exceed you in promoting the true interest of it. You did not prostitute commissions, but endeavored to add dignity to your courts and honor to your militia. You caused harmony to subsist between the several officers and sol-

L. J. Bradley
"On the death of
the Royal
Governor."
Boston Monthly
ly. 1775

1775 clear throughout the Province." (1) The friendly attitude of the people was well indicated by the general rejoicing which attended his vindication in the charges preferred by Peter Diving. They had referred chiefly to alleged land-grabbings and interfering with courts on the part of the governor. The Board of Trade sustained them, while admitting that the administration had been prosperous, but the Privy Council, on re-hearing the case, exonerated him. Whether Wentworth was guilty or no, is not our present concern, although it is probable that he was, but the people were jubilant when the news was received. The House presented him an address of congratulation, and a public ball was given in his honor at Portsmouth. As the crisis approached, he strove conscientiously for a time to avert the inevitable. In a letter of unknown date to T-W-W-, he says, "Our hemisphere threatens a hurricane; I have in vain strove, almost to death, to prevent it. If I can, at last, bring out of it safety to my country and honor to our sovereign, my labors will be joyful. My heart is devoted to it, and you know its sincerity."

(2) But in this case honor to the sovereign and safety to the country were antipodal, and hence there was an element of tragedy in the issue for the governor.

V. The Evolution of the First Permanent Constitution.

When in the process of a Revolution, all govern-

1. American
Archives 4th
Series II:189

2. Ms. Letter
to T-W-W- in
Belknap
II:374 n.

mental authority becomes defunct, the issue is apt to be temporary chaos, a return to a state of nature. In other colonies, there were charters upon which the perplexed citizens might base their temporary government. But when Gov. Wentworth abandoned the Assembly, New Hampshire had no refuge but her native resources of democratic common sense, and they proved sufficient. The spirit of their ancestors was in them, and for a brief time the town-republics on which the province was built were seen repeated manifold throughout the region of the White Mountains. A system of post-offices was established, and committees of correspondence kept the imperilled colonial fabric from being rent asunder, while the Provincial Congress was learning its first lessons in government.

1775
May
26

While it was learning these lessons, Congress was acting as well. The Committee of Safety appointed on the 20th of May received its first instructions on the 26th. The first power given them, was, as Belknap well points out suggestive of that given to Roman dictators: In the process of Congress to take under their consideration all matters in which the welfare of the Province in the security of their rights, shall be concerned, except the appointment of the field officers and take the utmost care that the public sustain no damage." (1) The three articles of the first in-

1. Ne quid
detrimenti
republica capi-
at. "Belknap
II:395

instruction arm them with executive powers, to carry out the laws of Congress not specifically trusted to particular officers and to act in accordance with their own judgment in critical situations unprovided for by Congress. This set of instructions was from time to time supplemented by others. Even before the dismemberment of the royal government, this Congress evinced no hesitation in assuming provincial authority. It

July 7	secured the records of the province from the unwilling secretary (1), secured the delivery of the public money	1. N.H. Prov. Papers VII: 552
July 8	into the hands of their newly appointed treasurer, (2) and made the wages of its members a part of the public tax bill. (3) Even before the transfer of the colonial monies, this revolutionary body was voting money	2. ibid 546
1775 June 8	out of the colonial treasury, as a reward for the manufacturers of "salt petre", and for the maintenance of the army. (4) As early as June 9th, they had surrendered to the necessity to which the other colonies were fast falling victims, and issued paper currency to the sum of ten thousand and fifty pounds, (5) which was reinforced by a further issue of ten thousand pounds on July 6th. (6)	3. ibid 579 4. N.H. Prov. Papers VII: 507, 508 5. ibid 510 6. ibid 549

But Congress recognized fully on how infirm a basis it stood. They made a statement of this fact and besought the Continental Congress for direction in regard ^{to} "some other regulations," as early as July 8. (7)

7. ibid 561

Oct. 2 It was three months later that Thornton, the chairman of the Committee of Safety received a letter from New Hampshire's representatives in Continental Congress, urging that the time was ripe for the Convention to send a petition for instructions to take up a form of government. (1) The Committee's letter of Oct. 12th, desired the ^{diligent} "delighted endeavors" of the representatives, "to procure something to be done relative to our civil government." (2) By the 26th, the wheels had been set in motion, for the representatives wrote that on that day a committee had been appointed to consider the motion which they had made for the regulation of New Hampshire's civil government. (3)

1775 Nov. 3 The resolution of Congress in this regard, was made on Nov. 3rd. Such business was unique for that body. It had been a matter of comparatively little difficulty for Massachusetts to fall back on its charter, but Congress had no such resources in New Hampshire's case. The latent constitutional genius of the American mind must have been stirred by this opportunity. We may well believe, as Bartlett and Langdon wrote to their Colony's Convention that "the arguments on this matter (being the first of the kind, as we had no charter) were truly Ciceronian." (4) This letter makes other observations of great interest, and the germinal constitutional suggestions it contains, are worth quoting. "The power is ample and full, even to

1. "You'll give us leave to repeat our desire that our convention, or Committee of Safety will forward a petition for Government, setting forth the absolute necessity of it, the impossibility of taxing without which is a thing that must be done, as it would ruin us to be emitting paper on every occasion. You'll pardon us for throwing out these hints." *ibid* 615

2. *ibid* 624

3. *ibid* 631

4. *ibid* 641

the choice of Governor, if the Colony should think it necessary, but that we humbly conceive worthy of consideration. You'll see that the government is limited to the present contest: to ease the minds of some few persons who were fearful of Independence, we thought it 1775 advisable not to oppose that part too much---

We would here beg leave to suggest whether a government somewhat similar to the Massachusetts would not be best--a *free* representation of the Province though not too many, as they may be increased at any time, but it would be hard to diminish; those representatives to choose a council, of proper number--say 15, these two branches to act in all cases whatever and not to proceed so far as Governor at present, though the door may be left open for that purpose. We throw out these hints with great submission to the honorable Convention." (1) The resolution itself is as follows:

1. *ibid* p. 641

"Resolved, that it be recommended to the Provincial Convention of New Hampshire to call a full representation if they think it necessary, establish such a form of government, as is their judgment will best produce the happiness of the people, and most effectually secure peace and good order in the province during the continuance of the present dispute between Great Britain and the Colonies." (2)

2. *ibid* p. 642

Meanwhile the Provincial body was wrestling with

1775 the problem of future representation. There was no question of the democratic tendency of the people of this New England Colony, and they were to produce eventually one of the most democratic of constitutions. But in their experimentation they vacillated strangely in regard to the basis of representation, and the franchise.

Aug.
31.

The first plan was reported on August 31, by a committee appointed for that purpose. (1) The basis of representation was made one hundred families, freeholders. Towns possessing such, and all other towns, formerly entitled to representation, were to be entitled to one representative. Smaller towns might combine to make up the number and send a representative. The franchise was to be given to all freehold inhabitants, and to non-inhabitants, possessing real-estate to the extent of twenty pounds value. Those elected as representatives were to be required to possess real estate in the Colony worth two hundred pounds. There is no action on this report recorded, but the votes of

1. ibid 600

Nov.
4th.

November 4th, would indicate that it was regarded as too liberal. On that day, the vote of the Convention raised the franchise qualifications to freehold or real estate of twenty pounds, in the town or place where the election was to be. (2) At the same time, the qualification for representatives was raised to

2. ibid. r. 644

three hundred pounds real estate.

Nov. 10 But on the 10th, these votes were reconsidered and made void. These first two plans are only indications of shifting or divided sentiment in the Convention. It is not improbable that there was an aristocratic element present which contested the popular propositions.

Nov. 14th On the 14th, the second committee on method of future representation made its report. The first clause provided that every legal inhabitant paying taxes should be a voter; the pendulum had swung back again. Representation was provided for one hundred and sixty three "towns, parishes, and places." The qualification for representatives was restored to the basis of the first plan; two hundred pounds in real estate. The Congress thus provided for was empowered to resolve itself into a House of Representatives to sit for a year, if the plan of government adopted should provide for such a body.

This plan was accepted, and on the following day Congress dissolved. Thus passed into history a notable Convention. It was New Hampshire's first de facto governing body. Its President during most of its session had been Matthew Thornton, afterward a signer of the Declaration of Independence, and much sentiment in favor of independence was reflected in the correspondence, but was checked by the presence of conservative members.

1775 Before dissolution, 151 members from 113 towns had been present.

All eyes were turned toward the next Convention, at which a form of government was to be adopted. General Sullivan, one of New Hampshire's foremost patriots, had the cause of his own province so much at heart, that though engaged in the rigorous life of the campaign, he wrote to Meshech Weare, as head of the Committee of Safety, and a member of the committee which had presented the plan of representation, a letter outlining his own plan of government. The sentiments he expresses are exceedingly democratic. Governor, Council and House, he believes, should all be elected by the people. His suggestions all bear out the first principle stated in his letter--a principle afterward to become so famous when written by another's pen--that "all governments are, or ought to be instituted for the good of the people." (1) Such sentiments were not however universal. Portsmouth's instructions to her representatives were to this effect. "We are of opinion that the present times are too unsettled to admit of perfecting a form, stable and permanent; and that to attempt it now would injure us; by furnishing our enemies in Great Britain with arguments to persuade the good people there that we are aiming at independency, which we totally disavow. We should therefore prefer the government of Congress, till God, in His provi-

1. ibid 625-8

1775 dence, shall afford us quieter times." (1)

ibid 701
(Italics not
in the ori-
ginal)

The Fifth and last Provincial Congress met at Exeter, on December 21st. On the 27th, it was voted "that this Congress will take up government" and a committee of fifteen^{were} appointed to prepare a report in an appropriate form. These votes were not put into effect, however (2) for on the following day, the crucial question was again put: shall "this Congress---at any time take up civil government, to continue during the present contest with Great Britain, and resolve itself into a House of Representatives, and then choose a

2. There is no record of these votes being reconsidered; I am unable to assign a cause for the way in which the Convention disregarded them.

1776 Council to continue one year from the 21st of December current," and was passed. The committee now appointed consisted of only five members: Matthew Thornton, Meshech Weare and Wiseman Clagget, whose names appear on every crucial page of New Hampshire's Revolutionary History were on this committee.

Jan 5. It was on January 5th, that the Provincial Congress passed its last measure. On that day it voted to take up civil government in accordance with the plan presented by the committee, and resolved itself into a House of Representatives. (3) The first statement of the constitution indicates clearly that this Congress considered itself a properly authorized constitutional body. Its members had been chosen by the "free suffrages of the people" and empowered to establish some form of government.

N.H. State
Papers VIII:2

The cause of the establishment of the Constitution was stated as the failure of legislation, and courts, due to the departure of the governor and dissolution of the council, wherefore some organization was absolutely necessary to preserve the peace. Its purely temporary character, however, was so clearly stated as to make one wonder somewhat at some of the grounds on which objections to it were afterwards based. They state that they found themselves forced to this expedient "protesting and declaring" that we never sought to throw off our dependance upon Great Britain" and that consequently the establishment was only to continue during the present unhappy and unnatural contest." This then was the basis upon which they assumed "the name, power and authority of a House of Representatives or Assembly for the Colony of New Hampshire."

This body was composed very largely of men who were quite ignorant of the lore of government. But as Belknap says (1) they had learned enough in six months by experience to know that they should have two Houses. They accordingly made provision for the choice by the House of a Council, of twelve persons, freeholders and inhabitants, to be a distinct branch of the legislature. Should the continuance of self-government longer than a year be necessary, this council was to be chosen by the people in some manner prescribed by the House. Annual issuance of precepts for

1. Hist. of
M.H.
Vol. II:399

the choice of a House and Council was provided for. The enumeration of particular powers was brief and fragmentary. Money bills might originate in the House only. Civil officers for the colony and the counties, and officers of the Army were to be appointed by the two Houses, with the exception of a few county officers.

In judging the constitution, there are several preliminary considerations that must be made. We have called attention to the fact that it was very consciously only a temporary expedient, and we must remember in addition to this that it was hampered in the outset by the objections of a very considerable faction to even a temporary organization. (1) Moreover, it was the first document of its kind in America. Pioneering in such a field is a thankless task, but an indispensable one, and to New Hampshire belongs whatever of glory may be ascribed to clearing the way for Colonial and State Constitutions.

Literary form was apparently the last thing in the minds of the framers. From the introductory clause which states the authority of the body; into a narration of the oppressive acts of Parliament; through the statement of the necessity for a form of government, the assertion of the temporary character of the same, and protestation of allegiance to Great Britain; down to the resolution that the Congress assume the functions

1. For instance, the tone of the Portsmouth instructions to their delegates above referred to.

1776 of a House of Representatives, the glib pen of the constitution maker glides without a pause to insert a period. The organization, as might be expected and as was true of many a later State Constitution, was very imperfect. But there was little adornment. If the length of the first sentence was notable, its content was co-ordinate with its length. And the rest of the document is briefly paragraphed, as though to atone for the form of the introduction. The entire length is but little more than two octavo pages.

The most material defect in the constitution is the lack of provision for an executive. During sessions the two houses performed executive functions, and during recess, they were entrusted to the Committee of Safety. It is scarcely an overstatement, that for eight years this Committee governed New Hampshire. During that period it was always in active existence, performing certain offices during the sessions of the Assembly, and all of its executive functions when it was ^{not} sitting. (1) Objections were manifold after the Declaration of Independence, but this was the chief initial defect.

The first business of New Hampshire's Assembly was the choice of Councillors. The President of this body was Meshech Weare. In nearly every Colony in the Revolutionary Period, there was one foremost man, whose pre-eminence, the testing of the times brought forth.

1. For a comprehensive account of the powers and history see "Provincial Committees of Safety," by Agnes Hunt, p. 19 seq.

1776 The newly elected President of this Council was such a man. His ancestry was illustrious in the Colony. Nathaniel Weare, it was, who bore to the King the protest of the provincials against the rule of Cranfield, a century before, and his name is often found in the records of the succeeding years, as a Councillor (1). Meshech Weare himself had taken his seat in the Assembly thirty years before the framing of the form of government, (2) and in that interval his name appears more often than any other in the records. In the Provincial Congresses he had been on important committees and, as before mentioned had been one of the framers of the Constitution itself. Very soon after its appointment he had been a member of the Committee of Safety, (3) and was shortly to become its President, (4) and to remain such for years. When the Assembly, on January 26, appointed justices of the Superior Court, he was made Chief Justice. (5) This remarkable character was thus at the head of the Executive, Legislative and Judicial departments of the State when it first came into being.

A week had not passed before there came a protest from the representatives of a dozen towns. Of the nine reasons for dissent enumerated, three profess a sort of timorous horror at the boldness of the move. New York and Virginia, they said, much larger and richer, "and we presume much wiser" had not presumed to take

7. N. H. Prov. v
Papers
II:84, 86 passim

2. ibid V:259

3. ibid VII:551

4. ibid VIII:111

5. ibid 81

1776 such a step. And then, as though it needed further emphasis, they add: "it appears assuming for so small and inconsiderable a colony to take the lead in such a matter." (1) Conservatism had not died in New Hampshire with the opening of the Revolution. It must not be forgotten however, that it was yet six months before Independence was declared and the majority of the people in this Province had not yet dreamed of it. The people of Portsmouth who memorialized the Assembly about the same time, offered a significant objection. They believed that in adopting and putting into execution so momentous a plan, without the ratification of the people, they had violated what was one of the people's inherent rights.(2)The alarm expressed is, however, chiefly on the ground that they "conceive that such a measure is an open Declaration of Independency," which will have a detrimental effect upon the cause of the Colonies in Great Britain. "Junius" writing for the New Hampshire Gazette, January 9, expresses very excited sentiments against "that horrid monster, Independency." (3)

1. ibid. 14

2. ibid. 16

3. ibid. 25

These very protests, however, showed how much the subject was in the public mind. Despite these vigorous protests from certain quarters, the sentiment for independence soon began to spread. In March the Continental Congress recommended that all who opposed the cause of America or had refused to associate in its

1776 defense should be disarmed. (1) The colonial Committee of Safety took an active step in that direction on April 12, by issuing an Association Test. It was framed in the language of a solemn covenant. "We the subscribers, do hereby solemnly engage and promise, that we will, to the utmost of our power, at the risk of our lives and fortunes, with arms oppose the hostile proceedings of the British fleets and armies against the ^{United} American colonies." (2) There are on record the names of more than eight thousand who *signed* and some seven hundred who refused to do so. (3) Such a movement was very significant of public sentiment, and subscribers of such a document were ripe for a Declaration of Independence. (4)

1. ibid 204

2. ibid 205

3. ibid 206-296

4. Much more import than this is attached to the Test by John Farmer, who calls it a "similar act to that of the patriots who signed the national Declaration on the 4th July, 1776" ibid 205

5. ibid 139

6. ibid 140

June 11 On June 11 and 12, the House and Council appointed the members of a committee to make a draft for a Declaration of Independence for the United Colonies. (5) The draft, reported four days later, contains one point of unique import. The Journal of the House states that the committee was appointed to draught a report relative to the Colonies "setting up an Independent State", (6) and the central clause in the Declaration instructed New Hampshire's delegates to unite with delegates from the other Colonies in declaring the "Thirteen United Colonies, a Free and Independent State." (7) It is not probable that New Hampshire statesmen would have made the elaborate distinc-

7. ibid 150

1776 tion between a sovereign State and sovereign States that were made in the coming decades, but the language above quoted is pretty good evidence that they expected to become one sovereignty instead of thirteen.

The turmoil and tension of war were to continue for years, but on July 4, the last great obstacle to constitutional development was swept away. The objections to the existing Constitution, that poured in during the Fall session of the Assembly, had no more to say about Independence. The clamor now was for a more perfect democracy. In September, President Weare issued precepts for election of representatives to the coming session of the Assembly. In the latter part of November and in December, came refusals from more than a dozen towns(1) to return representatives. These comprised a major part of Grafton County, and Weare assigned the cause of their disaffection largely to the students of Dartmouth College.(2) A most cursory examination of these letters would reveal the broad democracy of the spirit that indited them. If these sentiments were then peculiar to Grafton County and Dartmouth College, they had a rapid dissemination in the years to follow, for it was the people of the STATE who deliberately rejected constitution after constitution till most of the objections embodied in these protests were removed. The objections common to all the letters were four in number. They claimed first that the As-

1. Masover, Lyme, Acworth, Warlow, Alstead, Surrey, Maverhill, Lyman, Bath, Gunthwait, Sandaff, Merris-town and Chesterfield. ibid 420-425

2. ibid 420

1776 assembly had been dissolved by the act of separation from the mother country, and no longer possessed the authority which they continued to assume. Secondly, they claimed that every corporate town in a well-ordered commonwealth should be entitled to its own representative. In the third place, their statement of the rights of every elector to be eligible as a representative was made so briefly as almost to seem as if they considered it axiomatic. Lastly, some of them expressed their belief that a Council was superfluous, but insisted, that, if such a body were to be chosen at all, they ought all to be the choice of the State and not of individual counties.

The necessity for a better form of government, which these protests voiced in part was soon to set in motion the forces which molded the first permanent constitution. It was a year later, that the House voted
1777 Dec. 27 to recommend to all the "towns, parishes and places" in the State to instruct their representatives to the next Assembly to call a Constitutional Convention. (1) A joint committee from the two Houses, whose representatives were thus instructed, reported on Feb. 25, 1778, to the effect that such a Convention be called for the second Wednesday in the succeeding June, by the issuing of precepts to each town, parish and district in the State. (2) The form of government drawn up was not to go into effect until approved by the vote of three fourths

1. ibid 757

2. ibid 774

of the people of the State in their town meetings assembled. Far-sighted provision! It meant much cevil, but it secured democracy. On the following day the Assembly authorized the President to issue the precepts.

June 10, 1778
-Oct. 31, 1783
1779
June 5
It was only after two Constitutional Conventions, with at least nine sessions (1) in the aggregate, covering a period of five years and a half, that the requisite proportion of the people ratified the document presented to them. The Journal of the first session, called for June 10, is not extant, and the work of that body is not even a matter of conjecture. But a year later, June 5, 1779, the second session, held at Concord, agreed to a form and sent it out to the people for their adoption.(2) It is our plan to present this first Constitution with some detail, and mention only the changes which the will of the people wrought in the succeeding ones. (3)

It consisted of two distinct divisions: a Declaration of Rights, and a Plan of Government, containing respectively seven, and thirty-two articles. Beyond this, there is not much organization. Most of the Bill of Rights is devoted to the securing of those rights which had formerly been considered the inalienable possession of free-born Englishmen, such as life, liberty, property and trial by jury. (4)

1. Belknap speaks of nine sessions in the second Convention alone: (Hist. Of N.H. II:435) Seven only are mentioned in N.H. Town Papers IX:895.

N.H. Town Papers IX:837

3. A statement of the facts relative to the Conventions, and the documents drawn up, are presented in N.H. Town Papers, IX Appendix.

4. Ibid 837

1779 So far as the form of government itself is concerned, there was hardly an essential change from the much maligned Constitution of 1776. The first article provided that the State should be governed by a Council and a House of Representatives, to be styled the General Court. (1) The Councillors were apportioned among the counties as formerly: for Rockingham five, for Strafford, Hillsborough and Cheshire, two each, and for Grafton, one. It was stipulated that the number from Rockingham should not vary, but that the number from the other counties should be increased or diminished, as their population varied in relation to Rockingham. (2) The re-apportionment was to take place every seven years, the period for the re-apportionment of the State tax.(3)

1. ibid 133

2. ibid Art. 3-4

3. ibid Art. 7

The House of Representatives was also placed on the same basis as before. It was to consist of one member from every town possessing one hundred families, smaller towns to unite in sending a representative.(4) The General Court, composed of these two bodies, was declared to be the supreme power of the State. (5) Any measure, except money grants, might originate in either House, but the latter in the House of Representatives only. The appointment of military and naval officers, judges and justices and various State officers was placed in the hands of the Legislature. (6)

4. ibid Art. 5, 6

5. ibid Art. 10

6. ibid Art. 22
23

There was no separate Executive provided, but the President of the Council, who was chosen by that body itself, (1) was granted some powers in addition to those that officer had previously held. He was authorized to grant reprieves for a limited period, (2) and to call extra sessions of the General Court and to point out the principal business of its sessions. (3)

1. ibid Art. 7

2. ibid Art. 29

3. ibid. Art. 21
The term "Governor" applied to the President by F.L. Riley in "Colonial Origins of New England Senates", is scarcely warranted. (J.H.W. Studies, 14 Series, No. III)
4. Town Papers IX:839
5. ibid

If there was no fundamental change in the form of government, the change in the qualification of electors was notable. Every tax-payer, who was a Protestant was given the franchise, (4) Every representative was to be required to possess an estate of the value of three hundred pounds, one-half of it real estate. (5) The exclusion classes were important. They precluded the possibility of members of the General Court being at the same time judges, sheriffs etc. (6) Councillors, judges of the superior court, and sheriffs were prohibited from holding commissions in the army or navy (7)

6. ibid. Art. 26

7. ibid. Art. 27

The amendment clause restrained the General Court from altering the Constitution upon its own authority, but permitted the origination of such a measure by that body to become valid upon the ratification of a majority of the people. (8)

8. ibid. Art. 32

1779 The constitution represented an advance. To be sure, the most of the details which the people in their protests had demanded, changed, were left unaltered. But the addition of executive functions to the Presi-

dent of the Council, and the exclusion clauses are indicative of an evolution. "The significance of this constitution is the fact that it marks a tendency toward a separation of the functions of government. (1) It is perhaps not a matter of surprise to us that the people rejected this Constitution. The vote upon it is not known.

The Second Constitutional Convention met, pursuant to a resolve of the General Assembly, (2) on June 5, 1781 (3) The records of this session are not extant, but the two documents, which it issued, are. These were the Constitution which it framed, and an address to the people, to accompany it. This Constitution was greatly expanded, the Bill of Rights containing thirty-eight articles, in the place of the seven of the document of 1779, and the form of government covering eighteen pages in the records, in place of the three in the former.

1781 Beside the expansion of former articles, the addition of new ones is very notable. Freedom of worship; (4) right of trial by a jury in the vicinity, (5) and composed of the peers of the accused; (6) tenure of office by Judges of the Supreme Court during good behavior; (7) were secured. The Legislature was empowered to authorize the towns to make provision for "public Protestant teachers of piety, religion and morals" (8) This clause, which is of considerable length, reflects

1. Colonial Origins of New England Senate by F. I. Riley. (J.N.W. Studies, 14 Series, No. III p. 51.

2. State Papers VIII: 697

3. Town Papers IX: 842

4. Ibid 263 Art. 5

5. Ibid Art. 17

6. Ibid Art. 15

7. Ibid Art. 35

8. Ibid Art. 6

1781 very clearly the New England politico-religious tendency. Taxation without consent (1) ex post facto laws, (2) and quartering of soldiers (3) were guarded against. But the most significant and deep-sighted declaration in the thirty-eight is that regarding the separation of governmental powers. This clause, which stood in exactly the same form in the Constitution of 1783, which became the fundamental law of New Hampshire, was as follows: "In the government of this state, the three essential powers thereof, to-wit, the Legislative, Executive and Judicial, ought to be kept as separate from and independant of each other as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the Constitution in one indissoluble bond of union and amity." (4) This was the first time that the principle had been given full recognition in New Hampshire. But it recognized at the same time the indissoluble bond between the branches. James Madison says, relative to this clause: "New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and had qualified the doctrine---." (5)

1. Ibid Art. 12

2. Ibid Art. 23

3. Ibid Art. 27

4. Ibid Art. 27

5. The Federalist No. 47 (46)

The influence of the recently adopted Massachusetts Constitution is evident in the improvement in the form of this instrument. The Legislative and Executive divi-

1781 signs were for the first time separated in such fashion as at once to catch the eye. The Judiciary was not distinguished by a head co-ordinate with the other two, but was sufficiently distinct to be marked as another division.

The Legislature was entitled the General Court, as before, but the name of the upper branch was changed to Senate. The mutual negative was mentioned for the first time in the clause which named the two branches.(1)

After the statement of the time for the annual meeting of the General Court, there came a paragraph in which the name Governor appeared for the first time in this State's constitutional documents. This was the section(2) conferring the qualified veto on the Executive. It was stated that a bill, to become a law, must have the Governor's signature. If he had objections to offer, the same should be sent in writing to the House which originated the bill. In such a case the three-fourths votes of both Houses were necessary to pass the bill over the Governor's veto. But the return must be made by the Governor within eight days or the bill would have become a law.(3)

Following this was an enumeration of the powers of the General Court. These were the erection of Judiciatories, the making of laws, appointment of civil officers, imposition of fines and levying of taxes.(4) A

2. Town Papers IV:859

2. The use of the terms "section" and "article" in connection with this Constitution is for clearness only. The Constitution has no such external organization.

3. Ibid.

4. Ibid 859-60

1781 valuation of property at least every five years, instead of seven, as in the previous constitution, was provided for.(1)

1. ibid.

The articles upon the Senate came next. The number and distribution of Senators was unchanged, but the basis for future representation in this House was made the amount of public taxes paid in Senatorial Districts.

(2) The franchise for Senatorial electors suffered a strange reverse, and was conferred only upon possessors of freehold estates of one hundred pounds value.(3)

2. ibid 861

3. ibid

But there was a careful provision that inhabitants of "plantations and places unincorporated" who paid taxes, should be placed on the same basis as inhabitants of incorporated towns.(4) The Senatorial qualification it-

4. ibid 862

self was raised from the three hundred pounds estate of the Constitution of 1779, to four hundred pounds freehold.(5) The special power to hear impeachments

5. ibid 863

made by the lower House, was conferred upon the Senate(6)

6. ibid.

The House of Representatives was provided for by a new and elaborate scheme. In the first place, the number was fixed: fifty members apportioned among the counties in about the same proportion as the Senators, and to be elected in county conventions. The unit of representation in these conventions was to be "every corporate town and parish, having town privileges, containing fifty rateable polls." As before smaller towns were to be permitted to associate in sending delegates.

1781 Possessors of a two hundred pounds estate, one-half freehold, were eligible to become delegates, and hence Representatives, as the county conventions were to choose such from their own number.(1) The qualification was thus lower than planned in 1779, but by its indirectness got apt to please the independent spirit of the towns. 1. ibid 863-5

The Executive proposed was to consist of a Governor and Council chosen annually. The qualification for the former was made the possession of an estate of one thousand pounds, one-half freehold.(2) The electoral franchise was liberal, being the same as that for delegates to county conventions, the voting to be done in town meetings.(3) Every power granted to the chief executive was to be exercised "by and with the advice of the council." The single exception to this was the powers incidental to his office as commander-in-chief of the army and navy. (4) No notable new powers were conferred upon him. No man was to be eligible to the office more than three years out of seven. 2. ibid 866
3. ibid
4. ibid 868

The advisory Council was to be elected by joint ballot of both Houses, to consist of five persons possessing the qualifications of senators; but chosen from among the people at large.(5) 5. ibid 870

The article regarding the Judiciary is vague in its character. In accordance with the article in the Bill

1781 of Rights, tenure during good behavior was provided for all judicial officers and permanent salaries for Judges of the Superior Court. But commissions of Justices of the Peace were to hold good for five years only.(1)

2. Ibid 871-2

The Constitution concludes with a number of stray and miscellaneous provisions. Among these are found the "Exclusion Bill" of the Constitution of 1778, guarding against dual office holding, and an amendment clause. In view of the more definite forms of amendment adopted before this time in many of the States, it is surprising that New Hampshire's proposed provision was not more satisfactory. It provided for the issuing of precepts by the General Court in seven years ordering a vote taken in towns and unincorporated places, on the necessity of alteration. A two-third vote in such a case was to be sufficient to call a Convention.(2)

2. Ibid 876

The other document emanating from this session of the Convention was the address sent out to the people in explanation and defense of the Constitution. The utter subjection of the work of the Convention to the arbitrament of the people was clearly stated. "It is your interest as well as duty to examine it with the most critical attention," was the statement in regard to the Constitution, "and it is your unquestionable right to propose such alterations as you may judge necessary, to approve and establish it, as it now

1781 stands, or wholly to reject it."(1) After a statement of the temporary and defective character of the first Constitution, which necessitated another form, the address proceeded to a defense of the two principal innovations in the then proposed instrument: the limited lower House, and a separate and single Executive. In regard to a House of fifty members, it stated that it was the opinion of the Convention that such a body being more select than a larger one, would also be more expeditious and economical. As to an Executive, its characteristic requisites were considered to be secrecy, vigour and dispatch. These they thought were most satisfactorily united in one person. However, the exercise of arbitrary power had been guarded against by the checks which had been imposed upon him, namely the co-operation of the council, and his liability to impeachment. Brief discussions of the Judiciary, the Exclusion Bill and the Bill of Rights, occupy the latter part of the document. 2. Ibid 845

Sept. 14. It was in September that the Constitution was sent out to be subjected to the scrutiny of the people. When

1782 the Convention met in January 1782, according to adjourment, the count of votes resulted in a rejection of the Constitution.(2) But the Assembly, profiting by the fate of the Constitution of 1779, had voted in 2. Ibid 877

1782 the preceding April, that the next Constitutional Convention should have power to amend its formulations in accordance with the expressed will of the people.(1) Consequently, the Convention adjourned from January until the following August, at which time they proceeded to draw up another plan.

1.State Papers VIII:897

In the Constitution of 1782, the changes were few but important. The Bill of Rights was modified only in regard to minor details in four articles. The notable changes in the form of government were in regard to the franchise qualifications of office-holders, election of Representatives and amendment. The franchise was reduced to the then ultra-democratic basis of payment of a poll-tax.(2) The qualifications for Senators, Representatives and Governor were all reduced by one-half: for Senators, two hundred pounds freehold(3) for Representatives, one hundred pounds,(4) for the Governor, five hundred pounds.(5) The unique system of election of Representatives in county conventions was abolished. Towns having one hundred and fifty rateable polls were to be allowed one Representative, those having four hundred and fifty, two. Smaller towns were to be classed by the Assembly, the elections for the class, to be held by yearly rotation in each of the towns, in the order of their size. Where

2.Town Papers IX:885,887

3.Ibid 886
4.Ibid 887
5.Ibid 888

1782 such classing was impossible, individual towns were to be permitted to petition to send their own Representatives.(1) In the amendment clause the preliminary precepts to test the sentiment of the people in regard to alteration, which had appeared in the Constitution of 1781, was omitted. The provision was made directly for the calling of a Constitutional Convention in seven years. (2)

2. Ibid 885

2. Ibid 894

Dec. 1783
June But the people of the Commonwealth were not yet satisfied. Their appetite was thoroughly whetted for Constitutions, and they must have their fill. When the Convention met in December, they found that the plan had been rejected. They adjourned till June 1783, at which time they proceeded to the formation of a third Constitution.(3)

3. Ibid 895.

The changes were still fewer in this form. The name of the Executive was changed to President, (4) and provision was made for compensation to be made by Legislative grant to him and the Council.(5) The Council was to be elected, not, as before provided, from among the people at large, but from the Senate and House.(6) Franchise, qualifications, and the amendment clause all remained the same. The form now sent out to the people was the result, if not of years of trial, at least of years of careful scrutiny. It was

4. Ibid 909

5. Ibid 912

6. Ibid 913

1783 by no means perfect, as was to be shown by succeeding amendments. But it was no longer inchoate. The three prime departments of government were sufficiently differentiated, but unity was at the same time preserved. The Executive was checked by his Council, and subject to the impeachment of the Legislature. The Judiciary was appointed by the Executive, but the Senate itself was the supreme tribunal for the trial of impeachment of President and Council. Such was the caution observed in mutual checks.(1)

The Constitution was found to be ratified by the people, on Oct. 21, 1783, and declared to be the Civil Constitution for the State of New Hampshire.(2)

The Constitution of 1776, which had expired with the conclusion of the war, had been continued by the Act of the Assembly till the first Wednesday in June, 1784.(3) On that day the new Constitution became the fundamental law of the Commonwealth, and New Hampshire began to build the superstructure of its future history upon a permanent foundation.

1. See observations on this head in the Federalist, No. 47(25)

2. Town Papers IX:918

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