

The Peoples Liberty
A Commentary on
Constitution of the State of New Hampshire
Rep. Daniel C. Itse
Second Edition
December 23, 2006

This expository on the Constitution was written to discuss the nature of our constitution and the government it guarantees to the people living in the State of New Hampshire. There is a misconception that only lawyers are competent to understand the Constitutions. This misconception has led to an abuse of the people under the guise of constitutionality by the judiciary. This abuse is not unlike the abuse of the people by the church in the middle ages when the laity were hindered, even forbidden from reading the bible themselves for fear they would develop an understanding different from the church.

When considering this phenomenon we should consider that the primary expository works on the Constitution for the United States of America, the Federalist Papers and the Anti-Federalist Papers were written as news paper articles for everyone to read. These writings themselves have been edited (simplified) even for the students of law. Realize how much this controls the understanding, the interpretation, of the Constitution. However, if one reads these expository works, and then reads the Constitution, one realizes how simple and straight forward the Constitution is. They simply wrote what they meant, and except for the changes in our language, no “interpretation” is necessary, and their definitions of the words are obvious from the context.

When reading the Constitution of the State of New Hampshire, it is even more straight forward than the Constitution for the United States of America. That our Constitution was meant for the average person to read and comprehend is obvious from the Constitution itself. Article 38 states clearly that the people are to go back and study the constitution frequently so as to be able to force those in elected office to adhere to the constitution. It is also important that Article 37 requires that all Articles of the Constitution be interpreted in a manner consistent with every other Article. Article 37 refers to the Constitution is referred to as a fabric (interwoven) of unity and amity (self-consistent). However, this does not prevent an expository of the First Part, the Bill of Rights separate from the Second Part, the Form of Government. The founders understood the rights of man to be preexisting, and therefore, they would be independent of the form of government, but the form of government would be entirely dependent on the inherent rights. This is evident in The Declaration of Independence, part of which are included in Articles 2 and 10, which states that the very purpose of government is to secure the God given, unalienable rights. This is why the Bill of Rights appears first as a complete document. However, it is necessary to ensure complete understanding of the inherent rights that they be considered as one fabric, uniform and self-consistent.

The expository on the Bill of Rights has been written and released first by necessity. It will be followed by a complete expository including additions for the Form of Government.

PART FIRST- BILL OF RIGHTS

Article 1. [Equality of Men; Origin and Object of Government.].

All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.
June 2, 1784

This first article states that all of the power originates from the people. The term general good refers to the general good of the people and infers that the legitimate actions of government must benefit all equally at the time they are taken. The equality of men and general good also ties it directly to Articles 9 and 10. Article 9 forbids hereditary titles and Article 10 requires that government be for the common benefit and forbids government to be used for personal enrichment.

*The date on which each article was proclaimed as having been adopted is given after each article. This is followed by the year in which amendments were adopted and the subject matter of all the amendments.

[Art.] 2. [Natural Rights.]

All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.

June 2, 1784

Amended 1974 adding sentence to prohibit discrimination.

This Article borrows language directly from the Declaration of Independence in the definition of liberty which ties it directly to Articles 12 and 28 regarding property. It is also important that these rights are natural, essential and inherent; that is they preexist government. The latter phrase regarding discrimination says that judgment and punishment of a person can not be augmented based upon who they are. This is generally understood in regard to the accused, but in fact also makes punishment based upon whom the victim is, unconstitutional.

[Art.] 2-a. [The Bearing of Arms.].

All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.

December 1, 1982

The article is the embodiment of the second amendment to the Constitution for the United States of America. It was added in response to laws restricting gun ownership. In the Federalist Papers, Madison outlines how gun ownership was what enabled the success of the war for independence, and is necessary to resist a tyrannical government, as outlined in Article 10. It is also important that unlike the Constitution for the United States of America, our Constitution specifies the reasons for which to keep and bear arms and defines it as a personal right.

[Art.] 3. [Society, its Organization and Purposes.]

When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void.

June 2, 1784

Article 3 is interesting in that it states that living in society constitutes a surrender of a portion of a person's absolute sovereignty under God. The converse is that living isolated in the wilderness, a person would have unlimited rights. This Article justifies the surrender of rights in return for protection. For example, the surrender of some privacy under the guidance of Article 19, in order to be protected from crime by the apprehension of and punishment of criminals. However, taken in context of self-defense, and decisions by the Supreme Court of the United States of America, which define that the police are under no obligation to protect an individual from crime, because it is physically impossible to execute, but only to investigate crime and apprehend criminals; therefore, the right to protect oneself and one's family and property, even with deadly force, is never surrendered. This concept is repeated in Article 12 with protection and taxation are also reciprocal, and paralleled in Article 18 requiring punishment (a taking of liberty) to be proportional to the crime.

[Art.] 4. [Rights of Conscience Unalienable.]

Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.

June 2, 1784

This article puts rights of conscience above all other rights because there is no protection which can be traded. This ties directly back to Article 3. Many rights of conscience are enumerated in separate Articles; therefore, this would refer to unenumerated rights. An example of such a right would be the right of a pharmacist to not dispense abortifacients.

[Art.] 5. [Religious Freedom Recognized.]

Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship.

June 2, 1784

This Article is the first enumerated right of conscience and codifies the right to practice any religion as long as it does not interfere with the rights of others. Therefore, you can not worship in any way that jeopardizes the safety of another.

It is extremely important that the founders codified Article 5, the original form of Article 6 requiring teachers in the public schools to be protestant, Article 11 the qualifications to vote, and the religious qualification of protestant faith in Part 2 for Governor, Senator, Executive Councilor and Representative at the same time, and therefore, according to Article 37 there is no conflict between these Articles. They saw no conflict between freedom of worship and religious

qualification for certain governmental activities and offices. It proves that they believed that the states have the right to establish a religion if they choose, and that, that right continued beyond the creation of the United States of America. It is also important to realize that in the original Constitution of New Hampshire religious freedom was only extended to Christian denominations.

[Art.] 6. [Morality and Piety.]

As morality and piety, rightly grounded on high principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, therefore, the several parishes, bodies, corporate, or religious societies shall at all times have the right of electing their own teachers, and of contracting with them for their support or maintenance, or both. But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination. And every person, denomination or sect shall be equally under the protection of the law; and no subordination of any one sect, denomination or persuasion to another shall ever be established.

June 2, 1784

Amended 1968 to remove obsolete sectarian references.

It is necessary at this point for the student of the Constitution to see the original form of Article 6. In the Bill of Rights, only Articles 6 and 11 have been so extensively altered in their intent, and it is necessary to understand their intent is necessary to understand the intent and definitions of other Articles.

Art 6 1783. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and lay in the hearts of men the strongest obligations to due subjection; and as the knowledge of these, is most likely to be propagated through a society by the institution of the public worship of the Deity, and of public instruction in morality and religion; therefore, to promote those important purposes, the people of this state have a right to empower, and do hereby fully empower the legislature to authorize from time to time, the several towns, parishes, bodies-corporate, or religious societies within this state, to make adequate provision at their own expense, for the support and maintenance of public protestant teachers of piety, religion and morality.

Provided notwithstanding, that the several towns, parishes, bodies corporate, or religious societies, shall at all times have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance. And no portion of any one particular religious sect or denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect or denomination.

And Every denomination of christians demeaning themselves quietly, and as good subjects of the state shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain and be in the same state s if this constitution had not been made.

Article 6 originally tied to the qualifications for office in that it specified the morals of the state as evangelical (non-liturgical protestant). It also defined public schools as for purpose of teaching morality and piety by protestant teachers. These are the public schools referred to in Part 2, Article 83, which is why the seminaries and public schools are within the same set of commas in Article 83, both are religious schools. It is interesting to note, that while the definition was erased in 1968, it was not changed; therefore the definition has not changed.

There is an important synergy between Articles 2 and 6. Article 2 defines and an inherent right the right to enjoy and defend life. Originally, Article 6 described the morality of the state as being founded on evangelical principles. Exodus 21:22 requires the death penalty of anyone who hurts a woman with child so that the child dies. Therefore, one can rightly extend the enjoyment and defense of life to extend to the unborn child. While the term evangelical has been replaced with high, the phrase enjoy and defend life and liberty has been unaltered, and therefore, retains its original meaning.

[Art.] 7. [State Sovereignty.]

The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled.

June 2, 1784

This Article is extremely important as an enumerated right. It specifically recognizes the preeminence of United States law. However, taken with Article 10, it clarifies the intent of the of the people of New Hampshire that the Constitution for the United States of America is severable if the United States of America abuses its powers. The right, and obligation, of the people, or their political entity New Hampshire, to throw off tyrannical government, Part 1, Article 10, was not removed when they amended the Constitution of the State of New Hampshire to accommodate the ratification of the Constitution for the United States of America. It is also important to note that the powers transferred to the United States of America are delegated conotating an inferior status to the United States of America. This is an exact parallel to Articles 3 and 12 which equates a surrender of rights to protection.

[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.]

All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.

June 2, 1784

Amended 1976 by providing right of access to governmental proceedings and records.

Article 8 shows that from the inception the people of New Hampshire always recognized the submission of the government to the governed, consistent with Article 1.

[Art.] 9. [No Hereditary Office or Place.]

No office or place, whatsoever, in government, shall be hereditary - the abilities and integrity requisite in all, not being transmissible to posterity or relations.

June 2, 1784

This Article ties directly to Articles 2 and 10. It is interesting to note that the constitutions of the states included this prohibition. This together with the discussions in the Federalist Papers showed many aspects of the Constitution for the United States of America were derived from the constitutions of the states.

[Art.] 10. [Right of Revolution.]

Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

June 2, 1784

Article 10 ties back to Article 1 in both the sovereignty of the people and the purpose of government, Article 2 in the common benefit and Article 9 in prohibiting emoluments. It is this Article that prohibits special grants to earn money such as the casino gambling and licensing professions. This Article also is the embodiment of The Declaration of Independence; establishing the obligation to resist tyranny. It is the only such declaration outside The Declaration of Independence. It is noteworthy that the Constitution of the State of New Hampshire was subject to a constitutional convention in 1791, to amend it after the adoption of the Constitution for the United States of America, and Article 10 was retained, unaltered. Therefore, we can assume that the ratifiers of the constitutions assumed they retained the right to throw off the Government of the United States of America should it be injurious to their liberty.

[Art.] II. [Elections and Elective Franchises.]

All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile. No person shall have the right to vote under the constitution of this state who has been convicted of treason, bribery or any willful violation of the election laws of this state or of the United States; but the supreme court may, on notice to the attorney general, restore the privilege to vote to any person who may have forfeited it by conviction of such offenses. The general court shall provide by law for voting by qualified voters who at the time of the biennial or state elections, or of the primary elections therefor, or of city elections, or of town elections by official ballot, are absent from the city or town of which they are inhabitants, or who by reason of physical disability are unable to vote in person, in the choice of any officer or officers to be elected or upon any question submitted at such election. Voting registration and polling places shall be easily accessible to all persons including disabled and elderly persons who are otherwise qualified to vote in the choice of any officer or officers to be elected or upon any question submitted at such election. The right to vote shall not be denied to any person because of the non-payment of any tax. Every inhabitant of the state, having the proper qualifications, has equal right to be elected into office.

June 2, 1784

Amended 1903 to provide that in order to vote or be eligible for office a person must be able to read the English language and to write.

Amended 1912 to prohibit those convicted of treason, bribery or willful violation of the election laws from voting or holding elective office.

Amended 1942 to provide for absentee voting in general elections.

Amended 1956 to provide for absentee voting in primary elections.

Amended 1968 to provide right to vote not denied because of nonpayment of taxes. Also

Amended in 1968 to delete an obsolete phrase.

Amended 1976 to reduce voting age to 18.

Amended 1984 to provide accessibility to all registration and polling places.

This Article describes the qualifications for the right to vote. It is important that originally this Article had only the first six words and the last sentence. The intervening language consists of specific causes for which the suffrage can not be denied and must be denied. In reference to the recent controversies, it states the equal right to office and establishes exclusive jurisdiction over absentee ballots to the General Court. The obsolete phrase removed is not delineated, and as the Article still contains all of the original language, it is probably the qualification of reading English that was removed. The qualifications referred to are inhabitancy and age.

[Art.] 12. [Protection and Taxation Reciprocal.]

Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

June 2, 1784.

Article 12 ties the protection of ones liberty and property to the expense and execution the thereof. It is also the protective statement of eminent domain, and extends to protection of finances. The last sentence in Article 12 is restated in with Article 28 in regard to taxes and Article 29 in regard to general laws. The fact that these protections are stated twice as fundamental liberties underscores the importance that the people can only be subject to laws that the legislature enacts and eliminates the capacity of the judiciary to write or eliminate law.

[Art.] 13. [Conscientious Objectors not Compelled to Bear Arms.]

No person, who is conscientiously scrupulous about the lawfulness of bearing arms, shall be compelled thereto.

June 2, 1784

Amended 1964 by striking out reference to buying one's way out of military service.

This is an enumerated right of conscience. It is interesting to note that consistent with Article 12, conscientious objectors were compelled to substitute finances for military service. It is interesting that removing the requirement to pay an equivalent for exemption was thought of as buying ones way out of military service when it was removed. However, it is clear from Article 3 and 4 that the intent was allowing conscientious objection without eliminating the need to contribute to the defense of the state.

[Art.] 14. [Legal Remedies to be Free, Complete, and Prompt.]

Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

June 2, 1784

Article 14 declares a right of free access to redress of wrongs resulting in injury or loss. It prevents the government from creating the jeopardy of having to pay all legal costs in the event loosing a case questionable on constitutional grounds; though this might be required in a commercial contract. It also makes the practice of court fees unconstitutional.

[Art.] 15. [Rights of the Accused.]

No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land; provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person is potentially dangerous to himself or to others and that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.

June 2, 1784

Amended 1966 to provide the right to counsel at state expense if the need is shown.

Amended 1984 reducing legal requirement proof beyond a reasonable doubt to clear and convincing evidence in insanity hearings.

This article declares the right to protections which translate to habeas corpus, trial by jury and defense counsel, and establishes the criteria for acquittal by reason of insanity. The right to trial by jury for criminal cases gives the judiciary jurisdiction over criminal trials. It seems though that the right to trial by jury is limited and many allow criminal prosecution without a jury if that is the law of the land. It also declares the right of self defense and the ability to plead the 15th.

[Art.] 16. [Former Jeopardy; Jury Trial in Capital Cases.]

No subject shall be liable to be tried, after an acquittal, for the same crime or offense. Nor shall the legislature make any law that shall subject any person to a capital punishment, (excepting for the government of the army and navy, and the militia in actual service) without trial by jury.

June 2, 1784

This Article prohibits double jeopardy and separately establishes the right trial by jury for capital offenses. The right to trial by jury for capital punishment is necessary because of the window for trial without a jury in Article 15.

[Art.] 17. [Venue of Criminal Prosecutions.]

In criminal prosecutions, the trial of facts, in the vicinity where they happened, is so essential to the security of the life, liberty and estate of the citizen, that no crime or offense ought to be tried in any other county or judicial district than that in which it is committed; except in any case in any particular county or judicial district, upon motion by the defendant, and after a finding by the court that a fair and impartial trial cannot be had where the offense may be committed, the court shall direct the trial to a county or judicial district in which a fair and impartial trial can be obtained.

June 2, 1784

Amended 1792 to change "assembly" to: legislature.

Amended 1978 so that court at defendant's request may change trial to another county or judicial district.

This Article defines the venue for trial as the jurisdiction in which the crime occurs unless otherwise requested by the defendant, but only for the purpose of obtaining an impartial jury. It also clearly give the judiciary jurisdiction over criminal trials.

[Art.] 18. [Penalties to be Proportioned to Offenses]

True Design of Punishment.] All penalties ought to be proportioned to the nature of the offense. No wise legislature will affix the same punishment to the crimes of theft, forgery, and the like, which they do to those of murder and treason. Where the same undistinguishing severity is exerted against all offenses, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the lightest offenses. For the same reason a multitude of sanguinary laws is both impolitic and unjust. The true design of all punishments being to reform, not to exterminate mankind. June 2, 1784

Amended 1792 deleting "those of" after do in 3d sentence and changing "dye" to: offenses.

This Article requires the punishment to fit the crime, and directs the punishment toward reform.

It should be noted that this is essentially unaltered since 1784. This relates back to Articles 3 and 4 that any loss of liberty, voluntary or involuntary, is reciprocal.

[Art.] 19. [Searches and Seizures Regulated.]

Every subject hath a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. Therefore, all warrants to search suspected places, or arrest a person for examination or trial in prosecutions for criminal matters, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order, in a warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued; but in cases and with the formalities, prescribed by law.

June 2, 1784

Amended 1792 to change order of words.

Article 19 enumerates the right to privacy and describes the conditions under which and by

which it may be broached. It is an interesting contrast to the Fourth Amendment to the Constitution for the United States of America in that it states the inherent right outright before stating the conditions for violating it. It is instructive that with the absolute right to privacy enumerated, the laws against abortion were not considered unconstitutional.

[Art.] 20. [Jury Trial in Civil Causes.]

In all controversies concerning property, and in all suits between two or more persons except those in which another practice is and has been customary and except those in which the value in controversy does not exceed \$1,500 and no title to real estate is involved, the parties have a right to a trial by jury. This method of procedure shall be held sacred, unless, in cases* arising on the high seas and in cases relating to mariners' wages, the legislature shall think it necessary hereafter to alter it.

June 2, 1784

Amended in 1877 to prohibit jury trials unless the amount in controversy exceeds \$100.

Amended in 1960 to increase the amount to \$500 before a jury trial may be requested.

***"Cases" appears in 1792 parchment copy of constitution. Original constitution had "causes."**

Amended in 1988 to change \$500 to \$1,500

In establishing a right to trial by jury, for certain classes of civil suit, this Article give the judiciary jurisdiction over civil cases. It is important to note that civil cases are defined as being between two or more persons. In 1784, this would have been limited to natural persons. The admission of corporations to the status of person hood in the 1930s by law does not alter the meaning of persons under the constitution.

Subject to qualifications and value, and nature of property, Article 20 establishes a right to trial by jury in all cases unless there was another practice in 1784. This is best seen by simply crossing out the intervening qualifiers. It is instructive that this right was to be held sacred. No other right was considered sacred. This right was erased by the supreme court in the late 1800s with the simple statement "It is everywhere construed that there is a right to trial by jury if that was the practice at the time the constitution was adopted."

In all controversies concerning property, and in all suits between two or more persons except those in which another practice is and has been customary and except those in which the value in controversy does not exceed \$1,500 and no title to real estate is involved, the parties have a right to a trial by jury. This method of procedure shall be held sacred, unless, in cases* arising on the high seas and in cases relating to mariners' wages, the legislature shall think it necessary hereafter to alter it.

[Art.] 21. [Jurors; Compensation.]

In order to reap the fullest advantage of the inestimable privilege of the trial by jury, great care ought to be taken, that none but qualified persons should be appointed to serve; and such ought to be fully compensated for their travel, time and attendance.

June 2, 1784

This is an interesting inclusion. It states the need to have jurors who are able to render judgment, and the need to provide adequate compensation. It hints that there is more to being a juror than simply determining guilt or innocence.

[Art.] 22. [Free Speech; Liberty of the Press.]

Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved.

June 2, 1784

Amended 1968 to include free speech.

This is one of the enumerated rights of conscience. It is important to note that originally freedom of speech was not included, this Article dealt exclusively with freedom of the press, or political speech, and therefore, was focused in opposition to the stamp tax.

[Art.] 23. [Retrospective Laws Prohibited.]

Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.

June 2, 1784

Article 23 prohibits ex post facto law, establishing that the legislatures focus is prospective, even if it based on past experience.

[Art.] 24. [Militia.]

A well regulated militia is the proper, natural, and sure defense, of a state.

June 2, 1784

This Article is a mandate for the establishment of an organized state militia, independent of the national militia or military. Note that this Article was not removed when the Constitution for the United States of America was adopted.

[Art.] 25. [Standing Armies.]

Standing armies are dangerous to liberty, and ought not to be raised, or kept up, without the consent of the legislature.

June 2, 1784

This Article puts the existence of any state militia at the subjection of the people via the legislature.

[Art.] 26. [Military Subject to Civil Power.]

In all cases, and at all times, the military ought to be under strict subordination to, and governed by, the civil power.

June 2, 1784

This Article puts the operation of any state militia at the subjection of the people via the civil government; prohibiting martial law.

[Art.] 27. [Quartering of Soldiers.]

No soldier in time of peace, shall be quartered in any house, without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil authorities in a manner ordained by the legislature.

June 2, 1784

Amended in 1980 substituting "authorities" for "magistrate."

This Article prohibits the temporary taking of property by the state militia or military. The property can only be taken by civil authority.

[Art.] 28. [Taxes, by Whom Levied.]

No subsidy, charge, tax, impost, or duty, shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body.

June 2, 1784

Article 28 establishes the fundamental right of the people to be subject only to taxes authorized by themselves or their legislature. Note that taxation by any power of government other than the legislature is not allowed under any pretext whatsoever.

[Art.] 28-a. [Mandated Programs.]

The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

November 28, 1984

Article 28-a prohibits indirect taxation by the legislature by establishing a cost and requiring the local political subdivisions to fund it. It unequivocally ties the expense with the raising of the tax.

[Art.] 29. [Suspension of Laws by Legislature Only.]

The power of suspending the laws, or the execution of them, ought never to be exercised but by the legislature, or by authority derived therefrom, to be exercised in such particular cases only as the legislature shall expressly provide for.

June 2, 1784

The use of the word execute is a little confusing here. It is clearly a verb (a gerund).

EXECU'TION, n. Performance; the act of completing or accomplishing.

3. The act of signing and sealing a legal instrument, or giving it the forms required to render it a valid act; as the execution of a deed.

6. Destruction; slaughter. .

Therefore, in understanding Article 29, it is necessary to consider that the only way to remove or stop a law is by passing, or executing a nullifying law; simply that is referring to the

power of destroying or removing law. Either way, Article 29 establishes that it is a right of the people that only they or their representatives can create a law or stop a law temporarily or permanently. This prohibits judicial review as we know it. It is this Article makes jury nullification questionable, except that jury nullification is limited to a particular instance, and not a general removal of the law.

[Art.] 30. [Freedom of Speech.]

The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any action, complaint, or prosecution, in any other court or place whatsoever.

June 2, 1784

Article 30 establishes freedom of speech in the legislature as an enumerated right. It was not until 1966 that a general freedom of speech was enumerated. Though it would always have existed as a common law right

[Art.] 31. [Meetings of Legislature, for What Purposes.]

The legislature shall assemble for the redress of public grievances and for making such laws as the public good may require.

June 2, 1784

Amended 1792 generally rewording sentence and omitting "for correcting, strengthening and confirming the laws."

It is a right of the people that the legislature meet for a redress of public grievances and making of laws. Note that the redress of public grievances is separate from legislating. Articles 12 and 29 allow for the delegation of law making authority such as to the cities and towns or the agencies and departments. There is no such power of delegation for the redress of grievances. It is important to understand what is meant by redress of grievances. Webster's 1828 dictionary defines grievance as follows:

GRIE'VANCE, n. [from grief.] That which causes grief or uneasiness; that which burdens, oppresses or injures, implying a sense of wrong done, or a continued injury, and therefore applied only to the effects of human conduct; never to providential evils. The oppressed subject has the right to petition for a redress of grievances.

We also know that the requirement of the Judiciary to hear criminal cases and civil cases is provided for in Articles 15 and 20; therefore, this must refer to a different issue: complaints against the government for government actions such as: accidental or purposeful destruction of property, violation of due process, or the constitutionality of a law.

On the face of this, the two issues appear to be of equal importance. However, consider the following: redress of grievances is listed first; there is provision for the authority to delegate the making of law; and there is no provision for delegating the redress of grievances. Therefore, the redress of grievances is the primary responsibility. That is because the opportunity for redress of grievances by the government upon the people is the foundation of liberty. Therefore, it is delegated to the body over which the people have the most control, and not the body over which they have the least control (the judiciary).

You might hear the allegation that such issues should be heard by a non-political power. The answer is no. Government is by its nature political, the embodiment of the will of the people.

Therefore, any perceived wrongs, oppression, must be addressed by a political body. And as Articles 1 and 37 make the people the final arbiters of constitutionality, the legislature is the only governmental power for the redress grievances, including the constitutionality of law. It is a right of the people that their constitutional rights which they defined be adjudicated only by a governmental power over which they have direct control.

[Art.] 32. [Rights of Assembly, Instruction, and Petition.]

The people have a right, in an orderly and peaceable manner, to assemble and consult upon the common good, give instructions to their representatives, and to request of the legislative body, by way of petition or remonstrance, redress of the wrongs done them, and of the grievances they suffer.

June 2, 1784

It is a right of the people to assemble to demand action by the legislature and for a town to meet to give instructions to their representatives on how to vote on a bill. It also gives instruction on how to address the legislature for their right to a redress of grievances. For example, if the people believed a law were unconstitutional, this would be the method for them to demand its removal.

Articles 31 and 32 together give the legislature exclusive jurisdiction over grievances against the government.

[Art.] 33. [Excessive Bail, Fines, and Punishments Prohibited.]

No magistrate, or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

June 2, 1784

This is very simply a prohibition on cruel and unusual punishment or restrictions on liberty. This is again a statement of the loss of liberty or property to be reciprocal as in Article 18.

[Art.] 34. [Martial Law Limited.]

No person can, in any case, be subjected to law martial, or to any pains or penalties by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

June 2, 1784

It is a right of the people that can not be subject to martial law except by the consent of their representatives.

[Art.] 35. [The Judiciary; Tenure of Office, etc.]

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the judges of the supreme judicial court should hold their offices so long as they behave well; subject, however, to such limitations, on account of age, as may be provided by the constitution of the state; and that they should have honorable salaries,

ascertained and established by standing laws.

June 2, 1784

Amended 1792 to provide for age limitation as provided by the constitution.

It is a right of the people that they have a judges who are not part of the body that makes the law. It important to note that the supreme judicial court is lower cast, and therefore, not the name of a body, but a general reference to whatever supreme judicial court the General Court had constituted at the time.

[Art.] 36. [Pensions.]

Economy being a most essential virtue in all states, especially in a young one, no pension shall be granted, but in consideration of actual services; and such pensions ought to be granted with great caution, by the legislature, and never for more than one year at a time.

June 2, 1784

This is interesting in that the pensions could only be authorized for a year.

[Art.] 36-a [Use of Retirement Funds.]

The employer contributions certified as payable to the New Hampshire retirement system or any successor system to fund the system's liabilities, as shall be determined by sound actuarial valuation and practice, independent of the executive office, shall be appropriated each fiscal year to the same extent as is certified. All of the assets and proceeds, and income therefrom, of the New Hampshire retirement system and of any and all other retirement systems for public officers and employees operated by the state or by any of its political subdivisions, and of any successor system, and all contributions and payments made to any such system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, any other purposes.

November 28, 1984

It is unclear how this completely squares with Article 36. It is unclear how any legislature can obligate a future legislature to a retirement benefit. However, it is a later amendment.

[Art.] 37. [Separation of Powers.]

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 independent 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.

June 2, 1784

This Article is interesting, clearly stating that the separation of powers is not absolute. It further states that the interaction of the powers is governed by the constitution. It is also important that there is no statement of equality between the powers; which would also be covered by the constitution. In analyzing the form of government, the second part of the constitution, and what checks and balances each power has over the others, it is clear that the legislative power, and the house of representatives in particular is the most powerful. It is interesting that the protection by or obligation of legislature is defined in 15 Articles of the Bill of Rights (of the people) while the

protections by or obligations of the judiciary are defined in only 3 Articles, and there is no protection by or obligation of the executive defined. The last sentence defines the constitution as fabric (interwoven) as having one indissoluble bond (the articles can not be considered separately) of unity (a single document) and amity (without conflict). It is philosophically impossible for any Article to be in conflict with another Article, or more importantly, the interpretation of any Article must be consistent with the interpretation of every other Article.

This is the one time that I will break form and discuss the Form of Government in the Bill of Right, because it is directed in the Article. The chain of connection is shown in the Form of Government. Figure 1 is the diagram that I use to discuss the relative powers of the branches of government. Each arrow shows a power. The powers jointly held by the General Court are accrued to each chamber. In addition, the house is given to additional arrows for each of the actions which only it can initiate. If we sum up the arrows, the house has 9, the senate has 7, the executive has 3, and the judiciary has 1. It is clear that the house has the most power and the judiciary the least. Even if we admit the the ability of the power legislative and executive powers to request an opinion of the court and the court to give an opinion, that raises each chamber of the legislative and the executive by 1 and the judiciary by 2; and the supposed power of the judiciary to nullify a law (forbidden in Article 19), that raises the power of the judiciary by 1. This does not shift the balance of power between the legislature and the other powers. This analysis is consistent with the basic theory of giving the greatest power to those powers of government in which the individual members have the least power and over which the people have the greatest control.

New Hampshire's current Constitution replaced the hastily prepared war time constitution of January 1775. The Constitution of 1783 was the last of the post independence state constitutions to be written, and therefore, had the benefit of considering the constitutions of the other constitutions. In Federalist Paper 47, James Madison regarded Part 1, Article 37 as the best statement of the need to balance independence and commingling of the three powers in order to preserve free government. In the 1783 Constitution, the President was the President of the Senate having an equal vote and casting the deciding vote in the event of the tie. In addition, the executive councilors were members of the General Court, elected by the General Court. These two characteristics were changed in 1792. The General Court retained the responsibility of electing the Governor if no candidate achieved a majority until 1912. The General Court constituted all judicatories until 1968, and still constitutes the probate and district courts, and the Governor and Council appoint all judges and masters. Any pretense that the government was to be comprised of entirely independent branches is pure sophistry, and it is clear that the founders intended power to be concentrated in the General Court.

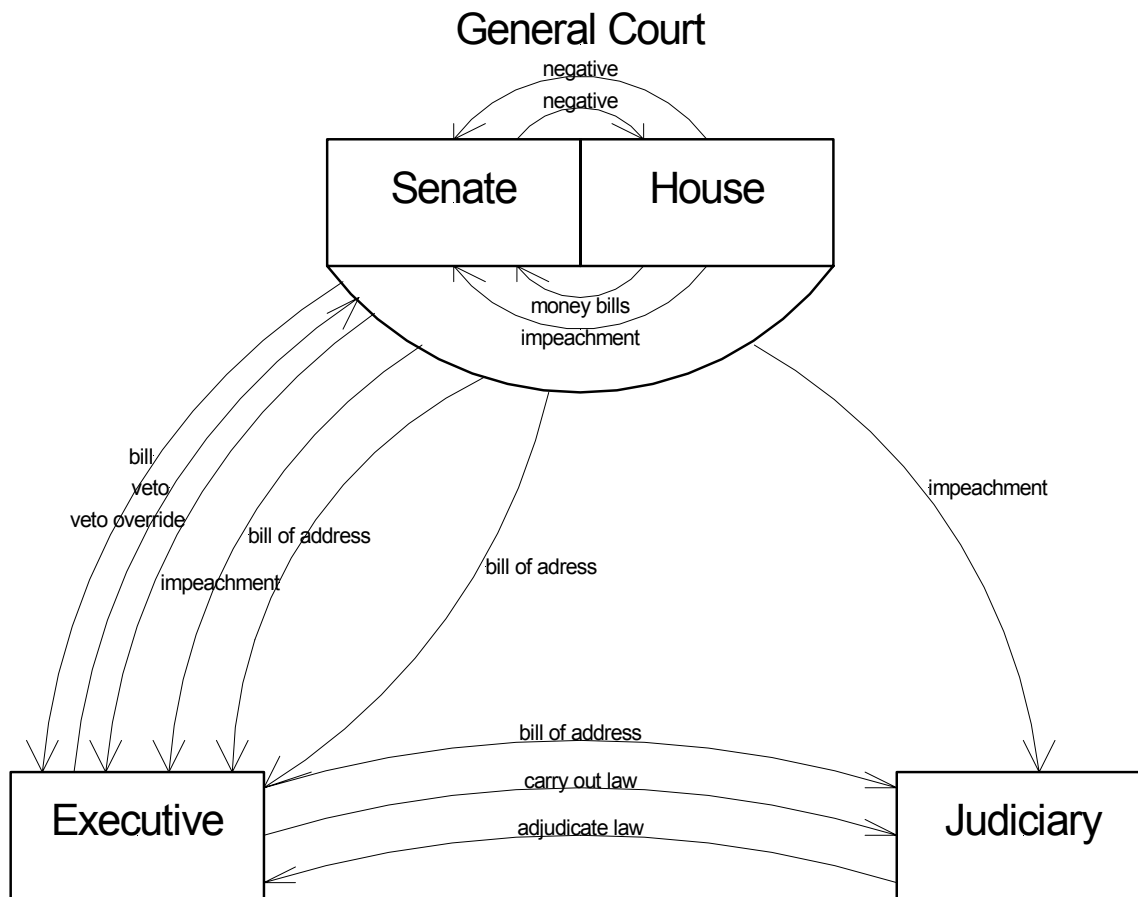


Figure 1

[Art.] 38. [Social Virtues Inculcated.]

A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives, and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of government.

June 2, 1784

It is important to recognize one of the definitions of recur is to go back and think about and discuss. This is the one obligation of the people, to go back and review the constitution regularly; to hold us, the officers and representatives of the state accountable to the constitution. This Article makes the people, the final judges of constitutionality. The people have a right to require that we and the executive and judges adhere exactly to the constitution. Beyond the very mechanism by which the Constitution is adopted, this Article makes the people the final arbiters

of constitutionality. This article together with Articles 12 and 29 make the legislature final governmental judge of constitutionality, because they are the only direct representatives of the people. There is no more searing indictment of the slavish doctrine that the constitution is the exclusive province of lawyers and political scientists than this.

Webster's 1828 Dictionary RECUR', v.i. [L. recurro; re and curro, to run.]

1. To return to the thought or mind.

When any word has been used to signify an idea, the old idea will recur in the mind, when the word is heard.

[Art.] 39. [Changes in Town and City Charters, Referendum Required.]

No law changing the charter or form of government of a particular city or town shall be enacted by the legislature except to become effective upon the approval of the voters of such city or town upon a referendum to be provided for in said law. The legislature may by general law authorize cities and towns to adopt or amend their charters or forms of government in any way which is not in conflict with general law, provided that such charters or amendments shall become effective only upon the approval of the voters of each such city or town on a referendum.

November 16, 1966

This article states that only the people of any city or town can change the form of government of their city or town. The legislature can not change the form of government of any city or town, but the form of government can only be changed with the consent of the legislature.

PART SECOND FORM OF GOVERNMENT

The second part of the Constitution of the State of New Hampshire describes the form or organization of the government. It is the implementation of the of the government whose sole purpose is to guarantee the rights described in the First Part, the Bill of Rights. The Form of Government was not originally written in the form of individual articles. It was instead written in paragraph form with titles for each major section of government. In 1842 the Form of Government was converted into Articles in Statute. This is highly irregular, but subsequent constitutional conventions ought to have satisfy the requirement of the peoples ratification..

Article I. [Name of Body Politic.]

The people inhabiting the territory formerly called the province of New Hampshire, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign and independent body-politic, or state, by the name of The State of New Hampshire.

June 2, 1784

Article 1 is the introduction to the Form of Government. It is the implementation of Part 1, Article 1. It states the intention of the people of New Hampshire to form themselves into a body-politic; that is the functioning government. It is important that it is characterized as free, sovereign and independent. It is important to note, having seen the original 1783 constitution that the word sovereign was edited in. The first writing read “free and independent body politic” which ties it back directly to Part 1, Article 1, which describes all men as free and independent from whom the power of government originates. At the time of that the Constitution of the State of New Hampshire was written, sovereignty meant to be directly responsible to God. The importance of their inclusion of concept of sovereignty is underscored by the fact that it was positively edited in, and was retained after the ratification of the Constitution for the United States of America. Therefore, those who ratified the constitution understood that while power was delegated to the United States of America, the state sovereignty was retained.. It was necessary to add the word sovereignty to make Part 2, Article 1, consistent with Part 1, Article 7 which states as a fundamental right of the people to govern themselves as free sovereign and independent state.

This styling the name of the State in the published version does not match the style of the name in any adopted form. On the 1783 parchment, the name was styled THE STATE OF NEW HAMPSHIRE the name being in all capitals, but with the first letter being a larger font. In 1792, the parchment was styled The State of New Hampshire. There is no record of any amendment to THE STATE OF NEW HAMPSHIRE. This surreptitious change has been corrected as of the 2007 printing.

GENERAL COURT

The General Court is the name given to the legislature of the State of New Hampshire. This name given based upon the structure of the government which made the General Court the highest court in the land. The superiority of the General Court was laid out in the original version of Article 72 which gave the General Court the power to erect and constitute all

judicatories.

[Art.] 2. [Legislature, How Constituted.]

The supreme legislative power, within this state, shall be vested in the senate and house of representatives, each of which shall have a negative on the other.

June 2, 1784

This Article is the implementation of Part 1, Articles 12, 28 and 29. The General Court is described as being the supreme legislative authority. This is consistent with Part 1, Articles 12 and 29 which create as a basic right of the people that the only governmental power that can make laws to which they shall be subject is the legislature, and that only the legislature can start or stop any law. The General Court is bicameral or divided legislature. This creates two independently elected chambers which must concur on all legislation. Either chamber can stop a proposal by the other.

[Art.] 3. [General Court, When to Meet and Dissolve.]

The senate and house shall assemble biennially on the first Wednesday of December for organizational purposes in even numbered years, and shall assemble annually on the first Wednesday following the first Tuesday in January, and at such other times as they may judge necessary; and shall dissolve and be dissolved at 12:01 A.M. on the first Wednesday of December in even numbered years and shall be styled THE GENERAL COURT OF NEW HAMPSHIRE.

June 2, 1784

Amended 1877 changing annual sessions to biennial sessions.

Amended 1889 calling for the legislature to meet in January instead of June.

1966 amendment permitting annual sessions was ruled invalid in Gerber v. King, 107 NH 495.

Amended 1974 to permit organizational meetings in December and the January meeting to be on the first Wednesday after the first Tuesday.

Amended 1984 changing biennial sessions to annual sessions.

Article 3 defines the terms of the members of the General Court. Originally they were elected annually and met in June. In 1877, the annual election was changed to election every two years with session only in the first year. This was the practice until 1984. There is a curious situation that there is no legislature from 12:01 A.M. on the first Wednesday of December until the new representatives and senators are sworn in later that day. The styling of the General Court suffers from the same problem as the styling of the name of the State. The 1792 parchment styles the name as The General Court of New Hampshire, and there is no record of any amendment to the published style. This surreptitious change has been corrected in the 2007 printing.

[Art.] 4. [Power of General Court to Establish Courts.]

The general court (except as otherwise provided by Article 72-a of Part 2) shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be holden, in the name of the state, for the hearing, trying, and determining, all manner of crimes, offenses, pleas, processes, complaints, actions, causes, matters and things whatsoever arising or happening within this state, or between or concerning persons inhabiting or residing, or brought, within the same, whether the same be criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real, personal or mixed, and for the awarding and issuing execution thereon. To which courts and judicatories, are hereby given and granted, full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

June 2, 1784

Amended 1966 to add exception relating to Art. 72-a, Part 2.

This is the first Article in the implementation Part 1, Articles 15 and 20. The first enumerated power of the General Court is to erect and constitute the judicatories (judiciary) of the State. Until 1968, this power was absolute; that is there was not constitutionally defined judicial branch of government. The General Court had the power and did five times dissolve the judiciary and reconstitute the judiciary. The exception for Article 72-a is the establishment of constitutional Supreme and Superior Courts in 1968. This Article, the amendment notwithstanding clearly creates the relationship between the General Court and the judiciary in which the judiciary is inferior to the General Court. While the General Court can no longer disband the Supreme or Superior Courts, it can still remove individual judges by bill of address or impeachment. A power which no other branch of government has over legislators, and legislators can only be removed for very specific causes enumerated in the constitution.

[Art.] 5. [Power to Make Laws, Elect Officers, Define Their Powers and Duties, Impose Fines and Assess Taxes; Prohibited from Authorizing Towns to Aid Certain Corporations.]
And farther, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions, and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this constitution, as they may judge for the benefit and welfare of this state, and for the governing and ordering thereof, and of the subjects of the same, for the necessary support and defense of the government thereof, and to name and settle biennially, or provide by fixed laws for the naming and settling, all civil officers within this state, such officers excepted, the election and appointment of whom are hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this state, and the forms of such oaths or affirmations as shall be respectively administered unto them, for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and also to impose fines, mulcts, imprisonments, and other punishments, and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state; and upon all estates within the same; to be issued and disposed of by warrant, under the hand of the governor of this state for the time being, with the advice and consent of the council, for the public service, in the necessary defense and support of the government of this state, and the protection and preservation of the subjects thereof, according to such acts as are, or shall be, in force within the same; provided that the general court shall not authorize any town to loan or give its money or credit directly or indirectly for the benefit of any corporation having for its object a dividend of profits or in any way aid the same by taking its stocks or bonds. For the purpose of encouraging conservation of the forest resources of the state, the general court may provide for special assessments, rates and taxes on growing wood and timber.

June 2, 1784

Amended 1792 changing "president" to "governor."

Amended 1877 changing "annually" to "biennially." Also amended to prohibit towns and cities from loaning money or credit to corporations.

Amended 1942 to permit a timber tax.

Part 2 Article 5 is the implementation of Part 1 Articles 12, 28 and 29 which states that the people shall only be subject to laws to which the legislature consent.. It lists the types of laws which can be made. However, no law made by the legislature can be repugnant to the constitution. It authorizes the legislature to create and seat any officer of the state not created by the constitution that it deems necessary. Finally, also gives the power to make assessments, rates and taxes upon inhabitants (a permanent citizen), residents (a non-citizen such as a foreign national) and estates and that the taxes be reasonable and proportional.

ESTA'TE,n. [L. status, from sto, to stand. The roots stb, std and stg, have nearly the same signification, to set, to fix. It is probable that the L. sto is contracted from stad, as it forms steti.

4. In law, the interest, or quantity of interest, a man has in lands, tenements, or other effects. Estates are real or personal. Real estate consists in lands or freeholds, which descent to heirs;

personal estate consists in chattels or movables, which go to executors and administrators. There are also estates for life, for years, at will, &c

The inclusion of estates as taxable entities allow the properties of those not living in the state (absentees) to be taxed. This insight is provided by comparison to Part 2, Article 90.

It specifically prohibits towns from loaning or giving money to any for profit corporation. Interesting with that specific consideration given for town, it intentionally leaves open the state giving or loaning money to for profit corporations. Finally, it created the capacity to create special taxes for timberland for the purposes of conservation. It should be noted that the reasonable and proportional requirement of taxes is limited to state taxes and as the original school tax being exclusively at the burden of the town was written at the same time, that the disparity in town taxes can in no way be construed as unconstitutional.

[Art.] 5-a. [Continuity of Government in Case of Enemy Attack.]

Notwithstanding any general or special provision of this constitution, the general court, in order to insure continuity of state and local government operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including but not limited to the financing thereof. In the exercise of the powers hereby conferred the general court shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the general court so to do would be impracticable or would admit of undue delay.

November 30, 1942

Article 5-a is clearly associated with World War II and the very real prospect of invasion. It enables the General Court to create a succession of power if the normal succession defined in this constitution could not be executed. This gives the full power of operating the government to the General Court if necessary during enemy attack or natural disaster. This is similar to the committee of safety which operated the state during the War for Independence.

[Art.] 5-b. [Power to Provide for Tax Valuations Based on Use.]

The general court may provide for the assessment of any class of real estate at valuations based upon the current use thereof.

November 15, 1968

This Article gives the General Court the power to create a special assessment rate for real estate in current use. It is odd that a separate article was used as it is identical in form and purpose to the timber tax amendment in 1942.

[Art.] 6. [Valuation and Taxation.]

The public charges of government, or any part thereof, may be raised by taxation upon polls, estates, and other classes of property, including franchises and property when passing by will or inheritance; and there shall be a valuation of the estates within the state taken anew once in every five years, at least, and as much oftener as the general court shall order.

June 2, 1784

Amended 1903 to permit taxes on other classes of property including franchises and property passing by inheritances.

This article describes the types of taxes which can be levied polls and other property. Since Article 5 includes the ability to tax both inhabitants and residents, would be a poll tax. It was amended in 1903 to include taxation of franchises and estates upon will and inheritance. A general definition of franchise in this context is a corporation. It also requires assessment of estates every five years, and has since the founding of the state.

Article 6 provides great insight on the types of taxes that can be levied. The 1903 amendment enables taxation of property in transfer of one type. This provides a distinction between property and property in transfer. The clearly understood that property in transfer was not property, and that therefore, an amendment was necessary to tax property in transfer. Other property transfers include sales and income. It is clear that any taxes on property transfers are not constitutional unless the constitution is amended to allow them.

Webster's 1828 Dictionary defines income as follows. **IN'COME**, n. in'cum. [in and come.] That gain which proceeds from labor, business or property of any kind; the produce of a farm; the rent of houses; the proceeds of professional business; the profits of commerce or of occupation; the interest of money or stock in funds. Income is often used synonymously with revenue, but income is more generally applied to the gain of private persons, and revenue to that of a sovereign or of a state. We speak of the annual income of a gentleman, and the annual revenue of the state.

This definition is unchanged in Random House, 1966. Income being defined as gain on property is therefore separate and distinct from property.

A second insight is that in 1903 amendment, franchises (businesses) and property are listed separately. This means that franchises were seen as separate from property, and therefore, they would not be included in Estates as well. Therefore, businesses are not included in the taxable entities in Article 5 or included in property as a type of tax in Article 6.

The idea that only property can be taxed is consistent with the entire fabric of the constitution. Part 1, Article 2 defines acquiring, possessing and protecting property as a fundamental liberty and the function of government is to protect that liberty. Part 1, Article 12 defines that protection and taxation reciprocal. Therefore, the government has only been successful has the right to tax to the extent that the people have been able to acquire and possess property. Income and purchases represent a flow of property, but not an accumulation of wealth. Just because a person has a high income does not necessarily mean that the state has been successful in its responsibility to create an environment where that person has been able to accumulate wealth. Therefore, the tax burden is rightly placed upon the citizens who have been able to accumulate

net worth. If the state wanted to tax effective income it could tax the annual increase in net worth. In fact, taxing a persons income or expenses inhibits their ability to accumulate wealth, and therefore, is counter to the very purpose of government as defined in the Constitution of the State of New Hampshire.

[Art.] 6-a. [Use of Certain Revenues Restricted to Highways.]

All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.

November 29, 1938

This article authorizes the registration of automobiles, operators licenses, road tolls and other taxes dealing with the operation of motor vehicles and requires all such fees and taxes be used for the maintenance of roads. It should be noted that it does not define the purpose of the registration or license. It also indicates that the people felt that a constitutional amendment was necessary for such to be created.

[Art.] 6-b. [Use of Lottery Revenues Restricted to Educational Purposes.]

All moneys received from a state-run lottery and all the interest received on such moneys shall, after deducting the necessary costs of administration, be appropriated and used exclusively for the school districts of the state. Such moneys shall be used exclusively for the purpose of state aid to education and shall not be transferred or diverted to any other purpose.

November 6, 1990

This article authorizes and defines the purpose of the state lottery and its taxes.

General thoughts on Articles 5 and 6.

It should be noted here that the constitution defines who may be taxed and what they may be taxed may be taxed. Clearly people and estates can pay taxes. They can be taxed for polls and property. Since in 1903 they felt it necessary to specify both franchises and property, it was probably their understanding that estates in 1783 did not include franchises. It is also important to note that franchises are only taxable at the time of transfer, or therefore, as property of an individual, though the term other classes of property might include the taxation of business ownership, on a balance sheet or stock value basis.

There is no apparent authorization to require business to pay taxes as an entity. Given the specifications put upon taxation and the previous perception of a need to authorize new types of taxation, I would be ready to argue that the business profits tax, business enterprise tax are not authorized. Franchises are only authorized as a taxable object and then only in the case of transfer by will or inheritance. I would also add that communications tax is not authorized.

There is a clear capacity to tax property, and a sales tax might be construed as a property upon

people at the time of transfer, but the room and meals tax are not taxes upon tangible objects, at least not by the time you pay for it, and therefore can not be construed as taxes upon the property of the purchaser. Again I would be ready to argue unconstitutional and that any general sales tax or income tax is not authorized by the constitution because they are property in transfer. In 1903, it was considered necessary to amend the constitution to tax property in transfer by will or inheritance; therefore, one would have to understand that there is no general capacity to tax property in transfer.

I would also add that Amendments on timber tax and 5b ought properly to have been amended to Article 6.

[Art.] 7. [Members of Legislature Not to Take Fees or Act as Counsel.]

No member of the general court shall take fees, be of counsel, or act as advocate, in any cause before either branch of the legislature; and upon due proof thereof, such member shall forfeit his seat in the legislature.

September 5, 1792

This article was included in the 1792 adoption of the constitution because representatives and senators were taking fees for the submission of petitions for redress of grievances.

[Art.] 8. [Open Sessions of Legislature.]

The doors of the galleries, of each house of the legislature, shall be kept open to all persons who behave decently, except when the welfare of the state, in the opinion of either branch, shall require secrecy.

September 5, 1792

This Article simply requires that all sessions of the legislature be open to the public unless there is a compelling reason for secrecy.

HOUSE OF REPRESENTATIVES

This section has of the constitution deals specifically with the organization of and unique powers of the House of Representatives. It is an interesting note that originally the description of the Senate preceded the Description of the House. Therefore, some of the Articles will seem out of order, referring to later Articles.

[Art.] 9. [Representatives Elected Every Second Year; Apportionment of Representatives.]
There shall be in the legislature of this state a house of representatives, biennially elected and founded on principles of equality, and representation therein shall be as equal as circumstances will admit. The whole number of representatives to be chosen from the towns, wards, places, and representative districts thereof established hereunder, shall be not less than three hundred seventy-five or more than four hundred. As soon as possible after the convening of the next regular session of the legislature, and at the session in 1971, and every ten years thereafter, the legislature shall make an apportionment of representatives according to the last general census of the inhabitants of the state taken by authority of the United States or of this state. In making such apportionment, no town, ward or place shall be divided nor the boundaries thereof altered.

June 2, 1784

Amended 1877 three times providing for biennial elections; increasing representation from 150 rateable polls to 600; prohibiting towns and wards from being altered so as to increase representation.

Amended 1942 limiting size of House to between 375 and 400.

Amended 1964 providing for equal representation.

In understanding the intent of Article 9, it is necessary to know its original form.

There shall be in the legislature of this State, a representation of the people annually elected and founded upon principles of equality:- and in order the such representation may be as equal as circumstances will admit, every town, parish or place entitled to town privileges, having one hundred and fifty rateable male polls, of twenty one years of age, and upwards, may elect one representative; if four hundred and fifty rateable polls may elect two representatives; and so proceeding in that proportion, making three hundred such rateable polls the mean increasing number for every additional representative.

Such towns, parishes or places as have less than one hundred and fifty rateable polls, shall be classed by the general assembly, for the purpose of choosing a representative, and seasonably notified thereof. And in every class formed for the above-mentioned purpose, the first annual meeting shall be held in the town parish or place wherein most of the rateable polls reside; and afterwards in that which as the next highest number and so on annually by rotation, through the several towns, parishes and places forming the districts.

Knowing that the Bill of Rights forbid the making of law other than by the legislature or authority derived from that body, the founders made sure to the degree possible that each town would have unique representation in the legislature. It is important that the number of qualified voters for being entitled to a representative was half the number necessary to qualify for each additional representative. A priority was given to achieving that first representative. The concept was one of ensuring unique representation for each political subdivision of the state to the degree possible.

This whole concept obscured in 1964 when the article was amended to provide for equal representation. However, the words as equal as circumstances will admit leaves room for the legislature to preserve the concept of unique representation. The necessity of unique representation and its enablement by the size of our legislature make codifying it in the constitution a high priority.

[Art.] 9-a. [Legislative Adjustments of Census with Reference to Non-Residents.]
The general court shall have the power to provide by statute for making suitable adjustments to the general census of the inhabitants of the state taken by the authority of the United States or of this state on account of non-residents temporarily residing in this state.

November 30, 1960

This article merely allows the legislature to adjust the population of the state as reported by the Census of the United States of America for the purposes of redistricting.

[Art.] 10. [Representation of Small Towns.] (Repealed)

June 2, 1784. Small towns grouped together to provide one representative for 150 rateable polls. The election meeting was to rotate annually between the towns.

Amended 1877 increasing districts to 600 inhabitants; rotation of meeting changed to biennially.

Repealed in 1889. Provisions incorporated into Art. II.

[Art.] II. [Small Towns; Representation by Districts.]

When any town, ward, or unincorporated place, according to the last federal decennial census, has less than the number of inhabitants necessary to entitle it to one representative, the legislature shall form those towns, wards, or unincorporated places into representative districts which contain a sufficient number of inhabitants to entitle each district so formed to one or more representatives for the entire district. In forming the districts, the boundaries of towns, wards and unincorporated places shall be preserved and the towns, wards and unincorporated places forming one district shall be reasonably proximate to one another. The legislature shall form the representative districts at its next session after approval of this article by the voters of the state, and thereafter at the regular session following every decennial federal census.

June 2, 1784

Amended 1792 changing General Assembly to General Court.

Amended 1877 changing 150 rateable polls to 600 inhabitants.

Amended 1889 providing that towns of less than 600 should be represented a proportional amount of time instead of being classed as formerly provided in Art. 10.

Amended 1942 deleting reference to 600 and providing that small towns should be represented at least once in every 10 years.

Amended 1964 to permit small towns to be districted for one or more representatives.

Whenever any town, parish or place entitled to town privileges as aforesaid, shall not have one hundred and fifty rateable polls, and be so situated as to render the classing thereof with any other town, the parish or place very inconvenient, the general assembly may upon application of a majority of the voters in such town parish or place issue a writ for their electing and sending a representative to the general court.

When towns were too small to qualify as districts the towns had to be grouped together with

contiguous towns until the aggregate population was sufficient to qualify for representation. The concept of unique representation for towns that the of the town in which the annual meeting for electing representatives would rotate each term so as to give that town an advantage in electing the representative from among its inhabitants. Furthermore, when a town could not be grouped with a contiguous town, it could be given its own representative

[Art.] 11-a. [Division of Town, Ward or Place; Representative Districts.] Notwithstanding Articles 9 and 11, a law providing for an apportionment to form representative districts under Articles 9 and 11 of Part Second may divide a town, ward or unincorporated place into two or more representative districts if such town, ward or place, by referendum requests such division.

November 22, 1978 (Rejected in 1976 as proposed by convention, but adopted in 1978 as proposed by the general court and including both representative and senate districts.)

Article 11-a is corollary to Part 1, Article 39. It prevents the legislature from dividing a town into wards, converting it to city government, to improve the uniqueness of representation unless the town first petitions the legislature, by referendum (consent of the inhabitants), first requests it by petitioning the legislature.

[Art.] 12. [Biennial Election of Representatives in November.]

The members of the house of representatives shall be chosen biennially, in the month of November, and shall be the second branch of the legislature.

June 2, 1784 Amended twice in 1877 substituting "biennially" for "annually" and "November" for "March."

Article 12 simply set the period of elections.

[Art.] 13. [Qualifications of Electors.] (Repealed)

June 2, 1784. All persons qualified to vote in the election of senators shall be entitled to vote within the town, district, parish, or place where they dwell, in the choice of representatives.

Note: The phrase "town, district, parish, or place" was shortened to "district" in engrossed copy of 1792, apparently without authority.

Repealed in 1976.

This Article seems out of place, but remember that in the original constitution that the Senate was described first.

[Art.] 14. [Representatives, How Elected, Qualifications of.]

Every member of the house of representatives shall be chosen by ballot; and, for two years, at least, next preceding his election shall have been an inhabitant of this state; shall be, at the time of his election, an inhabitant of the town, ward, place, or district he may be chosen to represent and shall cease to represent such town, ward, place, or district immediately on his ceasing to be qualified as aforesaid.

June 2, 1784 Amended 1852 deleting provision for representatives to have an estate of 100 pounds.

Amended 1877 deleting requirement that representatives be Protestants.

Amended 1956 substituting "ward" for "parish."

Amended 1964 adding word "district."

This Article states the qualifications for representative. It requires that the person be an inhabitant, a permanent resident. for at least two years. Note that the original qualification required that to be qualified a person had to have an estate worth at least 100 £, and until 1877 be a protestant. The most important qualification is the last, that they be an inhabitant of the district.

[Art.] 15. [Compensation of the Legislature.]

The presiding officers of both houses of the legislature, shall severally receive out of the state treasury as compensation in full for their services for the term elected the sum of \$250, and all other members thereof, seasonably attending and not departing without license, the sum of \$200 and each member shall receive mileage for actual daily attendance on legislative days, but not after the legislature shall have been in session for 45 legislative days or after the first day of July following the annual assembly of the legislature, whichever occurs first; provided, however, that, when a special session shall be called by the governor or by a 2/3 vote of the then qualified members of each branch of the general court, such officers and members shall receive for attendance an additional compensation of \$3 per day for a period not exceeding 15 days and the usual mileage. Nothing herein shall prevent the payment of additional mileage to members attending committee meetings or on other legislative business on nonlegislative days.

June 2, 1784

Amended 1792 requiring state to pay wages instead of town.

Amended 1889 setting salary for members at \$200 and for officers at \$250 with \$3 per day for special sessions.

Amended 1960 limiting mileage to 90 legislative days.

Amended 1984 limiting mileage to 45 legislative days in each annual session.

This Article defines the compensation of the legislature. It is interesting to note that originally the compensation was from the towns. This made the legislatures the agents of their constituency exclusively. The compensation was last set in 1889, which means that the compensation has been total disconnected from the original value of the service. It is also interesting that the compensation for expenses is only for a limited number of session days. Though both the compensation and expenses may be extended if a special session is special session is called. The most significant character of legislative compensation is that the it is constitutional and not legislative. This means that unlike the other states, the legislators can not

give themselves a raise. Only the people can raise the compensation of the legislature.

[Art.] 16. [Vacancies in House, How Filled.]

All intermediate vacancies, in the house of representatives may be filled up, from time to time, in the same manner as biennial elections are made.

June 2, 1784

Amended 1877 changing "annual" to "biennial" elections.

This Article simply defines the method for special elections for the House to be the same as regular elections.

[Art.] 17. [House to Impeach Before the Senate.]

The house of representatives shall be the grand inquest of the state; and all impeachments made by them, shall be heard and tried by the senate.

June 2, 1784

This Article establishes one of the two unique powers of the House of Representatives. This gives the House the power to initiate the removal from office of members of the other powers of government. It is important to note that impeachment is for criminal acts.

[Art.] 18. [Money Bills to Originate in House.]

All money bills shall originate in the house of representatives; but the senate may propose, or concur with amendments, as on other bills.

June 2, 1784

This Article establishes the second of the two unique powers of the House of Representatives. Initiating the taking the peoples property by power of taxation is limited to the governmental power over which the people have the most control.

[Art.] 18-a [Budget Bills.]

All sections of all budget bills before the general court shall contain only the operating and capital expenses for the executive, legislative and judicial branches of government. No section or footnote of any such budget bill shall contain any provision which establishes, amends or repeals statutory law, other than provisions establishing, amending or repealing operating and capital expenses for the executive, legislative and judicial branches of government.

November 28, 1984

This Article limits the concept of money bills to the budget. It precludes making other legislative action contingent on the passage of the budget. This still give the House the exclusive power of reaching into the peoples pockets.

[Art.] 19. [Adjournment.]

The house of representatives shall have the power to adjourn themselves.

June 2, 1784

Amended 1948 substituting "five" for "two" days as length of adjournment.

Amended 1966 removing limitation on adjournment.

This Article gives the House the power of adjourning themselves as they see fit. Otherwise, only

the Governor would only be able to adjourn the House.

[Art.] 20. [Quorum, What Constitutes.]

A majority of the members of the house of representatives shall be a quorum for doing business: But when less than two-thirds of the representatives elected shall be present, the assent of two-thirds of those members shall be necessary to render their acts and proceedings valid.

June 2, 1784

This Article sets the minimum attendance for the House to do business and requires that a super majority of those present are required to make take an action. This ensures that any action taken will reasonably reflect the thinking of the House, and therefore, the people.

[Art.] 21. [Privileges of Members of Legislature.]

No member of the house of representatives, or senate shall be arrested, or held to bail, on mesne process, during his going to, returning from, or attendance upon, the court.

June 2, 1784

This Article protects members of the House from interference when attending session. This was considered necessary so that member could not be prevented from voting by those who held opposing views.

[Art.] 22. [House to Elect Speaker and Officers, Settle Rules of Proceedings, and Punish Misconduct.] The house of representatives shall choose their own speaker, appoint their own officers, and settle the rules of proceedings in their own house; and shall be judge of the returns, elections, and qualifications, of its members, as pointed out in this constitution. They shall have authority to punish, by imprisonment, every person who shall be guilty of disrespect to the house, in its presence, by any disorderly and contemptuous behavior, or by threatening, or illtreating, any of its members; or by obstructing its deliberations; every person guilty of a breach of its privileges, in making arrests for debt, or by assaulting any member during his attendance at any session; in assaulting or disturbing any one of its officers in the execution of any order or procedure of the house; in assaulting any witness, or other person, ordered to attend, by and during his attendance of the house; or in rescuing any person arrested by order of the house, knowing them to be such.

June 2, 1784

Amended 1792 by adding that the House shall be judge of the returns, elections, and qualifications of its members.

This Article makes the House the judge of all its business. The phrase regarding the election of their members was apparently omitted by accident in 1783. The Senate has a corresponding clause which was present from the beginning, and without that clause, there is no clear final judge. The clause was added at the first opportunity in 1792. It is also interesting that the House has powers of arrest and imprisonment for those who openly disrespect the House or interfere with members.

[Art.] 23. [Senate and Executive Have Like Powers; Imprisonment Limited.]

The senate, governor and council, shall have the same powers in like cases; provided, that no imprisonment by either, for any offense, exceeds ten days.

June 2, 1784

Amended 1792 substituting "governor" for "president."

This Article gives the Senate and the Governor like powers to protect their dignity and ability to operate.

[Art.] 24 [Journals and Laws to be Published; Yeas and Nays; and Protests.]

The journals of the proceedings, and all public acts of both houses, of the legislature, shall be printed and published immediately after every adjournment or prorogation; and upon motion made by any one member, duly seconded, the yeas and nays, upon any question, shall be entered, on the journal. And any member of the senate, or house of representatives, shall have a right, on motion made at the time for that purpose to have his protest, or dissent, with the reasons, against any vote, resolve, or bill passed, entered on the journal.

June 2, 1784

Amended 1792 permitting protest or dissent with reasons to be entered in the journals.

Amended 1966 requiring roll call requests to be seconded.

This Article requires the creation of the Journals of the House and Senate. This is important for the maintenance of a free government and for the intent of legislation to be recorded in the permanent Journals. More importantly it gives the members of the House and Senate the right to have their protests to legislation recorded in the permanent journals.

SENATE

This section of the Constitution describes the organization and powers of the Senate.

[Art.] 25. [Senate, How Constituted.]

The senate shall consist of twenty-four members.

June 2, 1784. Provided for 12 senators.

Amended 1792. Generally rephrased specifying term as one year from the first Wednesday in June.

Amended 1877 increasing senators to 24 and providing for 2 year term.

Amended 1889 so that term started in January instead of June.

Amended 1974 deleting reference to term.

This Article defines the size of the Senate. Originally there were twelve Senators. That was later increased to Twenty-four. This was done at the same time as the number of constituents per representative was increased from 150 to 600.

[Art.] 26. [Senatorial Districts, How Constituted.]

And that the state may be equally represented in the senate, the legislature shall divide the state into single-member districts, as nearly equal as may be in population, each consisting of contiguous towns, city wards and unincorporated places, without dividing any town, city ward or unincorporated place. The legislature shall form the single-member districts at its next session after approval of this article by the voters of the state and thereafter at the regular session following each decennial federal census.

June 2, 1784. Number of senators elected from each district (county) proportioned to taxes paid by each district.

Amended 1792 dividing the state into 12 senatorial districts still based on proportion of taxes paid by the district.

Amended 1877 increasing senate to 24 members from single member districts.

Amended 1964 providing for election of senators on basis of population.

This Article describes the Senate districts as being single member districts. It is important to note that originally the Senate districts were defined such that they contributed approximately equal portions taxes. This is consistent with the concept of taxation being reciprocal with protection. This made a bicameral legislature apportioned two different premises, one on population the other on taxation; one who is protected, the other on who pays for that protection. This design is inherently more stable and conservative than having both chambers apportioned on population. Notice that the chamber originating money bills was not the chamber apportioned based on those money bills. The conversion to a purely population based apportionment in was relatively recent.

[Art.] 26-a. [Division of Town, Ward or Place; Senatorial Districts.]

Notwithstanding Article 26 or any other article, a law providing for an apportionment to form senatorial districts under Article 26 of Part Second may divide a town, ward or unincorporated place into two or more senatorial districts if such town, ward or place by referendum requests such division.

November 22, 1978

This Article allows a political subdivision of the State to be divided so that it is more than one Senatorial district by request. Note that Article 9 prevents similar division into multiple Representative Districts

[Art.] 27. [Election of Senators.]

The freeholders and other inhabitants of each district, qualified as in this constitution is provided shall biennially give in their votes for a senator, at some meeting holden in the month of November.

June 2, 1784. Annual election of senators at annual meeting in March.

Amended 1792 rewording phrases but not changing the meaning.

Amended 1877 twice substituting biennial election and sessions for annual elections and sessions and providing for elections in November instead of March.

This Article defines the frequency of election.

[Art.] 28. [Senators, How and by Whom Chosen; Right of Suffrage.] (Repealed)

June 2, 1784. Senate, first branch of the legislature, elected by male inhabitants 21 years of age and older who pay their own poll tax.

Amended 1792 changing wording but not the meaning.

Amended 1877 twice, substituting "biennially" for "annually" and "November" for "March."

Amended 1958 removing obsolete reference to "male" inhabitants as being the only ones allowed to vote.

Repealed 1976. Provisions covered by Part 1, Article II.

This Article defines who is qualified to vote for Senators. It was repealed in 1976.

[Art.] 29. [Qualifications of Senators.]

Provided nevertheless, that no person shall be capable of being elected a senator, who is not of the age of thirty years, and who shall not have been an inhabitant of this state for seven years immediately preceding his election, and at the time thereof he shall be an inhabitant of the district for which he shall be chosen. Should such person, after election, cease to be an inhabitant of the district for which he was chosen, he shall be disqualified to hold said position and a vacancy shall be declared therein.

June 2, 1784

Amended 1852 deleting property qualifications.

Amended 1877 deleting requirements that senators be Protestant.

Amended 1976 adding provision that a senator is disqualified if he moves from his district.

This Article describes the qualifications for Senators. Senators are required to be older than Representatives and their inhabitation is required to be longer. Remember that inhabitation is defined as permanent residence. Again, they are required to be an inhabitant of their district.

[Art.] 30. [Inhabitant Defined.]

And every person, qualified as the constitution provides, shall be considered an inhabitant for the purpose of being elected into any office or place within this state, in the town, or ward, where he is domiciled.

June 2, 1784

Amended 1958 substituting "ward" for "parish, and plantation."

Amended 1976 twice deleting reference to electing and substituting "is domiciled" for "dwelleth and hath his home."

This Article states the inverse of Articles 9 and 29 that anyone an inhabitant of the state duly qualified for the office to be able to be elected from the place he is domiciled.

[Art.] 31. [Inhabitants of Unincorporated Places; Their Rights, etc.] (Repealed)

June 2, 1784. Procedure and qualifications for inhabitants of unincorporated places to vote.

Amended 1877 twice providing for biennial instead of annual elections in November instead of March.

Amended 1958 deleting reference to plantations and substituting "wards" for "parishes."

Repealed 1976. Provisions covered by Part I, Art. II.

This Article qualified the inhabitants of unincorporated places to be eligible to vote.

[Art.] 32. [Biennial Meetings, How Warned, Governed, and Conducted; Return of Votes, etc.]

The meetings for the choice of governor, council and senators, shall be warned by warrant from the selectmen, and governed by a moderator, who shall, in the presence of the selectmen (whose duty it shall be to attend) in open meeting, receive the votes of all the inhabitants of such towns and wards present, and qualified to vote for senators; and shall, in said meetings, in presence of the said selectmen, and of the town or city clerk, in said meetings, sort and count the said votes, and make a public declaration thereof, with the name of every person voted for, and the number of votes for each person; and the town or city clerk shall make a fair record of the same at large, in the town book, and shall make out a fair attested copy thereof, to be by him sealed up and directed to the secretary of state, within five days following the election, with a superscription expressing the purport thereof.

June 2, 1784

Amended 1792 generally rewording section.

Amended 1889 substituting "January" for "June" regarding notification to secretary of state.

Amended 1958 substituting "wards" for "parishes" and added reference to city clerks.

Amended 1974 substituting "December" for "January" and "twenty" and "thirty" regarding notification to secretary of state.

Amended 1976 changing notification to 5 days after the election.

This Article describes the manner in which voting is to occur and how the Secretary of State is to be notified of the results for each town, city ward or unincorporated place.

[Art.] 33. [Secretary of State to Count Votes for Senators and Notify Persons Elected.]
And that there may be a due meeting of senators and representatives on the first Wednesday of December, biennially, the secretary of state shall, as soon as may be, examine the returned copy of such records; and fourteen days before the first Wednesday of December, he shall issue his summons to such persons as appear to be chosen senators and representatives, by a plurality of votes, to attend and take their seats on that day.
June 2, 1784. President and 3 of the council to issue summons to senators to take their seats.
Amended 1792 changing president to governor and specific number of councilors to majority of councilors.
Amended 1877 changing annually to biennially.
Amended 1889 changing June to January for beginning of session.
Amended 1912 substituting "plurality of votes" for "majority of votes."
Amended 1968 deleting proviso relating to the first year.
Amended 1974 changing meeting to first Wednesday of December.
Amended 1976 providing that the secretary of state should examine the returns and notify those elected instead of governor.

This Article describes the time at which the high officers of the state are to take their office.

[Art.] 34. [Vacancies in Senate, How Filled.]
And in case there shall not appear to be a senator elected, by a plurality of votes, for any district, the deficiency shall be supplied in the following manner, viz. The members of the house of representatives, and such senators as shall be declared elected, shall take the names of the two persons having the highest number of votes in the district, and out of them shall elect, by joint ballot, the senator wanted for such district; and in this manner all such vacancies shall be filled up, in every district of the state and in case the person receiving a plurality of votes in any district is found by the Senate not to be qualified to be seated, a new election shall be held forthwith in said district. All vacancies in the senate arising by death, removal out of the state, or otherwise, except from failure to elect, shall be filled by a new election by the people of the district upon the requisition of the governor and council, as soon as may be after such vacancies shall happen.
June 2, 1784
Amended 1792 generally rewording section.
Amended 1889 adding provisions for new elections in case of vacancies.
Amended 1912 providing for plurality of votes instead of majority.
Amended 1968 providing for new election if person elected is not qualified.

This Article describes how the office of Senator is to be filled if there is no clear winner or becomes vacant during the term.

[Art.] 35. [Senate, Judges of Their Own Elections.]
The senate shall be final judges of the elections, returns, and qualifications, of their own members, as pointed out in this constitution.
June 2, 1784

The Article defines the Senate as the final judges of their elections and the election of their members.

[Art.] 36. [Adjournment.]

The senate shall have power to adjourn themselves, and whenever they shall sit on the trial of any impeachment, they may adjourn to such time and place as they may think proper although the legislature be not assembled on such day, or at such place.

June 2, 1784

Amended 1792 adding proviso relating to impeachment.

Amended 1948 increasing adjournment from 2 days to 5 days.

Amended 1966 deleting limitation on adjournment.

This Article gives the Senate the power to adjourn themselves, and to adjourn to special locations for the trial of impeachments.

[Art.] 37. [Senate to Elect Their Own Officers; Quorum.]

The senate shall appoint their president and other officers, and determine their own rules of proceedings: And not less than thirteen members of the senate shall make a quorum for doing business; and when less than sixteen senators shall be present, the assent of ten, at least, shall be necessary to render their acts and proceedings valid.

June 2, 1784

Amended 1792 adding "president."

Amended 1877 increasing quorum from 7 to 13 and changing assent of 5 when less than 8 present to assent of 10 when less than 1 present.

This Article gives the Senate the power to elect its own officers. It also defines the quorum of the Senate and the number of votes necessary to render an act when attendance is diminished.

In the 1783 Constitution, the President of the State, elected by the whole people of the state, was also a member of the Senate and had an equal vote in the Senate, and cast the deciding vote in the event of a tie.

[Art.] 38. [Senate to Try Impeachments; Mode of Proceeding.]

The senate shall be a court, with full power and authority to hear, try, and determine, all impeachments made by the house of representatives against any officer or officers of the state, for bribery, corruption, malpractice or maladministration, in office; with full power to issue summons, or compulsory process, for convening witnesses before them: But previous to the trial of any such impeachment, the members of the senate shall respectively be sworn truly and impartially to try and determine the charge in question, according to evidence. And every officer, impeached for bribery, corruption, malpractice or maladministration in office, shall be served with an attested copy of the impeachment, and order of the senate thereon with such citation as the senate may direct, setting forth the time and place of their sitting to try the impeachment; which service shall be made by the sheriff, or such other sworn officer as the senate may appoint, at least fourteen days previous to the time of trial; and such citation being duly served and returned, the senate may proceed in the hearing of the impeachment, giving the person impeached, if he shall appear, full liberty of producing witnesses and proofs, and of making his defense, by himself and counsel, and may also, upon his refusing or neglecting to appear hear the proofs in support of the impeachment, and render judgment thereon, his nonappearance notwithstanding; and such judgment shall have the same force and effect as if the person impeached had appeared and pleaded in the trial.

June 2, 1784

Amended 1792 adding mode of proceeding.

This Article defines the Senate as the court of impeachment and the process of impeachment.

[Art.] 39. [Judgment on Impeachment Limited.]

Their judgment, however, shall not extend further than removal from office, disqualification to hold or enjoy any place of honor, trust, or profit, under this state, but the party so convicted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to the laws of the land.

June 2, 1784

This Article limits impeachment to removal from office and disqualification from future office. It also makes those impeached liable for criminal trial.

[Art.] 40. [Chief Justice to Preside on Impeachment of Governor.]

Whenever the governor shall be impeached, the chief justice of the supreme judicial court, shall, during the trial, preside in the senate, but have no vote therein.

September 5, 1792

This Article requires that when the governor is impeached that the Chief Justice of the Supreme Court preside over the Senate

EXECUTIVE POWER -- GOVERNOR

[Art.] 41. [Governor, Supreme Executive Magistrate.]

There shall be a supreme executive magistrate, who shall be styled the Governor of the State of New Hampshire, and whose title shall be His Excellency. The executive power of the state is vested in the governor. The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right, by any officer, department or agency of the state. This authority shall not be construed to authorize any action or proceedings against the legislative or judicial branches.

June 2, 1784

Amended 1792 substituting "Governor" for "President."

Amended 1966 clarifying and reinforcing executive powers of the governor.

This Article defines the power of the chief executive of the State and charges him with the execution of the laws. It also empowers the executive to enforce any court order to comply with the constitution or legislative mandate or to restrain any officer of the state from violating the constitution or legislative power. However, it specifically forbids the executive from taking any action against the General Court or Judiciary. Thus the General Court is the only branch empowered to take action against another branch of government.

[Art.] 42. [Election of Governor, Return of Votes; Electors; If No Choice, Legislature to Elect One of Two Highest Candidates; Qualifications for Governor.]

The governor shall be chosen biennially in the month of November; and the votes for governor shall be received, sorted, counted, certified and returned, in the same manner as the votes for senators; and the secretary shall lay the same before the senate and house of representatives, on the first Wednesday following the first Tuesday of January to be by them examined, and in case of an election by a plurality of votes through the state, the choice shall be by them declared and published. And the qualifications of electors of the governor shall be the same as those for senators; and if no person shall have a plurality of votes, the senate and house of representatives shall, by joint ballot elect one of the two persons, having the highest number of votes, who shall be declared governor. And no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this state for 7 years next preceding, and unless he shall be of the age of 30 years.

June 2, 1784

Amended 1792 deleting specifics of handling votes at town meeting.

Amended 1852 removing property qualification for holding office.

Amended 1877 three times: biennial elections replacing annual; elections in November instead of March; deleting provision that office holders be of protestant religion.

Amended 1889 changing June to January for the secretary of state to lay the votes before the house and senate.

Amended 1912 requiring a plurality instead of majority for election of governor.

Amended 1982 changing first Wednesday of January to Wednesday after the first Tuesday.

This Article defines the election of the Governor. It further defines the qualification of electors (voters) for governor to be the same as for Senators, and it defines the qualifications for the Governor, which happen to be the same as for Senator. Until 1912, the Governor had to be elected by a majority of the people. If no candidate received a majority of votes, the General Court elected the Governor from two candidates with the most votes.

[Art.] 43. [In Cases of Disagreement Governor to Adjourn or Prorogue Legislature; If Causes Exist, May Convene Them Elsewhere.]

In cases of disagreement between the two houses, with regard to the time or place of adjournment or prorogation, the governor, with advice of council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days at any one time, as he may determine the public good may require, and he shall dissolve the same on the first Wednesday of December biennially. And, in cases whereby dangers may arise to the health or lives of the members from their attendance at the general court at any place, the governor may direct the session to be holden at some other the most convenient place within the state.

June 2, 1784

Amended 1792 twice changing president to governor and inserting "place" of adjournment.

Amended 1889 changing June to January for time of dissolving house and senate.

Amended 1974 providing for the legislature to be dissolved on the first Wednesday of December.

Amended 1980 removing "infectious distemper" as a reason for the governor to convene the legislature at a different place.

This Article give the Governor the power to adjourn or prorogue (postpone the session) the legislature if they are not in agreement on adjournment. It also give him the power to relocate the place where the legislature meets if the State House is considered unsafe.

[Art.] 44. [Veto to Bills.]

Every bill which shall have passed both houses of the general court, shall, before it becomes a law, be presented to the governor, if he approves, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it; if after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with such objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of persons, voting for or against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law.

September 5, 1792

This Article gives the Governor the power to approve bills with his signature to allow them to pass without his signature, or to veto the bill with his objections. It goes on to describe the process for the legislature to overturn the governors veto. Interestingly, if a bill is not returned to the legislature, it becomes law, unless the legislature adjourns so that the bill can not be returned, in which case, it does not become law.

[Art.] 45. [Resolves to Be Treated Like Bills.]

Every resolve shall be presented to the governor, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

September 5, 1792

This Article provides for all resolves to be treated as bill, enabling a gubernatorial veto. This would apply to joint or concurrent resolution resolutions. The resolutions of the chambers would be exempt since they do not require the concurrence of both bodies.

[Art.] 46. [Nomination and Appointment of Officers.]

All judicial officers, the attorney general, and all officers of the navy, and general and field officers of the militia, shall be nominated and appointed by the governor and council; and every such nomination shall be made at least three days prior to such appointment; and no appointment shall take place, unless a majority of the council agree thereto.

June 2, 1784

Amended 1792 making minor changes in wording.

Amended 1877 deleting solicitors and sheriffs from those appointed by governor and council.

Amended 1976 deleting appointment of coroners by governor and council.

This Article enables the Governor and Council to nominate and appoint members of the Judiciary and Council. This is practiced as nomination by the Governor and approval or appointment by the Council. It should be noted that the Article authorizes both land and naval forces; this was retained after ratification of the Constitution for the United States of America which forbade the states to have navies. This creates a bicameral legislature.

[Art.] 47. [Governor and Council Have Negative on Each Other.]

The governor and council shall have a negative on each other, both in the nominations and appointments. Every nomination and appointment shall be signed by the governor and council, and every negative shall be also signed by the governor or council who made the same.

September 5, 1792

This Article enables the Governor and council to void each others actions. This is practiced as action by the Governor and disapproval by the Council.

**[Art.] 48. [Field Officers to Recommend, and Governor to Appoint, Company Officers.]
(Repealed)**

June 2, 1784

Amended 1792 providing that field officers were to nominate and recommend to the governor the captains and subalterns instead of appointing them.

Amended 1903 added proviso that nominees had to be examined and qualified by an examining board.

Repealed 1976.

This Article provided for the appointing of officers of the State Militia. It was repealed with the

National Guard Act.

[Art.] 49. [President of Senate, etc., To Act as Governor When Office Vacant; Speaker of House to Act When Office of President of Senate Is also Vacant.]

In the event of the death, resignation, removal from office, failure to qualify, physical or mental incapacity, absence from the state, or other incapacity of the governor, the president of the senate, for the time being, shall act as governor until the vacancy is filled or the incapacity is removed; and if the president of the senate, for any of the above-named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of representatives, for the time being, or in the case of the like incapacity of the speaker, upon the secretary of state, or in case of his like incapacity, upon the state treasurer, each of whom, in that order, shall act as governor, as hereinabove provided, until the vacancy is filled or the incapacity removed. Whenever a vacancy for the duration or remainder of the governor's term of office occurs before the commencement of the last year of such term, a special election for governor shall take place to fill the vacancy, as provided by law. Whenever the speaker of the house acts as governor, he shall act as such only until such time as the vacancy is filled or the incapacity removed in either the office of governor or of president of the senate, whichever occurs first. Whenever either the secretary of state or the treasurer acts as governor, he shall act as such only until such time as the vacancy is filled or the incapacity removed in the offices of governor, of president of the senate or of speaker of the house, whichever occurs first. While acting as governor under this article, the president of the senate, speaker of the house, secretary of state or state treasurer, as the case may be, shall be styled Acting Governor, shall not be required to take an additional oath of office, shall have and exercise all the powers, duties and authorities of, and receive compensation equal to that of the office of governor; and the capacity of each such officer to serve as president of the senate as well as senator, speaker of the house of representatives as well as representative, secretary of state, or state treasurer, as the case may be, or to receive the compensation of such office, shall be suspended only. While the governor or an acting governor is absent from the state on official business, he shall have the power and authority to transact such business.

June 2, 1784

Amended 1792 changing some wording and providing that the senate president acting as governor could not hold his office in the senate.

Amended 1889 providing for the speaker of the house to act as governor.

Amended 1956 providing that the governor while absent from the state has authority to transact such business.

Amended 1968 providing for succession through secretary of state and state treasurer, but only until a new senate president or house speaker is elected.

Amended 1984 rewording section generally to include incapacity, new election if vacancy occurs before last year of the term, compensation of acting governor to equal that of governor, and suspension of senate president acting as a senator or speaker to act as a representative while serving as acting governor.

This Article provides for a succession if the Governor is temporarily unable to serve, and provides for the termination of the substitution. However, the analysis of changes is not

accurate. Remembering that the Second Part of the Constitutions was originally written in paragraph form, not Articles. The President (now Governor) was originally the President of the Senate as well, had an equal vote with the Senators and was required to break ties.

[Art.] 49-a [Prolonged Failure to Qualify; Vacancy in Office of Governor Due to Physical or Mental Incapacity, etc.]

Whenever the governor transmits to the secretary of state and president of the senate his written declaration that he is unable to discharge the powers and duties of his office by reason of physical or mental incapacity and until he transmits to them a written declaration to the contrary, the president of the senate, for the time being, shall act as governor as provided in article 49, subject to the succession provisions therein set forth. Whenever it reasonably appears to the attorney general and a majority of the council that the governor is unable to discharge the powers and duties of his office by reason of physical or mental incapacity, but the governor is unwilling or unable to transmit his written declaration to such effect as above provided, the attorney general shall file a petition for declaratory judgment in the supreme court requesting a judicial determination of the ability of the governor to discharge the powers and duties of his office. After notice and hearing, the justices of the supreme court shall render such judgment as they find warranted by a preponderance of the evidence; and, if the court holds that the governor is unable to discharge the powers and duties of his office, the president of the senate, for the time being, shall act as governor as provided in article 49, subject to the succession provisions therein set forth, until such time as the disability of the governor is removed or a newly elected governor is inaugurated. Such disability, once determined by the supreme court, may be removed upon petition for declaratory judgment to the supreme court by the governor if the court finds, after notice and hearing, by a preponderance of the evidence that the governor is able to discharge the powers and duties of his office. Whenever such disability of the governor, as determined by his written declaration or by judgment of the supreme court, has continued for a period of 6 months, the general court may, by concurrent resolution adopted by both houses, declare the office of governor vacant. Whenever the governor-elect fails to qualify by reason of physical or mental incapacity or any cause other than death or resignation, for a period of 6 months following the inauguration date established by this constitution, the general court may, by concurrent resolution adopted by both houses, declare the office of governor vacant. The provisions of article 49 shall govern the filling of such vacancy, either by special election or continued service of an acting governor. If the general court is not in session when any such 6-month period expires, the acting governor, upon written request of at least 1/4 of the members of each house, shall convene the general court in special session for the sole purpose of considering and acting on the question whether to declare a vacancy in the office of governor under this article.

November 28, 1984

This Article provides procedures involving the Attorney General, Governors Council and Supreme Court to determine the Governor unable serve and for the General Court then to declare the governor office vacant for a varied of causes.

[Art.] 50. [Governor to Prorogue or Adjourn Legislature, and Call Extra Sessions.]
The governor, with advice of council, shall have full power and authority, in the recess of the general court, to prorogue the same from time to time, not exceeding ninety days, in any one recess of said court; and during the sessions of said court, to adjourn or prorogue it to any time the two houses may desire, and to call it together sooner than the time to which it may be adjourned, or prorogued, if the welfare of the state should require the same.

June 2, 1784

Amended 1792 changing president to governor.

This Article gives the Governor and Council to recess or prorogue the General Court.

[Art.] 51. [Powers and Duties of Governor as Commander-in-Chief.]
The governor of this state for the time being, shall be commander-in-chief of all the military forces of the state; and shall have full power, by himself or by any chief commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia; to call forth the militia and to put in warlike posture the inhabitants of the state; to execute the laws of the state and of the United States; to suppress insurrection and to repel invasion; and, in fine, the governor is hereby entrusted with all other powers incident to the office of commander-in-chief to be exercised agreeably to the rules and regulations of the constitution and the laws of the land.

June 2, 1784

Amended 1792 changing president to governor.

Amended 1968 condensing authority of the governor as commander-in-chief of military forces.

This Article makes the Governor the commander-in-Chief of the military forces of the State.

[Art.] 52. [Pardoning Power.]
The power of pardoning offenses, except such as persons may be convicted of before the senate, by impeachment of the house, shall be in the governor, by and with the advice of council: But no charter of pardon, granted by the governor, with advice of the council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offense or offenses intended to be pardoned.

June 2, 1784

Amended 1792 changing president to governor.

This Article gives the Governor the power to pardon all crimes, except conviction by impeachment by the General Court.

[Art.] 53. [Militia Officers, Removal of.] (Repealed)

June 2, 1784

Amended 1792 changing president to governor.

Repealed 1976.

This Article provides that officers of the militia can only be removed by bill of address by the General Court or Court Martial.

[Art.] 54. [Staff and Non-commissioned Officers, by Whom Appointed.] (Repealed)

June 2, 1784

Repealed 1976.

This Article gave the regimental and brigade officers the power to appoint their immediate subordinates and captains the power to appoint their noncommissioned officers.

[Art.] 55. [Division of Militia into Brigades, Regiments, and companies.] (Repealed)

June 2, 1784

Repealed 1976.

This Article provides that for the organization of the Militia by then current law or by such law as the General Court enacts.

[Art.] 56. [Disbursements from Treasury.]

No moneys shall be issued out of the treasury of this state, and disposed of, (except such sums as may be appropriated for the redemption of bills of credit, or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the governor for the time being, by and with the advice and consent of the council, for the necessary support and defense of this state, and for the necessary protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

June 2, 1784

Amended 1792 changing president to governor.

This Article provides that, except for paying back loans and interest, only the Governor with the approval of the Council can make disbursements from the treasury, and then only according to the acts and resolves of the General Court.

[Art.] 57. [Accounts of Military Stores.] (Repealed)

June 2, 1784

Amended 1792 changing president to governor.

Repealed 1950.

This Article required the Officers of the State Militia to account of the stores to the governor every three months.

[Art.] 58. [Compensation of Governor and Council.]

The governor and council shall be compensated for their services, from time to time, by such grants as the general courts shall think reasonable.

June 2, 1784

Amended 1792 changing president to governor.

This Article makes the compensation of the Executive Branch a matter of law at the discretion of the legislature in contrast to the compensation of the legislature which is a matter of the constitution at the discretion of the people.

[Art.] 59. [Salaries of Judges.]

Permanent and honorable salaries shall be established by law, for the justices of the superior court.

June 2, 1784

This Article makes the compensation of the Judiciary a matter of law at the discretion of the legislature in contrast to the compensation of the legislature which is a matter of the constitution at the discretion of the people.

[Art.] 60. [Councilors; Mode of Election, etc.]

There shall be biennially elected, by ballot, five councilors, for advising the governor in the executive part of government. The freeholders and other inhabitants in each county, qualified to vote for senators, shall some time in the month of November, give in their votes for one councilor; which votes shall be received, sorted, counted, certified, and returned to the secretary's office, in the same manner as the votes for senators, to be by the secretary laid before the senate and house of representatives on the first Wednesday following the first Tuesday of January.

June 2, 1784

Amended 1792 twice changing the council from members of the house and senate elected by the house and senate to individuals elected by voters - one in each county; and changing president to governor.

Amended 1877 twice substituting biennially for annually and November for March.

Amended 1889 substituting January for June.

Amended 1984 changing the first Wednesday to the first Wednesday following the first Tuesday.

This Article describes the method of election for the Executive council. In the 1783 Constitution the Executive Councilors were members of the House (3) and Senate (2) and elected by the General Court. This was changed in 1792 to direct election by the people, one for each County, later as the number of Counties increased this was changed to larger district.. However, it is interesting to note the degree of commingling that was originally structured into the Government of the State.

[Art.] 61. [Vacancies, How Filled, if No Choice.]

And the person having a plurality of votes in any county, shall be considered as duly elected a councilor: But if no person shall have a plurality of votes in any county, the senate and house of representatives shall take the names of the two persons who have the highest number of votes in each county, and not elected, and out of those two shall elect by joint ballot, the councilor wanted for such county, and the qualifications for councilors shall be the same as for senator.

September 5, 1792

Amended 1912 substituting plurality for majority.

This Article describes how to fill vacancies in the Executive Council. It was inserted in 1792 when the election became direct in 1792.

[Art.] 62. [Subsequent Vacancies; Governor to Convene; Duties.]

If any person thus chosen a councilor, shall be elected governor or member of either branch of the legislature, and shall accept the trust; or if any person elected a councilor, shall refuse to accept the office, or in case of the death, resignation, or removal of any councilor out of the state, the governor may issue a precept for the election of a new councilor in that county where such vacancy shall happen and the choice shall be in the same manner as before directed. And the governor shall have full power and authority to convene the council, from time to time, at his discretion; and, with them, or the majority of them, may and shall, from time to time hold a council, for ordering and directing the affairs of the state, according to the laws of the land.

September 5, 1792

This Article describes how to fill a vacancy in the Executive Council if an Executive Councilor is elected Governor.

[Art.] 63. [Impeachment of Councilors.] The members of the council may be impeached by the house, and tried by the senate for bribery, corruption, malpractice, or maladministration.

June 2, 1784

Amended 1792 changing wording generally and changing mal-conduct to bribery, corruption, malpractice, or maladministration.

This Article sets the method and grounds for impeachment of Executive Councilors.

[Art.] 64. [Secretary to Record Proceedings of Council.]

The resolutions and advice of the council shall be recorded by the secretary, in a register, and signed by all members present agreeing thereto; and this record may be called for at any time, by either house of the legislature; and any member of the council may enter his opinion contrary to the resolutions of the majority, with the reasons for such opinion.

June 2, 1784

Amended 1792 adding phrases: "by the secretary," "agreeing thereto," and "with the reasons for such opinion."

This Article provides for the recording of the proceedings of the Executive Council and for any Executive Councilor register his objection to the resolution of the majority. This mirrors the right of Representatives and Senators to have their protest or dissent recorded in the permanent journals of their respective chambers.

[Art.] 65. [Councilor Districts Provided for.]

The legislature may, if the public good shall hereafter require it, divide the state into five districts, as nearly equal as may be, governing themselves by the number of population, each district to elect a councilor: And, in case of such division, the manner of the choice shall be conformable to the present mode of election in counties.

September 5, 1792

Amended 1912 substituting population for rateable polls.

This Article defines the Executive Councilor districts after they became popularly elected in

1792.

[Art.] 66. [Elections by Legislature May Be Adjourned From Day to Day; Order Thereof.]
And, whereas the elections, appointed to be made by this constitution on the first Wednesday of January biennially, by the two houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day, until the same be completed; and the order of the elections shall be as follows - the vacancies in the senate, if any, shall be first filled up: The governor shall then be elected, provided there shall be no choice of him by the people: And afterwards, the two houses shall proceed to fill up the vacancy, if any, in the council.

June 2, 1784

Amended 1792 twice changing president to governor and election of the council only if there is a vacancy.

Amended 1877 substituting biennially for annually.

Amended 1889 substituting January for June.

This Article defines the date upon which elected officers and legislators are appointed to office, and makes provision for delays.

SECRETARY, TREASURER, ETC.

[Art.] 67. [Election of Secretary and Treasurer.]

The secretary and treasurer shall be chosen by joint ballot of the senators and representatives assembled in one room.

June 2, 1784

Amended 1950 deleting commissary-general.

This Article provides for the election of the Secretary and Treasurer by joint session of the General Court.

[Art.] 68. [State Records, Where Kept; Duty of Secretary.]

The records of the state shall be kept in the office of the secretary, and he shall attend the governor and council, the senate and representatives, in person, or by deputy, as they may require.

June 2, 1784

Amended 1792 twice transferring authority of the secretary to appoint his deputies to next article, and changing president to governor.

This Article defines the duties of the Secretary of State to attend to the Governor, Council, Senate and House of Representatives.

[Art.] 69. [Deputy Secretary.]

The secretary of the state shall, at all times, have a deputy, to be by him appointed; for whose conduct in office he shall be responsible: And, in case of the death, removal, or inability of the secretary, his deputy shall exercise all the duties of the office of secretary of this state, until another shall be appointed.

June 2, 1784

Amended 1792 describing duties of the deputy secretary.

This Article provides for the Secretary of State to appoint a Deputy Secretary who will fulfill his duties if the Secretary is unavailable.

[Art.] 70. [Secretary to Give Bond.]

The secretary, before he enters upon the business of his office, shall give bond, with sufficient sureties, in a reasonable sum, for the use of the state, for the punctual performance of his trust.

September 5, 1792

This Article provides that the Secretary must provide a bond against the performance of his duties. Since the value of the bond is not specified it must be provided for in statute.

COUNTY TREASURER, ETC.

[Art.] 71. [County Treasurers, Registers of Probate, County Attorneys, Sheriffs, and Registers of Deeds Elected.]

The county treasurers, registers of probate, county attorneys, sheriffs and registers of deeds, shall be elected by the inhabitants of the several towns, in the several counties in the state, according to the method now practiced, and the laws of the state, Provided nevertheless the legislature shall have authority to alter the manner of certifying the votes, and the mode of electing those officers; but not so as to deprive the people of the right they now have of electing them.

June 2, 1784

Amended 1792 twice adding proviso that the legislature could alter the manner of certifying the votes and mode of electing the officers; deleting oath and bond of county treasurer and transferring oath and bond of register of deeds to next article.

Amended 1877 adding registers of probate, county solicitors, and sheriffs to those to be elected.

Amended 1958 changing county solicitor to county attorney.

This Article describes the right of the people to elect their county officers. Not mentioned are the County Commissioners, and the Registers of Probate, County Attorneys and Sheriffs were added when appointment was removed from gubernatorial appointment. This leaves County Treasurers and Registers of Deeds as the originally elected county officers. Therefore, the founders were concerned with officers who accounted for the financial affairs of the county.

[Art.] 72. [Counties May Be Divided into Districts for Registering Deeds.]

And the legislature, on the application of the major part of the inhabitants of any county, shall have authority to divide the same into two districts for registering deeds, if to them it shall appear necessary; each district to elect a register of deeds: And before they enter upon the business of their offices, shall be respectively sworn faithfully to discharge the duties thereof, and shall severally give bond, with sufficient sureties, in a reasonable sum, for the use of the county for the punctual performance of their respective trusts.

June 2, 1784

Amended 1792 providing for counties being divided into districts for registering deeds and electing registers.

This Article allows for the inhabitants of a county to divide their county into districts for the registering of deeds and requires the Register of Deeds to post a bond. It should be noted that the County Treasurer does not have to post a bond because they are not responsible for the peoples property.

JUDICIARY POWER

[Art.] 72-a. [Supreme and Superior Courts.]

The judicial power of the state shall be vested in the supreme court, a trial court of general jurisdiction known as the superior court, and such lower courts as the legislature may establish under Article 4th of Part 2.

November 16, 1966

This Article describes the creation of the constitutional courts. Prior to 1966, Part 2, Article 4 gave the General Court the absolute authority to create, and therefore, abolish all courts. This Article carves out the Supreme and Superior Courts from the power of the legislature.

[Art.] 73. [Tenure of Office To Be Expressed in Commissions; Judges to Hold Office During Good Behavior, etc.; Removal.]

The tenure that all commissioned officers shall have by law in their offices shall be expressed in their respective commissions, and all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior except those for whom a different provision is made in this constitution. The governor with consent of the council may remove any commissioned officer for reasonable cause upon the address of both houses of the legislature, provided nevertheless that the cause for removal shall be stated fully and substantially in the address and shall not be a cause which is a sufficient ground for impeachment, and provided further that no officer shall be so removed unless he shall have had an opportunity to be heard in his defense by a joint committee of both houses of the legislature.

June 2, 1784

Amended 1792 changing president to governor.

Amended 1966 spelling out procedures for removal from office.

This Article though included in the section on judicial power includes the commissioners as well. The commissioners terms of office are governed by the terms of their commission. It describes the method for removal from office by bill of address for good cause, but less than

grounds for impeachment. We must take care to note that in 1966 when the procedure for impeachment was clarified there were several subtle word changes. The title commission officer was replaced with commissioned officer. The pronoun “them” (as it was from 1783 to 1966) was referring to commission officers and judicial officers was replaced with commissioned officers. As judicial officers are also commissioned, and as the constitution always empowered the removal of judges by bill of address it is clear that commissioned officers must refer to both commissioned officers and judicial officers. However, the opportunity to separate the two has been cleverly inserted so as to enable a further weakening of the legislature’s, and therefore, the people’s power over the judiciary to be construed.

[Art.] 73-a. [Supreme Court, Administration.]

The chief justice of the supreme court shall be the administrative head of all the courts. He shall, with the concurrence of a majority of the supreme court justices, make rules governing the administration of all courts in the state and the practice and procedure to be followed in all such courts. The rules so promulgated shall have the force and effect of law.

November 22, 1978

This Article created in 1978 enables the Supreme Court to make rules for the administration of the court. Troubling is that it elevates these rules to the status of law which is in conflict with Part 1, Articles 12 and 29. Articles 12 and 29 being fundamental rights ought to take precedence over the form of government. Therefore, this Article ought to be amended to eliminate ambiguity.

[Art.] 74. [Judges to Give Opinions, When.]

Each branch of the legislature as well as the governor and council shall have authority to require the opinions of the justices of the supreme court upon important questions of law and upon solemn occasions.

June 2, 1784

Amended 1792 changing president to governor.

Amended 1958 substituting supreme court for superior court.

This Article describes one of the few enumerated responsibilities of the Supreme Court which is to give opinions on important matters of law to the other powers of the government.

[Art.] 75. [Justices of Peace Commissioned for Five Years.]

In order that the people may not suffer from the long continuance in place of any justice of the peace who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justice of the peace shall become void at the expiration of five years from their respective dates, and upon the expiration of any commission, the same may if necessary be renewed or another person appointed as shall most conduce to the well being of the state.

June 2, 1784

This Article describes the term of office of justices of the peace.

[Art.] 76. [Divorce and Probate Appeals, Where Tried.]

All causes of marriage, divorce and alimony; and all appeals from the respective judges of probate shall be heard and tried by the superior court until the legislature shall by law make other provision.

June 2, 1784

This Article is the first of two Articles that define the venue for civil trials to comply with Part 1, Article 20. It requires that initially family matters be heard in the trial court known as the superior court until the legislature makes other provision. Since the Constitution is a fabric of unit and amity, and both this Article and Part 1, Article 20, which guarantees a right to trial by jury in all civil matters not regarding real estate and greater than a specified value, date virtually unaltered from the original writing, and knowing that the superior court at the time of the writing of the constitution was a jury court equivalent in jurisdiction to our Supreme Court, then it follows that family matters are due a jury trial. This throws in to question the constitutionality of requiring these matters be handled in a non-jury format or allowing the judiciary to mandate arbitration. By association matters such as parental right would also be due a jury trial. It also raises a question as to the constitutionality of no-fault divorce which by its nature denies the litigants to even an appeal by jury.

[Art.] 77. [Jurisdiction of Justices in Civil Causes.]

The general court are empowered to give to justices of the peace jurisdiction in civil causes, when the damages demanded shall not exceed one hundred dollars and title of real estate is not concerned; but with right of appeal, to either party, to some other court. And the general court are further empowered to give to police courts original jurisdiction to try and determine, subject to right of appeal and trial by jury, all criminal causes where in the punishment is less than imprisonment in the state prison.

September 5, 1792

Amended 1877 substituting \$100 for 4 pounds

Amended 1912 giving jurisdiction to police courts.

This Article is the second giving form to Part 1, Article 20, though the value for limit for justices of the peace ought to be raised to \$1,500.00 to conform to Part 1, Article 20. This Article also introduces police courts which are probably most similar to district courts. This might mean there is there a right to trial by jury for offenses such as traffic violations.

[Art.] 78. [Judges and Sheriffs, When Disqualified by Age.]

No person shall hold the office of judge of any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years.

September 5, 1792

This Article sets the maximum age for judges and sheriffs. This dates from the just after the Constitution for the United States of America, and probably should be updated to accommodate the change in life expectancy.

[Art.] 79. [Judges and Justices Not to Act as Counsel.]

No judge of any court, or justice of the peace, shall act as attorney, or be of counsel, to any party, or originate any civil suit, in matters which shall come or be brought before him as judge, or justice of the peace.

September 5, 1792

This Article limits the ability of judges and justices to practice law. Judges from one county might act as an attorney or county, or a district judge might practice in another district.

[Art.] 80. [Jurisdiction and Term of Probate Courts.]

All matters relating to the probate of wills, and granting letters of administration, shall be exercised by the judges of probate, in such manner as the legislature have directed, or may hereafter direct: And the judges of probate shall hold their courts at such place or places, on such fixed days, as the conveniency of the people may require; and the legislature from time to time appoint.

June 2, 1784

Amended 1792 rewording section generally.

This Article defines how issues of probate are to be handled. Issues of probate are not generally civil controversies unless challenged. The appeal would be to a Superior Court, in 1792 this would have been the Inferior Courts. The Superior Court was equivalent to our Supreme Court.

[Art.] 81. [Judges and Registers of Probate Not to Act as Counsel.]

No judge, or register of probate, shall be of counsel, act as advocate, or receive any fees as advocate or counsel, in any probate business which is pending, or may be brought into any court of probate in the county of which he is judge or register.

September 5, 1792

This Article is consistent with Article 79, and extends its principles to Registers of Probate.

CLERKS OF COURTS

[Art.] 82. [Clerks of Courts, by Whom Appointed.]

The judges of the courts (those of probate excepted) shall appoint their respective clerks to hold their office during pleasure: And no such clerk shall act as an attorney or be of counsel in any cause in the court of which he is clerk, nor shall he draw any writ originating a civil action.

June 2, 1784

Amended 1792 rewording section generally.

This Article gives judges of higher courts the power appoint their own clerks and extends the principles of Article 79 to those Clerks.

ENCOURAGEMENT OF LITERATURE, TRADES, ETC.

[Art.] 83. [Encouragement of Literature, etc.; Control of Corporations, Monopolies, etc.] Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: *Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools of institutions of any religious sect or denomination.* Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it. The size and functions of all corporations should be so limited and regulated as to prohibit fictitious capitalization and provision should be made for the supervision and government thereof. Therefore, all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within the state of all persons and associations, and all trusts and corporations, foreign or domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; to control and regulate the acts of all such persons, associations, corporations, trusts, and officials doing business within the state; to prevent fictitious capitalization; and to authorize civil and criminal proceedings in respect to all the wrongs herein declared against.

June 2, 1784

Amended 1877 prohibiting tax money from being applied to schools of religious denominations.

Amended 1903 permitting the general court to regulate trusts and monopolies restraining free trade.

This Article gives general direction to the legislators and magistrates. Since the Claremont decisions this has been interpreted by the court without regard to the balance of the constitution at the time it was written. Note that first sentence refers to legislators and magistrates as individuals, it does not refer to the governmental powers, and therefore does not refer to the making, enforcement, or adjudication of law. Cherish was written into the constitution at the same time as when the towns had the exclusive duty to provide for education.

Originally the Article ended just before the 1877 Blaine amendment italicized. This was considered an anti-Catholic move, but it is an obvious implementation of the Part 1, Article 6 prohibition of compelling a person to pay toward the schools of a denomination other than their own. Using tax money to pay for religious schools can easily be understood as a compulsion to pay for schools other than that of your own religion.

The 1903 amendment is everything after the Blaine amendment. It is interesting to note that this was not included in the original writing of the constitution. However, there were examples where the General Court made laws restricting price increases in the early years of the state.

OATHS AND SUBSCRIPTIONS - EXCLUSION FROM OFFICES - COMMISSIONS -WRITS
- CONFIRMATION OF LAWS - HABEAS CORPUS - THE ENACTING STYLE -

CONTINUANCE OF OFFICERS - PROVISION FOR FUTURE REVISION OF THE
CONSTITUTION - ETC.

[Art.] 84. [Oath of Civil Officers.]

Any person chosen governor, councilor, senator, or representative, military or civil officer, (town officers excepted) accepting the trust, shall, before he proceeds to execute the duties of his office, make and subscribe the following declaration, viz. -

I, A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitution thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all duties incumbent on me as, according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

Any person having taken and subscribed the oath of allegiance, and the same being filed in the secretary's office, he shall not be obliged to take said oath again.

Provided always, when any person chosen or appointed as aforesaid shall be of the denomination called Quakers, or shall be scrupulous of swearing, and shall decline taking the said oaths, such person shall take and subscribe them, omitting the word "swear," and likewise the words "So help me God," subjoining instead thereof, "This I do under the pains and penalties of perjury."

I, A.B., do solemnly and sincerely swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as.....according to the best of my abilities, agreeably to the rules and regulations of this constitution, and the laws of the State of New Hampshire. So help me God

June 2, 1784

Amended 1792 three times, changing president to governor; shortening oath of allegiance; and dispensing with need to take second oath.

Amended 1970 adding allegiance to the United States of America.

This Article defines the oath of office for public officials. It was amended in 1792 to exempt Quakers and others from having to swear and to make an oath to God. Troubling is the change in 1970 which when the allegiance to the United States was added also changes the word State to state. Therefore, it is no longer a proper noun, but a common noun or an adjective. Neither does it match the name of the republic as stated in Part 1, Article 1. This make it questionable as to whether or not any oath is taken to uphold the constitution of the state.

[Art.] 85. [Before Whom Taken.]

The oaths or affirmations shall be taken and subscribed by the governor before a justice of a New Hampshire court, in the presence of both houses of the legislature, by the senators and representatives before the governor and council for the time being, and by all other officers before such persons and in such manner as the general court shall from time to time appoint.

June 2, 1784

Amended 1792 three times changing president to governor, senior senator to president of the senate, assembly to legislature, and generally rewording section.

Amended 1968 deleting reference to those first elected.

Amended 1984 providing that the governor's oath shall be taken before a justice of a New Hampshire court.

This Article defines the those presiding over critical oaths. The most significant change is from the President of the Senate to a justice of the court. This is a seemingly innocuous change, but puts the Governor under apparent auspices of the court.

[Art.] 86. [Form of Commissions.]

All commissions shall be in the name of the state of New Hampshire, signed by the governor, and attested by the secretary, or his deputy, and shall have the great seal of the state affixed thereto.

June 2, 1784

Amended 1792 changing president to governor.

This Article states the authority by which commissioners are put in office. The printed version of the name of State is different from that in the 1792 parchment which reads "State of New Hampshire". This problem should be corrected in the next printing of the constitution.

[Art.] 87. [Form of Writs.]

All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the state of New Hampshire; shall be under the seal of the court whence they issue, and bear test of the chief, first, or senior justice of the court; but when such justice shall be interested, then the writ shall bear test of some other justice of the court, to which the same shall be returnable; and be signed by the clerk of such court.

June 2, 1784

This Article states that all writs shall be in the name of the state and under the seal of the court in which they were issued with the name of the highest justice of that court, making provision for the event that that justice is party to the case. This Article suffers from the same defect as the previous in the name of the state.

[Art.] 88. [Form of Indictments, etc.]

All indictments, presentments, and informations, shall conclude, "against the peace and dignity of the state."

June 2, 1784

This Article makes all crimes, crimes against the state.

[Art.] 89. [Suicides and Deodands.]

The estates of such persons as may destroy their own lives, shall not for that offense be forfeited, but descend or ascend in the same manner, as if such persons had died in a natural way. Nor shall any article, which shall accidentally occasion the death of any person, be henceforth deemed a deodand, or in any wise forfeited on account of such misfortune.

June 2, 1784

This Article protects accumulated estates from confiscation by the state. A deodand is any personal chattel (movable property) which is involved in the death of a rational being. For example, a car involved in a motor vehicle homicide. In England such property would be confiscated by the King for pious uses. It is presumed that the property of suicides might have been seized in similar

[Art.] 90. [Existing Laws Continued if Not Repugnant.]

All the laws which have heretofore been adopted, used, and approved, in the province, colony, or state of New Hampshire, and usually practiced on in the courts of law, shall remain and be in full force, until altered and repealed by the legislature; such parts thereof only excepted, as are repugnant to the rights and liberties contained in this constitution: Provided that nothing herein contained, when compared with the twenty-third article in the bill of rights, shall be construed to affect the laws already made respecting the persons, or estates of absentees.

June 2, 1784

This Article requires that all laws preceding the constitution of 1783 be respected unless they are in conflict with this constitution. The last sentence protects the persons and estates of those living outside the state from ex post facto law.

[Art.] 91. [Habeas Corpus.]

The privilege and benefit of the habeas corpus, shall be enjoyed in this state, in the most free, easy, cheap, expeditious, and ample manner, and shall not be suspended by the legislature, except upon most urgent and pressing occasions, and for a time not exceeding three months.

June 2, 1784

This Article extends the rights of the accused to due process to a body of law beyond Part 1, Articles 15, 16 and 17. Only the legislature can suspend habeas corpus, and then for periods not longer than three months.

[Art.] 92. [Enacting Style of Statutes.]

The enacting style in making and passing acts, statutes, and laws, shall be, Be it enacted by the Senate and House of Representatives in General Court convened.

June 2, 1784

This Article defines the declaratory preamble to the legislatures actions. Here we find a curious list acts, statutes and laws. Acts must refer to all actions that do not result in statutes and laws. From Webster's 1828 dictionary, statutes are prohibitive law defining what must not be done; laws are imperative defining what must be done.

[Art.] 93. [Governor and Judges Prohibited From Holding Other Offices.]

No governor, or judge of the supreme judicial court, shall hold any office or place under the authority of this state, except such as by this constitution they are admitted to hold, saving that the judges of the said court may hold the offices of justice of the peace throughout the state; nor shall they hold any place or office, or receive any pension or salary, from any other state, government, or power, whatever.

June 2, 1784

Amended 1792 changing president to governor. The engrossed copy of 1792, apparently without authority, changed superior court to supreme judicial court.

This Article is the first article defining incompatible offices acting on the chief executive and the justices of the highest court in the judicial power. Note that in this Article there has been an surreptitious change to the constitution.

[Art.] 94. [Incompatibility of Offices; Only Two Offices of Profit to Be Holden at Same Time.]

No person shall be capable of exercising, at the same time more than one of the following offices within this state, viz. judge of probate, sheriff, register of deeds; and never more than two offices of profit, which may be held by appointment of the governor, or governor and council, or senate and house of representatives, or superior or inferior courts; military offices, and offices of justice of the peace excepted.

June 2, 1784

Amended 1792 changing president to governor.

This Article defines incompatible offices of the county and of appointed offices the state. Note that elected offices are limited to one, while appointed offices are limited to two. The modern courts corresponding to the superior and inferior courts are the Supreme and Superior Courts. Members of the militia an justices of the peace are excepted.

[Art.] 95. [Incompatibility of Certain Offices.]

No person holding the office of judge of any court, (except special judges) secretary, treasurer of the state, attorney-general, register of deeds, sheriff, collectors of state and federal taxes, members of Congress or any person holding any office under the United States, including any person in active military service, shall at the same time hold the office of governor, or have a seat in the senate, or house of representatives, or council; but his being chosen and appointed to, and accepting the same, shall operate as a resignation of his seat in the chair, senate, or house of representatives, or council; and the place so vacated shall be filled up. No member of the council shall have a seat in the senate or house of representatives.

June 2, 1784

Amended 1792 generally rewording section.

Amended 1950 deleting commissary-general.

Amended 1958 changing obsolete words and phrases.

Amended 1980 prohibiting persons in active military service from holding state office.

This Article defines the offices which are incompatible with the offices of governor, senator, representative, or executive councilor. For governor this Article is redundant to Article 93.

Most important is the prohibition from any employee of the government of the of United States of America from holding the offices of governor, a seat in the General Court or executive council. Note that it does not prohibit the Secretary of State from holding the office of representative, senator or executive councilor.

[Art.] 96. [Bribery and Corruption Disqualify for Office.]

No person shall ever be admitted to hold a seat in the legislature or any office of trust or importance under this government, who, in the due course of law, has been convicted of bribery or corruption, in obtaining an election or appointment.

June 2, 1784

This article sets forth the crimes for which prohibit a person from holding office. They have only to deal with the obtaining of office. The crimes are similar to those for which a person loses their elective franchise. Since the impeachment can for broader causes this effectively becomes the causes for which members can be expelled from the General Court.

[Art.] 97. [Value of Money, How Computed.] (Repealed)

June 2, 1784. Money valued at 6 shillings 8 pence per ounce of silver.

Repealed 1950.

This Article set the value of money for the state. It would have been superseded by the constitution for the United States of America.

[Art.] 98. [Constitution, When to Take Effect.]

To the end that there may be no failure of justice, or danger to the state, by the alterations and amendments made in the constitution, the general court is hereby fully authorized and directed to fix the time when the alterations and amendments shall take effect, and make the necessary arrangements accordingly.

September 5, 1792

This Article empowers the General Court to provide for amendments made to the constitution to take effect. This power is given exclusively to the General Court.

[Art.] 99. [Revision of Constitution Provided For.] (Repealed)

June 2, 1784. Question of calling a convention to be submitted to the people after seven years. Delegates to be elected in the same manner as representatives. Questions to be approved by two thirds of qualified voters present and voting thereon.

Amended 1792 detailing procedure for calling a convention.

Repealed 1980.

This Article, repealed in 1980, provided for subsequent constitutional conventions. It is incorporated in Article 100.

[Art.] 100. [Alternate Methods of Proposing Amendments.]

Amendments to this constitution may be proposed by the general court or by a constitutional convention selected as herein provided.

(a) The senate and house of representatives, voting separately, may propose amendments by a three-fifths vote of the entire membership of each house at any session.

(b) The general court, by an affirmative vote of a majority of all members of both houses voting separately, may at any time submit the question "Shall there be a convention to amend or revise the constitution?" to the qualified voters of the state. If the question of holding a convention is not submitted to the people at some time during any period of ten years, it shall be submitted by the secretary of state at the general election in the tenth year following the last submission. If a majority of the qualified voters voting on the question of holding a convention approves it, delegates shall be chosen at the next regular general election, or at such earlier time as the legislature may provide, in the same manner and proportion as the representatives to the general court are chosen. The delegates so chosen shall convene at such time as the legislature may direct and may recess from time to time and make such rules for the conduct of their convention as they may determine.

(c) The constitutional convention may propose amendments by a three-fifths vote of the entire membership of the convention. Each constitutional amendment proposed by the general court or by a constitutional convention shall be submitted to the voters by written ballot at the next biennial November election and shall become a part of the Constitution only after approval by two-thirds of the qualified voters present and voting on the subject in the towns, wards, and unincorporated places.

September 5, 1792. Question of calling a convention to be submitted every 7 years.

Amended 1964 twice changing submission of question on calling a convention to every 10 years rather than 7 and providing that the general court could propose amendments.

Amended 1980 twice incorporating provisions of repealed Art. 99 and requiring all proposals be submitted at the next biennial November election.

This Article provides for amendments to the constitution through three methods. The General Court can propose amendments approved by three-fifths of each chamber to the people to be presented on the next ballot. Amendments approved by a constitutional convention by a three-fifths majority can be proposed to the people on the next ballot. The General Court can have the question of having a convention put on the next ballot at any time, and the secretary state shall put the question on the ballot at ten years after the last submission. The approval of the question for a constitutional convention requires a majority of the people, and the approval of an amendment requires a two-thirds majority of the people.

[Art.] 101. [Enrollment of Constitution.]

This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land and printed copies thereof shall be prefixed to the books containing the laws of this state, in all future editions thereof.

June 2, 1784

This Article requires that the constitution be enrolled on parchment, put in the secretary of state's office and included laws of the state. The parchment editions of the 1784 and 1792 constitutions are now held in the state archives division, which is part of the secretary of states

office.