INFLUENCE OF THE STATE CONSTITUTIONS, 1776-1780 ON THE EARLY WESTERN CONSTITUTIONS, 1791-1803

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INFLUENCE OF THE STATE CONSTITUTIONS, 1776-1780 ON THE EARLY WESTERN CONSTITUTIONS, 1791-1803

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I

INTRODUCTION

There are many criteria upon which the historian may base his study of the development of a people, but constitution-making affords a measure of popular ideas of government which no other phase of a people's life presents. Consequently, if a student wishes to understand the political evolution of a country, an analysis of the constitutions formed by the people of that country will offer an excellent source of information for the study.

In the United States, the first quarter century of the existence of the nation as an independent country is a very fertile field for an investigation regarding theinfluence of documents already in effect upon new constitutions being drawn up. Before the first twenty-five years had passed, twenty-five state constitutions has been made. Four states had made three constitutions (New Hampshire, Vermont, South Carolina, and Georgia); three had two each (Pennsylvania, Delaware, and Kentucky); while seven, including the frontier state of Tennessee, had a single constitution.[1] Two states, Connecticut and Rhode Island, had merely retained their colonial charters. Surely, in this great wave of constitution-making there

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1. Frederic L. Paxson, History of the American Frontier, 1763-1893, (Boston, 1946), 99.

is to be found abundant evidence of political theory of the day and it's change as new constitutions introduced new ideas to be experimented with.

This era (1775-1803) also offers evidence of the effect of functioning constitutions upon varying types of frontier areas. During this period, four states were admitted to the Union: Vermont (1791), Kentucky (1792), Tennessee (1796), and Ohio (1803). Each one of these areas was distinctly different; each one became a state under entirely different circumstances.

Vermont can not actually be classified as a frontier area. Although it did not become a state until after the Federal Union had been formed, it's constitution-making runs parallel to that of the original thirteen states. It's independence, in fact, can be dated from 1777 when the first Vermont constitution was written and put into effect even though Congress refused to recognize it. In Vermont, therefore, political theory as revealed by state constitutions should be quite similar to that of the original states.

Kentucky was a product of Virginia settlement. When Virginia, in 1776, organized Kentucky County, the parent state already was considering the county as a future state. When, in 1792, Kentucky's constitution was written, the men who were most influential at the convention were Virginia born. The completed constitution may be expected to show the effect of the frontier upon the theory of government brought there largely from Virginia.

By the time Tennessee entered as the sixteenth state, the frontier had already begun to recede. There were signs of stability and wealth in Kentucky. Local leaders, grown on the frontier, were making their appearance. They were to be the spokesmen for the frontier point of view. In Tennessee, then, the first significant departure from the constitutions of the original thirteen states may be expected.

Ohio presents for consideration the first state to be admitted according to the procedure established by the Ordinance of 1787. For the first time, Congress appears as the true parent of a state. National partisan politics also had made their appearance by the time Ohio was ready for statehood and presumably had some effect upon Ohio's political beginnings. National interest, therefore, probably will appear as having been more evident in the making of Ohio's first constitution than in those of the three states preceding it into the Union.

The purpose of this study will be to investigate the influence of the early state constitutions upon these first four new states. Did these first states admitted to the Union use earlier state constitutions for their models? If so, were they liberalized? Did the frontier completely change the political views of it's settlers?

II

A SURVEY OF THE CONSTITUTION OF THE ORIGINAL STATES

Undoubtedly, the most eventful epoch of state constitution-making in our history was the period from 1776-1780. During this time, eleven of the states wrote new state constitutions while two of them, Connecticut and Rhode Island, continued to use their colonial charters. These constitutions were to be the connecting links between the colonial charters and the Federal Constitution. Growing out of the colonial charters, they formed a basis for the Federal Constitution and a pattern for all subsequent state constitutions.[1]

Were these first constitutions liberal in their provisions? To answer this question, it will be necessary to study and compare provisions of these constitutions to discover indications of democratic theories being followed. Such a survey will serve as a basis of comparison with frontier constitutions also.[2]

The bills of rights or other guarantees of rights included in the documents under study will offer indications of democratic thought. It will be important to note whether civil rights were granted only to particular

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1. William C. Morey, "First State Constitutions," Annals of the American Academy of Political and Social Science, 1894, IV, 201.

2. The colonial charters and state constitutions may be found in Francis Newton Thorpe, The Federal and State Constitutions, Colonial Charters, and other Organic Laws...(7 vols., Washington, 1909).

groups or whether they were the property of all. The rights listed will indicate what was considered important to an individual's freedom.

Although all of these constitutions provided in some way for protection of civil rights, only seven of them were accompanied by a separate bill or declaration of rights. Virginia, Pennsylvania, Maryland, North Carolina, Vermont, Massachusetts, and New Hampshire were the states having such provisions. Connecticut, although it continued its charter, added a bill of rights to it.[3]

Common provisions of the states' bill of rights were similar to those later found in the Federal Bill of Rights. They guaranteed the right of trial by jury, freedom of the press, and some statement regarding religious freedom. Generally forbidden were general search warrants, standing armies in time of peace, the granting of titles of nobility, hereditary honors, and any exclusive privileges. All except Virginia and Maryland guaranteed the rights of assembly, petition, and instruction of representatives. Pennsylvania was the only one not forbidding excessive bail, the imposition of excessive fines, the infliction of unusual punishment, the suspension of laws by any authority other than the legislature, and taxation without representation.[4]

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3. William Clarence Webster, "Comparative Study of State Constitutions of the American Revolution", Annals of the American Academy of Political and Social Science, 1897, IX, 385

4. Thorpe, Charters and Constitutions, V, 3081-2

In some of the states these rights were granted only to "freemen" while other states included everyone. Georgia, in its 1777 constitution, had the statement that it was the right of all freemento plead their own cases.[5] Massachusetts, in Article I, used the expression, "all men."[6] Maryland, in articles XVII and XXI, limited the rights to every freemen.[7] New Hampshire in 1784 had included in its grant of rights the expression, "all men are born equally free and independent,"[8] and "all men have inherent rights."[9] North Carolina and South Carolina both used the expression freemen in delegating rights. Virginia's constitution in 1776 carried the expression, "All men are by nature equally free and independent."[10] In the Pennsylvania Declaration section 1 read, "That all men are born equally free and independent." [11] Only four states, Pennsylvania, Massachusetts, New Hampshire, and Virginia even approached the ideas of the Declaration of Independence which declared that "all men are created equal."

Several states made significant provisions for taxation. One feature of the Maryland Declaration of Rights was the provision which stated that poll-taxes

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5. Ibid., II, 785 (Art. LVIII).
6. Ibid., III, 1889 (Art. I)
7. Ibid., 1688 (Art XVII)
8. Ibid., IV, 2453
9. Ibid., 2453
10. Ibid., VII, 3812 (Art. I).
11. Ibid., V, 3102 (Art IX, Sec. 1)

were "grievous and oppressive." [12] Instead of poll-taxes, it provided that all except paupers ought to contribute to the support of the government in proportion to their individual worth.[13] In the same year, Pennsylvania followed a similar line of reasoning inserting in its constitution the provision, "That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute his proportion...."[14] Massachusetts, in 1780, wrote an almost identical provision in its constitution, with New Hampshire copying the statement in 1784. This was a liberal idea, putting into constitutional articles the present day theory that a good tax is based upon one's ability to pay.

Of the eighteen constitutions written between 1776 and 1802 in the original thirteen states, seven carried sections dealing with education. These were the Georgia constitutions of 1777 and 1798, Massachusetts in 1780, New Hampshire in 1784, North Carolina in 1776, and Pennsylvania in 1776 and 1790. This section of Pennsylvania's 1776 constitution read: "A school or schools shall be established in every county by the legislature, for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct

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12. Ibid., III, 1787 (Art XIII)
13. Ibid.,,1787
14. Ibid, V, 3082 (Art. VIII)

youth at low prices; and all useful learning shall be duly encouraged and promoted in one or more universities."[15] North Carolina had an identical provision in its constitution in Provision XLI of its Declaration of Rights. In 1790, Pennsylvania changed the provision for education by adopting this article, "The Legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis."[16] This was the only one of the seven that mentioned education of the poor.

The best known of these educational provisions was the one written into the Massachusetts Constitution by John Adams. It is a lengthy section into which Adams wrote his ideas regarding the importance of education. He looked upon knowledge as necessary for the preservation of the rights and liberties of the people; therefore, it became the duty of the legislature and magistrates to foster learning in all fields.[17] It is apparent from his letters that Adams realized he was including a provision to which objections probably would be raised. He expected it to be attacked in the convention from all quarters on the score of affectation, pedantry, phypocricy, and economy. His reason for this attitude was his feeling that too large a portion of the people and their representatives would rather starve their souls than pay for

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15. Ibid, V, 3082 (Art. VIII)
16. Ibid, 3100 (Art VII, Sec. 1)
17. See Appendix for the full content of this provision.

nourishment for them." Even he had failed to judge the spirit of the delegates for instead of the objections which he expected, it was received with applause and adopted without amendment.[18]

Abolition of slavery was not generally provided for in these first bills of rights. Rhode Island was one of the first to take a step toward emancipation when in 1774 it declared that if in the future a slave should be brought into the colony, he should be free.[19] It was not until 1784, ten years later, that slaves were actually freed in the state. Pennsylvania, in 1780, adopted a gradual abolition policy. Delaware, in 1776, forbade the slave trade in the state. In 1798, Georgia's constitution provided for the ending of the slave trade after October, 1799, but the legislature had no power to emancipate the slaves without the owners permission or to prevent owners from bringing slaves into the state.[20] Massachusetts was the only state to have in its fundamental law a provision by which slavery was abolished.

The significant part of the Massachusetts Constitution, as far as slavery was concerned, was Article I, Part I. As reported out of committee, the language was nearly the same as that of the first article of the Virginia Bill of

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18. Adrienne Koch and William Peden, eds., Selected Writings of John and John Quincy Adams (New York, 1946) 145. John Adams to Benjamin Waterhouse, Aug. 7, 1805.

19. Avery Craven and Walter Johnson, The United States, Experiment in Democracy (Boston, 1947), 114

20. Thorpe, Charters and Constitutions II, 801 (Art IV, Sec. 11)

Rights. In their study of the report, the convention decided to remove the word equally which had prefaced the term free and add the word independent so that the final statement read, "All men are born free and independent, and have certain natural, essential, and unalienable rights, among which may be reckoned the right of enjoying and defending their lives.....".[21] Three years after the passage of this constitution, the Supreme Judicial Court held that this article abolished slavery in the state. The decision was based on the proposition that if all men are born free, there can be no slaves. All of the judges sitting on the Court which rendered the decision had been members of the constitutional convention.[22] It is fairly safe to assume, then, that they were familiar with the general intent of the document.

One-third of these first constitutions somewhere in them stated the principle of separation of powers of government. For example, the Georgia Constitution of 1777 in Article I stated that there should be separation of the powers of government, neither branch to exercise the powers of the other. Massachusetts in 1780 included a similar statement in Chapter I, Article XXX of it's constitution. Maryland, 1776, had such a provision in Article VI as did the1776 constitution of North Carolina in Article IV.

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21. John Adams, The Works of John Adams, Charles Francis Adams, ed., 10 Vols. (Boston, 1851), IV,, 220.

22. A Manual For the Constitutional Conventionof 1917 (Boston, 1917),.27.

Virginia affirmed it's belief in the principle in Section 5 of the Bill of Rights in the Constitution of 1776. Although not all of them had a definite statement of the principle of separation of powers in their constitutions, all of them, in practice, followed the theory, having three branches in their frame of government.

In most cases, the idea of equality of power was not followed. The widespread practice was to make the legislative branch supreme, giving to it vast appointive power and exclusive legislative power. Since this put control into the hands of the department elected by the people, there are elements of liberalism in the arrangement. The executive and judiciary branches were not, by and large, selected in popular elections. It would not have been liberal to make either of those branches the controlling element.

Bi-cameral legislatures were the common organization pattern for the legislatures. In only two cases, Pennsylvania in 1776 and Georgia in 1777, was the unicameral legislature used. The upper houses were mainly an adaptation of the colonial Governor's Council. The bi-cameral legislature was a conservative feature designed to prevent radical or too liberal action from being taken.

Qualifications for membership in the upper house were comparatively high. Age requirements varied from twenty-five to thirty with Massachusetts, New Jersey, New York, North Carolina, and South Carolina (1776) not stating an

age qualification. Eight of the states established religious restrictions, commonly an oath professing the Christian Protestant religion. This was definitely not a liberal policy to follow.

Residence requirements were made in thirteen of the sixteen constitutions providing for upper houses. These varied from New Hampshire (1776), New York 1777, and Virginia were the most liberal, requiring only a freehold without any set valuation. South Carolina, 1778, had the highest property requirements, an estate valued at 2,000 pounds for a resident in the district or a 7,000 pound estate in the district for a non-resident.[23] Maryland and New Jersey had the second highest qualifications with the requirement of a 1,000 pound estate. In only five constitutions, therefore, was a fairly liberal provision made regarding property qualifications for Senators.

Provisions for tenure in office varied from liberal to conservative. The longest term of office was in Maryland where members of the upper house served five years.[24] Four states had four year terms; three of the constitutions established three year terms, one a two year term, and five had one year terms. Five of the constitutions provided for a system of staggered elections. This could work to the advantage of those in control, but it did mean a yearly opportunity for change

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23. Thorpe, Charter and Constitutions, VI, 3251 (Art XII).
24. Ibid., 1890 (Art II)

of some of the personnel. Staggering of elections is usually considered conservative since it limits the complete operation of democracy at a given time.

Allottment of senators to districts and counties was largely on a conservative basis. Of the eighteen constitutions surveyed, nine divided their senators on a county basis with an equal number for each county. This gave the counties with the smaller populations an advantage over the more thickly populated areas. Massachusetts apportioned its senators on the basis of the proportion of public taxes paid by the district,[25] as did New Hampshire, 1784.[26] This was a conservative practice, too. New York in 1777 provided for distribution of senators according to the number of freeholders,[27] but in 1801 changed and used the number of electors to guide apportionment.[28] Pennsylvania apportioned senators on the number of taxable inhabitants.[29]

With the exception of Maryland, states usually provided for election of senators by those qualified to vote for representative. Maryland used the very conservative system of having the voters choose electors who in turn would select the senators.[30] In cases where qualifications

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26. Ibid., IV, 2460
27. Ibid., V, 2625 (Art XII)
28. Ibid., 2638
29. Ibid., 3092 (Art Iv)
30. Ibid., III, 1693 (Art XIV)

for voting for senators were different from those for voting for representative, they were always higher.

It was in the House of Representatives, or Assemblies, where the more liberal provisions were to be found. Descendants of the colonial assemblies, they represented the people more directly than did the senate. Qualifications were more in detail, terms shorter, and representation on a broader scale. With one exception, the age required was twenty-one years. Delaware,, 1792,, set twenty-four as its minimum age qualification. [31]

Ten of the constitutions either had a specific restriction limiting membership to Protestants, or required an oath of belief in God and the Christian religion. This, of course, was conservative in nature.

Residence requirement was found in fourteen of the documents. Delaware, 1776, had no residence requirement. Virginia was liberal, setting only residence in the county with no time limit. Georgia, 1789, had the most rigid, conservative terms, asking seven years residence in the United States, two years residence in the state, and one year in the county.[32] A greater percentage of the states averaged two year state residence requirements. This seems fairly liberal in its operation.

Every state but Pennsylvania had property qualifications for membership in the lower house. Delaware and Virginia were the most liberal, specifying only owners

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31. Ibid., I, 571 (Art II, Sec. 2)
32. Ibid., II, 787 (Art. II, Sec. 7)

of freeholds with no value attached. South Carolina, 1778, had the most conservative provision, limiting those representing a district in which they did not reside to persons owning an estate of at least 3,500 pounds in the district he represented.[33] In its 1790 constitution, South Carolina had an unusual provision in which representatives who were residents of the district were to possess a settled freehold estate of 500 acres of land and ten negroes.[34] Without figures to show the exact percentage of people who were land owners and the amount of land held by the average land owner at the time,,it is difficult to label these provisions as liberal or conservative. Today, most people conceive of property qualifications as being conservative. These early property qualifications, apparently designed to protect slavery, certainly seem to be conservative.

Four different systems of apportioning representation were used. In seven of the eighteen constitutions, representation was based on an equal number from each county. Two used the number of electors as the basis for distribution of membership. Georgia, 1798,delegated representation according to population but counted only three-fifths of the persons of color.[35] Two states divided their representatives by the number of rateable polls in the district, and three constitutions used theamount of taxable property to determine the number of representatives.

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33. Ibid., VI, 3251 (Art XIII).
34. Ibid., VI, 3260 (Art. VI)
35. Ibid., II, 794 (Art. VII)

Here, again, conservative practices seem to predominate.

In the provisions for term of office, these constitutions were definitely liberal. All state constitutions, except those of South Carolina, limited the term of representative to one year. South Carolina permitted two years. Pennsylvania followed liberal ideas even further, making its representatives eligible only four years in seven.

South Carolina was the only state which bluntly provided that only free white men were eligible for the house of representatives.[36]

Provisions for the chief executives of the state were primarily conservative. This may be explained by the attitude generally taken toward the royal governors of the colonial period.

The seven constitutions establishing an age requirement all set thirty years as a minimum age. Nine, or fifty percent, limited the choice of governor to those who were Christian or Protestant. Even though the vast majority were Christian and Protestants, this was a conservative approach to qualifications.

Liberal sections were included regarding tenure of office. The terms of office ran from one year to three years. Eight constitutions granted one year terms; five set two year terms, and four provided for three year

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36. Ibid., VI, 3260 (Art. VI).

terms. Eight of them prevented long tenure of office by making the incubent ineligible. For example, Delaware made the governor eligible three years out of six,[37] and Georgia allowed a governor to hold the position one year out of three.[38]

Residence requirements for governor were, on the whole, high. Georgia, 1777, was the most liberal in this respect, asking state residence for three years.[39] However, in 1789, this was raised to citizen of the United States for twelve years and an inhabitant of the state for six years.[40] In 1792, Delaware adopted the same residence qualifications as Georgia did in 1789.[41] This was the most conservative of all such provisions made during this time.

There were some states which were liberal in their property qualifications for governor. Delaware, Maryland, Pennsylvania, and Virginia had no property limitations. New York limited governorship only by a freehold property demand. This, too, was fairly liberal.

Other states followed conservative thinking regarding property qualifications for governor. Georgia in its 1789 constitution set 500 acres of land and other property valued to the amount of 1,000 pounds sterling as the minimum.[42] This was increased in 1798 to 500 acres of land and other property to the amount of $4,000 after debts were

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37. Ibid., I, 571 (Art. III, Sec. 3)
38. Ibid., II, 781 (Art. XXIII).
39. Ibid., 781
40. Ibid., 788 (Art II, Sec.3)
41. Ibid., I, 571 (Art. III, Sec. 4)
42. Ibid., II, 788 (Art III, Sec. 4)

discharged.[43] South Carolina was extremely conservative in this matter with a property qualification of a freehold worth at least 10,000 pounds currency, clear of debt.[44]

Few of these constitutions gave the voters of the state the right to elect the governor. Delaware, 1792, Massachusetts, 1780, New Hampshire, 1784, New York, 1777, and Pennsylvania, 1790, were the states providing for popular election. In all others, the governor was to be chosen by the legislative body. Georgia, 1789, had a unique system whereby the House of Representatives nominated three, and the Senate chose from those three the one to be governor.[45] Five of the states, then, had elements of liberalism in their process of electing governor; the remainder were conservative.

Veto power was not widely given to the governor. In the South Carolina Constitution of 1776, the President (governor) had the right to assent to or reject a bill.[46] Any bill rejected could be re-introduced after any adjournment of more than three days. Massachusetts granted the veto power to the governor with the check that any bill could be passed over the governors veto by a two-thirds majority vote of both houses of the legislature.[47] Georgia, in 1789, carried an identical provision but dropped it in 1798. Pennsylvania, in its 1790 constitution, also gave

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43. Ibid., 793 (Art II, Sec. 3)
44. Ibid., VI, 3249 (Art. V)
45. Ibid., II, 787 (Art. II, Sec. 2)
46. Ibid., VI, 3245 (Art. VII)
47. Ibid., III, 1890 (Ch. I, Sec. 2)

the governor veto power under the same conditions. This was a liberal attitude for it was denying to one person the right to block a law passed by the representatives of the people.

The citizens of the States had very little to do with the establishment of the courts and the selection of judges on a state level. In no case were the judges of state courts elected. All states provided for the naming of judges either by the governor with the advise and consent of the legislature, or by the legislature itself. With few exceptions, terms were for good behavior. Georgia provided for three year terms,[48] New Jersey for seven year terms for Superior Court Justices and five year terms for justices in inferior courts.[49] Pennsylvania in 1776 provided for seven year terms.[50] New York had a section which established terms of good behavior or until the judge reached the age of sixty.[51] One liberal provision found in almost all the constitutions was that the court had to be held at least once each year in each county .

It is extremely difficult to attempt to summarize the provisions regarding the franchise since there were many states which had slightly different qualifications for electors for representatives and senators. On the chart, an attempt is made to give a concise picture of

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48. Ibid., II, 787 (Art. II, Sec. 1)
49. Ibid., V, 2596 (Art. XII)
50. Ibid., 3089 (Frame of Gov't. Sec. 23)
51. Ibid., 2628 (Art. XXIV)

constitutional voting limitations.[52]

All states limited voting to men who were twenty-one years of age or over with the exception of New Jersey where women were allowed to vote as early as 1776. Of the original states, Delaware and South Carolina also required the voter to acknowledge the being of a God and a future state of rewards and punishments.[53] The usual residence requirement was one year in the county where the individual was to vote. A fifty acre freehold would have met the average property qualification. Payment of taxes of some kind was necessary in seven of the states before it was permissible to vote. New Hampshire was one of the most liberal states setting up two simple qualifications: twenty-one years of age and a freeholder.[54]

Property qualifications for voting as stated in the first constitutions varied from no property required to highly conservative provisions. In 1777, New York had a requirement of a freehold valued at 100 pounds for senatorial electors.[55] This apparently was the highest, and therefore the most conservative, of all such provisions.

These original state constitutions were not directly submitted to the people for their approval or disapproval in any state. They were ratified, with three exceptions, by the conventions which wrote them. Massachusetts, in

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52. See appendix for some of the laws applying to voting qualifications.
53. Thorpe, Charters and Constitutions, VI, 3245(Art XI)
54. Ibid., IV, 2460
55. Ibid., V, 2630 (Art. X)

1780, had the people, through their town meetings, vote on and make recommendations regarding each section of the proposed constitution. However, the final ratification was accomplished in the reconvened convention.[56] Georgia, in 1789, submitted the proposed constitution to a convention called and elected specifically for the purpose of ratifying or rejecting it.[57] In 1790 in Pennsylvania, the constitutional convention adjourned to give the people an opportunity to examine the work and then reassembled to ratify the document.[58] Since there was no direct vote on these constitutions in any case, the processes of ratification were conservative.

It appears then, that the most liberal items of the constitutions of the original thirteen states are to be found inttenure of office and rotation of office. Some elements of liberalism were written into the legislative procedure when the governor was denied the veto. It is also apparent that liberalism prevailed in delegating the bulk of power to the body inthe government which was to represent the people. In other respects, these constitutions seem to be more conservative than liberal.

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56. Proceedings of Mass. Historical Society, L. 56
57. Thorpe, Charters and Constitutions, II, 785
58. Ibid., V, 3092

GOVERNOR IN THE FIRST STATE CONSTITUTIONS

te	Date	Age	Residence	Property	Religion	Term	Method of Election
..	1776				Religious Oath	3 yr. 1 term not eligible again for 3 years	Chosen by joint ballot of both Houses, to be taken in House of Assembly
.	1792	30	Citizen and inhabitant of U.S. 12 years prior to election, 6 years in state			3 years eligible 3 years in six	Chosen by citizens of the State having right to vote for representatives in county.
.	1777		Resided in State 3 years.			1 yeqr eligible 1 year out of 3	Chosen by Representatives. Not to hold military commission from any other state.
.	1789	30	Citizen of U. S. 12 years, inhabitant of state 6 years.	Possess 500 acres of land in the state, and other property to the amount of 1000 pounds sterling.		2 years	House of Representatives to vote for 3. Senate to choose 1 of the 3.
.	1798	30	Citizen of U.S. 12 years, inhabitant of state 6 yrs.	Possess 500 acres of land within state, and other property to the amount of $4000 with enough over to discharge debts		2 years	Elected by General Assembly

GOVERNOR IN THE FIRST STATE CONSTITUTION

State	Date	Age	Residence	Property	Religion	Term	Method of Election
Mass.	1780		Inhabitant of commonwealth for 7 years before election	Freehold, within commonwealth, of 1,000 pounds.	Declare himself to be of the Christian Religion	1 year	Elected by those qualified to vote for Senators and Representatives.
Maryland	1776		Person of wisdom, and virtue	experience	Christian	1 year	Joint ballot of both Houses
New Hampshire	1776		.....	.....	.....		Officers chosen by Council and Assembly.
	1784	30	Inhabitant of State for 7 years.	Estate valued at 500 pounds, 1/2 in Freehold	Protestant	1 year	Elected by those persons qualified to vote for Senators and Representatives.
New Jersey	1776	...	Some fit person	.....	Protestant by implication Article XIX	1 year	Elected by council and Assembly jointly
New York	1777			Wise and discreet Freeholder		3 years	Elected by ballot by freeholders qualified to vote for Senators

GOVERNOR IN THE FIRST STATE CONSTITUTION

State	Date	Age	Residence	Property	Religion	Term	Method of Election
North Carolina	1776	30	Resident of State above 5 years.	Freehold and tenements above value of $1,000 pounds.	Protestant	1 year eligible 3 out of 6 successive yrs.	Elected by joint ballot of Senate and House.
Penn	1776				Belief in God, Old and New Testament	1 yr.	By Ballot of General Assembly and Council, from members of Council.
...	1790	30 q	Citizen and inhabitant of State 7 years before election.		Acknowledge the being of God and a future state of rewards and punishments	3 yrs. eligible 9 out of any 12 years.	Elected by Citizens of commonwealth-qualified to vote in elections.
S.C.	1776		Same as for	General Assembly		2 yrs.	Elected by General Assembly and Legislative Council.
...	1778		Resident of State 10 years.	Have in state settled plantation of freehold of value of at least 10,000 pounds currency, clear of debt.	Protestant	2 years not eligible for 4 years.	Elected by Senate and House of Representatives

GOVERNOR IN THE FIRST STATE CONSTITUTIONS

State	Date	Age	Residence	Property	Religion	Term	Method of Election
S.C.	1790	30	Resided in State and been citizen thereof 10 years.	Possess settled estate, in his own right, of the value of 1500 pounds sterling, clear of debt.		2 years Not again eligible for for 4 years.	Chosen jointly by House and Senate
Va.	1776					1 year no more than 3 successive terms. Not eligible for 4 yrs. after he is out of office.	Elected byjoint ballot of both Houses of Legislature

REPRESENTATIVES IN THE FIRST STATE CONSTITUTION

State	Date	Age	Residence	Property	Religion	Term	No.	Method of election
Del.	1776			Freeholder	Profess belief in God, Jesus Christ, and Holy Ghost. Acknwledge old and New Testament to be given by divine inspiration.	1 yr.		7 representatives from each county
....	1792	24	Citizen and inhabitant of State 3 years prior to election. Inhabitant of county 1 year.	Freehold in county from which chosen	.....	1 yr.		7 from each county. May be increased by 2/3 vote of both Houses. Elected by free white men, 21 years of age, resident in state 2 years paid state or county tax which had been assessed at least 6 months before the election. Sons of such persons between 21 and 22, could vote even though they had not paid taxes
Ga.	1777	21	Resident of county, 3 months, resident of state 12 months.	Possess in their own right 250 acres of land, or property to the amount of 250 pounds.	Protestant	1 yr.		Apportioned by number of electors.

REPRESENTATIVES IN THE FIRST STATE CONSTITUTION

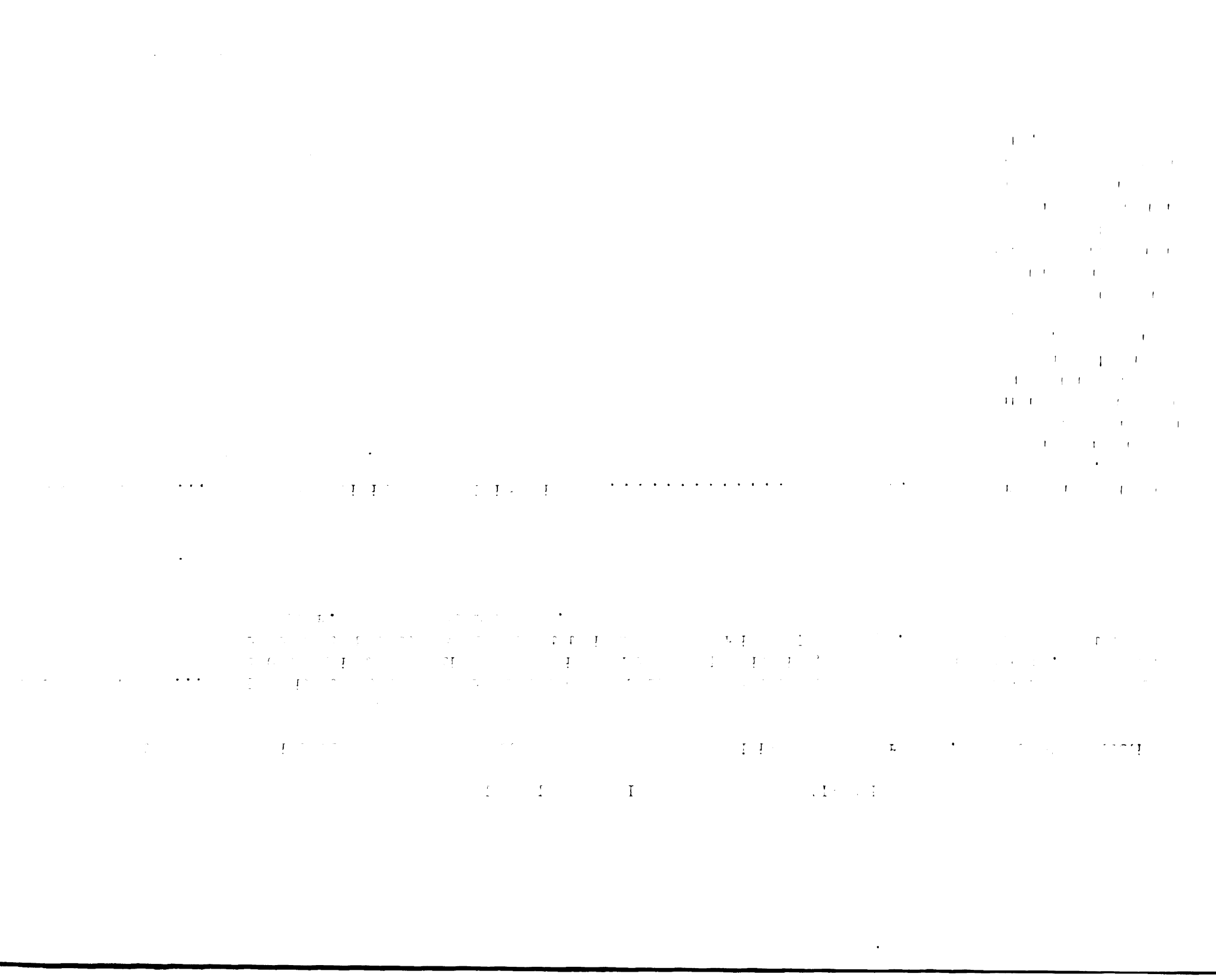
State	Date	Age	Residence	Property	Religion	Term	No.	Method of election
Ga.	1789	21	Seven yrs. citizen of U.S., 2 yrs., Inhabitant of State, Inhabitant of county from which chosen for 3 months.	Possessing 200 acres of land or property to the amount of 150 pounds.		1 yr.		Elected by citizens and inhabitants of this state. 21 yrs. of age, paid tax for a year preceding election, resided 6 mo's in county. Assigned by counties. Basis not given.
.....	1798	21	7 yrs. citizen of US 3 yr's inhabitant of state, resident in county 1 yr. prior to election.	Settled freehold estate of value of 250 dollars, or taxable property to amount of 500 dollars within county for 1 yr. preceding election estate to cover debts over and above requirements.		1 yr.		From counties by number free white persons, 3/5 of persons of color census every 7 yrs. Elected by citizens and inhabitants of state, 21 years of age, paid taxes required of them for 1 year prior to election, lived in county 6 months.
Mass.	1789		Inhabitant of district Rep. 1 year.	Freehold of value of 100 pounds within district he represents, or any rateable estate to value of 200 pounds.	Oath of belief in Christian Religion.	1 yr.		Distributed on basis of Ratable polls. Electors to be 21 years of age, resident of town 1 year, Freehold estate of annual income of 3 pounds of any estate of 60 pounds.

REPRESENTATIVES IN THE FIRST STATE CONSTITUTIONS

State	Date	Age	Residence	Property	Religion	Term	No.	Method of Election
Maryland	1776	21	Residents of county from which chosen 1 year	Have in state real or personal property above the value of 500 pound current money.	Christian	1 yr.		4 delegates from each county, chosen by Freemen, 21 years of age, having a freehold of 50 acres of land in county and residing in county, and all Freemen having property in this state above the value of 30 pounds current money, and residing in the county in which they vote 1 yr.
New Hampshire	1776	...	As was at the time					
	1784		Inhabitant of state for at least 2 years. Inhabitant of place chosen to represent	Estate in place chosen to represent of the value of 100 pounds, 1/2 in freehold.	Protestant	1 year		Distribution on basis of Ratable polls. Chosen by those qualified to vote for Senator.

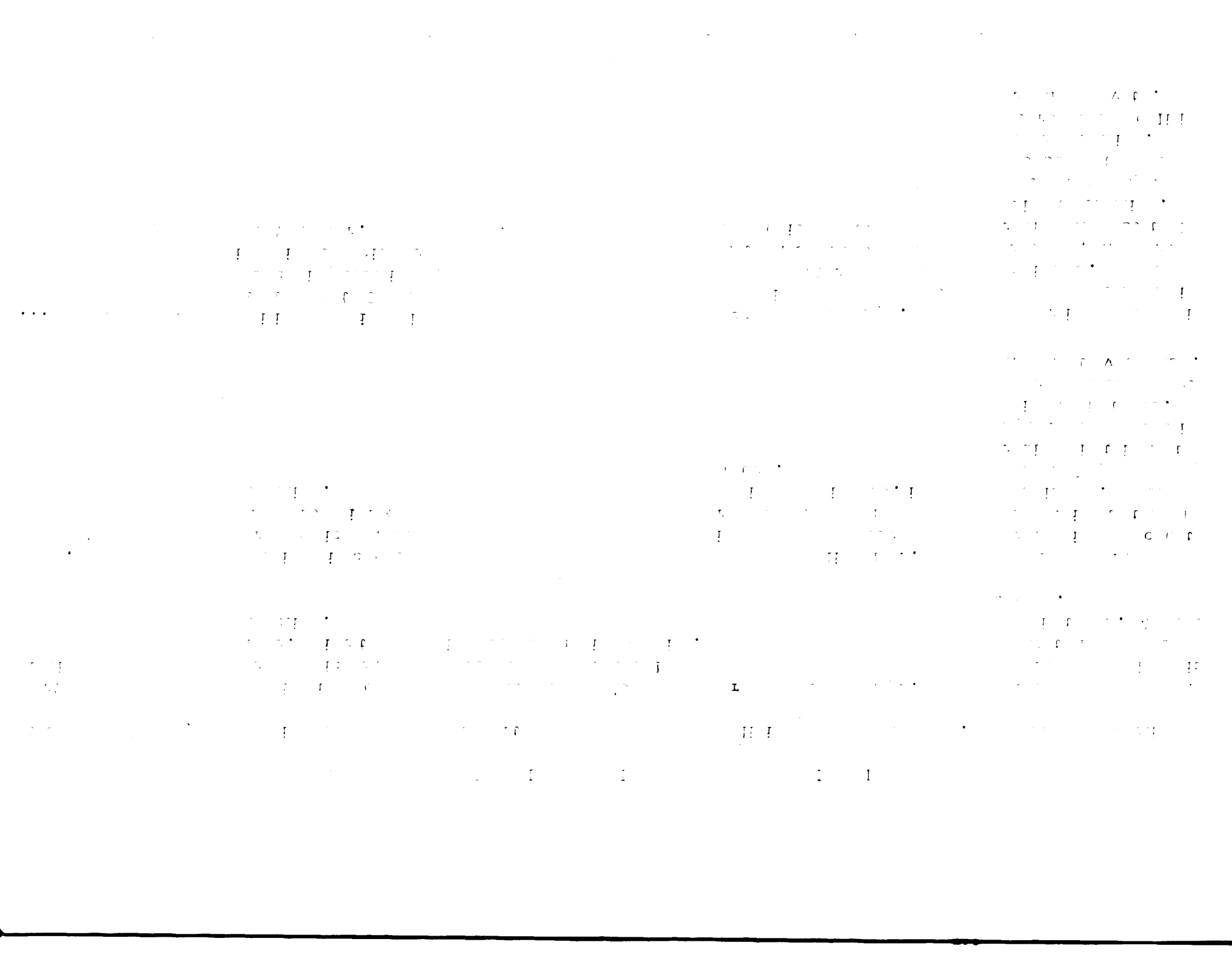
REPRESENTATIVES IN THE FIRST STATE CONSTITUTIONS

State	Date	Age	Residence	Property	Religion	Term	No.	Method of Election
New Jersey	1776	...	Inhabitant of the county he is to represent at least one year.	Worth 500 pounds proclamation money, in real and personal estate in county represented.	(Protestant by Implication, Article XIX	1 yr.	at least 39	3 persons from each county. Elector same as for Senators
New York	1777	...	No specified qualifications	.....		1 yr.	70	Proportioned to number of electors. Chosen by Male inhabitants of full age, personally resided within one of the counties of the state for 6 mo's. preceding election, freeholder, possessing freehold of value of 20 pounds or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this state Freemen of city of Albany and New York to vote.



REPRESENTATIVES IN THE FIRST STATE CONSTITUTIONS

State	Date	Age	Residence	Property	Religion	Term	No.	Method of Election
North Carolina	1776		Reside in county from which chosen 1 yr. prior to election.	Possess for 6 mo's not less than 100 acres of land in fee, or for his own life.	Protestant	1 yr.		Elected by freemen, 21 years of age, inhabitant of state 12 months, paid public taxes. 2 for each county.
Penn.	1776		Resided in county from which chosen 2 years prior to election.		Swear to belief in God, and reward or punishment in future.	1 yr. Serve only 4 yrs. in 7		Chosen by freemen of every city and county in proportion to taxable inhabitants. Vote to freemen of 21 years of age, resided in this state for 1 year before election, paid public taxes. Sons of freeholders who were 21 were to vote also.
...	1790	21	Citizen and inhabitant of state 3 years preceding election inhabitant of city or county 1 year.		Acknowledge the being of God and future state of rewards and punishments	1 yr.	60 to 100	Apportioned according to number of taxable inhabitants. Elected by freemen, 21 years of age, residents of state 2 years prior to election. Paid a state or county tax assessed at least 6 month before election. Sons of persons so qualified who are 21 may vote.



REPRESENTATIVES IN THE FIRST STATE CONSTITUTIONS

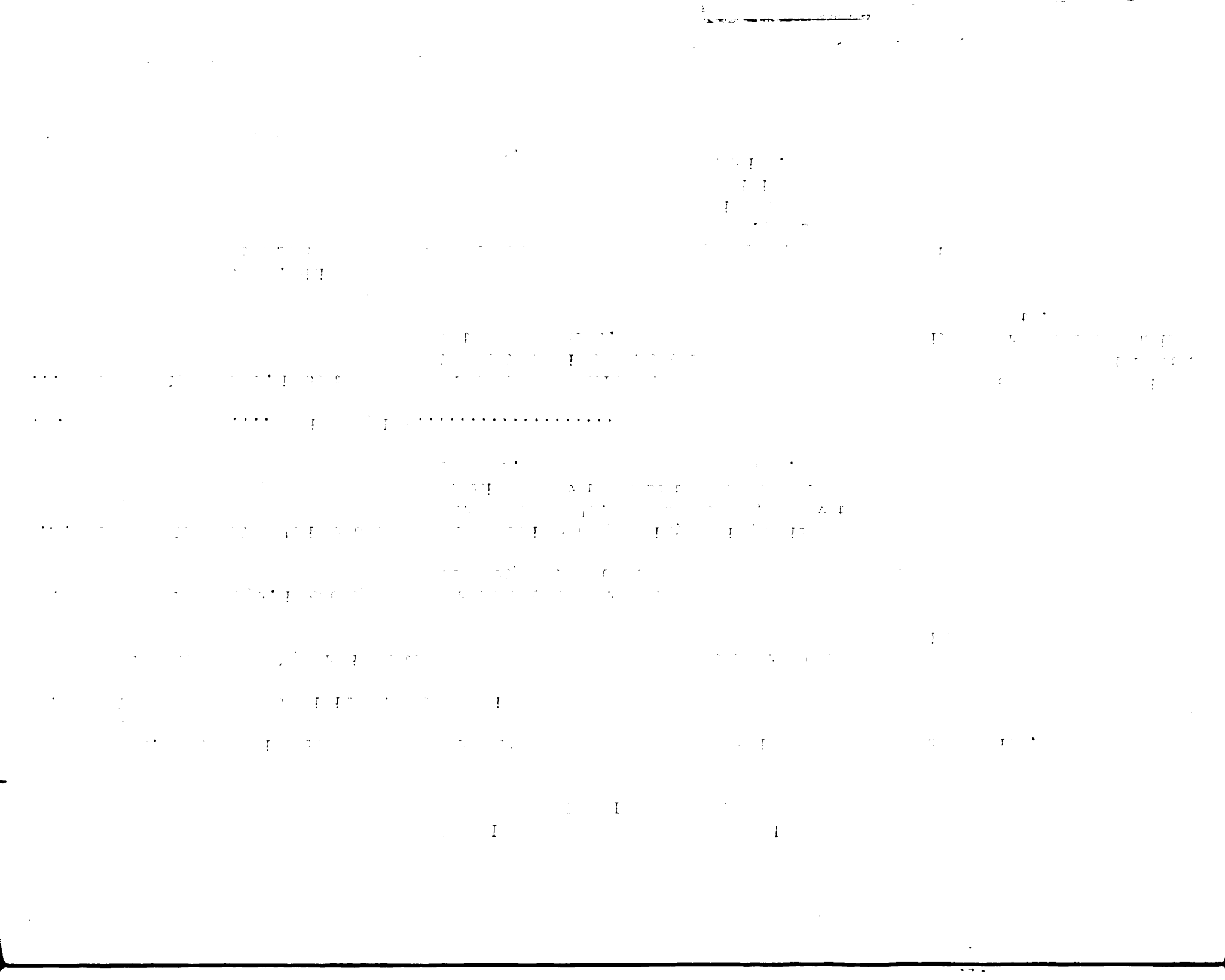
State	Date	Age	Residence	Property	Religion	Term	No.	Method of Election
S.C.	1776					2 yrs.		Set up on basis of existing one.
...	1778		Resident of the state 3 yrs. prior to election.	If resident, qualified as in election act, if non-resident, owner of settled estate and freehold in his own right valued at 3,500 pounds currency, at least, in parish or district represented. If	Protestant	2 yrs.		Apportioned among parishes and districts on basis of comparative taxable property and number of white inhabitants, electors: free white men, acknowledge the being of God, Future state of punishments and rewards, 21yrs. old, resident and inhabitant of state 1 year freehold of at least 50 acres, or a town lot.
...	1790	21	Free, white man, resident of this state 3 yrs previous to his election.	If a resident of district, possesses settled freehold estate of 500 acres of land and 10 negroes or of a real estate of the value of 150 pounds sterling free of debt. If a non-resident, possess settled freehold estate therein of value of 500 pounds sterling, clear of debt.		2 yrs		Districts and number of Rep. listed. Elected by free white men, citizen and resident of state 2 years owning freehold of 50 acres or town lot for 6 mo. or resident of electoral district 6 mo., paid tax of 35 shillings s sterling preceding year.
Va.	1776		Residents of county	Freeholders		1 yr.		2 Rep. from each county elected by those qualified to vote when constitution was written.

QUALIFICATIONS OF ELECTORS PRESCRIBED BY STATE CONSTITUTIONS - 1776 - 1800

State	Const	Age	Residence	Property	Taxation	Sex	Race	Misc.
New Hampshire	1784	21	Town, having town privileges	Freehold	Poll Tax	Male		
	1792	21		Freehold		Male		
Mass.	1780	21	1 yr. in town	Freehold of annual income of 3 pounds or estate of 60 pounds.		Male		
New York	1777	21	6 mo. in county	Freehold of twenty pounds or paying rent of forty shillings. Freehold of 100 pounds to vote for Senator	Taxpayer, or Freeman of Albany or New York City	Male		
New Jersey	1776	21	12 months in county	Estate of Fifty Pounds		Male of Female	White or Black	
Pa.	1776	21	1 year in state		Taxpayer	Male		
	1790	21	1 year in state		State or county Taxes	Male		

QUALIFICATIONS OF ELECTORS PRESCRIBED BY STATE CONSTITUTIONS 1776-1800

State	Const.	Age	Residence	Property	Taxation	SEX	Race	Misc.
De.	1776		Qualifications	as fixed by law				
	1792	21	2 years in state		State or county taxes	Male	White	
Md.	1776	21	1 yr. in county	Freehold of 50 acres or property of 30 pounds		Male		
N.C.	1776	21	12 mo's in county	Freehold in county of fifty acres for 6 mo's. before election may vote for state senator.	paid public taxes, may vote for members of House.			
S.C.	1776		....As fixed by law.	.....				
....	1778	21	1 yr. in state	Freehold of 50 acres or town lot or paid taxes equal to tax on 50 acres.		Male	White	Acknowledge the being of a God and a future state of rewards and punishments.
....	1790	21	2 yrs. citizen of the state	Same as 1778	If not a free-holder, has paid a tax of 3 shillings sterling.	Male	White	
Va.	1776		Asnfixed by law					



QUALIFICATIONS OF ELECTORS PRESCRIBED BY STATE CONSTITUTIONS 1776-1800

State	Const.	Age	Residence	Property	Taxation	Sex	Race	Misc.
Ga.	1777	21	6 Mo. in State	Property of 10 pounds or being of a mechanic trade or taxpayer				
	1789	21	6 Mo. in county citizens and inhabitants of the State					
	1798	21	6 Mo. in county Citizens and inhabitants of the State		Taxpayer			

FROM

Francis N. Thorpe, Constitutional History of the American People (New York: Harper and Brothers, 1898), I, 93-96

SENATORS IN THE FIRST STATE CONSTITUTIONS

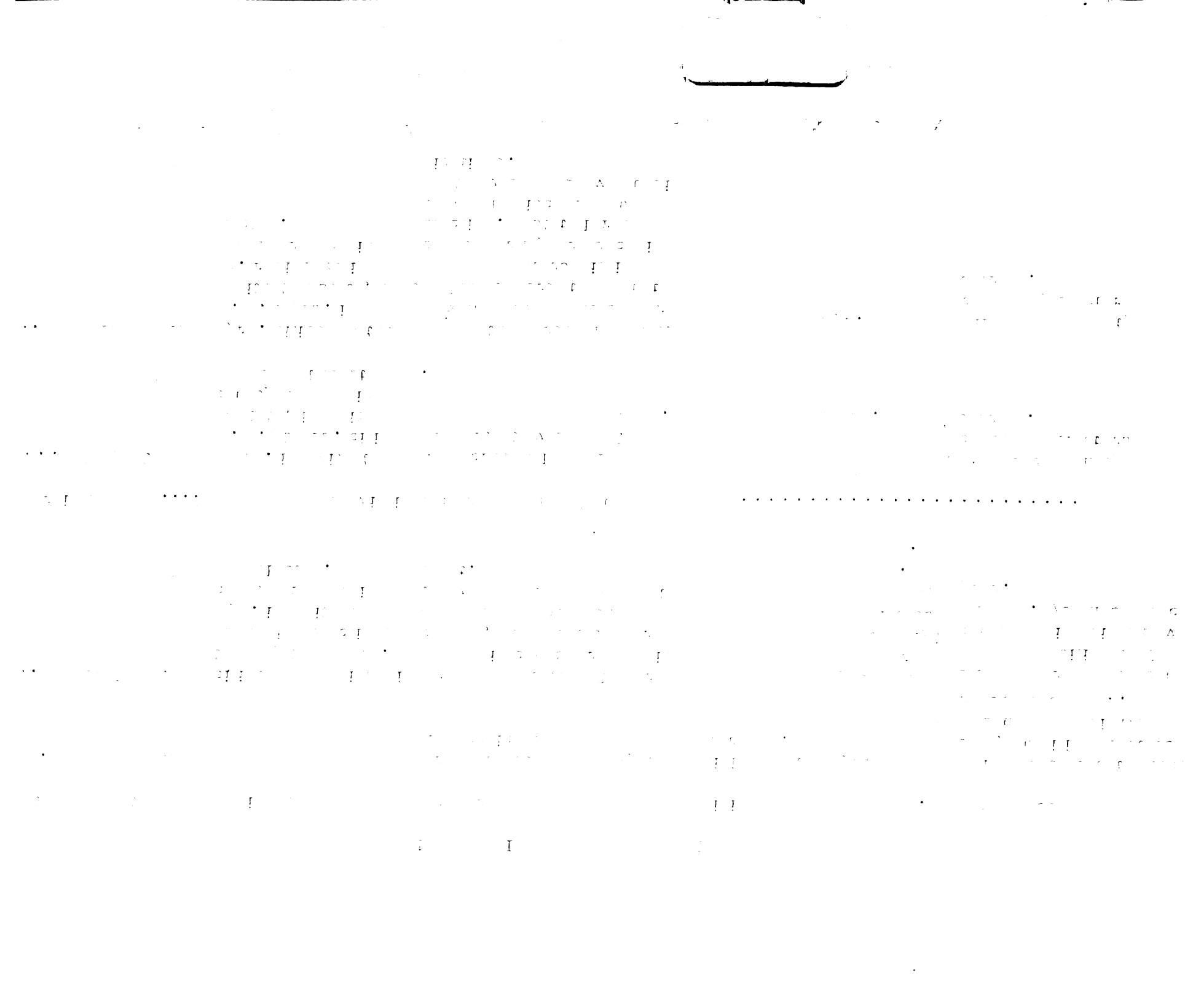
State	Date	Age	Residence	Property	Religion	Term	No.	How Chosen
S. C.	1790	30	Free, white men, citizens and residents of state 5 yrs. previous to election.	If resident of district, possesses settled Freehold estate of value of 300 pound sterling, clear of debt. If non-resident own settled Freehold in district of the value of 1000 pounds sterling free of debt.		4 yrs		By citizens qualified to vote for Rep. districts and no. of senators listed.
Va.	1776	25	Resident within district.	Freeholder in district		4 yrs 1/4 to be elected each year.	24	Counties to be divided into 24 districts - each to elect 1 senator.

SENATORS IN THE FIRST STATE CONSTITUTIONS

State	Const	Age.	Residence	Property	Religion	Term	No.	How chosen
New Jersey	1776		Inhabitant of county one year.	Freeholder in county worth at least 1,000 pounds proclamation money of real or personal property in county.	(Protestant by implication)	1 yr.		1 from each county called Legislative Council. Elected by those 21 years of age, worth 50 pounds proclamation money, clear estate in county, lived in county 1 year.
New York	1777			Freeholder		4 yr. 1/4 to be chosen yearly	24 32	Proportioned according to number of freeholders chosen by Freeholders owning Freehold of value of 100 pounds over and above debts charged thereon. 1801 Amendment 4 districts - Senators to be apportioned according to number of electors.
North Carolina	1776		Reside in county from which chosen for 1 year.	Own for 1 year 300 acres of land in fee in county	Protestant Religious Oath	1 yr.		1 from each county, elected by freemen, 21 years of age, inhabitant of county 1 yr. preceding election, own Freehold within county of 50 acres of land for 6 mos.

SENATORS IN THE FIRST STATE CONSTITUTIONS

State	Const	Age	Residence	Property	Religion	Term	No.	How Chosen
Del.	1776	25		Freeholders of the county from which chosen	Religious oath as for Rep.	3 yrs	9	3 from each county elected by qualified electors of county council 1/3 chosen each year.
...	1792	27	citizen and an inhabitant of state 3 yrs. preceding election, 1 yr. inhabitant of county from which he was elected.	Freehold estate of 200 acres of land in county from which chosen, or an estate of real and personal property of the value of 1000 pounds at least.		3 yrs	Not more than 1/2 or less than 1/3 no. of Rep.	3 chosen from each county Chosen by citizens of county having right to vote for Rep. 1/3 chosen each year.
Georgia	1777	....	No provision for Upper House		.....	....	....	.....
....	1789	28	9 yrs. inhabitant of U. S., 3 yrs. citizen of state, inhabitant of county from which chosen at least 6 mo.	250 acres of land or property to value of 250 pounds.		3 yrs.		1 from each County chosen by electors thereof.
...	1798	25	9 yrs. citizen of the U. S. 3 yrs. inhabitant of state, 1 yr. residence in county from which elected.	Own settled freehold estate of value of 500 dollars, or taxable property to amount of $1000 dollars within county for 1 year preceding election. Estate large enough to discharge just debts over and above qualifications.		1 yr.		1 from each county chosen by electors thereof.

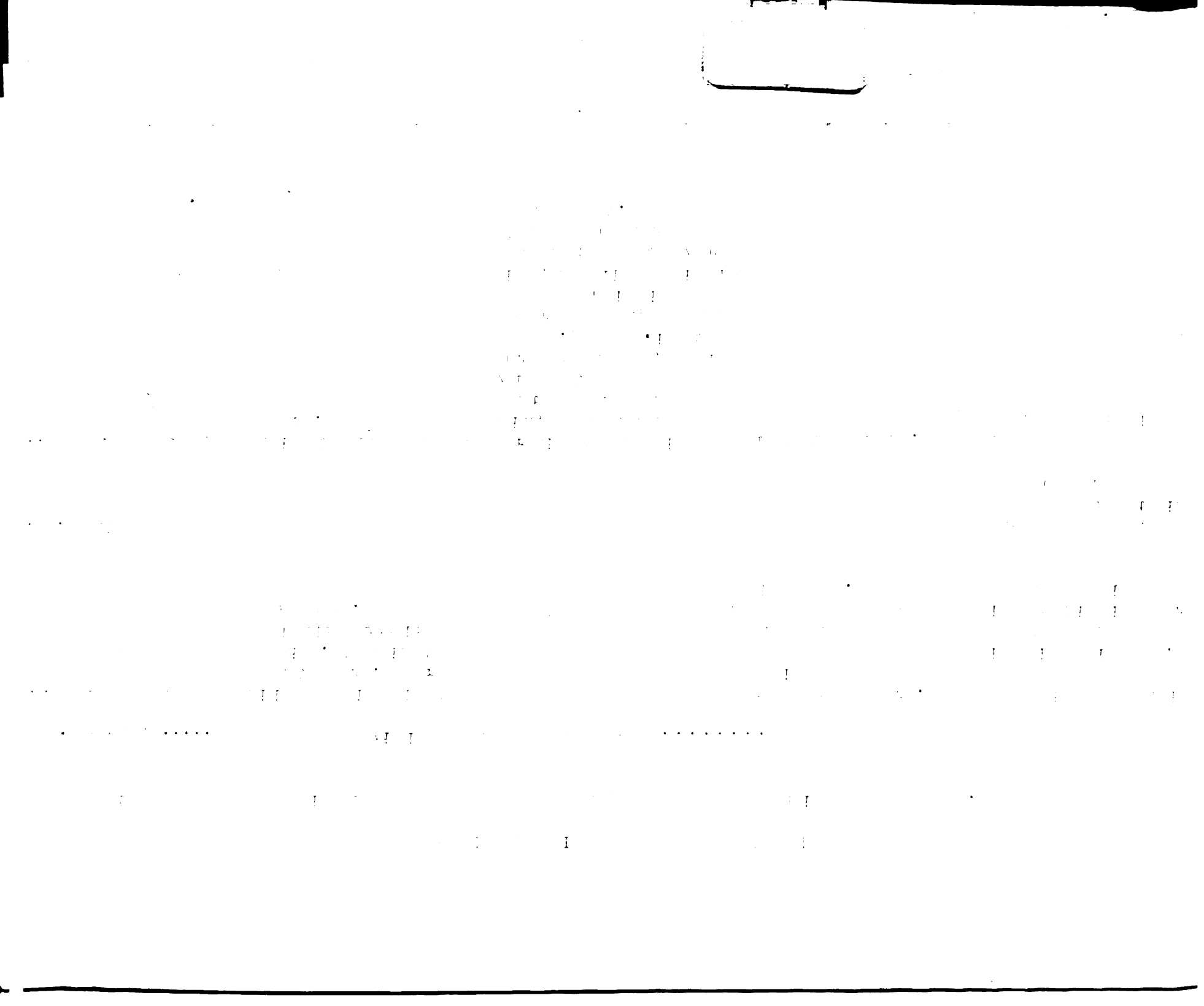


SENATORS IN THE FIRST STATE CONSTITUTIONS

State	Const.	Age.	Residence	Property	Religion	Term	No.	How Chosen
Mass.	1780	...	5 years inhabitant of state, inhabitant of district chosen from	Freehold, within state, of value of 300 pounds or personal estate to value of 600 pounds at least.	Religious oath	1 yr.	40	Elected by males, 21 yrs. of age, with freehold estate in state of annual income of 3 pounds, or any estate of the value of 60 pounds. Distribution on basis of the proportion of public taxes paid by district.
Maryland	1776	25	Residents of state over 3 years.	Real and personal property above value of 1000 pounds current money.	Declare belief in Christian Religion	5	15	9 from Western shore, 6 from Eastern shore. Chosen by @Electors of the Senate", who were chosen by those qualified to vote for members of the lower house.
New Hampshire	1776		Inhabitants within State	Reputable freeholders			12	By counties
	1784	30 yrs	7 years inhabitant of state, inhabitant @f district he represents.	Owning freehold estate in state valued at 200 pounds	Protestant	1 yr.	12	Districts set up by proportion of public taxes paid by district. Elected by males of each town and parish with town privileges, 21 years of age, paying a poll tax.

SENATORS IN THE FIRST STATE CONSTITUTIONS

State	Date	Age	Residence	Property	Religion	Term	No.	How Chosen
Penn.	1776	.....	No provision for	Upper House.....	...			
...	1790	25	Citizen and inhabitant of state 4 yrs. before election. Inhabitant of district for which chosen 1 yr.		Acknowledge the being of a God and future state of rewards and punishments.	4 yrs. 1/4 chosen each year		Apportioned according to number of taxable inhabitants in each. Elected by those meeting qualifications for general elections
S. C.	1776						13	Elected by General Assembly from their own number
...	1778	30	Resident of state at least 5 years.	If resident of the district, possess settled estate and freehold of value of 2000 pounds currency at least, clear of debt. Non-residents, owners of a settled estate and freehold in his own right, in parish or district represented, of the value of 7,000 pounds currency clear of debt.	Protestant	2 yrs.	13	1 member from each parish and district



CHAPTER III

THE FIRST CONSTITUTIONS OF VERMONT, KENTUCKY, AND TENNESSEE

The first three states to be admitted to the Union after the original thirteen were Vermont, Kentucky, and Tennessee. Each one of these states entered with its own new fundamental laws by which the state was to be governed. How did these constitutions compare with the original thirteen? Were they more liberal than the first state constitutions? How much were they influenced by the early documents?

The first state to be admitted to the Unionby the original thirteen were Vermont which became the fourteenth state on March2, 1791.[1] Its first constitution, however, was written as early as 1777 and was considered the law of the state from that date. The state was not admitted earlier because of a dispute over land titles. The state of Vermont was originally claimed by Massachusetts, New Hampshire, and New York. At the commencement of the Revolutionary War, it sought independence notonly from British rule, but also from New York, which claimed sovereignity over the territory to the west bank of the Connecticut River; from New Hampshire, which contested the claims of both New York and Vermont; and from Massachusetts. Adjustment of the Massachusetts claim was made in March,

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1. E. P. Walton, ed., Records of the Council of Safety and Governor and Council of the State of Vermont (Montpelier, 1873) III, 487 Hereafter cited as Records of the State of Vermont.

1781. Agreement was finally completed with New Hampshire in 1782. When New York abandoned claim to the territory in 1790, the way was cleared for the admission of Vermont to the Union.[2]

Information about the formation of the Vermont constitution is very sketchy. It was written by a convention held in Windsor from July 2 to July 8 and again on December 24, 1777. There is no journal of that convention; the only information available comes from the memoirs of people who could recall the events. There is not even an accurate list of delegates who attended. From what can be pieced together, there were probably only twelve delegates present during the short and harried sessions. Business was conducted in a hurry due to the danger created by the military affairs of the Revolutionary War. The enemy was pressing hard at Ticonderoga and threatening to break through the defenses of the colonies. That explains not only the short time spent in convention but also the lack of any carefully kept records.[3] We have only the completed document, therefore, upon which to judge the work of the group.

There is little doubt that the Pennsylvania Constitution of 1776, written by a convention with Benjamin Franklin as its president, was a model for the Vermont Convention. The Vermont document had nineteen articles in its Declaration of Rights, whereas Pennsylvania had only sixteen. However,

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2. Thorpe, Charters and Constitutions, VI, 3737
3. Records of the State of Vermont, I, 62-75

fourteen of the Vermont articles are in substance identical with those of Pennsylvania. In the Frame of Government, Vermont had only forty-four sections as compared with forty-seven in the Pennsylvania model. Of these, twenty-seven articles are identical.

The first outstanding addition made by Vermont was in Article I of the Declaration of Rights which established a system of gradual emancipation of slaves in the state. Males were not to be kept in slavery after the age of twenty-one, and females only to the age of eighteen. This is said to be the first Emancipation Act in America.[4] In this respect, Vermont certainly was liberal in policy.

Article III of the Declaration of Rights was another addition made by Vermont. This article stated that private property ought to be subservient to public uses, but that if it should be necessary to take private property, the owner should be suitably compensated. This was a liberal principle which apparently was first used in Vermont. Section 6 of the Virginia Bill of Rights of 1776 was a conservative adaptation of this idea. It said that no man could be taxed or deprived of his property for public uses without his own consent or that of his representatives.[5] Massachusetts in 1780 incorporated into its Bill of Rights an Article X following the Vermont provision in substance. New Hampshire did the same in 1784, and Pennsylvania

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4. Ibid., 92.
5. Thorpe, Charters and Constitutions, VII, 3812.

borrowed it in 1790.

The next difference to be noted in the two documents is the provision on religion (Article II in Pennsylvania, Article III in Vermont). In this respect, Vermont was not as liberal as Pennsylvania. Vermont limited religious freedom first by the addition of the phrase, "regulated by the word of God". Pennsylvania granted freedom of religion to "any man who acknowledges the being of God" while Vermont extended full rights only to Protestants. Pennsylvania stated that no person was to be compelled to attend or support any church, but Vermont stipulated that every sect or denomination of people ought to observe the Sabbath and that everybody ought to support some kind of religious worship.

Article XII is a liberal annexation of Vermont to the Pennsylvania model. This provision protects debtors from arrest and from having their property attached unless the person requesting action could swear that he was in danger of losing the debt. In respect to court procedure, Article XIX must be noted as a liberal contribution of Vermont. This section, not included in Pennsylvania's constitution, forbade the transportation of a person out of the state for trial for an offsense committed within the state.

The first change made in the Frame of Government was made in Section 6 which referred to the right of suffrage. Vermont changed voting from the tax-paying basis in Pennsylvania to a manhood basis, and added a freemans

oath. This, too, was a step toward more liberal government.

There were three departures from the Pennsylvania constitution in regard to representatives. Vermont did not exclude plural office holding as Pennsylvania did. On the matter of residence, Vermont was more liberal. There was a two year residence requirement in Pennsylvania while Vermont required only one year's residence. Vermont also left out of its constitution the Pennsylvania restriction that representatives could serve only four out of seven years. Although the limitation was in line with the liberal theory of rotation of office, it very easily could serve as a disadvantage by keeping good men out of office.

The differences in the oaths of office made the Vermont oath the more conservative. Vermont required the individual to swear "by the everliving God" and also to profess to the Protestant religion. Pennsylvania did not include either of these statements in its oath of office.

Both constitutions provided for a recording of the yeas and nays in the assembly upon request. However, Pennsylvania made the recording possible upon the request of two delegates while Vermont set the number at one-third of the delegates making its provision more conservative than Pennsylvanias.

Vermont also varied slightly from Pennsylvania's 1776 constitution in the process of passing bills. The fifteenth section of Pennsylvania's Frame of Government directed that

laws of public nature were to be printed for consideration of the people before they were read in the General Assembly for the last time. Except for emergency, the bills were not to be passed into law until the next session of the Assembly. It was this last provision which Vermont did not include in the corresponding section (XIV) of it's Frame of Government.

Differences existed between the two constitutions in the matter of representation. Pennsylvania (Section 17 of the Frame of Government) provided that representation was to be in proportion to taxable inhabitants. Districts would be formed according to the census which was to be taken each seven years. Vermont's system of representation was a town system of representation, granting each town consisting of 80 taxable inhabitants two delegates and other inhabited towns one delegate (Vermont XVI). Pennsylvania also had introduced the ideaof payment of delegates to the Council by the state, not the districts. Vermont did not follow this plan, preferring to remain traditional on this point.

Section 17 of the Vermont Constitution was greatly changed from the comparative section 19 of the Pennsylvania Frame of Government. In the Quaker State, the members of the Council were chosen by counties, while in Vermont, these officials were elected on a general ticket by the whole state. The same section substituted the terms governor and Lieutenant-Governor for those of

President and Vice-President used in Pennsylvania and altered the system of election. From the conservative Pennsylvania method of choice of these officials from the Council of joint ballot of the Council and House of Representatives, Vermont turned to the more liberal choise of governor and Lieutenant-Governor by the freemen at large.

The next point of comparison may be the two judicial systems. In Pennsylvania, judges of the Supreme Court were commissioned for seven years (sec. 23). There was no such specified term in the Vermont document. Section 30 and 31 of the Pennsylvania Constitution established Justices of Peace elected by freeholders of each city and county plus sheriffs and coroners elected annually by freemen of each city and county. The equivalent section XXVII in Vermont provided for county elections in which the freemen would have the liberty of choosing the judges of inferior courts of common pleas, sheriffs, justices of the peace and judges of probate. They were to serve during good behavior instead of one year as in Pennsylvania.

Section XXVIII of the Vermont Fundamental Law was an addition to that of Pennsylvania. In this section, it was declared that no person should be qualified to hold any civil office in the state unless he had acquired, and maintained, a good moral character.

Another addition made by Vermont was section XLII which provided that field officers, staff officers, and commissioned officers of the Army, and all general officers

of the militia would be chosen by the General Assembly. This would generally be considered as a conservative arrangement since it denied this power of selection of officers to the militiamen, themselves. It probably reflected the fear of militarism quite common at the time.

Both constitutions contained sections regarding education - section 44 in Pennsylvania and Section XL in Vermont. Few changes were made here: the term "each town" was substituted for "each county" as designation for location of schools. Instead of salaries paid by the public, Vermont provided for the payment of these salaries by each town. Vermont added the phrase "making proper use of school lands in each town" as a means of financing the schools. Here is indication of at least interest in schools supported by the public.

It may also be noted that Vermont dropped a most interesting provision in Pennsylvania's document - Section 38. Probably as a reaction to the British penal practices, the legislature of Pennsylvania was instructed by the section to reform the penal laws of the state as soon as possible and punishments made more proportionate to the crimes.

In summary, it appears that the one outstanding feature in which the two constitutions just compared differed from the original state constitutions was the provision for a single body legislature called a General Assembly with exclusive and supreme legislative power. Only one of the

other first states, Georgia, had a unicameral legislature. It is also interesting to note that two states soon adopted a bi-cameral system: Georgia in 1789 and[6] Pennsylvania in 1790; with Vermont following in 1836.

Before Vermont became a state, this constitution just discussed had been amended in 1786, and again in 1793 changes were made. The changes made were such that the constant interaction of political ideas among the states may be seen.

The Vermont Constitution of 1786 contained three changes in it's Bill of Rights. Article IV stated the principle that every person in the state ought to have prompt recourse to justice freely, without being obligated to purchase it. Article V had the words "by their legal representatives" added to the original section so that it read, "that the people; by their legal representatives, have the sole, exclusive, and inherent right of governing and regulating the internal police of the same." Article VI was a provision on freedom of speech followed today by many states as well as the United States. This article granted to the legislators immunity from prosecution for anything said in the process of legislative deliberation.

Two changes were made in the Vermont Frame of Government. Article IX (1786) provided for election of judges and sheriffs by the House and Council instead of by the freemen of the counties as in the 1777 constitution.

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6. Ibid., VI, 3772.

Article XVI (1786) extended the power of the governor and Council by granting the right to suspend the passing of bills to which they could not agree until the following session of the legislature. This was an adaptation of the Pennsylvania Constitution of 1776 which Vermont had dropped in 1777. It is also an indication of the future granting of veto power to the Governor which was finally granted in 1836.[7]

The oath of office and the freeman's oath stated in 1786 differed from that of 1777 by departing from the religious character of the first oath. No longer were officials required to swear by the ever living God, and they were permitted to use the expression, "Under the pains and penalties of perjury", instead of "So help me God".[8]

In 1793, by Section 18, the residence requirement for representatives was made a two year residence instead of the one year residence required up to that time. This would be considered a conservative trend.

The first state admitted to the Union shows in its constitutional development an area, although technically frontier, following closely the political developments of the original states, It's first constitution was patterned closely after that of Pennsylvania; the changes made in it up to the state's admission to the United States reflected the changes made in the other states.

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7. Ibid., 3772
8. Ibid., 3759 (Sec. XXVI)

Kentucky, the Fifteenth State of the Union, is said to be the first frontier area to have an opportunity to shape its own political institutions.[9] As early as 1791, two groups having definite theories as to what they desired in the constitution began to take form. The first group, supported largely by slave-holding planters, preferred to follow the customs of Virginia. The second group, considered the liberal group, advocated manhood suffrage, representation by population, voting by ballot instead of viva voce, a one house legislature and popular election of all local and most state officials. They also proposed the abolition of a bill of rights, apparently upon the theory that it would be a guarantee of property and therefore would be an obstacle to emancipation.[10]

After a struggle which involved getting permission from the State of Virginia to become independent, a convention to meet in Danville on Monday, April 1, 1792 was arranged. This was done by a meeting called to consider the action which should be taken by the prospective state. The resolution passed to provide for the new gathering directed that in December of 1791 on the regular court days of the counties the free male inhabitants over twenty-one should elect representatives to a convention to hold office for seven months. No person was to vote in any county, except that in which he resided. Representatives were required to have resided within their district for at least

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9. Thomas Perkins Abernethy, Three Virginia Frontiers (Baton Rouge, 1940), 68

10. Ibid., 68-71

one year. The total number of delegates was limited to forty-five.[11]

The constitution which this group established for Kentucky set up a three department government as was found in other states. Still following the generally accepted practices, a bi-cameral legislature was provided for. The usual one year term was established for reppresentatives, while senators had a comparatively long term of four years. The influence of Virginia is apparent here, for Virginia and New York were the only other states providing four year terms for senators. Only one state, Maryland, had a longer senatorial term.

Provisions for the House of Representatives were fairly liberal. Representatives were chosen by the qualified electors of the county on the first Tuesday in May. Elections could continue for three days if the presiding officer thought it necessary. A representative was required to be twenty-four years of age, a citizen and inhabitant of the state for two years preceding his election, and a resident for six months of the county from which he was chosen. The size of the house could vary from forty to one hundred, being apportioned according to the number of free male inhabitants above twenty-one in each county. To determine the proper distribution, a census was to be taken every four years.[12] New York, in its constitution of 1777, included

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11. H. Marshall, History of Kentucky (Frankfort, 1824)361.
12. Robert K. Cullen, reviser, (Notes and Annotations to the Kentucky Revised Statutes (Published by the Kentucky Revision Commission, 1944), 28 "Constitution of Kentucky", Art. 1, Sec. 1-6 Hereafter cited as Cullen, Notes.

in Article V a provision for a census to be taken every seven years.

There were to be eleven senators, one to be added for each four added to the House with one from each county until the number of counties equalled the number of senators. Then any new county was to be considered part of the one from which it was made. Senators were to be named by electors who filled the qualifications of being twenty-seven years of age, and a resident of the state for three years prior to his election. A senator was to be twenty-seven years of age and a resident of the state two years preceding his election.[13]

Powers of thelegislature were almost identical to those exercised by the Congress of the United States. Revenue bills were to originate in the House with the Senate exercising the right of amendment. Impeachment power was centered in the House, with the Senate acting as a jury. A two-thirds vote of both Houses was required to over-ride the veto of the Governor. A pocket veto, such as is exercised by the President of the United States was allowed.[14]

Provisions for the Governor were a combination of liberal and conservative principles. The Governor was to be named by the voters of the state for a four year term. Qualifications were simple: thirty years of age, a citizen, and an inhabitant of the state for at least two

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13. Ibid., (Art I, Sec. 7-15)
14. Ibid., (Art I, Sec. 16-28)

years prior to his election. His powers closely paralleled those of the President.[15] The provision for governor was conservative regarding term of office. The usual term in the first states had been from one to three years. The governor also was granted greater power than in most of the earlier states. The tendency was to deny the governor such power as the veto. Kentucky, in this respect, was reflecting a movement appearing gradually in the states as was pointed out in the gradual increase of power granted to the Governor of Vermont.

Article III, dealing with elections followed the Vermont experiment in manhood suffrage. All free male citizens, twenty-one years of age and over, who had resided in the state two years, or the county in which they were to vote for one year, were entitled to vote. Viva voce voting was abolished by the stipulation that all elections were to be by ballot.[16] The use of the ballot was a liberal provision along with manhood suffrage. The viva voce method did not allow for secret balloting and couldgive rise to graft and corruption in elections.

Article IX, Section 1, providing for slavery created the greatest single factor of dispute. The only vote of yeas and nays recorded in the proceedings was taken on this issue. Under the date of Wednesday April 18, 1792, a motion was made to "expunge the ninth Article of the constitution

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15. Ibid., (Art. II, Sec. 1-15)
16. Ibid., (Art III, Sec. 1-2)

regarding slavery". There were sixteen yeas, twenty-six nays; therefore, the section remained.[17] This unusual Article forbad the Legislature from emancipating slaves without the consent of the owners. Emigrants were not to be denied the privilege of bringing slaves into Kentucky, but the Legislature was granted the power to forbid slave trade into the state. It was further empowered to pass laws requiring humane treatment of slaves.[18]

By this arrangement, the liberals had left open away to bring about abolition, but the rights of property were protected. The possiblemethod of abolition by state purchase of the slaves with emancipation immediately following is suggested here. Property rights would be protected by payment for the slaves. Theinfluence of Virginia is apparent here in the desire to protect the slave owner.

Like most of the other states, Kentucky did not submit it's constitution to the people for ratification. By a brief Preamble reading, "We, the representatives of the people of the State of Kentucky, in convention assembled, do ordain and establish this Constitution for its government," it was put into effect.[19] However, Article XI did provide that a vote should be taken for oragainst a convention to amend the constitution in 1797. At that time, the citizens of Kentucky had an opportunity to express their opinion on the document. A conservative provision

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17. John M. Brown, Political Beginnings of Kentucky (Louisville, 1890),, 228. Hereafter cited as Brown, Kentucky.
18. Ibid.,228
19. Cullen, Notes,,28 (Preamble).

of this article required an affirmative vote for two consecutive years. If a convention was not approved at that time, one was not to be called until two-thirds of both houses of the legislature deemed it necessary. These provisions made changing the constitution very difficult.

This first Constitution of Kentucky is clearly modeled after that of the United States. This is attributed to the fact that Colonel George Nicholas, an ardent admirer of the Federal Constitution, is conceded to be its author.[20] There is also influence from the parent state of Virginia. There is also some influence from the Massachusetts Constitution to be noted since the Federal Constitution is very similar to thatof Massachusetts.

Under the leadership of men such as John Breckenridge, agitation for revision of the first constitution was soon under way. In May, 1797, the first vote was cast for a new document. With 5 of 21 counties failing to report, there was a vote of 5,456 to 440 in favorof calling a new convention.[21] A desire for such change was again indicated the following year; consequently, July 22,1799, just twenty-seven days later, the second constitution was ready.

Franchise provisions in 1799 were more conservative than those of the first constitution. Article II, section 6 changed the basis of representation from free male inhabitants above the age of 21 to qualified electors. To determine

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20. Marshall, History of Kentucky, 414
21. Thomas D. Clarke, A History of Kentucky (New York, 1937), 163

the allotment, a census was to be taken every four years. The number of representatives was raised from 40-100 to 58-100. Evidence of conservative influence is shown in the change of the basis of representation.

Article II, section 8, introduced an undemocratic provision by denying the franchise for representatives, to negroes, mulattoes, and Indians. Such a provision did not appear in the first Kentucky Constitution. It shows the dominance of the southern view of slavery in the area.

Section 9 through 15 of Article II, relating to the Senate, was somewhat more liberal than in the first document. Instead of being elected by electors as originally stipulated, senators were to be elected by those qualified to vote for representatives. A system of staggered terms was introduced with one-fourth of the senate being elected each year. The influene of Virginia is evident here again since the system was taken directly from the Virginia Constitution of 1776.

Article III, pertaining to the executive, contained several revisions. Although the governor's term of four years remained the same, he was made ineligible for seven years following his term. The use of electors in selecting the governor was abandoned in favor of election by citizens entitled to vote for representatives. Qualifications for governor were made more rigid. Age requirement was raised from thirty to thirty-five; residence was changed from citizen and inhabitant of the state for at least two years

to citizen of the United States for six years and an inhabitant of the state. A Lieutenant-Governor, comparable to the Vice-President of the United States,,was added to the Executive Department.

Article III, Section 31, directed that sheriffs should be selected in a more conservative way. Instead of election by the people, they were to be named by the Governor from two which the county court had nominated.

The democratic use of ballots was abolished by Article VI, section 16 which provided that votes should be personally and publically given viva voce. Here was a conservative move away from a democratic practice followed in earlier constitutions.

The process of amendment was liberalized. To replace the previous system which required an affirmative vote for two consecutive years on calling a constitutional convention, Article IX gave the power to call for a vote on a constitutional convention to a majority vote in both houses of the State Legislature. A majority vote of the qualified voters could then direct the calling of a convention.

There is further evidence of a conservative tendency in the 1799 constitution in Section 1 of the Bill of Rights. Whereas the comparative section of the 1792 document stated that "all men when they form a social compact, are equal", the revised constitution limited equality to "all free men,". Here once more, the Virginia influence is shown.

Kentucky's two constitutions of this period show a

combination of conservative and liberal provisions copied from practices already in effect. Using the conservative method of election by electors in 1792, it changed to the liberal system of election of representatives, senators, governor and lieutenant-governor by freemen in 1799. The use of the ballot established in 1792 was abandoned in 1799. This seems to indicate a tendency toward desire to conform to existing practice. Again, the change of the qualifications of governor making him ineligible for seven years following his term points to a return to earlier practice where such restrictions were common. These changes reflect Kentucky's gradual evolution from a frontier area to a settled community, and the acceptance of established ideas in the process.

Tennessee was the next frontier state to take it's place in the Union, being admitted to statehood status on June 1, 1796.[22] This was accomplished only after a long series of efforts in that direction including the premature attempt at the establishment of a state to be called the State of Franklin. This petition was denied, but a constitution had been drawn up giving us some conception of their governmental ideas.

The constitution for the proposed state was drawn up in 1785. It had a Declaration of Rights of twenty-five sections and a body of forty-six sections. It provided

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22. Annals of Congress, 4th Congress,1st Session 1795, 1796, 891, 1299,1328

for universal manhood suffrage, and a referendum on all legislation of a general nature. These provisions were liberal in character. There was to be no established religion in the state. Office holding was limited to property owners and those who believed in the Bible, in Heaven, in Hell, and in the Trinity. Clergymen, doctors, lawyers, immoral men, Sabbath breakers, profane swearers,, gamblers and drunkards were forbidden to hold office. It authorized the establishment of a tax supported University by the Year 1787.[23]

It was not until ten years later that the settlers of Tennessee were officially granted the right to form a state government. Upon the advice of Dr. James White, the territorial delegate in Congress, Governor Blount issued a proclamation for the election of delegates to a convention to meet in Knoxville on January 11, 1796. No property qualifications were required by the Governor for voting for delegates since "all free males, twenty-one years of age and upwards" were entitled to vote.[24]

There were fifty-five members of the convention, five delegates from each of the eleven counties. They named William Blount, President; William Maclin, Secretary; and John Sevier, Junior Clerk. A committee of two from each county was selected to draft the constitution. The session

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23. William E. Cole and William H. Combs, Tennessee, a Political Study (Knoxville, 1940), 607

24. Ibid., 10

was short, lasting twenty-seven days. Deliberation is said to have been marked with moderation and unusual harmony.[25]

Organization of the legislature was the one major point of debate. One group proposed a unicameral plan with the requirement of a two-third vote to carry bills and resolutions. The other proposal, providing for a bicameral system, was adopted. In this discussion can be detected the influence of Pennsylvania, Vermont, and Georgia. It is strange that the unicameral legislature should have become an issue since Georgia had adopted a bicameral legislature in 1789 and Pennsylvania in 1790.

The people of the state did not ratify the constitution by popular vote. The convention, by a unanimous vote, on February 6, 1796, declared it to be in effect.[26] This was the procedure followed by the majority of the states.

Like the preceding states, the government of Tennessee was based on the separation of powers into three departments of government: legislative, executive, and judicial. The legislative branch was the dominant branch just as it had been according to the first constitutions of practically all of the preceding states.

The legislature, provided for by Article I, was to

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25. J.G.M. Ramsey, Annals of Tennessee to the end of the Eighteenth Century (Charleston, 1853) 650.
26. Cole and Combs, Tennessee, 10.

be composed of two houses - a senate and a house of representatives. Both representatives and senators were to serve for two year terms. Representatives were required to be twenty-one years of age, residents of the state for three years, and resident of the county for one year. They were also to possess in their own right in the county which they represented, not less than 200 acres of land. If they denied the existence of a God or a future state of rewards and punishments, they were not eligible. Senators qualifications were the same. Clergymen were not to be eligible to sit in the General Assembly. This was in line with section 3 and 4 of Article XI which provided for religious freedom and forbade religious tests as qualifications for office. Most of these provisions are to be found in the North Carolina Constitution of 1776. The greater difference in qualifications was a one hundred acre reduction in holding the land requirement.

Few limitations were placed upon the powers of Legislature. Section 20 of Article I limited salaries and forbade their increase until 1804. Section 26 of the same article restricted their power of taxation by requiring equal and uniform taxation of land. No freeman was to be taxed on more than 100 acres, and no slave on more than 200 acres each. Section 27 forbade the taxation of an article manufactured from the produce of the state. These provisions are conservative, designed

to protect the land-owner and the business man.

Provision for law-making were liberal. Bills were to originate in either house with the other house having the power of amendment or rejection. To become law, bills were to pass each house at three readings on three separate days and be signed by their respective speakers. There was no mention of a governor's signature and no provision for a veto by the governor.[27]

The Governor, elected for a two year term by the electors qualified to vote for representatives, did not exercise wide powers. He could summon the Legislature into special sessions, give them information on the state of the government, and recommend for passage those laws which he considered necessary. His appointive power was a temporary one - his appointments lasting only during the recess of the Legislature. Qualifications for Governor were as follows: he must be at least twenty-five years of age, a citizen or inhabitant of the state for four years, and owner of a freehold of five hundred acres of land.[28]

Provisions for suffrage were very democratic for that period. Freemen, twenty-one years of age and over, who were inhabitants of the state could qualify to vote either for possessing a freehold in the county or by residence in the county for six months.[29] Under these

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27. Poore, Constitutions and Charters II, 1667-1669, 1672, "Constitution of Tennessee, 1796", Art. I, Sec. 1-8; Art. VIII, Sec. 1,2
28. Ibid., 1669-1670, (Art. II, Sec. 1-14)
29. Ibid., II, 1670 (Art. III, Sec. 1-3)

provisions, free negroes were permitted to vote until 1834 when a new constitution was written. Elections, according to Article III Section 3 were to be held by ballot instead of the viva voce method in common use. Perhaps the earlier Kentucky experiment influenced this.

Selection of judges was given to the General Assembly by Article V. By joint ballot, the General assembly was to appoint all judges. Term of office for judges was established as good behavior. This is a conservative measure.

Article VII gave to the citizens of the districts who were subject to military duty the right to elect militia officers. This was liberal, and was a procedure very often found in earlier states.

Another liberal provision was Article X, Section 3, providing for the process of amendment. Two-thirds of the General Assembly could recommend amendment to the electors. If a majority of the electors asked for a convention, the General Assembly was to call one with the same organization as the General Assembly within three months of the election.

The Declaration of Rights, Article XI, sounding very much like a combination of the Declaration of Independence and the Federal Bill of Rights, was considered so important that it was declared inviolate by section 4. Section 2, showing the influence of the Declaration of Independence declared the right of the people to oppose

arbitrary power. Section 14 provided for administration of justice to all men without sale, denial, or delay. Citizens were to be given the right to bring suit against the state in a manner to be established by the legislature. Section 19 granted freedom of press, but made the citizen responsible for the abuse of the liberty. In cases of libel, a jury was to determine the law and facts just as in all other cases. Keen interest in the use of the Mississippi is shown by section 29 which stated that the navigation of the Mississippi was an inherent right of the citizens of that state and could not be conceded to any person or power. There was no mention of slavery in the article.

This document, moderately democratic, differed little from previous constitutions. The greatest change was to be found in the liberal provision for voting. In all other essentials, it differed little from the constitution of the parent state, North Carolina.[30] Increaseddddemocracy - but no radical departure from previously recognized procedures - seems to be the keynote of this conventions work.

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30. Cole and Combs, Tennessee, 71

THE SENATE IN THE FRONTIER STATES

State	Date	Age	Residence	Property	Religion	Term	Apportioned	How Chosen
Vt.	1777	...	No provision for	Upper House				
	1786		" "					
	1793		No provision for	Upper House				
Ky.	1792					4 yrs.	At least 1 from each county	Elected by electors elected by those qualified to vote for representative. No. of electors equal to No. of Rep. of County
...	1799	35	Citzen of U. S. Resident of State 6 years, of district 1 year			4 yrs. 1/4 each year	According to free male inhabitants over 21.	Elected by those qualified to vote for Rep.
Tenn	1796	21	3 yr's in state 1 yr. in county	Possess in own right in county he represents not less than 200 acres of land.	Cannot deny the being of a God or future state of Rewards and Punishments	2 yrs.	According to number of taxable inhabitants	Elected by those qualified to vote for Representative
Ohio	1802	30	Citizen of U. S. Resident of county or district chosen from for 2 years.			2 yrs. 1/2 each year		Chosen by those qualified to vote for representative.

THE GOVERNOR IN THE FIRST FRONTIER STATES

State	Date	Age	Residence	Property	Religion	Term	How chosen	
Vt.[1]	1777				Protestant	1 yr.	By ballot of Freemen at large	
	1786				Protestant	1 yr.		
	1793		Resided in state 4 years.		Protestant	1 yr.		
Ky.	1792	30	Citizen and inhabitant of this state at least 2 years			4 yrs.	Chosen by electors of the Senate	
	1799	35	Citizen of U. S. 6 yrs. inhabitant of the state.			4 yrs. Not eligible again for 7yrs	By citizens entitled to vote for Erepresentative	
Tenn	1796	25	Citizen of U. S. 12 years - inhabitants of state 4 years preceding election	Freehold estate of 500 acres of land	Cannot deny being of God or future state of punishment and reward.	2 yrs eligible 6yrs. out of 8	Elected by qualified electors of the state.	
Ohio	1802	30	Citizen of U. S. 12 years inhabitant of State 4 years preceding election		2 year	2 years eligible 6 yrs. out of 8	Elected by qualified electors of state	

QUALIFICATIONS FOR ELECTORS IN THE FIRST FRONTIER STATES

State	Date	Age	Residence	Property	Taxation	SEX	Race	Misc.
Ver-								
mont	1777	21	1 year in State			Male		Foreigner could vote after
	1786	21	1 year in State			Male		1 years residence
								As above
	1793	21	1 year in state			Male		No foreigners
Ky.	1792	21	2 yrs. in state or 1 yr. in county			Male		
	1799	21	2 yrs in state or 1 yr. in county			Male	White	
Tenn.	1796	21	6 months in county	Freehold		Male		
Ohio	1802	21	1 year in state		Pay or be charged with a state or county tax	Male	White	

REPRESENTATIVES IN THE FIRST FRONTIER STATES

State	Date	Age	Residence	Property	Religion	Term	Apportioned	How chosen
Vt.	1777		Reside in area represented 1 year		Protestant	1 yr.	Towns, basis, taxable inhabitants census, 7 years.	By qualified voters.
...	1786		"		"	"	"	"
...	1793		Reside in area he represented 2 yrs		"	"	"	"
Ky.	1792	24				1 yr	According to no. of free male inhabitants above 21 yrs. of age.	Elected by qualified voters
...	1799	24	Citizen of U. S. 2 yrs. Residence in state, 1 year in county chosen from			1 yr.	On the basis of qualified electors census every 4 yrs.	By qualified voters
Tenn	1796	21	3 yrs. in state, 1 year in county	Possess in own right not less than 200 acres in district he represents.	Cannot deny the being of a God or future state of rewards and punishments	2 yrs.	According to the number of taxable inhabitants census every 7 years.	Elected by the qualified voters
Ohio	1802	25	Citizen of U. S. inhabitant of the State, Resident of county from which elected for b year.			1 year		Elected by white males, above age of 21, 1 years residence in state, paid state or county tax.

CHAPTER IV

THE OHIO CONSTITUTION OF 1802

Shortly after the turn of the Nineteenth Century, Ohio became the seventeenth state of the Union. First of the states to be made from the Northwest Territory, it was the first to follow the procedure outlined in the Ordinance of 1787 for becoming a state. It was the first state to which an Enabling Act granting permission to write a Constitution was issued, and it was really the first state to be established by Congress. National party politics made an entry into state-making in Ohio, too. All of these factors make the writing of the Ohio Constitution of 1802 most interesting to follow.

The story of the bitter struggle between Governor Arthur St. Clair and these people of the territory need not be related here. That it was an all-out battle fought with all of the weapons at the disposal of the politicans of the day can be easily seen by a very cursory reading of the papers of St. Clair relating to this period. The basis of the entire unfortunate situation was the fact that he, a Federalist, was serving as governor in an area populated chiefly by Republicans whose ideas he could not, or would not, attempt to understand. The Ohio constitution of 1802 shows the effect of the controversy.[1]

1. Robert E. Chaddock, Ohio Before 1850 (Columbia University Press, 1908), 64.

Agitation for statehood reached fruition on April 30,,1802. On that date, the 7th Congress of the United States passed "An Act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such state into the Union, on an equal footing with the original States, and for other purposes". For the first time, Congress was setting up the conditions under which a territory could become a state. Section 1 granted permission to establish a state government. Boundary lines were set up by sections 2 and 3. Section 4 directed that all male citizens of the United States, who shall have arrived at full age, and resided within the said Territory at least one year previous to the day of election, and shall have paid a territorial or county-tax, and all persons having in other respects, the legal qualifications to vote for representatives in the General Assembly of the Territory were to choose delegates to form a convention. Representation was to be in the rationof one representative to every twelve hundred inhabitants. These delegates were to meet on the first Monday of November, 1802, to determine two questions: 1. Whether it was expedient to form a state government at that time, 2. if they decided in the affirmative, they were empowered either to write a constitution or to provide for a special constitutional convention.

This act then set forth the three conditions which were to be accepted by the convention before statehood would be granted. The first condition set aside every sixteenth section in every township for the inhabitants to be used for schools. Secondly, that the reservation commonly called the Sciota salt springs, the salt springs near the Muskingum River, and in the military tract were to come under the control of the state legislature, provided that the legislature did not lease the same for a period of more than ten years. Although the second proposition called forth considerable opposition, it was the third proposal that was the center of greatest debate. This third condition would exempt from taxation for any purpose for a five year period all tracts of land sold by Congress in that area after June 30, 1802. In exchange for that concession, the proposed state would have returned it to one-twentieth part of the net proceeds of land lying within the state after June 30, 1802.[2]

Even before the proposal was submitted to the territory, there was considerable difference of opinion on the part of the members of the committee considering it as to whether or not such a procedure was constitutional. Those who upheld the action based their opinion on the clause of the Federal Constitution giving to Congress the

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2. Annals of Congress, 7th Congress, 1st Session, 1801-1802, 1349.

power to admit new states. Those who objected to it said that in no other case was a state asked to relinquish any of its powers as a condition of entry into the Union. Mr. Fearing, the Territorial Delegate, vigorously opposed the resolution on the grounds that he did not believe that Congress had anything to do with the arrangements for calling a state convention. He considered it a definite encroachment upon the rights of the people of his territory. In a letter written to Albert Gallatin, he stated that he did not think the United States had a right to annex new conditions, not implied in the articles of compact, limiting the Legislature right of taxation of the Territory or the new state.[3] In spite of the opposition, it became law on the date previously cited.

Reaction upon the Republicans of Ohio was immediate. Elated by the prospect of ridding themselves of Governor St. Clair and gaining control of the government, they campaigned vigorously for their candidates for delegates. Against this was an unfortunate repercussion of the St. Clair affair. If the people of Ohio had not been so anxious to rid themselves of a hated Chief executive, they very soon would have been able to ask for statehood without any conditions attached. The population of the proposed state was growing so rapidly that it would have,

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3. Annals of Congress, 7th Congress, 1st Session, 1801-1802, .1349.

in a very short time, passed the sixty-thousand figure set up by the Northwest Ordinance as the stage where the territory should become a state.

When the delegate had been elected according to the Enabling Act the membership of the convention proved to be overwhelmingly Republican. John Smith, wrote on November 2, 1802 that there was definitely twenty-four Republicans out of the thirty-five.[4] Thomas Worthington set the figure even higher saying that there were twenty-seven Republicans, seven Federalists, and one doubtful.[5] It may be expected, then, that this convention would write a document fully in accord with the liberal doctrines of the Republican leader, Thomas Jefferson.

The temper of the Convention was well illustrated in the meeting of Wednesday, November 3, when a motion was made and seconded that Governor St. Clair be admitted to address the gathering on those points which he deemed of importance. On the vote, there were nineteen yeas and fourteen nays. It was under such a situation that St. Clair was admitted to speak.[6]

The remarks which the Governor made before the convention proved to be his political exit. He spoke of

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4. C. E. Carter, ed., Territorial Papers (Washington D. C., 1934), III, 254, "Letter of John Smith to the President, November 2, 1802."

5. Territorial Papers, III, 257 "Letters of Thomas Worthington to William Giles, November 17, 1802."

6. Journal of the Convention, 1802, in Daniel J. Ryan, "From Charter to Constitution". Ohio Archaeological and Historical Society Publications (Columbus, 1898), V, 84-89. Hereafter cited Ryan, Journal of the Convention.

his pride that the territory had grown to the stage of statehood under his direction and exhorted the delegates to think first of the welfare of the people. Then he departed from this paternalistic approach to accuse the President and Congress of acting contrary to the Constitution in imposing the conditions of statehood upon the territory. He charged the Congress with usurpation of power and discrimination against the people of the state. He ended with a plea to the delegates to consider carefully the terms before they accepted them.[7] This address was delivered on November 3, and on the Fourteenth of December he was informed that he had been dismissed from his position of governor.[8] Thus, ended a relationship that had been most disagreeable to both parties concerned.

Following the Governor's address, the convention formed itself in a committee of the whole to discuss the motion by which they would agree that a state government should be formed under the terms specified by congress. The decision was almost unanimous - 32 yeas and 1 nay, with Ephraim Cutler, a strong Federalist, casting the sole negative vote.[9] So the verdict was made in favor of accepting the terms of Congress in exchange for statehood states.

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7. William H. Smith, arranger, The St. Clair Papers (Cincinnati 1882), II, 592-597.
8. Ibid., 599
9. Ryan, Journal of the Convention, 87.

The issue of slavery and the civil status of the Negro was the most troublesome question to confront the Convention in writing their constitution. Apparently this was anticipated because there was an unwritten agreement to keep the discussion slavery as much as possible off the floor of the convention.[10] Some agreement had to be reached since there were between one and two hundred negroes in Ohio at the time.[11]

The discussion over slavery arose in connection with the Bill of Rights. President Tiffin had referred the question to the Committee on the Bill of Rights made up of nine men with John W. Browne of Hamilton County as chairman. Browne was frankly in favor of a limited slavery being introduced. Ephriam Cutler, the Federalist, led the group in favor of abolition.[12]

The original report carried the provision forbidding slavery. The debate opened on Saturday, November 20, when a motion was introduced by Mr. Browne to amend the Bill of Rights by adding to the second section, "Nor shall any male person arrived at the age of eighteen years, be held to serve any person as a servant under pretense of indenture or otherwise, unless such person shall enter into such indenture, while in a state of perfect freedom, and on condition of a bona fide consideration, received or to be received for their service,

10. Charles J. Wilson, "The Negro in Early Ohio", Ohio Archaeological and Historical Society Publications, 1930, XXXIX, 734.

11. Jacob Burnet, Notes on the Early Settlement of the Northwest Territory (Cincinnati, 1847), 354.

12. Wilson, "The Negro in Early Ohio." 734

except as before excepted." When the motion came to a vote, it was defeated by a 21-12 vote.[13]

Immediately another motion was made to amend the same section by inserting, "Nor shall there be either slavery or involuntary servitude ever admitted in any State to be erected on the north-west side of the river Ohio, within the limits of the United States, except as above excepted. Here the yeas and nays when called showed yeas 2, nays 31.[14]

Here the issue rested until Monday, November 22 when it was moved that the section regarding electors should be amending by adding, "provided, that all male negroes and mulattoes now residing in this territory shall be entitled to the right of suffrage, if they shall within____months make a record of their citizenship." A record of the vote shows 19 yeas and 15 nays - establishing suffrage for the negro by the action.[15] Then it was moved that there should be added to the section, "and provided also, That the male descendents of such negroes and mulattoes as shall be recorded, shall be entitled to the same privilege." This proposal lost by a vote of 17-16.[16]

The next step taken was a motion to add to the

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13. Ryan, Journal of the Convention, 110
14. Ibid.,
15. Ibid., 114.
16. Ibid.,

article a section 7 which would read,. "No negro or mulatto shall ever be eligible to any office, civil or military, or give their oath in any court of justice against a white person, be subject to do military duty,. or pay a poll-tax in this state; provided always, and it is fully understood and declared, that all negroes and mulattoes now in, or who may hereafter reside in,. this State, shall be entitled to all the privileges of citizens of this State, not excepted by this constitution." This proposition passed by a 19 to 16 affirmative vote.[17]

As the situation stood on November 22,. Slavery had been forbidden; the negro had been granted suffrage, but he had been limited in his position as a citizen by being denied certain functions generally connected with citizenship. Three days later, this was to undergo change again.

Rules provided that all sections were to be read three times before final action, so according to the regulations, the fourth article, designating the qualifications of electors, was taken up and read for the third time on Friday, November 26,. when it was read, a motion was made to amend the article by striking out the section granting negroes the right to vote. Calling the roll, it was discovered that the vote was evenly divided - 17 yeas and 17 nays. It became the duty of President Tiffin to cast a vote to break the tie which he did by voting to strike out

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17. Ibid.,

the article.[18] By one vote, the negro of Ohio was denied suffrage in the Constitution of 1802.

On the same day, Section 7, previously referred to, was removed by a 17-16 vote.[19] In the final draft, the negro while denied the right to vote, could not be held in servitude other than indenture, and was granted equality in the courts. They did not have any place, or could they have umder the Constitution of 1802, in conducting the government or in making and administering the laws. As Judge Burnet wrote, "They are suffered to continue, they have a right to claim the protection of the laws of the state, and to be treated with justice and humanity, but beyond that, no claims are secured for them." [20].

The sectional division of Ohio was clearly demonstrated by the vote on the slavery issue, and it was a forecast as to the vote on the future "Black Codes" of Ohio. The Scioto settlements, Belmont county and a minority from Hamilton County voted both for the "Black Codes" and against negro suffrage.[21] These areas voting against negro suffrage were the southern areas of Ohio.

It is interesting to speculate on the question of

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18. Ibid., 122.
19. Ibid., 124.
20. Burnet, Notes, 356
21. William T. Utter, The Frontier State (The Ohio State Archaeological and Historical Society, 1942), II, 21. Hereafter cited as Utter, Frontier State.

just how much influence was brought to bear by Thomas Jefferson on the matter of slavery as it was considered by the convention. Evidence is not conclusive but there are indications that he had attempted to have slavery introduced into Ohio for a limited period. Cutler, who was a member of the committee, had no doubt that Mr. Browne's proposal was inspired by Jefferson. In his writings, he recalled that he had been in Washington when Mr. Worthington had been lobbying for statehood, and Worthington had told him that Jefferson desired just such a provision in the constitution of the proposed state. Cutler's proof was a letter which he received from Jeremiah Morrow in 1846 in which he wrote that when he went to Washington as Ohio's first congressman, Jefferson, in commenting on the constitution, had said that it would have been more judicious to have admitted slavery for a limited time."[22] Thomas Scott, Secretary of the Convention, however, did not believe that Jefferson had attempted to influence the convention on the matter.[23]

That Jefferson was interested in emancipation cannot be doubted since all of his writings indicate that. If he did attempt to have a limited slavery introduced into Ohio, what could have been his motives? Perhaps he felt that neither party, master or slave, was ready for immediate abolition. He may have thought that by permitting the extension of slavery westward, it would prevent the question

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22. Cutler quoted in Ibid., 20.
23. Ibid.,

from becoming the purely sectional one that it did. Another purpose may have been to speed total abolition by spreading the slaves more thinly over a wider area.[24]

It is also important to point out that the group rejecting Mr. Browne's proposed limited slavery clause was decidely Republican - at least 24 out of 35 subscribing to Republican theory. The leader of the opposition, the proponent of the clause forbidding slavery, was Mr. Cutler who was unquestionably the area's most confirmed Federalist. There must have been a strong sentiment in favor of abolition among the people for a group of delegates so definitely of one party to vote down the proposition supported by their leaders.

The establishment of the Judicial Department for the state brought forth more antagonism. The difficulty was created by the fact that delegates from some of the more populous counties, a distance from Chillicothe, objected to the Supreme Court being held exclusively at the seat of the government. Jealous of their local control, they were not willing to yield the claims of their own counties to another. It was soon found that a majority vote could not be had to locate the court in any one county.[25] Compr

Compromise was reached in a Supreme Court composed

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24. Benjamin S. Catchings, Master Thoughts of Thomas Jefferson (New York, 1907), 1-7.
25. Burnet, Notes, 356.

of three judges who were appointed by the legislature for a term of seven years. This court was required to hold a session once a year in each county seat. In each county there were also to be sessions of the courts of Common Pleas. The state was divided into three districts, and a presiding judge appointed for each. A judge visited each county seat three times each year, there holding court with two or three associate judges who were residents of the county. Besides these two courts, there were justice courts to be established in each township. The legislature was empowered to establish other courts as it deemed necessary.[26]

The result of this organization was that judges were required to be on horseback half of the year, and were compelled to decide most important questions of law in great haste, frequently in frontier counties where there was no access to law books. Since the same judges were not always present, sometimes the same point of law was decided differently in different counties. So unsatisfactory was the system that the legislature of Ohio in 1821 provided that once each year a session of the Supreme Court was to be held at the seat of the government to consider and decide questions reserved in the counties and sent up by order of the Court.[27]

One liberal provision written into this constitution was viewed with considerable apprehension. Militia

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26. Ryan, Journal of the Convention, 140-142. "Constitution of Ohio, 1802", Art. III.

27. Burnet, Notes, 356.

officers were to be selected by the legislature, but to be named in election by the grade of officer or men next beneath them. Military men were especially concerned over the pressure to which the officers would be subject under the system.[28] This, too, may have been brought about by the authoritarian procedure of Governor St. Clair. For a long time, militia officers had been under the close supervision of the Chief Executive.[29].

Ohio's first constitution was not submitted to the people for ratification on the decision of the members of the convention. Saturday, November 13, the question of taking the constitution to the people was brought up before the delegates. It was decisively voted down by a 27 to 7 vote. Those who favored a vote on it were Cutler, Gilman, McIntyre, Putnam, Reily, Updegraff and Wills.[30] It is significant to notice that these people were led by Cutler, the staunchest Federalist at the Convention.

Mr. Cutler spoke for those who were in favor of the vote. His reasons for desiring the referendum were spoken in these words, "The mouths of the clamorous would be stopped, and the minds of the judicious would be satisfied."[31] Perhaps just a faint hope remained alive

28. Ibid., 359
29. Randolph C. Downers, Frontier Ohio, 1788-1803 (Columbus, 1935) 248
30. Ryan, Journal of the Convention, 97.
31. Emilius O. Randall and Daniel J. Ryan, History of Ohio (New York, 1912) 123.

for Mr. Cutler that the people would reject the work of the convention.

Jacob Burnet felt that there were two chief reasons for the rejection of the proposal: 1. Fear that the people would repudiate the constitution if it were submitted to them in the form in which it had been drawn up. 2. Over-anxiety to get the new government into operation as soon as possible as it was understood that all important offices to be created would be filled by members of the convention.[32]

Although one would expect a frontier, Republican group to submit their work for the approval of the people, it was not extraordinary or revolutionary that they did not. Remember that it had not been an established custom, nine of the thirteen original state constitutions not being submitted for approval. There was no question of the convention having authority to put the completed instrument into effect for the Enabling Act, as explained before, had specifically endowed it with that power. The convention, itself, was astrictly respresentative body, elected by the people after a campaign based upon the issues which would face the members. That it was approved by the membership is shown by the unanimous vote for adoption cast on November 29, 1802.[33]

The Ohio Constitution of 1802 established a state

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32. Burnet, Notes, 353
33. Ryan, Journal of the Convention, 131

government in which the Legislature was to be supreme. It was composed of two houses, a House of Representatives and a Senate. Representatives were to be chosen annually by citizens of each county on the second Tuesday of October. Representatives were to be at least twenty-five years of age, citizens of the United States, inhabitants of Ohio, and residents of the county from which elected for one year preceding their election. Senators were chosen biennially, by voters qualified to vote for Representatives, one-half to be chosen each year. Their qualifications demanded that they be at least thirty years of age, citizens of the United States, and residents for two years of the county or district from which they were chosen. Section 22 of Article I obligated them to attach an accurate statement of the receipts and expenditures of the public money to the laws each year. Power of impeachment was given to the House with the trial and power of conviction the right of the Senate.[34]

The Executive Department was organized by Article III. The governor was chosen by the electors of the General Assembly. He had a two year term of office, but was not eligible more than six years in eight. Qualifications stated that the Chief Executive was to be at least thirty years of age, a citizen of the United States for twelve

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34. Ibid., 133-137 (Art. I)

years, and an inhabitant of the State for four years preceding the election.

The governor's powers were so limited and restricted as to be almost nominal. It was his duty to recommend to the consideration of the Assembly such matters as he deemed important. He would fill vacancies in office which occurred during the recess of the General Assembly, but the appointments would expire at the end of the next session of the Legislature. He held the power to reprive or pardon convicts of the State. The Governor could also call special sessions of the Legislature, by proclamation, stating to them when they convened the purpose of the special session. He had no power of veto, and could not interfer in any way with the actions of the Legislature. Although he was technically the Chief Executive, he was powerless to remove any officer no matter what his conduct had been.[35] This provision for a weak, ineffectual Executive is usually attributed to the actions of St. Clair more than to any other single factor. In light of grants of power made to the governors by the first state constitutions, it does not appear that Ohio departed from the custom of the day in denying the governor great power.

The constitution of 1802 was very liberal in its provisions for voting. The franchise was extended to almost all adult white males. The restrictions imposed were that the individual was to be at least twenty-one years of age, a resident in the state one year prior to the election, and

35. Ibid., 138-140 (Art. II)

pay or be charged with a state or county tax. Anyone above twenty-one who was compelled to work on the township or county roads was to be allowed to vote.[36] All elections were to be held by ballot; a provision included in the first constitution of Kentucky and the constitution of Tennessee.

Article VIII of the constitution contained the Bill of Rights. Section 1of the article was a paraphrase of Jefferson's statement of the Doctrine of Natural Rights in the Declaration of Independence and read, "All men are born equally free and independent...". Section 2 abolished slavery in Ohio; section 3 guaranteed freedom of worship, while section 7 declared that a poll tax was grievous and oppressive and should not be levied for county or state purposes.[37] Records in the Journal of the Convention show that the statement against the poll tax was approved by a vote of 26-7.[38] An effort was made on November 20, 1802 to insert a proposal saying, "No person who denies the being of a God or a future state of rewards and punishment shall hold any office in the civil department of this state." This suggestion, similar to clauses found in several of the early constitutions, was defeated by a 30-3 vote.[39]

One unusual feature of Ohio's Bill of Rights was the section which outlined a philosophy underlying the

36. Ibid., 142 (Art. Iv)
37. Ibid., 147-151 (Art. VIII)
38. Ibid., III
39. Ibid.

ideal criminal code. According to this philosophy, penalties should be in proportion to the nature of the offense. If, as it says, punishment is the same for all crimes, people will forget the distinction between crimes and will commit the most serious with as little regard as they commit minor offenses. These frontier constitution-makers further theorized that the design of punishment is to reform, not to exterminate mankind.[40] We, as modern Americans, could profit from the advise of these Ohioans of 1802.

Neither was the question of education forgotten. Copying from the Ordinance of 1787, the delegates stated the belief that, "Schools and the means of instruction shall forever be encouraged by legislative provision not inconsistent with the rights of conscience". The liberality of the group was demonstrated by their acceptance of Section 25 which stipulated that no law should be passed to prevent equal participation in educational institutions.[41]

This constitution established a government which had a weak executive, a half-starved judiciary, and an all-powerful legislature. It embodied in it the favorite dogma of liberal political thinkers of the day; give the legislature extensive powers, but hold it in check by frequent elections. The code reflected in it the organic laws of the other states and the results of the experiences of political leaders of other areas. It was the result of

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40. Utter, Frontier State, 23
41. Ryan, Journal of the Convention, 151

adaptation of what had happened in other states to the particular situation in Ohio.

Comparison with the fundamental laws of other states indicates that perhaps the Tennessee Constitution had played an important role in Ohio. This was particularly true in the provisions for governor. Both denied veto and appointive power to their chief executive.

Close friendships between people of Ohio and other states exerted influence also. Nathaniel Macon, leader of the Republicans in North Carolina and speaker of the House of Representatives furnished advice to his friend, Thomas Worthington, which carried great weight at the Convention. During the summer preceding the meetings, Worthington had written, "You promised me you would be so obliging as to write me and point out such parts of your constitution as had been found by experience to be deficient". Macon's reply of September 1, 1802, recommended these principles: 1. Weal executive, 2. Strong legislature with large appointive powers. 3. A system of election in the militia. 4. Publication of state expenditures.[42] All of these principles were incorporated into Ohio's constitution. This is an indication that either Macon's advise was followed by the constitution makers or he had summarized current ideas already accepted by Ohioans. Evidence seems to point to the latter.

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42. Utter, Frontier State, 17

A further indication of factors influencing the work of the Ohio convention was a letter written by Mr. Cutler in which he observed Judge Byrd, who was secretary of the territory, was at the commencement of the Session looked to by that party (The Jeffersonians) as the one to draft the constitution. He happily approved of the Tennessee constitution, which was the most recent one to which we had access.[43]

43. Ibid., 16

CHAPTER V

CONCLUSION

The writing of the constitutions for the first frontier states was a part of a long, slow evolutionary process. It was not set apart, separated from the political growth of the Nation as a whole. It was not a revolutionary process in which all of the traditions were put aside and new ones substituted for them. There were no radical departures from the systems set up by the Original Thirteen States.

The Constitutions of the first Thirteen States reflected well the political philosophies of the day. They provided the type of government structure for which the people of the day were ready. Changes to liberalism, or conservatism, come as a society is ready for them. Leaders may theorize, and they may preach, but the time must be right for their theories to be accepted.

Were the first state constitutions undemocratic? Perhaps by our standards set up by an urban, industrialized society, some of the provisions would seem to be oppressive for some groups. Their society, however, was an agricultural society with a population many times smaller than ours. To be fair, judgment should be based upon situations existing at that time.

Did the first frontier states depart radically from the practices of the first states? By comparing the

constitutions written during the first twenty-five years of the history of our country, it can be shown that they did not; in fact, there was a tendency to copy provisions of constitutions already familiar to them.

Looking first at the qualifications for electors, one notices few unusual development. Right down the list of states, the age of 21 was set as the first requirement. Residence qualifications varied from six months to 2 years, with Kentucky and South Carolina being the only two with the two year requirement. The frontier states, with the exception of Tennessee dropped the property qualifications for voting. Kentucky and Ohio limited voting to whites, patterning from Delaware and South Carolina. Ohio retained the qualification whereby the voter must pay or be charged with a state or county tax. Several states had used this provision.

There is little difference noted between the religious qualifications found for office holders in the first states and those found in frontier states. Vermont copied the Pennsylvania provisions word for word; Tennessee followed South Carolina in the matter, and Kentucky and Ohio did not include such a provision.

Most of the constitutions studied were based upon the principle of a weak executive and a strong legislature. This practice was followed by the first states as well as the frontier states. This is in accordance with the

theory of giving to the representatives of the people the greatest share of power and then make them responsible to the people through frequent elections. It should be noted that by the time Kentucky and Tennessee began to write their constitutions, a movement was underway in the states to provide the governor with greater power. This, too, was reflected on the frontier.

In the process of voting, Tennessee and Ohio followed Delaware, Massachusetts, New Hampshire, and New York in using a ballot or a written vote. Kentucky, in its first constitution, provided for the ballot, but returned to viva voce voting in its second. This seems to have been an almost evenly divided issue. Georgia, after having used the ballot according to both their 1777 and 1789 constitutions, provided for vive voce voting in 1798. This may have had some influence on Kentucky's action in 1799.

At times, previously written documents served as models for new constitutions. Vermont copied its first constitution directly from that of Pennsylvania. Ohio's constitution was definitely influenced by those of Tennessee and North Carolina. Tennessee's first government differed little from that of North Carolina. Kentucky modeled its constitution after Virginia's and the Federal Constitution.

Well known authors of the Revolutionary Period were influential in making the first state constitutions. John

Adams became the author of the Massachusett's constitution of 1780. Benjamin Franklin was President of the Convention which drew up Pennsylvania's first framework of government. Letters written by these men and others to friends on the frontier carried messages of advice on government. Frequently, leaders on the frontier sought this advice from friends back home. More often than not, the advice sought was accepted.

A comparison of the processes by which these codes were drawn and adopted discloses great similarity again. Only one of the states through the adoption of the Ohio Constitution of 1802 submitted it's completed document to the people. The frontier did not depart from the procedure of having the convention, after drafting the constitution for the state, put it into effect by its approval.

What was the relationship between the first thirteen state constitutions and those of the first frontier states? They servedaas guides and models. They demonstrated what was workable and what could not satisfactorily be employed. They were all part of the larger development; and development of the state constitution as we know it today.

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This group of sources proved to be the most valuable in research for this work. The greatest volume of material used in the final writing of this paper was obtained from them. Since there was no interpretation made of material in these books, there was no possibility of accepting opinion as fact.

II. Memoirs, Works, and Contemporary Accounts

This series of references were most interesting to use and provided first hand accounts of events being studied. However, care had to be exercised in the use of material from some of them since memory is not always accurate. The collections of letters and other source material were very helpful and convenient to use.

III. Convention Manuals

These works were useful in so far as they included records of early conventions, discussions relating to dissatisfaction with existing constitutions, and comparisons with other state constitutions. The writer, however, used very little material from these sources.

SECONDARY SOURCES

I. Periodicals

Those references were, for the most part, used very sparingly. Much personal interpretation is used in preparing material for periodicals. Frequently this may be based on cursory study of available sources. Therefore, a careful check was made of all material used from a periodical.

II. Books

This group of works served as sources of background material for the main study. Undisputed facts were used from these, but care was exercised in accepting opinions expressed in the volume.

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APPENDIX

QUALIFICATIONS OF ELECTORS AS PRESCRIBED BY LAW

Mass., March 23, 1786 - Freeholders who pay one single tax, besides the poll, a sum equal to 2/3 of a single poll-tax. This was for voting in town affairs, not in state elections.

Rhode Island, 1762 - 21 years of age, Inhabitants, Forty Pounds in realty, or forty shillings per annum rent, or the eldest son of a freeholder.

Connecticut, 1715, 21, Realty - Forty shillings per annum, or forty pounds in personal estate.

New York, March 27, 1778. Every mortgager or mortgagee in possession, and every person possessed of a freehold in right of his wife, vote viva voce for senators and assemblymen, by ballot for governor and lieutenant-governor.

New Jersey, February 22, 1797 - 21, Free inhabitants having fifty pounds property, and 12 months in the county. Women, aliens, and free negroes, thus qualified, voted.

Pennsylvania, February 15, 1799 - 21, citizens of the state 2 years, paying state or county tax 6 months before the election; sons of electors to vote at 21 without payment of the tax.

Maryland, Oct., 1785; Dec. 31, 1796 - Free negroes not to be electors.

Virginia - Law of 1781 - Poll tax, 1/2 bu. wheat, or 5 pecks pats, or 2 pounds sound bacon. Repealed November, 1781,

and made 10 shillings.

South Carolina - October, 1759 - Elector, free white man possessing settled freehold estate, or 100 acres unsettled, or sixty pounds in houses, or paying a tax of 10 shillings.

Francis N. Thorpe, Constitutional History of the American People, I, 96.

III

MASSACHUSETTS CONSTITUTION OF 1780

Chapter V Section II

Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties, and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislators and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections and generous sentiments among the people.

IV

MASSACHUSETTS CONSTITUTION OF 1780

Chapter I, Article III, as written by John Adams

III. Good morals being necessary to the preservation of civil society; and the knowledge and belief of the being of God, His providential government of the world, and a future state of rewards and punishments, being the only true foundation of morality, the legislature hath, therefore, a right, and ought to provide, at the expense of the subject, if necessary, a suitable support for the public worship of God, and of the teachers of religion and morals; and to enjoin upon all the subjects an attendance upon their instructions at stated times and seasons; provided there be any such teacher on whose ministry they can conscientiously and conveniently attend.

Chapter I, Article II, as amended by the Convention

III. As the happiness of a people, and the good order and preservation of a civil government, essentially depend upon piety, religion, and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instruction in piety, religion, and morality, therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall from

time to time, authorize and require the several towns, parishes, precincts, and other bodies politic or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.

[redacted]

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