The Peoples Liberty

A Commentary on
Constitution of the State of New Hampshire

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Fourth Edition
Original, December 23, 2006
Updated November, 2007

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

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

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

The first Constitution of the State of New Hampshire was put into force by the Legislature in January of 1776. It was the first Constitution of an independent State that had originally been part of the British Empire. It was a temporary Constitution that looked forward to a reunification with Great Britain. By 1779 it was apparent that no reunification was pending and that a permanent Constitution was necessary. Therefore, John Langdon, Speaker of the House organized the worlds firs Constitutional Convention, implementing government by consent.

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The Constitution proposed in 1779 had a very brief Bill of Rights containing only seven articles, the first of which declared our independence from Great Britain. The Form of Government was the same as had currently existed with a General Court comprised of the Executive Council, the President of which was the Chief Executive, and a House of Representatives. This Constitution was rejected by the people in 1780.

The second Constitutional Convention proposed a much more extensive Constitution. It had a Bill of Rights that closely resembles our current Bill of Rights. The proposed Form of Government was substantially different. The Chief Executive, the Governor, was chosen directly from the people, the Governor was provided with a privy council, the Executive Council numbering five also elected directly by the people. The legislative power was vested in a General Court comprised of a Senate and a House of Representatives. This Constitution was also rejected by the people in 1782.

The third Constitutional Convention proposed a Constitution with the same Bill of Rights, but a Form of Government between the previous two. The legislative power was vested in a General Court comprised of a Senate and House of Representatives. The executive power was extracted from the Legislature. The President of the State was the President of the Senate, chosen by the Senate and a voting Senator. The Presidents privy council, the Executive Council was comprised of two Senators and three Representatives, chosen by the Legislature. This Constitution was approved in 1784.

In 1791 there was a regular Constitutional Convention which proposed over 100 amendments. Included in these amendments were changes to the Executive that made it the same as that proposed in 1781. These many of these amendments were adopted including the changes to the Executive in 1792. The changes were so extensive that the Constitution was enrolled in parchment as a new Constitution. This is the oldest surviving parchment edition of the Constitution of the State of New Hampshire. Subsequent amendments have been adopted in relative handfuls. Therefore, no new Constitutions have been enrolled.

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PART FIRST- BILL OF RIGHTS

Article l. [Equality of Men; Origin and Object of Government.].
All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.
June 2, l784

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

[Art.] 2. [Natural Rights.]
All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.
June 2, l784
Amended l974 adding sentence to prohibit discrimination.

This Article borrows language directly from the Declaration of Independence in the definition of liberty which ties it directly to Articles 12 and 28 regarding property. It is also important that these rights are natural, essential and inherent; that is they preexist government. The latter phrase regarding discrimination says that judgment and punishment of a person can not be augmented based upon who they are. This is generally understood in regard to the accused, but in fact also makes punishment based upon whom the victim is, unconstitutional. It embodies the evangelical principles person sovereignty, responsibility and authority and that God is no respecter of persons (1974). It is a clear statement that there is a right to life. It also shows the uniqueness of governmental philosophy in northern New England as only Massachusetts, New Hampshire, Pennsylvania and Vermont recognized the right to defend life and protect property. This is a direct refute of the concept that the king actually owns all.

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

[Art.] 2-a. [The Bearing of Arms.].
All persons have the right to keep and bear arms in defense of themselves, their families, their property and the State.
December l, l982

Article 2-a is the embodiment of the second amendment to the Constitution for the United States of America. It was added in response to laws restricting gun ownership. In the Federalist Papers, Madison outlines how gun ownership was what enabled the success of the war for independence, and is necessary to resist a tyrannical government, as outlined in Article 10. It is also important that unlike the Constitution for the United States of America, our Constitution specifies the reasons for which to keep and bear arms and defines it as a personal right. Most significant is that the first call for an amendment to the Constitution for the United States of America protecting the right to keep and bear arms was made in the ratification by New Hampshire on June 21, 1788 which also included a list of proposed amendments. New Hampshire made their own declaration of this right in 1982 after they began to see the general government infringe upon the right.

[Art.] 3. [Society, its Organization and Purposes.]
When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void.
June 2, l784

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

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[Art.] 4. [Rights of Conscience Unalienable.]
Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.
June 2, l784

Article puts rights of conscience above all other rights because there is no protection which can be traded. This ties directly back to Article 3. Many rights of conscience are enumerated in separate Articles; therefore, this would refer to unremunerated rights. An example of such a right would be the right of a pharmacist to not dispense abortifacients. What is more important is what is said about natural rights. Natural rights are those which would exist without this or any government, they come to men naturally. These are also known as negative rights. Those upon which the government can not infringe. Positive rights or civil rights are those created by government, they are also known as benefits or privileges of society. Another common distinction is financial. Generally, it costs nothing for government to not infringe upon your natural right, but privileges of society always cost something and can bankrupt a society. It embodies the evangelical principle of God before government.

[Art.] 5. [Religious Freedom Recognized.]
Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship.
June 2, l784

Article 5 is the first enumerated right of conscience and codifies the right to practice any religion as long as it does not interfere with the rights of others. Therefore, you can not worship in any way that jeopardizes the safety of another.

It is extremely important that the founders codified Article 5, the original form of Article 6 requiring teachers in the public schools to be Protestant, Article 11 the qualifications to vote, and the religious qualification of Protestant faith in Part 2 for Governor, Senator, Executive Councilor and Representative at the same time, and therefore, according to Article 37 there is no conflict between these Articles. They saw no conflict between freedom of worship and religious qualification for certain governmental activities and offices. It proves that they believed that the States have the right to establish a religion if they choose, and that, that right continued beyond the creation of the United States of America. It is also important to realize that in the original Constitution of New Hampshire religious protection in Article 6 was only extended to Christian denominations. It embodies the evangelical principle of personal relationship with God.

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[Art.] 6. [Morality and Piety.]
As morality and piety, rightly grounded on high principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, therefore, the several parishes, bodies, corporate, or religious societies shall at all times have the right of electing their own teachers, and of contracting with them for their support or maintenance, or both. But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination. And every person, denomination or sect shall be equally under the protection of the law; and no subordination of any one sect, denomination or persuasion to another shall ever be established.
June 2, l784
Amended l968 to remove obsolete sectarian references.

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

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

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

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

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

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Article 6 originally tied to the qualifications for office in that it specified the morals of the State as Evangelical (non-liturical Protestant). It also defined purse of publics schools to be for teaching of morality and piety by Protestant teachers. These are the public schools referred to in Part 2, Article 83. It is interesting to note that in the definition of public schools (schools established to teach Evangelical principles) was only erased in 1968. No other definition was substituted; therefore, the definition has not changed. This means that when the term public schools appears in Part, Article 83, the definition has not changed. Those are still the schools that were to be supported by the towns, and absent a positive instruction for the State to pay for public schools, the State has no authority to pay for education. There is no such instruction

The use of the term evangelical imparts a host values. It is both a theology and a philosophy. Evangelical theology is founded on three legs: personal relationship with God; salvation by grace, not works; and supremacy of scripture. Evangelical philosophy extended to both church government and civil government. It advocated a lack of hierarchical structure, and struck at the root of the divine right of kings. If the founders had simply wanted to impart social morays, they could have said Christian. If they had only wanted to add personal accountability before God, they could have said Protestant. But, they said Evangelical which adds personal responsibility and authority. Liturgical churches appoint their local pastors, whereas, Evangelical churches elect their pastors either directly or by representatives. In Evangelical philosophy the leader is the servant of all, that is, the Legislators and Magistrates are the servants of the people. That this would lay in the hearts of men due subjection does not refer subjection to government. Article 10 shows that they were clearly more concerned with the people being unduly subject to government rather that not sufficiently subject. Therefore, in view of Evangelical principles this must refer to man subject to God and leaders subject to the governed. This would give the best and greatest security to government because legislators and magistrate, conscious of their submission to God and the people would never create laws nor administer laws in a manner that would inspire rebellion.

This creates an important synergy between Article 6 and Articles 1 through 5 and 7 through 10:

> Article 1 states that all legitimate government originates with the people and is found with their consent. This makes the government clearly subordinate to the people. Evangelical principle extend that authority through out the life of that government.
>
> Article 2 defines and an inherent right the right to enjoy and defend life and liberty and to acquire, possess and protect property. Protestant principles impart the right to enjoy, acquire and possess. Evangelical principles impart the right to defend and protect
>
> Article 3 the right of protection in exchange for surrender of sovereignty. Therefore, prior to the protection sovereignty was absolute before God.
>
> Article 4 describes that certain natural rights, articles of sovereignty, which the State can never infringe upon. This underscores and codifies the supremacy of the people over any government, religious or civil.
>
> Article 5 states that the State can not infringe upon religious freedom. This codifies the personal relationship between each man and God.

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Article 6 states that the fundamental principles of he Constitution are Evangelical principles and outlines the necessity to teach them to our children.

Article 7 states that the State is sovereign and independent. Evangelical principles expressed in Articles 1, 2, 3, 4 and 8 put personal sovereignty first, before the State, and Article 7 puts State sovereignty before national sovereignty above national sovereignty; therefore, personal sovereignty also precedes national sovereignty. This is reflected in the tenth amendment to the Constitution for the United States of America.

Article 8 states that all power resides in, originates in and is derived from the people and that all elements of government are accountable to the people. This makes the people (under God) the sovereigns of the State, and is the embodiment of servant leadership.

Article 9 states that there shall be no hereditary offices. This is the repudiation of the divine right of kings.

Article 10 states that when government is perverted from its original purpose, for which consent was given, that it ought to be reformed or replaced. This is the supremacy of the people over the government.

The supremacy of scripture would also lead to the premis that all State laws must comply with scripture. Exodus 21:22 requires the death penalty of anyone who hurts a woman with child so that the child dies. Therefore, one can rightly extend the enjoyment and defense of life to extend to the unborn child. While the term evangelical has be been replaced with high, the phrase enjoy and defend life and liberty has been unaltered, and therefore, retains its original meaning.

It is also important to realize that the removal of the word Evangelical does not change the connection that our Constitution has to Evangelical principles and the Geneva Bible. Though the identity of the principles is cloaked it does not change their identity. No other world view (Hindu, Buddhist, Taoist, Islam, Catholicism, Protestantism, or Humanism) would result in these principles. They all embrace or at least allow for caste societies. Only Evangelical principles result in: legitimate government originating with the people, the governors being subject to God and to the governed, unalienable natural rights, no divine right rulers and the right to throw off a government that supplants God. A rose by any other name, or no name at all, is still a rose.

It is important to note that it was Article 6 which gave the Legislature power to authorize public schools in the towns and protected local control of those schools. The primary purpose of those schools was to teach Evangelical principles, the fundamental principles of the Constitution, so that the people would recognize and preserve good government.

In order to best understand how the 1968 amendment changed the nature of public education in New Hampshire it is useful to see the actual changes to the Article. This is shown below. The language removed is struck through and the language added is shown in bold.

As morality and piety, rightly grounded on ~~evangelical~~ ***high*** *principles, will give the best and greatest security to government, and lay in the hearts of men the strongest obligations to due subjection; and as the knowledge of these, is most likely to be propagated through a society ~~by the institution of the public worship of the Deity, and of public instruction in morality and religion;~~ therefore, ~~to promote those important purposes , the people of this State have a right to~~*

~~*empower, and do hereby fully empower the Legislature to authorize from time to time, the several towns, parishes, bodies-corporate, or religious societies within this State, to make adequate provision at their own expense, for the support and maintenance of public Protestant teachers of piety, religion and morality.*~~

~~*Provided notwithstanding, that*~~ *the several* ~~*towns,*~~ *parishes, bodies corporate, or religious societies, shall at all times have the exclusive right of electing their own* ~~*public*~~ *teachers, and of contracting with them for their support and maintenance.* ~~*And*~~ ***But*** *no* ~~*portion of any one particular religious sect or denomination*~~***, person*** *shall ever be compelled to pay towards the* ~~*support of the teacher or teachers of another persuasion*~~***, schools of any*** *sect or denomination. And* ~~*E*~~***e****very* ***person****, denomination* ~~*of christians*~~ ***or sect*** ~~*demeaning themselves quietly, and as good subjects of the State*~~ *shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.*

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

The Article was changed without complete forethought. That is to say, the motive was not in what was added , or what it would mean, but in what was removed. There is no definition of what constitutes high principles. At least in the Constitutions of other States they use the term "fundamental principles of the Constitution" as ours does in Article 38. The first sentence becomes incomplete the first portion ending in a dangling participle. There is no longer any statement of how to propagate these principles throughout society. One is left with the vague sense that some how the right of parishes, bodies corporate and religious to contract with their own teachers is some how integral to the propagation of high principles.

When the Constitution was amended in 1968 the power of Legislature to authorize schools in the towns and the protection of local control in the town schools was removed. This could probably be construed to prohibit them from authorizing Charter Schools and throws into question the legitimacy of the regional schools formed since 1968. It also throws into question the authority of the Legislature to regulate the administration of public schools in any manner.

In understanding the effect of the 1968 amendment on local control of education, the definitions of the terms is needed. The following definitions are from "A Rhetorical Grammar", Thomas Sheridan, 1783.

parish - the particular charge of a secular priest; a particular division or district, having officers of its own, typically a church
town - any walled collection of houses, any collection of houses greater than a village
bodies corporate
body - a corporation (a body politic)
corporate - united in a body or community
township - the corporation of a town

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It can be seen that the original intent was very broad. By excluding the term township, the entities which could have a school was not limited to incorporated towns or cities, but was meant to include any collection of families. It is not clear why the term towns was removed. However, the term bodies corporate still maintains idea that any group of people, not limited by living in close proximity, can form a school. This would clearly admit the idea of school districts as separate from towns. During the late 1990s and till 2007 the Part 1, Article 6 has been presented with a comma between bodies and corporate. This destroys the inclusion of school districts for local control. This error in presentation has been corrected in 2007.

The inclusion of local control in our Constitution constituted a positive reservation of rights relative to the Tenth Amendment of the Constitution for the United States of America, not only for our State, but for all States. The presence of the protection of local control of education is inconsistent with the federal department of education. An important question would be whether or not other States provided for local control of education? If so, was it removed and when? Of the 14 original States, only Massachusetts and New Hampshire had such a provision; Maine, also a daughter of Massachusetts has no such provision. Massachusetts removed their protection of local control in their 11th amendment adopted in 1832. This means that New Hampshire's Constitution is the only apparent impediment to the nationalization of education.

[Art.] 7. [State Sovereignty.]
The people of this State have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled. June 2, l784

Article 7 is extremely important as an enumerated right. It specifically recognizes the preeminence of the laws of the United States of America. However, taken with Article 10, it clarifies the intent of the of the people of New Hampshire that the Constitution for the United States of America is severable if the United States of America abuses its powers. The right, and obligation, of the people, or their political entity New Hampshire, to throw off tyrannical government, Part 1, Article 10, was not removed when they amended the Constitution of the State of New Hampshire to accommodate the ratification of the Constitution for the United States of America. It is also important to note that the powers transferred to the United States of America are delegated conotating an inferior status to the United States of America. This is an exact parallel to Articles 3 and 12 which equates a surrender of rights to protection. It embodies the Evangelical principle of personal sovereignty, responsibility and authority.

[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.]
All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.
June 2, l784
Amended l976 by providing right of access to governmental proceedings and records.

Article 8 shows that from the inception the people of New Hampshire always recognized the submission of the government to the governed, consistent with Article 1. Sovereignty or independency is the origin of power Sovereignty or independency is the origin of power. Sovereignty is defined as the supreme and independent power or authority in government as claimed by a State or community. A sovereign is a group or body of people or a State having sovereign authority, having supreme rank, power or authority. If all power resides in, originates in, and is derived from the people, and if all the people are equally free and independent, then the people are the sovereigns of the State, and therefore, of these United States.. That the members of government are the substitutes and agents of the people embodies the Evangelical principle of servant leadership. The 1976 amendment resulted in the Right to Know laws.

[Art.] 9. [No Hereditary Office or Place.]
No office or place, whatsoever, in government, shall be hereditary - the abilities and integrity requisite in all, not being transmissible to posterity or relations.
June 2, l784

Article 9 ties directly to Article 2 (that all men are born equally free and independent) and Article 10 (that government is not for the emolument of any man, family, or class of men). It is interesting to note that the Constitutions of all the States included this prohibition. This together with the discussions in the Federalist Papers showed many aspects of the Constitution for the United States of America were derived from the Constitutions of the States. It embodies the Evangelical principle of no divine right kings; that God is no respecter of persons.

[Art.] l0. [Right of Revolution.]
Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.
June 2, l784

Article 10 ties back to Article 1 in both the sovereignty of the people and the purpose of government, Article 2 in the common benefit and Article 9 in prohibiting emoluments. It is this Article that prohibits special grants to earn money such as the casino gambling and licensing professions. This Article also is the embodiment of The Declaration of Independence; establishing the obligation to resist tyranny. It is noteworthy that the Constitution of the State of New Hampshire was subject to a Constitutional convention in 1791, to amend it after the adoption of the Constitution for the United States of America, and Article 10 was retained, unaltered. Therefore, we can assume that the ratifies of the Constitutions assumed they retained the right to throw off the Government of the United States of America should it be injurious to their liberty. It embodies the evangelical principle of personal sovereignty, responsibility and authority. One of the most important aspects of this Article is that the word ought is the moral imperative. The people have an obligation to throw off tyrannical government. As such, this is the summation of the preceding Articles. It demonstrates that the due subjection in Article 6 is not the subjection of the people to the government, but of the government to the people (Article 8), and of both to God.

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[Art.] 11. [Elections and Elective Franchises.]
All elections are to be free, and every inhabitant of the State of l8 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile. No person shall have the right to vote under the Constitution of this State who has been convicted of treason, bribery or any willful violation of the election laws of this State or of the United States; but the supreme court may, on notice to the attorney general, restore the privilege to vote to any person who may have forfeited it by conviction of such offenses. The General Court shall provide by law for voting by qualified voters who at the time of the biennial or State elections, or of the primary elections therefor, or of city elections, or of town elections by official ballot, are absent from the city or town of which they are inhabitants, or who by reason of physical disability are unable to vote in person, in the choice of any officer or officers to be elected or upon any question submitted at such election. Voting registration and polling places shall be easily accessible to all persons including disabled and elderly persons who are otherwise qualified to vote in the choice of any officer or officers to be elected or upon any question submitted at such election. The right to vote shall not be denied to any person because of the non-payment of any tax. Every inhabitant of the State, having the proper qualifications, has equal right to be elected into office.
June 2, l784
Amended l903 to provide that in order to vote or be eligible for office a person must be able to read the English language and to write.
Amended l9l2 to prohibit those convicted of treason, bribery or willful violation of the election laws from voting or holding elective office.
Amended l942 to provide for absentee voting in general elections.
Amended l956 to provide for absentee voting in primary elections.
Amended l968 to provide right to vote not denied because of nonpayment of taxes. Also Amended in 1968 to delete an obsolete phrase.
Amended 1976 to reduce voting age to 18.
Amended 1984 to provide accessibility to all registration and polling places.

Article 11 describes the qualifications for the right to vote. It is important that originally this Article had only the first six words and the last sentence. The intervening language consists of specific causes for which the suffrage can not be denied and must be denied. In reference to the recent controversies, it states the equal right to office and establishes exclusive jurisdiction over absentee ballots to the General Court. The obsolete phrase removed in 1968 is not delineated, and as the Article still contains all of the original language, it is probably the qualification of reading English, added in 1903, that was removed. The positive qualifications for franchise are inhabitancy and age. The concept of free elections flows out of the Magna Carta and is reiterated in the English Bill of Rights 1689.

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The meaning of inhabitant as a qualification for the right to vote (suffrage) is being questioned and is being defined in law such that it alters the Constitution; which is unconstitutional. In order to understand the true intent of the founders, the definitions of the words as they understood them are important. Following are definitions from Thomas Sheridan's "A Rhetorical Grammar", London, 1780. .

Inhabitant: Dweller, one that resides in a place.

Dwell (v): to inhabit, to live in a place, to reside, to have a habitation.

Habitation (n): place of abode, dwelling.

Abode: Stay; continuation in a place.

Since these definitions are hardly exclusionary, we can look for guidance in Webster's 1828 "Dictionary of the American Language". This is especially important as Sheridan's does not include the word domicile, but Webster's does.

INHAB'ITANT, n. A dweller; one who dwells or resides permanently in a place, or who has a fixed residence, as distinguished from an occasional lodger or visitor

1. One who has a legal settlement in a town, city or parish. The conditions or qualifications which constitute a person an inhabitant of a town or parish, so as to subject the town or parish to support him, if a pauper, **are defined by the statutes of different governments or states.**

Inhabitant is defined in Part 2, Article 30 as being an inhabitant of where one is domiciled. This is a higher level of definition than can be achieved in a statute.

RES'IDENT, n. One who resides or dwells in a place for some time. A B is now a resident in London.

DOMICIL, n. [L., a mansion.] An abode or mansion; a place of permanent residence, either of an individual or family; a residence, animo manendi.

DOMICIL, DOMICILIATE, v.t. To establish a fixed residence, or a residence that constitutes habitancy

DOMICILED. Having gained a permanent residence or inhabitancy.

Clearly, at least in the American context, the fundamental qualification for voting and holding office was to be a permanent resident. Domiciled is used to define inhabitant in Part 2, Article 30. Domicile is clearly defined as a place of permanent residency. Furthermore, it is the qualification for being elected a Representative or Senator that one be an inhabitant of the District. An absentee is a inhabitant who is residing elsewhere temporarily. However, they still vote where they are permanent resident, not where they are a temporary resident.

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[Art.] l2. [Protection and Taxation Reciprocal.]
Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the Representative body of the people. Nor are the inhabitants of this State controllable by any other laws than those to which they, or their Representative body, have given their consent.
June 2, l784.

Article 12 ties the protection of ones liberty and property to the expense and execution the thereof. This principle was used in the original apportioning mechanisms for the two chambers of the Legislature. The first chamber, the Senate, represented those who paid taxes. The second chamber, the House of Representatives, represented the people who were to be protected. The last phrase in the first sentence establishes justification for mandatory service in the Militia.

The second sentence is the protective statement of eminent domain, and as it uses the term property, not real estate, or estate; therefore, it extends to protection of chattel and money. This second sentence flows out of the Manga Carta.

The last sentence in Article 12 is one of the most elegant in the Constitution. It prohibits anybody other than the Legislature from making any law (or requiring any law to be made). This principle is restated in with Article 28 in regard to taxes and Article 29 in regard to general laws. Though with more emphasis in Article 29 as it refers both to the inception and cessation of laws. The fact that these protections are stated twice as fundamental liberties underscores the importance that the people can only be subject to laws that the Legislature enacts and eliminates the capacity of the Judiciary to write or eliminate law. This concept flows directly out of the English Bill of Rights of 1689.

[Art.] 12-a. [Power to Take Property Limited.]
No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development of other private use of the property.

November 7, 2006

Article 12-a was added in response to the Kelo Decision in Connecticut (2005). It clarifies the purposes for which eminent domain can be used, and substantially limits legislative prerogative. It states that eminent domain can not be used to transfer property between individuals or private parties. However, a strict reading of Part 1, Articles 1 and 10 would have arrived at the same result.

[Art.] l3. [Conscientious Objectors not Compelled to Bear Arms.]
No person, who is conscientiously scrupulous about the lawfulness of bearing arms, shall be compelled thereto.
June 2, l784
Amended l964 by striking out reference to buying one's way out of military service.

Article 13 is an enumerated right of conscience. It is interesting to note that consistent with Article 12, conscientious objectors were originally compelled to substitute finances for military service. It is also interesting that removing the requirement to pay an equivalent for exemption was thought of as buying ones way out of military service when it was removed. However, it is clear from Article 3 and 4 that the intent was allowing conscientious objection without eliminating the need to contribute to the defense of the State.

[Art.] l4. [Legal Remedies to be Free, Complete, and Prompt.]
Every subject of this State is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.
June 2, l784

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

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[Art.] l5. [Rights of the Accused.]
No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land; provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person is potentially dangerous to himself or to others and that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.
June 2, l784
Amended l966 to provide the right to counsel at State expense if the need is shown.
Amended l984 reducing legal requirement proof beyond a reasonable doubt to clear and convincing evidence in insanity hearings.

Article 15 declares the right to protections which translate to habeas corpus, and protects a man from having to incriminate himself. It further guarantees the right to all exculpatory evidence and the right to face one's accusers. Since the Article pertains to offenses (non-criminal) as well as criminal, it makes anonymous tips in a court of law unconstitutional. Article 15 also establishes the right to trial by jury. More recently it adds the right to defense counsel, and establishes the criteria for acquittal by reason of insanity.

The right to trial by jury for criminal cases gives the Judiciary jurisdiction over criminal trials. It seems though that the right to trial by jury is not universal and many allow criminal prosecution without a jury if that is the law of the land. However, this shows the importance of the fabric of the Constitution, as Article 16 requires a trial by jury in capital punishment, and in Article 15 there is nothing to suggest an order to the list as life appears squarely in the middle of the list. There is no guidance that the which protection pertains to which object. The concept of a trial by jury flows out of the Magna Carta.

[Art.] l6. [Former Jeopardy; Jury Trial in Capital Cases.]
No subject shall be liable to be tried, after an acquittal, for the same crime or offense. Nor shall the Legislature make any law that shall subject any person to a capital punishment, (excepting for the government of the army and navy, and the militia in actual service) without trial by jury.
June 2, l784

Article 16 prohibits double jeopardy and separately establishes the right to trial by jury for capital offenses. The right to trial by jury for capital punishment is necessary because of the window for trial without a jury in Article 15. Note that it makes the particular exception for the military and the Militia.

[Art.] l7. [Venue of Criminal Prosecutions.]
In criminal prosecutions, the trial of facts, in the vicinity where they happened, is so essential to the security of the life, liberty and estate of the citizen, that no crime or offense ought to be tried in any other county or judicial district than that in which it is committed; except in any case in any particular county or judicial district, upon motion by the defendant, and after a finding by the court that a fair and impartial trial cannot be had where the offense may be committed, the court shall direct the trial to a county or judicial district in which a fair and impartial trial can be obtained.
June 2, l784
Amended l792 to change "assembly" to: Legislature.
Amended l978 so that court at defendant's request may change trial to another county or judicial district.

Article 17 defines he venue for trial as the jurisdiction in which the crime occurs unless otherwise requested by the defendant, but only for the purpose of obtaining an impartial jury. It also clearly give the Judiciary jurisdiction over criminal trials. However, until 1978 it was the responsibility of the Legislature to direct the trial to a new jurisdiction. The concept of local jurisdiction flows out of the Magna Carta.

[Art.] l8. [Penalties to be Proportioned to Offenses]
True Design of Punishment.] All penalties ought to be proportioned to the nature of the offense. No wise Legislature will affix the same punishment to the crimes of theft, forgery, and the like, which they do to those of murder and treason. Where the same undistinguishing severity is exerted against all offenses, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the lightest offenses. For the same reason a multitude of sanguinary laws is both impolitic and unjust. The true design of all punishments being to reform, not to exterminate mankind. June 2, l784
Amended l792 deleting "those of" after do in 3d sentence and changing "dye" to: offenses.

Article 18 requires the punishment to fit the crime. This relates back to Articles 3 and 4, that any loss of liberty, voluntary or involuntary is reciprocal to protection. This principle relates to many issues which the Legislature is now considering. Article 18 also directs the punishment toward reform or rehabilitation where possible and that punishment for minor crimes and offenses ought to be appropriate to the crime. However, this Article is not an argument against capital punishment as Article 16 specifically authorizes capital punishment. For the readers benefit, sanguinary literally means bloody. The concept of punishment proportional to the crime flows out of the Magna Carta.

[Art.] l9. [Searches and Seizures Regulated.]
Every subject hath a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. Therefore, all warrants to search suspected places, or arrest a person for examination or trial in prosecutions for criminal matters, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order, in a warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued; but in cases and with the formalities, prescribed by law.
June 2, l784
Amended l792 to change order of words.

Article 19 enumerates the right to privacy and describes the conditions under which and by which it may be broached. It is an interesting contrast to the Fourth Amendment to the Constitution for the United States of America in that it states the inherent right outright before stating the conditions for violating it. It is instructive that with the absolute right to privacy enumerated, the laws against abortion were not considered unconstitutional. Furthermore, it clearly puts eh due process as a matter of law, giving jurisdiction of defining due process to the Legislature. Not withstanding the amendment to Part 2, Article 74, this make any procedures regarding warrants created by other branches of the government patently unconstitutional. The concept of due process flows from the Magna Carta.

[Art.] 20. [Jury Trial in Civil Causes.]
In all controversies concerning property, and in all suits between two or more persons except those in which another practice is and has been customary and except those in which the value in controversy does not exceed $1,500 and no title to real estate is involved, the parties have a right to a trial by jury. This method of procedure shall be held sacred, unless, in cases* arising on the high seas and in cases relating to mariners' wages, the Legislature shall think it necessary hereafter to alter it.
June 2, l784
Amended in l877 to prohibit jury trials unless the amount in controversy exceeds $l00.
Amended in l960 to increase the amount to $500 before a jury trial may be requested.
***"Cases" appears in l792 parchment copy of Constitution. Original Constitution had "causes."**
Amended in 1988 to change $500 to $1,500

Article 20 describes the rights associated with private grievances, grievances between two or more persons. In establishing a right to trial by jury, for certain classes of civil suit, Article 20 gives the judiciary jurisdiction over civil cases. It is important to note that civil cases are defined as being between two or more persons. In 1784, this would have been limited to natural persons. The admission of corporations to the status of person hood in the 1930s by law does not alter the meaning of persons under the Constitution. Again the guarantee of a trial by jury flows out of the Magna Carta

Subject to qualifications and value, and nature of property, Article 20 establishes a right to trial by jury in all cases unless there was another practice in 1784. This is best seen by simply crossing out the intervening qualifiers. It is instructive that this right was to be held sacred. No other right was declared to be sacred.

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

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This right was upheld in this manner through 1868 in East Kingston versus Towle. However, it was severely compromised in 1875, in a case known as Copp versus Henniker. The Legislature had recently enacted a law which created a pre-trial tribunal similar to our current tort reform. This was ruled unconstitutional because it prejudiced the jury denying the parties an impartial jury. In their decision the justices relied heavily on an earlier case an earlier case East Kingston versus Towle (1868) which stated clearly that you had a right to trial by jury unless there was another practice at the time the Constitution was written, but in the end attributes it to a historical perspective (argument 14). Finally, in their brief they made the statement "The guarantee of the right to trial by jury I everywhere construed to secure a right to trial by jury where it could be claimed as a matter of right a the time the Constitution was framed." To make this leap they reference a Wisconsin case Meade versus Walker (1863) and a New Hampshire case Eastman versus Clarke (1872). This Wisconsin case quotes the Constitution of the State of Wisconsin, which clearly has this limitation, but is irrelevant to New Hampshire. Referencing the New Hampshire case was one of the boldest instances of sophistry that I have seen, as the case dealt only with how much of profits or expenses must be shared to constitute a partnership, and to the best of my discernment never touched upon the right to a trial by jury. It should be noted that East Kingston versus Towle is after Meade versus Walker and is therefore more relevant both by jurisdiction and by time. Nevertheless, this case has been relied upon ever since to deny jury trials in new types of civil cases.

The denial of a right to trial by jury in civil cases between two persons, held as sacred by the founders, has been most troublesome as the new class of civil cases are those between the government and the people. These civil cases include such issues as traffic violations (the absolute right to travel freely), abuse and neglect and termination of parental rights (parental rights).

Even more interesting is that of cases, by people against the government. In the period that the Constitution was approved by the people, these were more rightly termed redresses of grievances over which the Legislature has exclusive jurisdiction. No amendment has been written to alter or diminish the right of redress of grievances as practiced by the founders. The people now denied their right to state their case before the Legislature are also denied their peers as the jury.

[Art.] 2l. [Jurors; Compensation.]
In order to reap the fullest advantage of the inestimable privilege of the trial by jury, great care ought to be taken, that none but qualified persons should be appointed to serve; and such ought to be fully compensated for their travel, time and attendance.
June 2, l784

Article 21 is an interesting as an enumerated right. It states the need to have jurors who are able to render judgment, and the need to provide adequate compensation. It hints that there is more to being a juror than simply determining guilt or innocence. We know from historical practice that the jury has the power of nullification, that is to determine that a law doesn't apply in a particular cas, or that the law is unjust. Therefore, they would have wanted jurors who were sufficiently literate and wise as to understand the justice (the Bible) and constitutional principles. These are people who would likely be successful in other spheres of life as well; therefore, their participation in a jury would result in loss of income.

[Art.] 22. [Free Speech; Liberty of the Press.]
Free speech and liberty of the press are essential to the security of freedom in a State: They ought, therefore, to be inviolably preserved.
June 2, l784
Amended l968 to include free speech.

Article 22 is one of the enumerated rights of conscience. It is important to note that originally freedom of speech was not included, this Article dealt exclusively with freedom of the press, or political speech, and therefore, was focused in opposition to the stamp tax. The use of the word inviolably is important. It connotes a sacred right to be kept from violation or profanation.

Webster's 1828 1. Not to be profaned ought not to be injured, polluted or treated with irreverence; as a sacred place or sacred things should be considered inviolable.

The American Heritage (1971) retains the same qualities of definition.

The use of the liberty of the freedom of the press to publish prurient material would certainly qualify as profaning that liberty. This gives clear power to the State to prevent the publishing of prurient material under the guise of the freedom of the press. Note that the prohibit on the general government of the United States in the First Amendment to its Constitution contains no such limitation.

[Art.] 23. [Retrospective Laws Prohibited.]
Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.
June 2, l784

Article 23 prohibits expost facto law, establishing that the Legislatures focus is prospective, even if it based on past experience. This plays directly into the practice of redress of grievances before the legislature. It would not be appropriate for the Legislature to be the court for the hearing of a criminal case, or to award civil damages between two persons. However, the founders believed it completely appropriate for the Legislature to determine whether or not a civil case adjudicated before the Judiciary had been carried out unjustly.

[Art.] 24. [Militia.]
A well regulated militia is the proper, natural, and sure defense, of a State.
June 2, l784

Article 24 is a mandate for the establishment of an organized State militia, independent of the national militia or military. This whole theory of government grew out of the oppressions of James I and the Stewarts who used the national armies to suppress their political opponents. Therefore, a military consisting of private citizens, not beholden to those in power, is the surest defense of a free State. It was their fear that an army in the employ of the government could lead to tyranny. This works in concert with Article 2 which codifies the right of the people to defend their lives and liberty and protect their property. The Militia consisted of all the able bodied men not exempted. If the people are the defense of the State, the State can not practice tyranny upon the people. Note that this Article was not removed when the Constitution for the United States of America was adopted.

[Art.] 25. [Standing Armies.]
Standing armies are dangerous to liberty, and ought not to be raised, or kept up, without the consent of the Legislature.
June 2, l784

Article 25 working in concert with Article 24 contrasts Militias and standing armies. Militias are essential to liberty, while standing armies are dangerous to liberty. Nevertheless, it recognizes the power of the Legislature, the State Legislature, to assemble a standing army. Presumably, this would be done in a period of extreme dangers, and anticipation that the danger would be protracted. However, it also puts the existence (not the command) of any standing army under the sole jurisdiction of the Legislature, and therefore, at the subjection of the people. This Article flows directly our of the English Bill of Rights 1689.

[Art.] 26. [Military Subject to Civil Power.]
In all cases, and at all times, the military ought to be under strict subordination to, and governed by, the civil power.
June 2, l784

Article 25 puts the existence and operation of any State Militia or standing army at the subjection of the people via the Legislature. Therefore, the Militia is subject to both the Legislature and the Governor. The specific manners of control are described in Part 2. This is why all regulation of the Militia occurs in law. This regulation included al issues of organization, arming, and discipline. Most importantly, this was a continuation of the practice that began in 1688 with the organization of the Province. This article flows directly out of the English Bill of Rights 1689.

[Art.] 27. [Quartering of Soldiers.]
No soldier in time of peace, shall be quartered in any house, without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil authorities in a manner ordained by the Legislature.
June 2, l784
Amended in l980 substituting "authorities" for "magistrate."

Article 27 prohibits the temporary taking of property by the State militia or military. The property can only be taken by civil authority. The civil authorities are bodies such as towns, city or county government. It also limits the power of those civil authorities to the discretion of the Legislature, who represent the people. This article flow directly out of the English Bill of Rights 1689.

[Art.] 28. [Taxes, by Whom Levied.]
No subsidy, charge, tax, impost, or duty, shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their Representatives in the Legislature, or authority derived from that body.
June 2, l784

Article 28 establishes the fundamental right of the people to be subject only to taxes authorized by themselves or their Legislature. Note that taxation by any power of government other than the Legislature is not allowed under any pretext whatsoever. Note that this is Article only defines who may levy a tax, whom and what the tax may be levied upon is defined in Part 2, Articles 5 and 6. The authority of the towns, cities, counties and school districts to tax is derived from the Legislature via the laws executed by the Legislature pursuant to the Constitution. This article flow directly out of the English Bill of Rights 1689.

[Art.] 28-a. [Mandated Programs.]
The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.
November 28, l984

Article 28-a prohibits indirect taxation by the Legislature by establishing a cost and requiring the local political subdivisions to fund it. It unequivocally ties the expense with the raising of the tax. The local Legislative bodies are the persons qualified to vote in the town, city, school district or county.

[Art.] 29. [Suspension of Laws by Legislature Only.]
The power of suspending the laws, or the execution of them, ought never to be exercised but by the Legislature, or by authority derived therefrom, to be exercised in such particular cases only as the Legislature shall expressly provide for.
June 2, l784.

Article 29 is a very powerful limitation on the power of government and clearly sets a structure of Legislative supremacy. Properly understanding the sentence requires discretion of the sentence, which is complex. It is also necessary to consider the definition of the verb (gerund) execution.

Websters 1828 EXECU'TION, n. Performance; the act of completing or accomplishing.

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

6. Destruction; slaughter.

The first interpretation is as follows. The sentence is constructed in parallel form. The clue that led to my interpretation is the verb execution which we normally associate with the Executive. Therefore, a simpler way to present the principle is as follows: the power of suspending the laws ought never to be exercised, but by the Legislature; the laws ought never to be executed but by authority derived from the Legislature, to be exercised in such particular cases only as the Legislature shall expressly provide for.

Article 29 states that the law can only be stopped temporarily by the Legislature. It further states that no law can be carried out except as the Legislature prescribes. It is also necessary to consider that that the only way to remove or stop a law is by passing, or executing a nullifying law; therefore, the stopping the practice of a law is exclusively a Legislative act. Article 29 establishes that it is a right of the people that only they or their Representatives can create a law or stop a law temporarily or permanently. This prohibits judicial review as we know it.

The second interpretation takes this one step further. Article 12 states that the people shall only be subject to laws created by the Legislature. Similarly, Article 28 deals with the creation of taxes. To my mind it would not be the logical progression to say that only the Legislature could stop or start laws; the proper progression would start or stop. Since previous articles deal with initiation of law; therefore it would be logical that Article 29 deals with the cessation of laws, requiring execution to refer to termination. The interpretation would be: only the Legislature has the power to temporarily or permanently stop laws. This interpretation would be also consistent with the fact that the power is limited to the Legislature, not given to the people directly (except in the principle of jury nullification). However, it would not be consistent (Article 37) to say in Article 12 that the people or the Legislature can create law and in Article 29 that only the Legislature can stop law.

In either case, this Article patently prohibits the actions that the Judiciary has taken in recent years. It is clearly unlawful for the Judiciary to temporarily stop the practice of the law. It is also unlawful for the Judiciary to permanently stop the practice of a law which would require the passage of a nullifying law. But, it is most unlawful for the Judiciary to require the practice of a law that was not passed by the Legislature. Therefore, the Legislative Districts of 2002 through 2004 and the ballots of 2006 were unconstitutional.

[Art.] 30. [Freedom of Speech.]
The freedom of deliberation, speech, and debate, in either house of the Legislature, is so essential to the rights of the people, that it cannot be the foundation of any action, complaint, or prosecution, in any other court or place whatsoever.
June 2, l784

Article 30 establishes freedom of speech in the Legislature as an enumerated right. It was not until 1966 that a general freedom of speech was enumerated. Though it would always have existed as a common law right. An interesting aspect is the phrase “any other court”; which admits the General Court as a court of adjudication by implication. We know that the Legislature, the General Court of New Hampshire, is a court of adjudication for impeachment and bill of address. We also know that it was a court for adjudication of governmental infractions against citizens, and that no amendment to the Constitution has been made to alter that. Therefore, we can also assume that the Legislature itself might adjudicate a crime associated with speech in the Legislature. This article flow directly out of the English Bill of Rights 1689.

[Art.] 3l. [Meetings of Legislature, for What Purposes.]
The Legislature shall assemble for the redress of public grievances and for making such laws as the public good may require.
June 2, l784
Amended l792 generally rewording sentence and omitting "for correcting, strengthening and confirming the laws."

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

PUB'LIC, a. [L.publicus, from the root of populus, people; that is, people-like.]

1. Pertaining to a nation, state or community; extending to a whole people; as a public law, which binds the people of a nation or state, as opposed to a private statute or resolve, which respects an individual or a corporation only. Thus we say, public welfare, public good, public calamity, public service, public property.

2. Common to many; current or circulated among people of all classes; general; as public

report; public scandal.

3. Open; notorious; exposed to all persons without restriction.

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

Articles 15 and 20 requires the Judiciary to hear criminal cases and civil cases; therefore, this Article must refer to a different issue: complaints against the government (the public) for government actions such as: accidental or purposeful destruction of property, violation of due process, or the constitutionality of a law.

On the face of this, the hearing of grievances and the making of law appear to be of equal importance. However, consider the following: redress of grievances is listed first; there is provision for the authority to delegate the making of law in Articles 12 and 28; and there is no provision for delegating the redress of grievances. Therefore, the redress of grievances is the primary responsibility. That is because the opportunity for redress of grievances by the government upon the people is the foundation of liberty. Therefore, it is delegated to the body over which the people have the most control, and not the body over which they have the least control (the judiciary).

You might hear the allegation that such issues should be heard by an non-political power. The answer is no. Government is by its nature political, the embodiment of the will of the people. Therefore, any perceived wrongs, oppression, must be addressed by a political body. And as Articles 1 and 37 make the people the final arbiters of constitutionality, the Legislature is the only governmental power for the redress grievances, including the constitutionality of law. It is a right of the people that their constitutional rights which they defined be adjudicated only by a governmental power over which they have direct control.

Another argument is that the term public grievance refers only to grievances experienced by the people at large. However, another interpretation would be a grievance of public record, before the public or committed by the public in the form of the government. As those who wrote and ratified the Constitution regularly heard and redressed grievances of individuals against the government before the legislature this must have been their intent, and therefore, the proper interpretation of the Constitution. This perspective is corroborated by the fact that this was a function of the British Parliament at the time the people put our Constitution into law and would be regarded as an issue of common law which is recognized in Part 2, Article 90. This article flow directly out of the English Bill of Rights 1689.

[Art.] 32. [Rights of Assembly, Instruction, and Petition.]
The people have a right, in and orderly and peaceable manner, to assemble and consult upon the common good, give instructions to their Representatives, and to request of the Legislative body, by way of petition or remonstrance, redress of the wrongs done them, and the grievances the suffer.
June 2, l784

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

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

The right of redress of grievances was first attacked in 1819 in a lawsuit known as Merrill versus Sherburne. It occurred immediately after the Legislature had changed hands twice (1816 and 1818) and the Legislature had replaced the entire judiciary each time it was replaced. The result was that there was no institutional memory in any branch of government.

Prior to 1819, the most frequent activity of the Legislature was redresses of grievances, and one of the significant classes of grievances was to be restored to one's law. In such a case, the individual might have been denied justice in the judiciary. One specific case concerned an issue of probate where an inheritor was in England as the time of the hearing, and she wasn't notified of the hearing until afterward. She petitioned to the General Court to be restored to her law. She was granted a new hearing and later received her inheritance.

Such petitions were heard regularly by the Legislature for the first 35 years of the republic. The most salient evidence of this is Part 2, Article 7 which prohibits Legislators from acting as Counsel or taking fees or acting as counsel or advocate in any matter before the General Court. This Article was an amendment to the Constitution in 1792 to end the practice of Legislators requiring a fee to submit petitions for redress of grievances.

In the arguments of the decision of Merrill versus Sherburne, the judiciary argued that Article 31 referred to public grievances and that because these typically involved one person, they weren't public. However, Thomas Sheridan's "A Rhetorical Grammar", a dictionary published in 1780, Publick is defined as "Belonging to a State or nation." Does an abuse committed by a State belong to it? In all of the arguments setting the background in Merrill versus Sherburne, the Judiciary makes extensive references to Part 1, Articles 31 the business of the Legislature and Article 37 the Separation of Powers; however, they made not one single reference to Part 1, Article 32.

They further go on to argue from Montesque, "that, indeed there is no liberty, if the power of judging be not separated from the legislative and executive powers", and from Federalist Paper 47, "or as Mr. Madison observes, may be justly pronounced the very definition of tyranny". But if we read Federalist Paper 47, we learn something very different.

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The quote from Montesque is a partial sentence from several paragraphs discussing separation of powers in one book of many volumes. In his writings, Montesque was arguing the elegance of the English form of government which provided partial agency of one power of government of the sphere of another. Therefore, he could not have been arguing for absolute separation. In fact, Madison in the referenced Federalist Paper 47 was made exactly this observation.

Madison was writing about England, specifically about what he considered the inappropriate activity of the Judiciary in the business of the Legislature. Madison reported, The judges, again, are so far connected with the legislative department as often to attend and participate in its deliberations, though not admitted to a legislative vote. From these facts, by which Montesque was guided, it may clearly be inferred that, in saying "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates," or, "if the power of judging be not separated from the legislative and executive powers," he did not mean that these departments ought to have no PARTIAL AGENCY in, or no CONTROL over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the WHOLE power of one department is exercised by the same hands which possess the WHOLE power of another department, the fundamental principles of a free constitution are subverted. It is clear that what was being decried was not legislative review of judicial proceedings to see whether or not they followed the law, but the participation of the judiciary in the legislative process.

It is clear that the judiciary meant to impart that the Madison thought the oversight of the judiciary by the Legislature could be termed the definition of tyranny. However, what Madison said was, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." In order to justify denying the people their liberty, they had to deliberately mislead, that is to lie.

Most interesting is that in Federalist Paper 47, Madison went on to acclaim the Constitution of the State of New Hampshire for recognizing that some commingling of the powers of government was necessary to maintain free government. Unlike the Constitutions of the other States which proclaimed the need for absolute separation, and then went on to describe commingling. Madison describes in detail that in New Hampshire at that time the Executive department was entirely a subset of the Legislature: the President being President of the Senate, and a voting Senator; and the Executive Council being three Representatives and two Senators elected by the Legislature. He found no fault in this and this indicates that he was probably well aware of the Legislature hearing petitions of people to be restored to their law. What is even more ludicrous is the idea that the people who wrote and ratified the Constitution, in restoring people to their law, did not understand what they had themselves created.

The power of redress of grievances was further compromised in 1925 in the recodification of laws. In 1921, Title 3 addressed the due process of those who were parties in a redress of grievances. In 1925, those statutes had disappeared from the law, without ever having been repealed.

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In 1963 redress of grievances was further impeded by the elimination of any mechanism to introduce them. Prior to 1963, legislators prepared their legislation themselves. In 1963, Legislative Services was created to prepare legislation. Legislative services was empowered to draft bills and resolutions, but not petitions for the redress of grievances. Thus the people have been denied one of their most fundamental liberties, to complain to their representative body that they have been abused by their government.

What is most interesting now is that such cases are heard by the judiciary. Articles 31 and 32 clearly give jurisdiction over these issues to the General Court. No where in the Constitution is jurisdiction given to the Judiciary.

[Art.] 33. [Excessive Bail, Fines, and Punishments Prohibited.]
No magistrate, or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.
June 2, l784

Article 33 is very simply a prohibition on cruel and unusual punishment or restrictions on liberty. This is again a statement of the loss of liberty or property to be reciprocal as in Article 18. It prohibits the power of government from arbitrarily imprisoning someone without a trial by setting a bail beyond their means. This article also works with Articles 16 and 18 which require a jury trial for capital punishment and require punishment to be commensurate with the crime. Therefore, capital punishment can not be considered cruel or unusual. This article flow directly out of the English Bill of Rights 1689.

[Art.] 34. [Martial Law Limited.]
No person can, in any case, be subjected to law martial, or to any pains or penalties by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the Legislature.
June 2, l784

Article 34 prevents a person not in the military or in the Militia during actual service from being subject to martial law except by the consent of their Representatives. This law coordinates with Article 26. It is important that the Governor, the Chief Executive and Commander in Chief of the Militia can not impose martial law. This Article may become more important as the use of emergency powers becomes more frequent.

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

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

June 2, l784
Amended l792 to provide for age limitation as provided by the Constitution.

Article 35 describes the right of the people to have impartial judges who are not part of the body that makes the law. This Article gives the judiciary the duty to interpret the laws and administer justice. This has been construed as authority to interpret the Constitution. However, every other instance of the word law(s) refers to laws enacted pursuant to the Constitution. When the Constitution refers to itself as in this Article and Articles 37 and 38, it does so explicitly. Therefore, this can not be generally construed to refer to the Constitution. Even more importantly, it is important to remember that the Constitution constrains government, and therefore, the judiciary as a power of government can violate the Constitution. It would be absurd to leave the interpretation of the Constitution solely to a power of government over which the people, the sovereigns, have no direct power.

The provision that judicial tenure is during good behavior isolates judges from capricious decisions by one individual, the Governor. A supreme court judge can only be removed by a bill of address or impeachment approved by a majority of the Legislature representing the people. The age provided in the Constitution is seventy in Part 2, Article 78. It is extended to all judicial officers in Part 2, Articles 73 and 78. Though this extension is not a right, but a form of government.

It important to note that the supreme judicial court is lower case, and therefore, not the name of a body, but a general reference to whatever supreme judicial court the General Court had constituted at the time.

[Art.] 36. [Pensions.]
Economy being a most essential virtue in all states, especially in a young one, no pension shall be granted, but in consideration of actual services; and such pensions ought to be granted with great caution, by the Legislature, and never for more than one year at a time. June 2, l784

Article 36 is interesting in that the pensions can only be authorized for a year. A primary question is the meaning of Pension. The contemporary definition includes payment in retirement for services rendered, but also includes payments of patronage. Websters 1828 Dictionary focuses on payments in retirement for previous service, but includes payments in the light of a bribe. The limitation of pensions to consideration for actual service limits them to the first definition. This forbids compensation without service, or programs such as Social Security. Therefore, since the Constitution only delegates power to the general government that has been previously delegated to the state, Article 7, the power to grant Social Security could not have been delegated to the United States of America. This works in conjunction with Article 1 and Part 2, Article 1 which require that the government be for the general good, benefiting all equally to the extent possible, Article 10 which forbid government to be used to benefit any class of men, say the poor.

Article 36 also works in conjunction with Article 38 which requires that the lawgivers and magistrates exercise the virtues of industry and frugality in the formation and execution of the laws.

[Art.] 36-a [Use of Retirement Funds.]
The employer contributions certified as payable to the New Hampshire retirement system or any successor system to fund the system's liabilities, as shall be determined by sound actuarial valuation and practice, independent of the executive office, shall be appropriated each fiscal year to the same extent as is certified. All of the assets and proceeds, and income therefrom, of the New Hampshire retirement system and of any and all other retirement systems for public officers and employees operated by the state or by any of its political subdivisions, and of any successor system, and all contributions and payments made to any such system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, any other purposes.
November 28, l984

It is unclear how Article 36-a completely squares with the provision of a 1 year limit on pensions in Article 36. It is unclear how any Legislature can obligate a future Legislature to a retirement benefit. However, it is a later amendment. Having been lawfully adopted it is equally binding. I would say that at the very least the annual contributions to any pension fund must be approved annually.

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[Art.] 37. [Separation of Powers.]
In the government of this State, the three essential powers thereof, to wit, the legislative, executive, and judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the Constitution in one indissoluble bond of union and amity.
June 2, l784

Article is significant, clearly stating that the separation of powers is not absolute. It further states that the interaction of the powers is governed by the Constitution. It is also important that there is no statement of equality between the powers; which would be stated in the Constitution if it were intended. In analyzing the form of government, the second part of the Constitution, and what checks and balances each power has over the others, it is clear that the legislative power, and the House of Representatives in particular is the most powerful. It is interesting that the protection by or obligation of the Legislature is defined in 15 Articles of the Bill of Rights (of the people), the protections by or obligations of the Executive are defined in 5 Articles (most pertaining to the Militia) and the protections by or obligations of the Judiciary are defined in only 4 Articles. In Part 2, 38 Articles are used to describe the powers of the Legislature, 35 Articles are used to describe the powers of the Executive (Governor, Council, and Secretary of State) and 12 Articles are used to describe the powers of the Judiciary. Typically one goes to the greatest length to define and confine those to whom one give the most power. Little consideration would be given to those who have little power. The last sentence defines the Constitution as fabric (interwoven) as having one indissoluble bond (the articles can not be considered separately) of unity (a single document) and amity (without conflict). It is philosophically impossible for any Article to be in conflict with another Article, or more importantly, the interpretation of any Article must be consistent with the interpretation of every other Article.

This is the one time that I will break form and discuss the Form of Government in the Bill of Right, because it is directed in the Article. The chain of connection is shown in the Form of Government. Figure 1 is the diagram that I use to discuss the relative powers of the branches of government. Each arrow shows a power. The powers jointly held by the General Court are accrued to each chamber. In addition, the house is given to additional arrows for each of the actions which only it can initiate. If we sum up the arrows, the house has 9, the Senate has 7, the executive has 3, and the judiciary has 1. It is clear that the house has the most power and the judiciary the least. Even if we admit the ability of the legislative and executive powers to request an opinion of the court and the court to give an opinion, that raises each chamber of the legislative and the executive by 1 and the judiciary by 2; and the supposed power of the judiciary to nullify a law (forbidden in Article 29), that raises the power of the judiciary by 1. This does not shift the balance of power between the Legislature and the other powers. This analysis is consistent with the basic theory of giving the greatest power to those powers of government in which the individual members have the least power and over which the people have the greatest control.

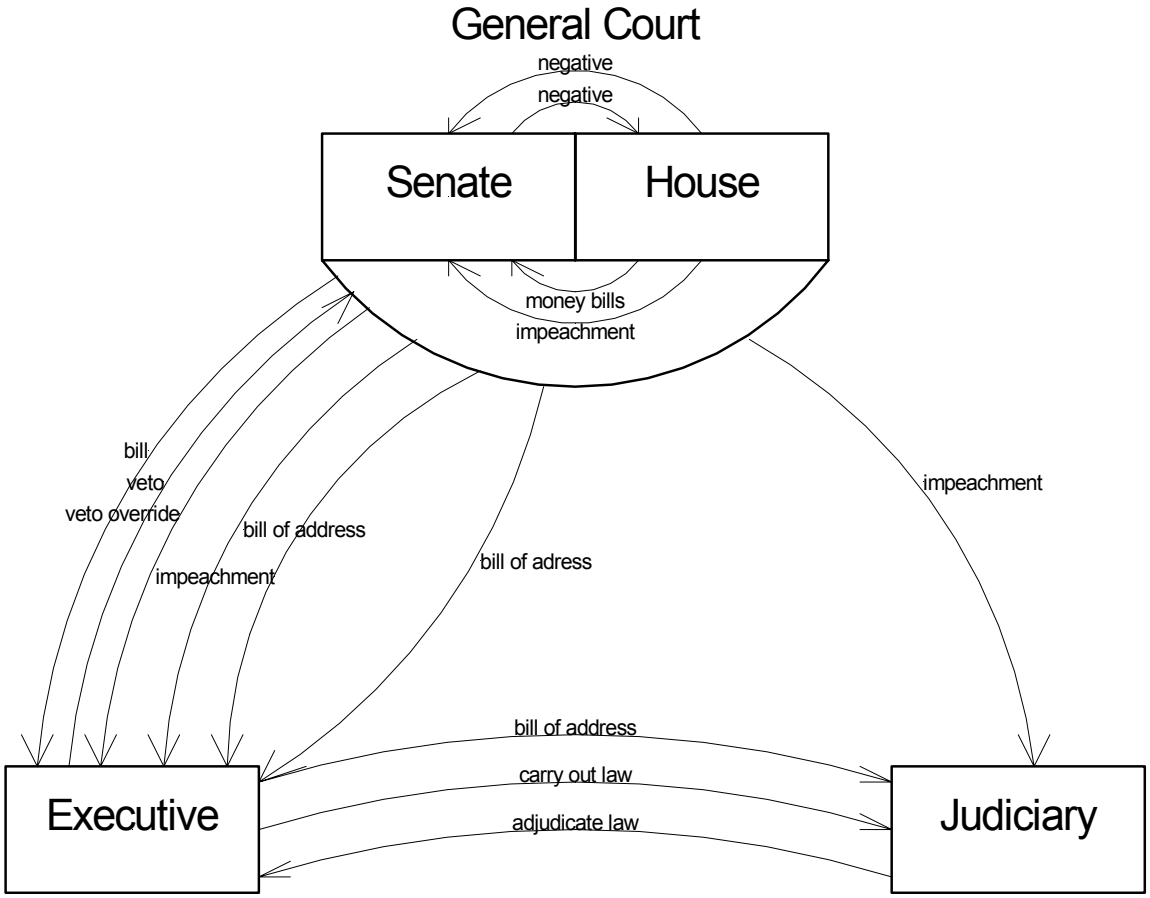

Figure 1 Relative Powers of the Branches of Government

New Hampshire's current Constitution replaced the hastily prepared war time Constitution of January 1776, after two previous attempts 1780 and 1782. The Constitution ratified in 1784 was the last of the post independence State Constitutions to be written, and therefore, had the benefit of considering the Constitutions of the other Constitutions. In Federalist Paper 47, James Madison regarded Part 1, Article 37 as the best statement of the need to balance independence and commingling of the three powers in order to preserve free government. In the 1784 Constitution, the President was the President of the Senate having an equal vote and casting the deciding vote in the event of the tie. In addition, the Executive Councilors were members of the General Court, elected by the General Court. These two characteristics were changed in 1792. The General Court retained the responsibility of electing the Governor if no candidate achieved a majority until 1912. The General Court constituted all judicatories until 1968, and still constitutes the probate and district courts and recently constituted the family courts, and the Governor and Council appoint all judges and masters. Any pretense that the government was to be comprised of entirely independent branches is pure sophistry, and it is clear that the founders intended power to be concentrated in the General Court.

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[Art.] 38. [Social Virtues Inculcated.]
A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and Representatives, and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of government.
June 2, l784

Article 38 is one of the few charges that the Constitution makes upon the people who adopted it and live under it: to read and study the Constitution and to enforce it upon the government it defines. It is important to recognize one of the definitions of recur is to go back and think about and discuss. It is the obligation of the people, to go back and review the Constitution regularly; to hold us, the officers and Representatives of the State accountable to the Constitution. This Article makes the people, the final judges of constitutionality as it empowers them to enforce the Constitution upon the Judiciary as well as the other branches of government. The people have a right to require that the Legislature, the Executive and Judiciary adhere exactly to the Constitution. Beyond the very mechanism by which the Constitution is adopted, this Article makes the people the final arbiters of constitutionality. This article together with Articles 12 and 29 make the Legislature final governmental judge of constitutionality, because they are the only direct representatives of the people. There is no more searing indictment of the slavish doctrine that the Constitution is the exclusive province of lawyers and political scientists than this. Remember that the Article 35 refers the laws to the Judiciary, but Article 38 refers the Constitution to the People

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

1. To return to the thought or mind.

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

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[Art.] 39. [Changes in Town and City Charters, Referendum Required.]
No law changing the charter or form of government of a particular city or town shall be enacted by the Legislature except to become effective upon the approval of the voters of such city or town upon a referendum to be provided for in said law. The Legislature may by general law authorize cities and towns to adopt or amend their charters or forms of government in any way which is not in conflict with general law, provided that such charters or amendments shall become effective only upon the approval of the voters of each such city or town on a referendum.
November l6, l966

Article 39 states that only the people of any city or town can change the form of government of their city or town. The Legislature can not change the form of government of any city or town, but the form of government can only be changed with the consent of the Legislature. This underscores the dependency of the political subdivisions on the State, and self-determination of the political subdivisions.

PART SECOND FORM OF GOVERNMENT

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

Article l. [Name of Body Politic.]
The people inhabiting the territory formerly called the province of New Hampshire, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign and independent body-politic, or State, by the name of The State of New Hampshire.
June 2, l784

Article 1 is the introduction to the Form of Government. It is the implementation of Part 1, Article 1. It states the intention of the people of New Hampshire to form themselves into a body-politic; that is the functioning government. It is important that it is characterized as free, sovereign and independent. It is important to note, having seen the original 1792 Constitution that the word sovereign was edited in. The first writing read “free and independent body politic” which ties it back directly to Part 1, Article 1, which describes all men as free and independent from whom the power of government originates. At the time of that the Constitution of the State of New Hampshire was written, sovereignty meant to be directly responsible to God. The importance of their inclusion of concept of sovereignty is underscored by the fact that it was positively edited in, and was retained after the ratification of the Constitution for the United States of America. Therefore, those who ratified the Constitution understood that while power was delegated to the United States of America, the State sovereignty was retained.. It was necessary to add the word sovereignty to make Part 2, Article 1, consistent with Part 1, Article 7 which states as a fundamental right of the people to govern themselves as free sovereign and independent State.

This styling the name of the State in the published version does not match the style of the name in any adopted form. The oldest original document in the State is the 1792 parchment edition of the Constitution. In 1792, the parchment was styled The State of New Hampshire. There is no record of any amendment to THE STATE OF NEW HAMPSHIRE. This surreptitious change has been corrected as of the 2007 printing.

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GENERAL COURT

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

[Art.] 2. [Legislature, How Constituted.]
The supreme legislative power, within this State, shall be vested in the Senate and House of Representatives, each of which shall have a negative on the other.
June 2, l784

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

[Art.] 3. [General Court, When to Meet and Dissolve.]
The Senate and house shall assemble biennially on the first Wednesday of December for organizational purposes in even numbered years, and shall assemble annually on the first Wednesday following the first Tuesday in January, and at such other times as they may judge necessary; and shall dissolve and be dissolved at l2:0l A.M. on the first Wednesday of December in even numbered years and shall be styled The General Court of New Hampshire.
June 2, l784
Amended l877 changing annual sessions to biennial sessions.
Amended l889 calling for the Legislature to meet in January instead of June.
l966 amendment permitting annual sessions was ruled invalid in Gerber v. King, l07 NH 495.
Amended l974 to permit organizational meetings in December and the January meeting to be on the first Wednesday after the first Tuesday.
Amended l984 changing biennial sessions to annual sessions.

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

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[Art.] 4. [Power of General Court to Establish Courts.]
The General Court (except as otherwise provided by Article 72-a of Part 2) shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be holden, in the name of the State, for the hearing, trying, and determining, all manner of crimes, offenses, pleas, processes, plaints, action, causes, matters and things whatsoever arising or happening within this State, or between or concerning persons inhabiting or residing, or brought, within the same, whether the same be criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real, personal or mixed, and for the awarding and issuing execution thereon. To which courts and judicatories, are hereby given and granted, full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.
June 2, l784
Amended l966 to add exception relating to Art. 72-a, Part 2.

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

[Art.] 5. [Power to Make Laws, Elect Officers, Define Their Powers and Duties, Impose Fines and Assess Taxes; Prohibited from Authorizing Towns to Aid Certain Corporations.] And farther, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions, and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this Constitution, as they may judge for the benefit and welfare of this State, and for the governing and ordering thereof, and of the subjects of the same, for the necessary support and defense of the government thereof, and to name and settle biennially, or provide by fixed laws for the naming and settling, all civil officers within this State, such officers excepted, the election and appointment of whom are hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this State, and the forms of such oaths or affirmations as shall be respectively administered unto them, for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and also to impose fines, mulcts, imprisonments, and other punishments, and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said State; and upon all estates within the same; to be issued and disposed of by warrant, under the hand of the Governor of this State for the time being, with the advice and consent of the Council, for the public service, in the necessary defense and support of the government of this State, and the protection and preservation of the subjects thereof, according to such acts as are, or shall be, in force within the same; provided that the General Court shall not authorize any town to loan or give its money or credit directly or indirectly for the benefit of any corporation having for its object a dividend of profits or in any way aid the same by taking its stocks or bonds. For the purpose of encouraging conservation of the forest resources of the state, the general court may provide for special assessments, rates and taxes on growing wood and timber.
June 2, l784
Amended l792 changing "president" to "Governor."
Amended l877 changing "annually" to "biennially." Also amended to prohibit towns and cities from loaning money or credit to corporations.
Amended l942 to permit a timber tax.

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

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

4. In law, the interest, or quantity of interest, a man has in lands, tenements, or other effects.

Estates are real or personal. Real estate consists in lands or freeholds, which descent to heirs; personal estate consists in chattels or movables, which go to executors and administrators. There are also estates for life, for years, at will, &c

The inclusion of estates as taxpayers allow the properties held in trust to pay taxes. These might be the property of minors held in trust till their majority or of those not living in the State (absentees) to be taxed. This insight is provided by comparison to Part 2, Article 90, and by an opinion given by the Superior Court upon inquiry by the General Court in 1834 regarding the enumeration of non-citizen residents for the apportioning of representation.
Missing from the list of taxable entities are franchises (corporations), though they are listed as property which can be the basis of taxation.
Article 6 specifically prohibits towns from loaning or giving money to any for profit corporation. Interesting with that specific consideration given for town, it intentionally leaves open the State giving or loaning money to for profit corporations. This might be construed as preventing towns from giving special tax rates as incentives for businesses to locate in a town. Finally, it created the capacity to create special taxes for timberland for the purposes of conservation. It should be noted that the reasonable and proportional requirement of taxes is limited to State taxes and as the original school tax being exclusively at the burden of the town was written at the same time, that the disparity in town taxes can in no way be construed as unconstitutional.

[Art.] 5-a. [Continuity of Government in Case of Enemy Attack.]
Notwithstanding any general or special provision of this Constitution, the general court, in order to insure continuity of state and local government operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including but not limited to the financing thereof. In the exercise of the powers hereby conferred the general court shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the general court so to do would be impracticable or would admit of undue delay.
November 30, l942

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

[Art.] 5-b. [Power to Provide for Tax Valuations Based on Use.]
The general court may provide for the assessment of any class of real estate at valuations based upon the current use thereof.
November l5, l968

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

[Art.] 6. [Valuation and Taxation.]
The public charges of government, or any part thereof, may be raised by taxation upon polls, estates, and other classes of property, including franchises and property when passing by will or inheritance; and there shall be a valuation of the estates within the State taken anew once in every five years, at least, and as much oftener as the General Court shall order.
June 2, l784
Amended l903 to permit taxes on other classes of property including franchises and property passing by inheritances.

This article describes what may be taxed which can be levied polls (a head tax) and estates (real and personal property). It was amended in 1903 to include taxation upon franchises and estates upon will and inheritance. A general definition of franchise in this context is a corporation It also requires assessment of estates every five years, and has since the founding of the State. Therefore we can tax an inhabitant, resident or an estate for its ownership in a franchise.

Article 6 provides defines the types of taxes that can be levied. The 1903 amendment enables taxation of property in transfer of one type. This provides a distinction between property and property in transfer. They clearly understood that property in transfer was not property, and that therefore, an amendment was necessary to tax property in transfer. This is articulated in the debate on the 1903 amendment to Article 6. Mr. Chandler states "The transfer or succession of property can not properly be called property. Franchises are property, but transfer is not property." This argument led to the form of the amendment which taxes *property* passed by will or inheritance. Other property transfers include sales and income. Whether or not the amendment would include an income tax was consciously considered and it was purposely worded not to include transfers. It is clear that any taxes on property transfers are not constitutional unless the Constitution is amended to allow them. In accounting terms, we are allowed to tax the balance sheet, but not the profit and loss sheet.

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

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

A second insight is that in 1903 amendment in the words of the drafters was worded allow other forms of property, but at the time crafted narrowly to admit only franchises and property passed by will or inheritance. This means that franchises and transfers of property were seen as separate from the previous definitions of estates in Article 6, and therefore, they would not be included in estates in Article 5 as well. Therefore, businesses are not included in the taxable entities in Article 5, though they are included as taxable property in 1903.

The idea that only property can be taxed is consistent with the entire fabric of the Constitution. Part 1, Article 2 defines acquiring, possessing and protecting property as a fundamental liberty and the function of government is to protect that liberty. Part 1, Article 12 defines that protection and taxation reciprocal. Therefore, the government has only been successful has the right to tax to the extent that the people have been able to acquire and possess property. Income and purchases represent a flow of property, but not an accumulation of wealth. Just because a person has a high income does not necessarily mean that the State has been successful in its responsibility to create an environment where that person has been able to accumulate wealth. Therefore, the tax burden is rightly placed upon the citizens who have been able to accumulate net worth. If the State wanted to tax effective income it could tax the annual increase in net worth. In fact, taxing a persons income or expenses inhibits their ability to accumulate wealth, and therefore, is counter to the very purpose of government as defined in the Constitution of the State of New Hampshire.

[Art.] 6-a. [Use of Certain Revenues Restricted to Highways.]
All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.
November 29, l938

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

[Art.] 6-b. [Use of Lottery Revenues Restricted to Educational Purposes.]
All moneys received from a state-run lottery and all the interest received on such moneys shall, after deducting the necessary costs of administration, be appropriated and used exclusively for the school districts of the state. Such moneys shall be used exclusively for the purpose of state aid to education and shall not be transferred or diverted to any other purpose.
November 6, 1990

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

General thoughts on Articles 5 and 6.
It should be noted here that the Constitution defines taxpayers (Article 5) and what is taxable (Article 6). Confusing in this is that the term estates appears in both. The founders were articulate and specific, since the term appears in two articles with different purposes, there must have been two understandings. In 1903 they felt it necessary to specify expand the definition of property, it was probably their understanding that estates in 1783 did not include franchises in the modern sense of corporations. It is also important to note that franchises are only taxable property.
There is no apparent authorization to require business to pay taxes as an entity. Given the specifications put upon taxation and the previous perception of a need to authorize new types of taxation, I would be ready to argue that the business profits tax, business enterprise tax are not authorized. Franchises are only authorized as a taxable object and then only in the case of transfer by will or inheritance. I would also add that communications tax is not authorized.

There is a clear capacity to tax property, but the debate in the Constitutional Convention of 1902 show that transfers were not considered property. Again I would be ready to argue unconstitutional and that any general sales tax or income tax is not authorized by the Constitution because they are property in transfer and whether or not a tax on income would be included was considered in 1903. In 1903, it was considered necessary to amend the Constitution to tax property in passed by will or inheritance; therefore, one would have to understand that there is no general capacity to tax property in transfer.

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

[Art.] 7. [Members of Legislature Not to Take Fees or Act as Counsel.]
No member of the General Court shall take fees, be of counsel, or act as advocate, in any cause before either branch of the Legislature; and upon due proof thereof, such member shall forfeit his seat in the Legislature.
September 5, l792

This article was included in the 1792 adoption of the Constitution because Representatives and Senators were taking fees for the submission of petitions for redress of grievances.

[Art.] 8. [Open Sessions of Legislature.]
The doors of the galleries, of each house of the Legislature, shall be kept open to all persons who behave decently, except when the welfare of the State, in the opinion of either branch, shall require secrecy.
September 5, l792

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

HOUSE OF REPRESENTATIVES

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

[Art.] 9. [Representatives Elected Every Second Year; Apportionment of Representatives.]
There shall be in the Legislature of this State a House of Representatives, biennially elected and founded on principles of equality, and representation therein shall be as equal as circumstances will admit. The whole number of Representatives to be chosen from the towns, wards, places, and Representative districts thereof established hereunder, shall be not less than three hundred seventy-five or more than four hundred. As soon as possible after the convening of the next regular session of the Legislature, and at the session in l97l, and every ten years thereafter, the Legislature shall make an apportionment of Representatives according to the last general census of the inhabitants of the State taken by authority of the United States or of this State. In making such apportionment, no town, ward or place shall be divided nor the boundaries thereof altered.
June 2, l784
Amended l877 three times providing for biennial elections; increasing representation from l50 rateable polls to 600; prohibiting towns and wards from being altered so as to increase representation.
Amended l942 limiting size of House to between 375 and 400.
Amended l964 providing for equal representation.

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

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

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

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

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

[Art.] 9-a. [Legislative Adjustments of Census with Reference to Non-Residents.]
The general court shall have the power to provide by statute for making suitable adjustments to the general census of the inhabitants of the state taken by the authority of the United States or of this state on account of non-residents temporarily residing in this state.
November 30, l960

This article allows the Legislature to adjust the population of the state as reported by the Census of the United States of America for the purposes of redistricting. While this does not enable non-inhabitants to affect the outcome of elections, it does cause them to affect the character of the Legislature by inflating the population of certain areas relative to others. This is particularly significant in the locations of college campuses which tend to be of one political view.

[Art.] l0. [Representation of Small Towns.] (Repealed)
June 2, l784. Small towns grouped together to provide one Representative for l50 rateable polls. The election meeting was to rotate annually between the towns.
Amended l877 increasing districts to 600 inhabitants; rotation of meeting changed to biennially.
Repealed in l889. Provisions incorporated into Art. ll.

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

When the population of any town or ward, according to the last federal census, is within a reasonable deviation from the ideal population for one or more representative seats, the

town or ward shall have its own district of one or more representative seats. The apportionment shall not deny any other town or ward membership in on non-floterial representative district. When any town, ward, or unincorporated place has fewer than the number of inhabitants necessary to entitle it to one representative, the Legislature shall form those towns, wards, or unincorporated places into representative districts which contain a sufficient number of inhabitants to entitle each district so formed to one or more representatives for the entire district. In forming the districts, the boundaries of towns, wards, and unincorporated places shall be preserved and contiguous. The excess number of inhabitants of district may be added to the excess number of inhabitants of other districts to form at-large or floterial districts conforming to acceptable deviations. The Legislature shall form the representative districts at the regular session following every decennial federal census.

June 2, l784
Amended l792 changing General Assembly to General Court.
Amended l877 changing l50 rateable polls to 600 inhabitants.
Amended l889 providing that towns of less than 600 should be represented a proportional amount of time instead of being classed as formerly provided in Art. l0.
Amended l942 deleting reference to 600 and providing that small towns should be represented at least once in every l0 years.
Amended l964 to permit small towns to be districted for one or more representatives.
Amended November 7, 2006 to enable towns with sufficient population to have their own representative district and permits the use of floterial districts.

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

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

The 2006 amendment was in response to the unconstitutional redistricting performed by the court in 2002. The court created large multi-town, multi-Representative districts that were counter to the design of New Hampshire. Unlike most of the other States, New Hampshire is not a commonwealth and does not have home rule. This was done for uniformity of law. In exchange for the loss of sovereignty, each political subdivision (town or city ward) was given unique representation in the Legislature. Originally, there was one representative for every town with 150 rateable polls (voters), and an addition representative for every additional 300 voters. Furthermore, in multi-town districts, the town in which the election was held was rotated term to term. The 2006, amendment reaffirms the peoples expectations of unique representation.

[Art.] ll-a. [Division of Town, Ward or Place; Representative Districts.] Notwithstanding Articles 9 and ll, a law providing for an apportionment to form Representative districts under Articles 9 and ll of Part Second may divide a town, ward or unincorporated place into two or more Representative districts if such town, ward or place, by referendum requests such division.
November 22, l978 (Rejected in l976 as proposed by convention, but adopted in l978 as proposed by the General Court and including both Representative and Senate districts.)

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

[Art.] l2. [Biennial Election of Representative in November.]
The members of the House of Representatives shall be chosen biennially, in the month of November, and shall be the second branch of the Legislature.
June 2, l784 Amended twice in l877 substituting "biennially" for "annually" and "November" for "March."

Article 12 simply set the period of elections.

[Art.] l3. [Qualifications of Electors.] (Repealed)
June 2, l784. All persons qualified to vote in the election of Senators shall be entitled to vote within the town, district, parish, or place where they dwell, in the choice of Representatives. Note: The phrase "town, district, parish, or place" was shortened to "district" in engrossed copy of l792, apparently without authority.
Repealed in l976.

Most important is that there no longer is a qualification for voting for Representatives.

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[Art.] l4. [Representatives, How Elected, Qualifications of.]
Every member of the House of Representatives shall be chosen by ballot; and, for two years, at least, next preceding his election shall have been an inhabitant of this State; shall be, at the time of his election, an inhabitant of the town, ward, place, or district he may be chosen to represent and shall cease to represent such town, ward, place, or district immediately on his ceasing to be qualified as aforesaid.
June 2, l784 Amended l852 deleting provision for Representatives to have an estate of l00 pounds.
Amended l877 deleting requirement that Representatives be Protestants.
Amended l956 substituting "ward" for "parish."
Amended l964 adding word "district."

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

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[Art.] l5. [Compensation of the Legislature.]
The presiding officers of both Houses of the Legislature, shall severally receive out of the State treasury as compensation in full for their services for the term elected the sum of $250, and all other members thereof, seasonably attending and not departing without license, the sum of $200 and each member shall receive mileage for actual daily attendance on legislative days, but not after the Legislature shall have been in session for 45 legislative days or after the first day of July following the annual assembly of the Legislature, whichever occurs first; provided, however, that, when a special session shall be called by the Governor or by a 2/3 vote of the then qualified members of each branch of the General Court, such officers and members shall receive for attendance an additional compensation of $3 per day for a period not exceeding 15 days and the usual mileage. Nothing herein shall prevent the payment of additional mileage to members attending committee meetings or on other legislative business on nonlegislative days.
June 2, l784
Amended l792 requiring State to pay wages instead of town.
Amended l889 setting salary for members at $200 and for officers at $250 with $3 per day for special sessions.
Amended l960 limiting mileage to 90 legislative days.
Amended l984 limiting mileage to 45 legislative days in each annual session.

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

[Art.] l6. [Vacancies in House, How Filled.]
All intermediate vacancies, in the House of Representatives may be filled up, from time to time, in the same manner as biennial elections are made.
June 2, l784
Amended l877 changing "annual" to "biennial" elections.

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

[Art.] l7. [House to Impeach Before the Senate.]
The House of Representatives shall be the grand inquest of the State; and all impeachments made by them, shall be heard and tried by the Senate.
June 2, l784

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

[Art.] l8. [Money Bills to Originate in House.]
All money bills shall originate in the House of Representatives; but the Senate may propose, or concur with amendments, as on other bills.
June 2, l784

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

[Art.] l8-a [Budget Bills.]
All sections of all budget bills before the general court shall contain only the operating and capital expenses for the executive, legislative and judicial branches of government. No section or footnote of any such budget bill shall contain any provision which establishes, amends or repeals statutory law, other than provisions establishing, amending or repealing operating and capital expenses for the executive, legislative and judicial branches of government.
November 28, l984

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

[Art.] l9. [Adjournment.]
The House of Representatives shall have the power to adjourn themselves.
June 2, l784
Amended l948 substituting "five" for "two" days as length of adjournment.
Amended l966 removing limitation on adjournment.

This Article gives the House the power of adjourning themselves as they see fit. Otherwise, only the Governor would only be able to adjourn the House.

[Art.] 20. [Quorum, What Constitutes.]
A majority of the members of the House of Representatives shall be a quorum for doing business: But when less than two-thirds of the Representatives elected shall be present, the assent of two-thirds of those members shall be necessary to render their acts and proceedings valid.
June 2, l784

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

[Art.] 2l. [Privileges of Members of Legislature.]
No member of the House of Representatives, or Senate shall be arrested, or held to bail, on mesne process, during his going to, returning from, or attendance upon, the court.
June 2, l784

This Article protects members of the House from interference when attending session. This was considered necessary so that member could not be prevented from voting by those who held opposing views. You can see from the definition this would mean that the process of prosecution could not be used to keep you from court. I would interpret this to mean that a traffic stop and the time required to do the license and registration checks could not be used to delay you.

***MESNE**, a. meen. In law, middle; intervening; as a mesne lord, that is, a lord who holds land of a superior, but grants a part of it to another person. In this case,he is a tenant to the superior, but lord or superior to the second grantee, and called the mesne lord.*

Mesne process, that part of the proceedings in a suit which intervenes between the original process or writ and the final issue, and which issues, pending the suit, on some collateral matter; and sometimes it is understood to be the whole process preceding the execution.

Mesne profits, the profits of an estate which accrue to a tenant in possession, after the demise of the lessor.

[Art.] 22. [House to Elect Speaker and Officers, Settle Rules of Proceedings, and Punish Misconduct.]
The House of Representatives shall choose their own speaker, appoint their own officers, and settle the rules of proceedings in their own house; and shall be judge of the returns, elections, and qualifications, of its members, as pointed out in this Constitution. They shall have authority to punish, by imprisonment, every person who shall be guilty of disrespect to the house, in its presence, by any disorderly and contemptuous behavior, or by threatening, or illtreating, any of its members; or by obstructing its deliberations; every person guilty of a breach of its privileges, in making arrests for debt, or by assaulting any member during his attendance at any session; in assaulting or disturbing any one of its officers in the execution of any order or procedure of the house; in assaulting any witness, or other person, ordered to attend, by and during his attendance of the house; or in rescuing any person arrested by order of the house, knowing them to be such.
June 2, l784
Amended l792 by adding that the House shall be judge of the returns, elections, and qualifications of its members.

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

[Art.] 23. [Senate and Executive Have Like Powers; Imprisonment Limited.]
The Senate, Governor and Council, shall have the same powers in like cases; provided, that no imprisonment by either, for any offense, exceeds ten days.
June 2, l784
Amended l792 substituting "Governor" for "president."

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

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[Art.] 24 [Journals and Laws to be Published; Yeas and Nayes; and Protests.]
The journals of the proceedings, and all public acts of both houses, of the Legislature, shall be printed and published immediately after every adjournment or prorogation; and upon motion made by any one member, duly seconded, the yeas and nays, upon any question, shall be entered, on the journal. And any member of the Senate, or House of Representatives, shall have a right, on motion made at the time for that purpose to have his protest, or dissent, with the reasons, against any vote, resolve, or bill passed, entered on the journal.
June 2, l784
Amended l792 permitting protest or dissent with reasons to be entered in the journals.
Amended l966 requiring roll call requests to be seconded.

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

SENATE

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

[Art.] 25. [Senate, How Constituted.]
The Senate shall consist of twenty-four members.
June 2, l784. Provided for l2 Senators.
Amended l792. Generally rephrased specifying term as one year from the first Wednesday in June.
Amended l877 increasing Senators to 24 and providing for 2 year term.
Amended l889 so that term started in January instead of June.
Amended l974 deleting reference to term.

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

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[Art.] 26. [Senatorial Districts, How Constituted.]
And that the State may be equally represented in the Senate, the Legislature shall divide the State into single-member districts, as nearly equal as may be in population, each consisting of contiguous towns, city wards and unincorporated places, without dividing any town, city ward or unincorporated place. The Legislature shall form the single-member districts at its next session after approval of this article by the voters of the State and thereafter at the regular session following each decennial federal census.
June 2, l784. Number of Senators elected from each district (county) proportioned to taxes paid by each district.
Amended l792 dividing the State into l2 Senatorial districts still based on proportion of taxes paid by the district.
Amended l877 increasing Senate to 24 members from single member districts.
Amended l964 providing for election of Senators on basis of population.

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

[Art.] 26-a. [Division of Town, Ward or Place; Senatorial Districts.]
Notwithstanding Article 26 or any other article, a law providing for an apportionment to form senatorial districts under Article 26 of Part Second may divide a town, ward or unincorporated place into two or more senatorial districts if such town, ward or place by referendum requests such division.
November 22, l978

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

[Art.] 27. [Election of Senators.]
The freeholders and other inhabitants of each district, qualified as in this Constitution is provided shall biennially give in their votes for a senator, at some meeting holden in the month of November.
June 2, l784. Annual election of senators at annual meeting in March.
Amended l792 rewording phrases but not changing the meaning.
Amended l877 twice substituting biennial election and sessions for annual elections and sessions and providing for elections in November instead of March.

This Article defines the frequency of election.

[Art.] 28. [Senators, How and by Whom Chosen; Right of Suffrage.] (Repealed)
June 2, l784. Senate, first branch of the Legislature, elected by male inhabitants 2l years of age and older who pay their own poll tax.
Amended l792 changing wording but not the meaning.
Amended l877 twice, substituting "biennially" for "annually" and "November" for "March."
Amended l958 removing obsolete reference to "male" inhabitants as being the only ones allowed to vote.
Repealed l976. Provisions covered by Part 1, Article ll.

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

[Art.] 29. [Qualifications of Senators.]
Provided nevertheless, that no person shall be capable of being elected a senator, who is not of the age of thirty years, and who shall not have been an inhabitant of this State for seven years immediately preceding his election, and at the time thereof he shall be an inhabitant of the district for which he shall be chosen. Should such person, after election, cease to be an inhabitant of the district for which he was chosen, he shall be disqualified to hold said position and a vacancy shall be declared therein.
June 2, l784
Amended l852 deleting property qualifications.
Amended l877 deleting requirements that senators be Protestant.
Amended l976 adding provision that a senator is disqualified if he moves from his district.

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

[Art.] 30. [Inhabitant Defined.]
And every person, qualified as the Constitution provides, shall be considered an inhabitant for the purpose of being elected into any office or place within this State, in the town, or ward, where he is domiciled.
June 2, l784
Amended l958 substituting "ward" for "parish, and plantation."
Amended l976 twice deleting reference to electing and substituting "is domiciled" for "dwelleth and hath his home."

This Article defines inhabitant which is used in of Part 1, Article 11, and Part 2, Articles 9 and 29 that anyone an inhabitant of the State duly qualified for the office to be able to be elected from the place he is domiciled. Domiciled is not defined in Thomas Sheridan's "A Rhetorical Grammar", London, 1780. However, it is defined in Websters, "American Dictionary", 1828.

DOMICIL, DOMICILIATE, v.t. To establish a fixed residence, or a residence that constitutes habitancy

DOMICILED. Having gained a permanent residence or inhabitancy.

[Art.] 3l. [Inhabitants of Unincorporated Places; Their Rights, etc.] (Repealed)
June 2, l784. Procedure and qualifications for inhabitants of unincorporated places to vote.
Amended l877 twice providing for biennial instead of annual elections in November instead of March.
Amended l958 deleting reference to plantations and substituting "wards" for "parishes."
Repealed l976. Provisions covered by Part I, Art. ll.

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

[Art.] 32. [Biennial Meetings, How Warned, Governed, and Conducted; Return of Votes, etc.]
The meetings for the choice of Governor, Council and Senators, shall be warned by warrant from the selectmen, and governed by a moderator, who shall, in the presence of the selectmen (whose duty it shall be to attend) in open meeting, receive the votes of all the inhabitants of such towns and wards present, and qualified to vote for Senators; and shall, in said meetings, in presence of the said selectmen, and of the town or city clerk, in said meetings, sort and count the said votes, and make a public declaration thereof, with the name of every person voted for, and the number of votes for each person; and the town or city clerk shall make a fair record of the same at large, in the town book, and shall make out a fair attested copy thereof, to be by him sealed up and directed to the Secretary of State, within five days following the election, with a superscription expressing the purpose thereof.
June 2, l784
Amended l792 generally rewording section.
Amended l889 substituting "January" for "June" regarding notification to Secretary of State.
Amended l958 substituting "wards" for "parishes" and added reference to city clerks.
Amended l974 substituting "December" for "January" and "twenty" and "thirty" regarding notification to Secretary of State.
Amended l976 changing notification to 5 days after the election.

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

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[Art.] 33. [Secretary of State to Count Votes for Senators and Notify Persons Elected.]
And that there may be a due meeting of Senators and Representatives on the first Wednesday of December, biennially, the secretary of state shall, as soon as may be, examine the returned copy of such records; and fourteen days before the first Wednesday of December, he shall issue his summons to such persons as appear to be chosen Senators and Representatives, by a plurality of votes, to attend and take their seats on that day.
June 2, l784. President and 3 of the Council to issue summons to Senators to take their seats.
Amended l792 changing president to Governor and specific number of Councilors to majority of Councilors.
Amended l877 changing annually to biennially.
Amended l889 changing June to January for beginning of session.
Amended l912 substituting "plurality of votes" for "majority of votes."
Amended l968 deleting proviso relating to the first year.
Amended l974 changing meeting to first Wednesday of December.
Amended l976 providing that the secretary of state should examine the returns and notify those elected instead of Governor.

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

[Art.] 34. [Vacancies in Senate, How Filled.]
And in case there shall not appear to be a Senator elected, by a plurality of votes, for any district, the deficiency shall be supplied in the following manner, viz. The members of the House of Representatives, and such Senators as shall be declared elected, shall take the names of the two persons having the highest number of votes in the district, and out of them shall elect, by joint ballot, the Senator wanted for such district; and in this manner all such vacancies shall be filled up, in every district of the State and in case the person receiving a plurality of votes in any district is found by the Senate not to be qualified to be seated, a new election shall be held forthwith in said district. All vacancies in the senate arising by death, removal out of the state, or otherwise, except from failure to elect, shall be filled by a new election by the people of the district upon the requisition of the Governor and council, as soon as may be after such vacancies shall happen.
June 2, l784
Amended l792 generally rewording section.
Amended l889 adding provisions for new elections in case of vacancies.
Amended l912 providing for plurality of votes instead of majority.
Amended l968 providing for new election if person elected is not qualified.

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

[Art.] 35. [Senate, Judges of Their Own Elections.]
The senate shall be final judges of the elections, returns, and qualifications, of their own members, as pointed out in this Constitution.
June 2, l784

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

[Art.] 36. [Adjournment.]
The senate shall have power to adjourn themselves, and whenever they shall sit on the trial of any impeachment, they may adjourn to such time and place as they may think proper although the Legislature be not assembled on such day, or at such place.
June 2, l784
Amended l792 adding proviso relating to impeachment.
Amended l948 increasing adjournment from 2 days to 5 days.
Amended l966 deleting limitation on adjournment.

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

[Art.] 37. [Senate to Elect Their Own Officers; Quorum.]
The senate shall appoint their president and other officers, and determine their own rules of proceedings: And not less than thirteen members of the senate shall make a quorum for doing business; and when less than sixteen Senators shall be present, the assent of ten, at least, shall be necessary to render their acts and proceedings valid.
June 2, l784
Amended l792 adding "president."
Amended l877 increasing quorum from 7 to l3 and changing assent of 5 when less than 8 present to assent of l0 when less than l present.

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

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

[Art.] 38. [Senate to Try Impeachments; Mode of Proceeding.]
The senate shall be a court, with full power and authority to hear, try, and determine, all impeachments made by the House of Representatives against any officer or officers of the State, for bribery, corruption, malpractice or maladministration, in office; with full power to issue summons, or compulsory process, for convening witnesses before them: But previous to the trial of any such impeachment, the members of the senate shall respectively be sworn truly and impartially to try and determine the charge in question, according to evidence. And every officer, impeached for bribery, corruption, malpractice or maladministration in office, shall be served with an attested copy of the impeachment, and order of the senate thereon with such citation as the senate may direct, setting forth the time and place of their sitting to try the impeachment; which service shall be made by the sheriff, or such other sworn officer as the senate may appoint, at least fourteen days previous to the time of trial; and such citation being duly served and returned, the senate may proceed in the hearing of the impeachment, giving the person impeached, if he shall appear, full liberty of producing witnesses and proofs, and of making his defense, by himself and counsel, and may also, upon his refusing or neglecting to appear hear the proofs in support of the impeachment, and render judgment thereon, his nonappearance notwithstanding; and such judgment shall have the same force and effect as if the person impeached had appeared and pleaded in the trial.
June 2, l784
Amended l792 adding mode of proceeding.

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

[Art.] 39. [Judgment on Impeachment Limited.]
Their judgment, however, shall not extend further than removal from office, disqualification to hold or enjoy any place of honor, trust, or profit, under this State, but the party so convicted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to the laws of the land.
June 2, l784

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

[Art.] 40. [Chief Justice to Preside on Impeachment of Governor.]
Whenever the Governor shall be impeached, the chief justice of the supreme judicial court, shall, during the trial, preside in the senate, but have no vote therein.
September 5, l792

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

EXECUTIVE POWER -- GOVERNOR

[Art.] 4l. [Governor, Supreme Executive Magistrate.]
There shall be a supreme executive magistrate, who shall be styled the Governor of the State of New Hampshire, and whose title shall be His Excellency. The executive power of the State is vested in the governor. The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the state, enforce compliance with any Constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right, by any officer, department or agency of the state. This authority shall not be construed to authorize any action or proceedings against the legislative or judicial branches.
June 2, l784
Amended l792 substituting "Governor" for "President."
Amended l966 clarifying and reinforcing executive powers of the governor.

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

[Art.] 42. [Election of Governor, Return of Votes; Electors; If No Choice, Legislature to Elect One of Two Highest Candidates; Qualifications for Governor.]
The Governor shall be chosen biennially in the month of November; and the votes for Governor shall be received, sorted, counted, certified and returned, in the same manner as the votes for Senators; and the Secretary shall lay the same before the Senate and House of Representatives, on the first Wednesday following the first Tuesday of January to be by them examined, and in case of an election by a plurality of votes through the State, the choice shall be by them declared and published. And the qualifications of electors of the Governor shall be the same as those for Senators; and if no person shall have a plurality of votes, the Senate and House of Representatives shall, by joint ballot elect one of the two persons, having the highest number of votes, who shall be declared Governor. And no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this State for 7 years next preceding, and unless he shall be of the age of 30 years.
June 2, l784
Amended l792 deleting specifics of handling votes at town meeting.
Amended l852 removing property qualification for holding office.
Amended l877 three times: biennial elections replacing annual; elections in November instead of March; deleting provision that office holders be of Protestant religion.
Amended l889 changing June to January for the Secretary of State to lay the votes before the house and Senate.
Amended l912 requiring a plurality instead of majority for election of Governor.
Amended l982 changing first Wednesday of January to Wednesday after the first Tuesday.

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

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[Art.] 43. [In Cases of Disagreement Governor to Adjourn or Prorogue Legislature; If Causes Exist, May Convene Them Elsewhere.]
In cases of disagreement between the two houses, with regard to the time or place of adjournment or prorogation, the Governor, with advice of council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days at any one time, as he may determine the public good may require, and he shall dissolve the same on the first Wednesday of December biennially. And, in cases whereby dangers may arise to the health or lives of the members from their attendance at the General Court at any place, the Governor may direct the session to be holden at some other the most convenient place within the State.
June 2, l784
Amended l792 twice changing president to Governor and inserting "place" of adjournment.
Amended l889 changing June to January for time of dissolving house and Senate.
Amended l974 providing for the Legislature to be dissolved on the first Wednesday of December.
Amended l980 removing "infectious distemper" as a reason for the Governor to convene the Legislature at a different place.

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

[Art.] 44. [Veto to Bills.]
Every bill which shall have passed both houses of the General Court, shall, before it becomes a law, be presented to the Governor, if he approves, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it; if after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with such objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of persons, voting for or against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it unless the Legislature, by their adjournment, prevent its return, in which case it shall not be a law.
September 5, l792

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

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[Art.] 45. [Resolves to Be Treated Like Bills.]
Every resolve shall be presented to the Governor, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.
September 5, l792

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

[Art.] 46. [Nomination and Appointment of Officers.]
All judicial officers, the attorney general, and all officers of the navy, and general and field officers of the militia, shall be nominated and appointed by the Governor and council; and every such nomination shall be made at least three days prior to such appointment; and no appointment shall take place, unless a majority of the council agree thereto.
June 2, l784
Amended l792 making minor changes in wording.
Amended l877 deleting solicitors and sheriffs from those appointed by Governor and council.
Amended l976 deleting appointment of coroners by Governor and council.

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

[Art.] 47. [Governor and Council Have Negative on Each Other.]
The Governor and council shall have a negative on each other, both in the nominations and appointments. Every nomination and appointment shall be signed by the Governor and council, and every negative shall be also signed by the Governor or council who made the same.
September 5, l792

This Article enables the Governor and Council to void each others actions. This is practiced as action by the Governor and disapproval by the Council and vice versa. This makes our executive the weakest in the nation.

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[Art.] 48. [Field Officers to Recommend, and Governor to Appoint, Company Officers.] (Repealed)
June 2, l784
Amended l792 providing that field officers were to nominate and recommend to the Governor the captains and subalterns instead of appointing them.
Amended l903 added proviso that nominees had to be examined and qualified by an examining board.
Repealed l976.

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

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[Art.] 49. [President of Senate, etc., To Act as Governor When Office Vacant; Speaker of House to Act When Office of President of Senate Is also Vacant.]
In the event of the death, resignation, removal from office, failure to qualify, physical or mental incapacity, absence from the State, or other incapacity of the Governor, the president of the Senate, for the time being, shall act as Governor until the vacancy is filled or the incapacity is removed; and if the president of the senate, for any of the above-named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the speaker of the House of Representatives, for the time being, or in the case of the like incapacity of the speaker, upon the Secretary of state, or in case of his like incapacity, upon the state Treasurer, each of whom, in that order, shall act as governor, as hereinabove provided, until the vacancy is filled or the incapacity removed. Whenever a vacancy for the duration or remainder of the governor's term of office occurs before the commencement of the last year of such term, a special election for governor shall take place to fill the vacancy, as provided by law. Whenever the speaker of the house acts as governor, he shall act as such only until such time as the vacancy is filled or the incapacity removed in either the office of governor or of president of the senate, whichever occurs first. Whenever either the Secretary of state or the Treasurer acts as governor, he shall act as such only until such time as the vacancy is filled or the incapacity removed in the offices of governor, of president of the senate or of speaker of the house, whichever occurs first. While acting as governor under this article, the president of the senate, speaker of the house, Secretary of state or state Treasurer, as the case may be, shall be styled Acting governor, shall not be required to take an additional oath of office, shall have and exercise all the powers, duties and authorities of, and receive compensation equal to that of the office of governor; and the capacity of each such officer to serve as president of the senate as well as senator, speaker of the house of representatives as well as representative, Secretary of state, or state Treasurer, as the case may be, or to receive the compensation of such office, shall be suspended only. While the governor or an acting governor is absent from the state on official business, he shall have the power and authority to transact such business.
June 2, l784
Amended l792 changing some wording and providing that the senate president acting as Governor could not hold his office in the Senate.
Amended l889 providing for the speaker of the house to act as Governor.
Amended l956 providing that the Governor while absent from the state has authority to transact such business.
Amended l968 providing for succession through secretary of state and state Treasurer, but only until a new senate president or house speaker is elected.
Amended l984 rewording section generally to include incapacity, new election if vacancy occurs before last year of the term, compensation of acting governor to equal that of governor, and suspension of senate president acting as a Senator or speaker to act as a representative while serving as acting governor.

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

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

[Art.] 49-a [Prolonged Failure to Qualify; Vacancy in Office of Governor Due to Physical or Mental Incapacity, etc.]
Whenever the governor transmits to the secretary of state and president of the senate his written declaration that he is unable to discharge the powers and duties of his office by reason of physical or mental incapacity and until he transmits to them a written declaration to the contrary, the president of the senate, for the time being, shall act as governor as provided in article 49, subject to the succession provisions therein set forth. Whenever it reasonably appears to the attorney general and a majority of the council that the governor is unable to discharge the powers and duties of his office by reason of physical or mental incapacity, but the governor is unwilling or unable to transmit his written declaration to such effect as above provided, the attorney general shall file a petition for declaratory judgment in the supreme court requesting a judicial determination of the ability of the governor to discharge the powers and duties of his office. After notice and hearing, the justices of the supreme court shall render such judgment as they find warranted by a preponderance of the evidence; and, if the court holds that the governor is unable to discharge the powers and duties of his office, the president of the senate, for the time being, shall act as governor as provided in article 49, subject to the succession provisions therein set forth, until such time as the disability of the governor is removed or a newly elected governor is inaugurated. Such disability, once determined by the supreme court, may be removed upon petition for declaratory judgment to the supreme court by the governor if the court finds, after notice and hearing, by a preponderance of the evidence that the governor is able to discharge the powers and duties of his office. Whenever such disability of the governor, as determined by his written declaration or by judgment of the supreme court, has continued for a period of 6 months, the General Court may, by concurrent resolution adopted by both houses, declare the office of governor vacant. Whenever the governor-elect fails to qualify by reason of physical or mental incapacity or any cause other than death or resignation, for a period of 6 months following the inauguration date established by this constitution, the general court may, by concurrent resolution adopted by both houses, declare the office of governor vacant. The provisions of article 49 shall govern the filling of such vacancy, either by special election or continued service of an acting governor. If the general court is not in session when any such 6-month period expires, the acting governor, upon written request of at least l/4 of the members of each house, shall convene the general court in special session for the sole purpose of considering and acting on the question whether to declare a vacancy in the office of governor under this article.
November 28, l984

This Article provides procedures involving the attorney general, governors council and supreme court to determine the governor unable serve and for the general court then to declare the governor office vacant for a variety of causes.

[Art.] 50. [Governor to Prorogue or Adjourn Legislature, and Call Extra Sessions.]
The Governor, with advice of Council, shall have full power and authority, in the recess of the general court, to prorogue the same from time to time, not exceeding ninety days, in any one recess of said court; and during the sessions of said court, to adjourn or prorogue it to any time the two houses may desire, and to call it together sooner than the time to which it may be adjourned, or prorogued, if the welfare of the State should require the same.
June 2, l784
Amended l792 changing president to Governor.

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

[Art.] 5l. [Powers and Duties of Governor as Commander-in-Chief.]
The Governor of this State for the time being, shall be commander-in-chief of all the military forces of the State; and shall have full power, by himself or by any chief commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia; to call forth the militia and to put in warlike posture the inhabitants of the State; to execute the laws of the State and of the United States; to suppress insurrection and to repel invasion; and, in fine, the Governor is hereby entrusted with all other powers incident to the office of commander-in-chief to be exercised agreeably to the rules and regulations of the Constitution and the laws of the land.
June 2, l784
Amended l792 changing president to Governor.
Amended l968 condensing authority of the Governor as commander-in-chief of military forces.

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

[Art.] 52. [Pardoning Power.]
The power of pardoning offenses, except such as persons may be convicted of before the senate, by impeachment of the house, shall be in the Governor, by and with the advice of Council: But no charter of pardon, granted by the Governor, with advice of the council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offense or offenses intended to be pardoned.
June 2, l784
Amended l792 changing president to Governor**.**

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

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[Art.] 53. [Militia Officers, Removal of.] (Repealed)
June 2, l784
Amended l792 changing president to Governor.
Repealed 1976.

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

[Art.] 54. [Staff and Non-commissioned Officers, by Whom Appointed.] (Repealed)
June 2, l784
Repealed l976.

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

[Art.] 55. [Division of Militia into Brigades, Regiments, and companies.] (Repealed)
June 2, l784
Repealed l976.

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

[Art.] 56. [Disbursements from Treasury.]
No moneys shall be issued out of the treasury of this State, and disposed of, (except such sums as may be appropriated for the redemption of bills of credit, or Treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the Governor for the time being, by and with the advice and consent of the council, for the necessary support and defense of this State, and for the necessary protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.
June 2, l784
Amended l792 changing president to Governor.

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

[Art.] 57. [Accounts of Military Stores.] (Repealed)
June 2, l784
Amended l792 changing president to Governor.
Repealed l950.

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

[Art.] 58. [Compensation of Governor and Council.]
The Governor and council shall be compensated for their services, from time to time, by such grants as the general courts shall think reasonable.
June 2, l784
Amended l792 changing president to Governor.

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

[Art.] 59. [Salaries of Judges.]
Permanent and honorable salaries shall be established by law, for the justices of the superior court.
June 2, l784

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

[Art.] 60. [Councilors; Mode of Election, etc.]
There shall be biennially elected, by ballot, five councilors, for advising the Governor in the executive part of government. The freeholders and other inhabitants in each county, qualified to vote for Senators, shall some time in the month of November, give in their votes for one councilor; which votes shall be received, sorted, counted, certified, and returned to the Secretary's office, in the same manner as the votes for Senators, to be by the Secretary laid before the Senate and House of Representatives on the first Wednesday following the first Tuesday of January.
June 2, l784
Amended l792 twice changing the council from members of the house and senate elected by the house and senate to individuals elected by voters - one in each county; and changing president to Governor.
Amended l877 twice substituting biennially for annually and November for March.
Amended l889 substituting January for June.
Amended l984 changing the first Wednesday to the first Wednesday following the first Tuesday.

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

[Art.] 6l. [Vacancies, How Filled, if No Choice.]
And the person having a plurality of votes in any county, shall be considered as duly elected a councilor: But if no person shall have a plurality of votes in any county, the senate and House of Representatives shall take the names of the two persons who have the highest number of votes in each county, and not elected, and out of those two shall elect by joint ballot, the councilor wanted for such county, and the qualifications for councilors shall be the same as for Senator.
September 5, l792
Amended l912 substituting plurality for majority.

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

[Art.] 62. [Subsequent Vacancies; Governor to Convene; Duties.]
If any person thus chosen a councilor, shall be elected Governor or member of either branch of the Legislature, and shall accept the trust; or if any person elected a councilor, shall refuse to accept the office, or in case of the death, resignation, or removal of any councilor out of the State, the Governor may issue a precept for the election of a new councilor in that county where such vacancy shall happen and the choice shall be in the same manner as before directed. And the Governor shall have full power and authority to convene the Council, from time to time, at his discretion; and, with them, or the majority of them, may and shall, from time to time hold a council, for ordering and directing the affairs of the State, according to the laws of the land.
September 5, l792

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

[Art.] 63. [Impeachment of Councilors.] The members of the Council may be impeached by the house, and tried by the senate for bribery, corruption, malpractice, or maladministration.
June 2, l784
Amended l792 changing wording generally and changing mal-conduct to bribery, corruption, malpractice, or maladministration.

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

[Art.] 64. [Secretary to Record Proceedings of Council.]
The resolutions and advice of the Council shall be recorded by the Secretary, in a register, and signed by all members present agreeing thereto; and this record may be called for at any time, by either house of the Legislature; and any member of the Council may enter his opinion contrary to the resolutions of the majority, with the reasons for such opinion.
June 2, l784
Amended l792 adding phrases: "by the Secretary," "agreeing thereto," and "with the reasons for such opinion."

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

[Art.] 65. [Councilor Districts Provided for.]
The Legislature may, if the public good shall hereafter require it, divide the State into five districts, as nearly equal as may be, governing themselves by the number of population, each district to elect a Councilor: And, in case of such division, the manner of the choice shall be conformable to the present mode of election in counties.
September 5, l792
Amended l912 substituting population for rateable polls.

This Article defines the Executive Councilor districts after they became popularly elected in 1792.

[Art.] 66. [Elections by Legislature May Be Adjourned From Day to Day; Order Thereof.]
And, whereas the elections, appointed to be made by this Constitution on the first Wednesday of January biennially, by the two houses of the Legislature, may not be completed on that day, the said elections may be adjourned from day to day, until the same be completed; and the order of the elections shall be as follows - the vacancies in the senate, if any, shall be first filled up: The Governor shall then be elected, provided there shall be no choice of him by the people: And afterwards, the two houses shall proceed to fill up the vacancy, if any, in the Council.
June 2, l784
Amended l792 twice changing president to Governor and election of the Council only if there is a vacancy.
Amended l877 substituting biennially for annually.
Amended l889 substituting January for June.

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

SECRETARY, TREASURER, ETC.

[Art.] 67. [Election of Secretary and Treasurer.]
The Secretary and Treasurer shall be chosen by joint ballot of the Senators and Representatives assembled in one room.
June 2, l784
Amended l950 deleting commissary-general.

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

[Art.] 68. [State Records, Where Kept; Duty of Secretary.]
The records of the State shall be kept in the office of the Secretary, and he shall attend the Governor and Council, the senate and Representatives, in person, or by deputy, as they may require.
June 2, l784
Amended l792 twice transferring authority of the Secretary to appoint his deputies to next article, and changing president to Governor.

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

[Art.] 69. [Deputy Secretary.]
The Secretary of the State shall, at all times, have a deputy, to be by him appointed; for whose conduct in office he shall be responsible: And, in case of the death, removal, or inability of the Secretary, his deputy shall exercise all the duties of the office of Secretary of this State, until another shall be appointed.
June 2, l784
Amended l792 describing duties of the deputy Secretary.

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

[Art.] 70. [Secretary to Give Bond.]
The Secretary, before he enters upon the business of his office, shall give bond, with sufficient sureties, in a reasonable sum, for the use of the State, for the punctual performance of his trust.
September 5, l792

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

COUNTY TREASURER, ETC.

[Art.] 7l. [County Treasurers, Registers of Probate, County Attorneys, Sheriffs, and Registers of Deeds Elected.]
The county Treasurers, registers of probate, county attorneys, sheriffs and registers of deeds, shall be elected by the inhabitants of the several towns, in the several counties in the State, according to the method now practiced, and the laws of the State, Provided nevertheless the Legislature shall have authority to alter the manner of certifying the votes, and the mode of electing those officers; but not so as to deprive the people of the right they now have of electing them.
June 2, l784
Amended l792 twice adding proviso that the Legislature could alter the manner of certifying the votes and mode of electing the officers; deleting oath and bond of county Treasurer and transferring oath and bond of register of deeds to next article.
Amended l877 adding registers of probate, county solicitors, and sheriffs to those to be elected.
Amended l958 changing county solicitor to county attorney.

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

[Art.] 72. [Counties May Be Divided into Districts for Registering Deeds.]
And the Legislature, on the application of the major part of the inhabitants of any county, shall have authority to divide the same into two districts for registering deeds, if to them it shall appear necessary; each district to elect a register of deeds: And before they enter upon the business of their offices, shall be respectively sworn faithfully to discharge the duties thereof, and shall severally give bond, with sufficient sureties, in a reasonable sum, for the use of the county for the punctual performance of their respective trusts.
June 2, l784
Amended l792 providing for counties being divided into districts for registering deeds and electing registers.

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

JUDICIARY POWER

[Art.] 72-a. [Supreme and Superior Courts.]
The judicial power of the state shall be vested in the supreme court, a trial court of general jurisdiction known as the superior court, and such lower courts as the Legislature may establish under Article 4th of Part 2.
November l6, l966

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

[Art.] 73. [Tenure of Office To Be Expressed in Commissions; Judges to Hold Office During Good Behavior, etc.; Removal.]
The tenure that all commissioned officers shall have by law in their offices shall be expressed in their respective commissions, and all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior except those for whom a different provision is made in this Constitution. The Governor with consent of the Council may remove any commissioned officer for reasonable cause upon the address of both houses of the Legislature, provided nevertheless that the cause for removal shall be Stated fully and substantially in the address and shall not be a cause which is a sufficient ground for impeachment, and provided further that no officer shall be so removed unless he shall have had an opportunity to be heard in his defense by a joint committee of both houses of the Legislature.
June 2, l784
Amended l792 changing president to Governor.
Amended l966 spelling out procedures for removal from office.

This Article though included in the section on judicial power includes the commissioners as well. The commissioners terms of office are governed by the terms of their commission. It describes the method for removal from office by bill of address for good cause, but less than grounds for impeachment. We must take care to note that in 1966 when the procedure for impeachment was clarified there were several subtle word changes. The title commission officer was replaced with commissioned officer. The pronoun “them” (as it was from 1783 to 1966) was referring to commission officers and judicial officers was replaced with commissioned officers. As judicial officers are also commissioned, and as the Constitution always empowered the removal of judges by bill of address it is clear that commissioned officers must refer to both commissioned officers and judicial officers. However, the opportunity to separate the two has been cleverly inserted so as to enable a further weakening of the Legislature’s, and therefore, the people’s power over the judiciary to be construed.

[Art.] 73-a. [Supreme Court, Administration.]
The chief justice of the supreme court shall be the administrative head of all the courts. He shall, with the concurrence of a majority of the supreme court justices, make rules governing the administration of all courts in the state and the practice and procedure to be followed in all such courts. The rules so promulgated shall have the force and effect of law.
November 22, l978

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

[Art.] 74. [Judges to Give Opinions, When.]
Each branch of the Legislature as well as the Governor and Council shall have authority to require the opinions of the justices of the supreme court upon important questions of law and upon solemn occasions.
June 2, l784
Amended l792 changing president to Governor.
Amended l958 substituting supreme court for superior court.

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

[Art.] 75. [Justices of Peace Commissioned for Five Years.]
In order that the people may not suffer from the long continuance in place of any justice of the peace who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justice of the peace shall become void at the expiration of five years from their respective dates, and upon the expiration of any commission, the same may if necessary be renewed or another person appointed as shall most conduce to the well being of the State.
June 2, l784

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

[Art.] 76. [Divorce and Probate Appeals, Where Tried.]
All causes of marriage, divorce and alimony; and all appeals from the respective judges of probate shall be heard and tried by the superior court until the Legislature shall by law make other provision.
June 2, l784

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

[Art.] 77. [Jurisdiction of Justices in Civil Causes.]
The general court are empowered to give to justices of the peace jurisdiction in civil causes, when the damages demanded shall not exceed one hundred dollars and title of real estate is not concerned; but with right of appeal, to either party, to some other court. And the general court are further empowered to give to police courts original jurisdiction to try and determine, subject to right of appeal and trial by jury, all criminal causes where in the punishment is less than imprisonment in the state prison.
September 5, l792
Amended l877 substituting $l00 for 4 pounds
Amended l912 giving jurisdiction to police courts.

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

[Art.] 78. [Judges and Sheriffs, When Disqualified by Age.]
No person shall hold the office of judge of any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years.
September 5, l792

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

[Art.] 79. [Judges and Justices Not to Act as Counsel.]
No judge of any court, or justice of the peace, shall act as attorney, or be of counsel, to any party, or originate any civil suit, in matters which shall come or be brought before him as judge, or justice of the peace.
September 5, l792

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

[Art.] 80. [Jurisdiction and Term of Probate Courts.]
All matters relating to the probate of wills, and granting letters of administration, shall be exercised by the judges of probate, in such manner as the Legislature have directed, or may hereafter direct: And the judges of probate shall hold their courts at such place or places, on such fixed days, as the conveniency of the people may require; and the Legislature from time to time appoint.
June 2, l784
Amended l792 rewording section generally.

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

[Art.] 8l. [Judges and Registers of Probate Not to Act as Counsel.]
No judge, or register of probate, shall be of counsel, act as advocate, or receive any fees as advocate or counsel, in any probate business which is pending, or may be brought into any court of probate in the county of which he is judge or register.
September 5, l792

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

CLERKS OF COURTS

[Art.] 82. [Clerks of Courts, by Whom Appointed.]
The judges of the courts (those of probate excepted) shall appoint their respective clerks to hold their office during pleasure: And no such clerk shall act as an attorney or be of counsel in any cause in the court of which he is clerk, nor shall he draw any writ originating a civil action.
June 2, l784
Amended l792 rewording section generally.

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

ENCOURAGEMENT OF LITERATURE, TRADES, ETC.

[Art.] 83. [Encouragement of Literature, etc.; Control of Corporations, Monopolies, etc.] Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: ***Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools of institutions of any religious sect or denomination.*** **Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it. The size and functions of all corporations should be so limited and regulated as to prohibit fictitious capitalization and provision should be made for the supervision and government thereof. Therefore, all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within the state of all persons and associations, and all trusts and corporations, foreign or domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; to control and regulate the acts of all such persons, associations, corporations, trusts, and officials doing business within the state; to prevent fictitious capitalization; and to authorize civil and criminal proceedings in respect to all the wrongs herein declared against.**
June 2, l784
Amended l877 prohibiting tax money from being applied to schools of religious denominations.
Amended l903 permitting the general court to regulate trusts and monopolies restraining free trade.

This Article gives general direction to the legislators and magistrates. Since the Claremont decisions this are has been interpreted by the court without regard to the balance of the Constitution at the time it was written. Note that first sentence refers to legislators and magistrates as individuals, it does not refer to the governmental powers, and therefore does not refer to the making, enforcement, or adjudication of law. The court asserted that this is was a scribes error; however, the Constitution was amended many times, and any such error could have been easily addressed. Cherish was written into the Constitution at the same time as when the towns had the exclusive duty to provide for education.

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

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

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

CONTINUANCE OF OFFICERS - PROVISION FOR FUTURE REVISION OF THE

[Art.] 84. [Oath of Civil Officers.]
Any person chosen Governor, Councilor, Senator, or Representatives, military or civil officer, (town officers excepted) accepting the trust, shall, before he proceeds to execute the duties of his office, make and subscribe the following declaration, viz. -

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

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

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

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

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

June 2, l784
Amended l792 three times, changing president to Governor; shortening oath of allegiance; and dispensing with need to take second oath.
Amended l970 adding allegiance to the United States of America.

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

[Art.] 85. [Before Whom Taken.]
The oaths or affirmations shall be taken and subscribed by the Governor before a justice of a New Hampshire court, in the presence of both houses of the Legislature, by the Senators and Representatives before the Governor and Council for the time being, and by all other officers before such persons and in such manner as the general court shall from time to time appoint.
June 2, l784
Amended l792 three times changing president to Governor, senior Senator to president of the senate, assembly to Legislature, and generally rewording section.
Amended l968 deleting reference to those first elected.
Amended l984 providing that the governor's oath shall be taken before a justice of a New Hampshire court.

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

[Art.] 86. [Form of Commissions.]
All commissions shall be in the name of the State of New Hampshire, signed by the Governor, and attested by the Secretary, or his deputy, and shall have the great seal of the State affixed thereto.
June 2, l784
Amended l792 changing president to Governor.

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

[Art.] 87. [Form of Writs.]
All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the State of New Hampshire; shall be under the seal of the court whence they issue, and bear test of the chief, first, or senior justice of the court; but when such justice shall be interested, then the writ shall bear test of some other justice of the court, to which the same shall be returnable; and be signed by the clerk of such court.
June 2, l784

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

[Art.] 88. [Form of Indictments, etc.]
All indictments, presentments, and informations, shall conclude, "against the peace and dignity of the State."
June 2, l784

This Article makes all crimes, crimes against the State.

[Art.] 89. [Suicides and Deodands.]
The estates of such persons as may destroy their own lives, shall not for that offense be forfeited, but descend or ascend in the same manner, as if such persons had died in a natural way. Nor shall any article, which shall accidentally occasion the death of any person, be henceforth deemed a deodand, or in any wise forfeited on account of such misfortune.
June 2, l784

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

[Art.] 90. [Existing Laws Continued if Not Repugnant.]
All the laws which have heretofore been adopted, used, and approved, in the province, colony, or State of New Hampshire, and usually practiced on in the courts of law, shall remain and be in full force, until altered and repealed by the Legislature; such parts thereof only excepted, as are repugnant to the rights and liberties contained in this Constitution: Provided that nothing herein contained, when compared with the twenty-third article in the bill of rights, shall be construed to affect the laws already made respecting the persons, or estates of absentees.
June 2, l784

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

[Art.] 9l. [Habeas Corpus.]
The privilege and benefit of the habeas corpus, shall be enjoyed in this State, in the most free, easy, cheap, expeditious, and ample manner, and shall not be suspended by the Legislature, except upon most urgent and pressing occasions, and for a time not exceeding three months.
June 2, l784

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

[Art.] 92. [Enacting Style of Statutes.]
The enacting style in making and passing acts, statutes, and laws, shall be, Be it enacted by the Senate and House of Representatives in General Court convened.
June 2, l784

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

[Art.] 93. [Governor and Judges Prohibited From Holding Other Offices.]
No Governor, or judge of the supreme judicial court, shall hold any office or place under the authority of this State, except such as by this Constitution they are admitted to hold, saving that the judges of the said court may hold the offices of justice of the peace throughout the State; nor shall they hold any place or office, or receive any pension or salary, from any other State, government, or power, whatever.
June 2, l784
Amended l792 changing president to Governor. The engrossed copy of l792, apparently without authority, changed superior court to supreme judicial court.

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

[Art.] 94. [Incompatibility of Offices; Only Two Offices of Profit to Be Holden at Same Time.]
No person shall be capable of exercising, at the same time more than one of the following offices within this State, viz. judge of probate, sheriff, register of deeds; and never more than two offices of profit, which may be held by appointment of the Governor, or Governor and Council, or senate and House of Representatives, or superior or inferior courts; military offices, and offices of justice of the peace excepted.
June 2, l784
Amended l792 changing president to Governor.

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

[Art.] 95. [Incompatibility of Certain Offices.]
No person holding the office of judge of any court, (except special judges) Secretary, Treasurer of the State, attorney-general, register of deeds, sheriff, collectors of State and federal taxes, members of Congress or any person holding any office under the United States, including any person in active military service, shall at the same time hold the office of Governor, or have a seat in the senate, or House of Representatives, or Council; but his being chosen and appointed to, and accepting the same, shall operate as a resignation of his seat in the chair, senate, or House of Representatives, or Council; and the place so vacated shall be filled up. No member of the Council shall have a seat in the Senate or House of Representatives.
June 2, l784
Amended l792 generally rewording section.
Amended l950 deleting commissary-general.
Amended l958 changing obsolete words and phrases.
Amended l980 prohibiting persons in active military service from holding State office.

This Article defines the offices which are incompatible with the offices of Governor, Senator, Representatives, or Executive Councilor. For Governor this Article is redundant to Article 93. Most important is the prohibition from any employee of the government of the of United States of America from holding the offices of Governor, a seat in the General Court or Executive Council.

[Art.] 96. [Bribery and Corruption Disqualify for Office.]
No person shall ever be admitted to hold a seat in the Legislature or any office of trust or importance under this government, who, in the due course of law, has been convicted of bribery or corruption, in obtaining an election or appointment.
June 2, l784

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

[Art.] 97. [Value of Money, How Computed.] (Repealed)
June 2, l784. Money valued at 6 shillings 8 pence per ounce of silver.
Repealed l950.

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

[Art.] 98. [Constitution, When to Take Effect.]
To the end that there may be no failure of justice, or danger to the State, by the alterations and amendments made in the Constitution, the general court is hereby fully authorized and directed to fix the time when the alterations and amendments shall take effect, and make the necessary arrangements accordingly.
September 5, l792

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

[Art.] 99. [Revision of Constitution Provided For.] (Repealed)
June 2, l784. Question of calling a convention to be submitted to the people after seven years. Delegates to be elected in the same manner as Representatives. Questions to be approved by two thirds of qualified voters present and voting thereon.
Amended l792 detailing procedure for calling a convention.
Repealed l980.

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

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[Art.] l00. [Alternate Methods of Proposing Amendments.]
Amendments to this constitution may be proposed by the general court or by a constitutional convention selected as herein provided.

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

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

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

September 5, l792. Question of calling a convention to be submitted every 7 years. Amended l964 twice changing submission of question on calling a convention to every l0 years rather than 7 and providing that the general court could propose amendments. Amended l980 twice incorporating provisions of repealed Art. 99 and requiring all proposals be submitted at the next biennial November election.

This Article provides for amendments to the constitution through three methods. The General Court can propose amendments approved by three-fifths of each chamber to the people to be presented on the next ballot. Amendments approved by a constitutional convention by a three-fifths majority can be proposed to the people on the next ballot. The General Court can have the question of having a convention put on the next ballot at any time, and the Secretary state shall put the question on the ballot at ten years after the last submission. The approval of the question for a constitutional convention requires a majority of the people, and the approval of an amendment requires a two-thirds majority of the people. There was no provision for the General Court to propose amendments until 1964. It is unclear when this power was created.

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[Art.] 10l. [Enrollment of Constitution.]
This form of government shall be enrolled on parchment, and deposited in the Secretary's office, and be a part of the laws of the land and printed copies thereof shall be prefixed to the books containing the laws of this State, in all future editions thereof.
June 2, l784

This Article requires that the Constitution be enrolled on parchment, put in the Secretary of State's office and included laws of the State. The parchment editions of the 1792 Constitution are now held in the state archives division, which is part of the Secretary of states office. Unfortunately, the 1784 Constitution was lost during the period of 1784 to 1819 when the Capitol was transitory..

APPENDIX

As mentioned previously, the Part 2 of the Constitution was originally in paragraph form. It was apparently changed without authority when it was transcribed into the front of the statutes in 1842. Therefore, I have included the Form of Government in its original form with the current article designations and titles inserted so that reader can assess any effect that the transfer has on the interpretation.

PART SECOND.

FORM OF GOVERNMENT.

[Art.] l. [Name of Body Politic.] The people inhabiting the territory formerly called the Province of New-Hampshire, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign and independent body-politic, or State, by the name of the State of New Hampshire.

GENERAL COURT.

[Art.] 2. [Legislature, How Constituted.] The supreme legislative power, within this State, shall be vested in the Senate and House of Representatives each of which shall have a negative on the other. **[Art.] 3. [General Court, When to Meet and Dissolve.]** The Senate and house shall assemble every year on the first Wednesday of June, and at such other times as they may judge necessary; and shall dissolve, and be dissolved seven days next preceding the said first Wednesday of June; and shall be stiled the General Court of New-Hampshire.

[Art.] 4. [Power of General Court to Establish Courts.] The General Court shall forever have full power and authority to erect and constitute judicatories, and courts of record, or other courts, to be holden in the name of the State, for the hearing, trying and determining all manner of crimes, offences, pleas, processes, plaints, actions, causes, matters and things whatsoever, arising or happening within this State, or between or concerning persons inhabiting or residing, or brought within the same; whether the same be criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and issuing execution thereon. To which courts and judicatories, are hereby given and granted, full power and authority, from time to time to administer oaths or affirmations, for the better

discovery of truth in any. matter in controversy, or depending before them.

[Art.] 5. [Power to Make Laws, Elect Officers, Define Their Powers and Duties, Impose Fines and Assess Taxes; Prohibited from Authorizing Towns to Aid Certain Corporations.] And further, full, power and authority are hereby given and granted to the said General Court, from time to time to make, ordain and establish, all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this Constitution, as they may judge for the benefit and welfare of this State, and for the governing and ordering thereof, and of the subjects of

the same, for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws for the naming and settling, all civil officers within this State; such officers excepted, the election and appointment of whom are hereafter in this form of government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this State, and the forms of such oaths or affirmations as shall be respectively administered unto them, for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and also to impose fines, mulcts, imprisonments and other punishments; and to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the said State; and upon all estates within the same; to be issued and disposed of by warrant, under the hand of

the Governor of this State for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of this State, and the protection and preservation of the subjects thereof, according to such acts as are, or shall be in force within the same.

[Art.] 6. [Valuation and Taxation.] And while the publick charges of government, or any part thereof, shall be assessed on polls and estate in the manner that has heretofore been practised; in order that such assessments may be made with equality, there shall be a valuation of the estates within the State taken anew once in every five years at least, and as much oftener as the General Court shall order.

[Art.] 7. [Members of Legislature Not to Take Fees or Act as Counsel.] No member of the General Court shall take fees, be of council, or act as advocate, in any cause before either branch of the Legislature; and upon due proof thereof, such member shall forfeit his seat in the Legislature. The doors of the galleries, of each house of the Legislature, shall be kept open to all persons who behave decently except when the welfare of the State, in the opinion of either branch, shall require secrecy.

SENATE

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[Art.] 25. [Senate, How Constituted.] The Senate shall consist of twelve members, who shall hold their office for one year from, the, first Wednesday of June next ensuing their election

[Art.] 26. [Senatorial Districts, How Constituted.] And that the State may be equally represented in the Senate, the Legislature shall, from time to time, divide the State into twelve districts, as nearly equal as may be without dividing towns and unincorporated places; and in making this division, they shall govern themselves by the proportion of direct taxes paid by the said districts, and timely make known to the inhabitants of the State the limits of each district.

[Art.] 27. [Election of Senators.] The freeholders and other inhabitants of each district, qualified as in this Constitution is. provided, shall annually give in their votes for a Senator, at some meeting holden, in the month of March.

[**Art.] 28. [Senators, How and by Whom Chosen; Right of Suffrage.] (Repealed 1976 covered in Part 1, Article 11)** The Senate shall be the first branch of the Legislature ; and the Senators shall be chosen In the following manner, viz. every mate inhabitant of each town, and parish with town privileges, and places unincorporated, in this State, of twenty-one years of age and upwards, excepting paupers, and persons excused from paying taxes at their own request, shall have a right at the annual or other meetings of the inhabitants of said towns and parishes, to be duly warned and holden annually forever it, the month of March, to vote in the town or parish wherein he dwells, for the Senator in the district whereof he is a member.

[Art.] 29. [Qualifications of Senators.] Provided nevertheless, That no person shall be capable of being elected a Senator, who is not of the Protestant religion, and seized of a freehold estate in his own right, of the value of two hundred pounds, lying within this State, who is not of the age of thirty year; and who shall not have been an inhabitant of this State for seven years immediately preceding his election, and at the time thereof' he shall be an inhabitant of the district for which be shall be chosen.

[Art.] 30. [Inhabitant Defined.] And every person, qualified as the Constitution provides, shall be considered an inhabitant for the purpose of election and being elected into any office or place within this State, in the town, parish and plantation, where he dwelled, and hath his home.

[Art.] 3l. [Inhabitants of Unincorporated Places; Their Rights, etc.] (Repealed 1976 moved in Article 11) And the inhabitants of plantations and places incorporated, qualified as this Constitution provides, who are or shall be required to assess taxes upon themselves towards the support of government or shall be taxed therefor, shall have the same privilege of voting for Senator, in the plantations and places wherein they reside, as the inhabitants of the respective towns and parishes aforesaid have. And the meetings of such plantation and places for that

purpose shall be holden annually in the month of March, at such places respectively therein as the assessor thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerk have in their several towns by this Constitution.

[Art.] 32. [Biennial Meetings, How Warned, Governed, and Conducted; Return of Votes, etc.] The meeting for the choice of Governor, Council, and Senators, shall be warned by warrant from the selectmen and governed by a moderator, who shall in the presence of the selectmen (whose duty it shall be to attend) in open meeting, receive the votes of all the inhabitants of such towns and parishes present and qualified to vote for Senators; and shall, in said meetings, in presence of the said selectmen, and of the town clerk in said meetings, sort and count the said votes, and make a public declaration thereof, with the name of every person voted for, and the number of votes for each person; and the town clerk shall make a fair record of the same at large, in the town book, and shall make out a fair attested copy thereof, to be by him sealed up, and directed to the Secretary of the State, with a superscription expressing the purpose thereof: And the said town clerk shall cause such attested. copy to be delivered to the sheriff of the county in which such town or parish shall lie, thirty days at least before the first Wednesday of June or to the Secretary of the State at least twenty days before the said first Wednesday of June: and the sheriff of each county or his deputy shall deliver all such certificates, by him received, into the Secretary's office, at least twenty days before the first Wednesday of June.

[**Art.] 33. [Secretary of State to Count Votes for Senators and Notify Persons Elected.]** (paragraphs combined) And that there may be a due meeting of Senators on the first Wednesday of June annually, the Governor and a majority of the Council for the time being, shall as soon as may be, examine the returned copies of such records, and fourteen days before the first Wednesday of June, he shall issue his summons to such persons as appear to be chosen Senators, by a majority of votes to attend and take their seats on that day.

Provided nevertheless, That for the first year the said returned copies shall be examined by the president, and a majority of the Council then in office; and the said president shall in like manner notify the persons elected to attend and take their seats accordingly.

[Art.] 34. [Vacancies in Senate, How Filled.] And in case there shall not appear to be a Senator elected by a majority of votes, for any district, the deficiency shall be supplied. in, the following manner, viz., the members of the House of Representatives, and such Senators as shall be declared elected, shall take the names of the two persons having the highest number of votes in the district, and out of them shall elect, by joint ballot; the Senator wanted for such district; and in this mariner all such vacancies shall be filled up in every district of the State, and in like manner all vacancies in the Senate; arising by death, removal out of the Senate, or otherwise,

shall be supplied as soon as may be after such vacancies happen.

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

[Art.] 36. [Adjournment.] The Senate shall have power to adjourn themselves, provided such adjournment do not exceed two days at a time.

Provided nevertheless, that whenever they shall sit on the trial of any impeachment, they may adjourn to such time and place as they may think proper, although the Legislature be not assembled on such day, or at such place.

[**Art.] 37. [Senate to Elect Their Own Officers; Quorum.]** The Senate shall appoint their president and other officers, and determine their own rules of proceedings: and not less than seven members of the Senate shall make a quorum for doing business ; and when less than eight Senators shall be present, the assent of five at least, shall be necessary to render their acts and proceedings valid.

[Art.] 38. [Senate to Try Impeachments; Mode of Proceeding.] The Senate shaft be a court, with full power and authority to hear, try and determine all impeachments made by the House of Representatives against any officer or officers of the State, for bribery, corruption, malpractice or mal-administration, in office; with full power to issue summons, or compulsory process, for convening witnesses before them; but previous to the trial of any such impeachment, the members of the Senate shall respectively be sworn truly and impartially to try and determine the charge in question,, according to evidence. And every officer, impeached for bribery, corruption, mal-practice or mal-administration in office, shall be served with an attested copy of the impeachment, and order of Senate thereon, with such citation as the Senate may direct, setting forth the time and place of their sitting to try the impeachment; which service shall be made by the sheriff, or such other sworn officer as the Senate may appoint, at

least fourteen days previous to the time of trial; and such citation being duly served and returned, the Senate may proceed in the hearing of the impeachment, giving the person impeached (if he shall appear) full liberty of producing witnesses and proofs, and of making his defence, by himself and Council, and may also, upon his refusing or neglecting to appear hear the proofs in support of impeachment, and render judgment thereon, his non-appearance notwithstanding;

and such judgments shall have the same force and effect as if the person impeached had appeared and pleaded in. the trial. **[Art.] 39. [Judgment on Impeachment Limited.]** Their judgment, however shall not extend further than removal from office, disqualification to hold or enjoy any place of honor, trust, or profit, under this State; but the party so convicted, shall nevertheless be liable to indictment, trial, judgment and punishment, according to the laws of the

land.

HOUSE OF REPRESENTATIVES.

[Art.] 9. [Representatives Elected Every Second Year; Apportionment of Representatives.] There shall be, in the Legislature of this State, a. representation of the people, annually elected and founded upon principles of equality: and in order that such representation may be as equal as circumstances will admit, every town, parish or place entitled to town privileges, having one hundred and fifty rateable male polls, of twenty-one years of age and upwards, may elect one Representatives; if four hundred and fifty rateable polls, may elect two representatives and so proceeding in that proportion, making three hundred such rateable polls the mean increasing number, for every additional Representatives.

[Art.] ll. [Small Towns; Representation by Districts.] Such towns, parishes, or places as have less than one hundred and fifty rateable polls, shall be classed by the General Court for the purpose of choosing a Representatives and seasonably notified thereof. And in every class, formed for the above mentioned purpose, the first annual meeting shall be held in the town, parish, or place, wherein most of the rateable polls reside, and afterwards in that with has the next highest number; and so on annually by rotation, through the several towns, parishes, or places, forming the district.

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

[Art.] l2. [Biennial Election of Representatives in November.] The members of the House of Representatives shall be chosen annually in the month of, March and shall, be the second branch of the Legislature.

[Art.] l3. [Qualifications of Electors.] (Repealed 1976 covered in Part 1, Article 11) All person qualified to vote in, the election of Senators shall be entitled to vote within the district where they dwell, in the choice of Representatives. **[Art.] l4. [Representatives, How Elected, Qualifications of.]** Every member of the House of Representatives shall be chosen by ballot, and for, two years at least, next preceding his election, shall have been an inhabitant of this State; shall have an estate within the district which he may be chosen :to .represent, of the value of one hundred pounds, one half of which to be freehold, whereof be is seized in his own right; shall be at the time of his election an inhabitant of the town, parish or place he may be chosen to represent, shall be of the Protestant religion, and shall cease to represent :such town, parish, or

place, immediately on his ceasing to be qualified as aforesaid.

[**Art.] l5. [Compensation of the Legislature.]** The members of both houses of the Legislature shall be compensated for their services out :of the treasury of the State, by a. law made for that purpose; such members attending seasonably and not departing without license. **[Art.] l6. [Vacancies in House, How Filled.]** All intermediate vacancies in the House of Representatives may be filled up from time to time in. the same manner as annual elections are made.

[Art.] l7. [House to Impeach Before the Senate.] The House of Representatives shall be the grand inquest of the State, and all impeachments made by them, shall be heard and tried by the Senate.

[Art.] l8. [Money Bills to Originate in House.] All money bills shall, originate in the House of Representatives; but the Senate may: propose, or concur with amendments, as on all other bills.

[Art.] l9. [Adjournment.] The House of Representatives, shall have power to adjourn themselves, but no longer than two days at a time.

[Art.] 20. [Quorum, What Constitutes.] A majority of the members of the House of Representatives shall be a quorum for doing business; but when less than two thirds of the Representatives elected shall be present, the assent of two thirds of those members shall be necessary to render their acts and proceedings valid.

[Art.] 2l. [Privileges of Members of Legislature.] No member of the House of Representatives or Senate, shall be arrested or held to bail on, mean process, during his going to, returning from, or attendance upon the court.

[Art.] 22. [House to Elect Speaker and Officers, Settle Rules of Proceedings, and Punish Misconduct.] The house of. Representatives shall choose their own speaker, appoint their own officers, and settle the rules of proceedings in their own house, and shall be judge of the returns, elections, and qualifications of, its members, as pointed put in this. Constitution. They shall have authority.

to punish by imprisonment, every person who shall be guilty of disrespect to the house in its presence, by any disorderly and contemptuous behavior, or by threatening or ill treating any of its members; or by obstructing its deliberations; every person guilty of a breach of its privileges, in making arrest for debt, or by assaulting any member during his attendance at any session; in assaulting or disturbing any one of its officers in the execution of any order or procedure of the house; in assaulting any witness or other person; ordered to attend, by, and during his attendance

upon* the house; or in rescuing any person arrested by order of the house, knowing them to be such—~**[Art.] 23. [Senate and Executive Have Like Powers; Imprisonment Limited.]** The Senate, Governor and Council, shall have the same powers in like cases: provided, that no imprisonment by either, for any offence exceed ten days.

[Art.] 24 [Journals and Laws to be Published; Yeas and Nayes; and Protests.] The journals of the proceedings; and all publick acts, of both houses of the Legislature, shall be printed and published immediately alter every adjournment or prorogation; and upon motion made by any one member, the yeas and nays upon any question shall be entered upon the journal.: And any member of the Senate or house to Representatives, shall have a right, on motion made at the time for that purpose, to have his protest or dissent, with the reasons, against any vote, resolution,. or bill passed, entered on the journal.

[**Art.] 40. [Chief Justice to Preside on Impeachment of Governor.]** Whenever the Governor shall be impeached; the chief justice of the supreme judicial court shall, during the trial, preside in the Senate, but have no vote therein.

EXECUTIVE POWER.

GOVERNOR

Art.] 4l. [Governor, Supreme Executive Magistrate.] There shall be a supreme executive magistrate, who shall be stiled the Governor of the State of New Hampshire, and whose title shall be His Excellency.

[Art.] 42. [Election of Governor, Return of Votes; Electors; If No Choice, Legislature to Elect One of Two Highest Candidates; Qualifications for Governor.] (paragraphs combined) The Governor shall be chosen annually in the month of March; and the votes for Governor shall be received, sorted, counted, certified, and returned, in the same manner as the votes for Senators; and the Secretary shall lay the same before the Senate and House of Representatives on the first Wednesday of June, to be by them examined, and in case of an election by a majority of votes through the State, the choice shall be by them declared and published

And the qualification of electors of the Governor shall be the same as those for Senators; and if no person shall have a majority of votes, the Senate and House of Representatives shall by joint ballot elect one of the two persons having the highest number of votes, who shall be

declared Governor.

And no person shall be eligible to this office; unless at the time of his election, he shall have been an inhabitant of this State for seven years next preceding, and unless he shall be of the age of thirty years, and unless he shall at the same time have an estate of the value of five hundred pounds, one half of which shall consist of a freehold., in his own right within this State, and unless: he shaft, be; of the. Protestant religion .

[Art.] 43. [In Cases of Disagreement Governor to Adjourn or Prorogue Legislature; If Causes Exist, May Convene Them Elsewhere.] (paragraphs combined) In cases of disagreement between the two houses with regard to the time or place of adjournment or prorogation, the Governor; with advice of Council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days ,at any one time, as he may determine the public good may require, and he shall dissolve the same Seven days before the said first Wednesday of June.

And in case of any infectious distemper prevailing the place where the said court at any time is to convene, or any other cause whereby dangers may arise to the health or lives of the members from their attendance, the Governor may direct the session to be holden at some other the most convenient place within the State.

[Art.] 44. [Veto to Bills.] Every bill which shall have passed both houses of the General Court, shall, before it become a law, be presented to the Governor; if be approve, he shall sign it, but if not, he shall return it with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it; if after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with such objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the Dames of the persons voting for or against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor, within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature, by their adjournment, prevent its return, in such case it shall not be a law.

[Art.] 45. [Resolves to Be Treated Like Bills.] Every resolve shall be presented to the Governor, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

[Art.] 46. [Nomination and Appointment of Officers.] All judicial officers, the attorney

general, solicitors, all sheriffs, coroners, registers of probate, and all officers of the navy, and general and field officers of the militia shall be nominated and appointed by the Governor and Council; and every such nomination shall be made at least three days prior to such appointment; and no appointment shall take place, unless a majority of the Council agree thereto. **[Art.] 47. [Governor and Council Have Negative on Each Other.]** The Governor and Council shall have a negative on each other, both in the nominations and appointments. Every nomination and appointment shall be signed by the Governor and Council, and every negative shall be also signed by the Governor or Council, who made the same.

[Art.] 48. [Field Officers to Recommend, and Governor to Appoint, Company Officers.] (Repealed 1976) The captains and subalterns in the respective regiments, shall be nominated and recommended by the field officers to the Governor, who is to issue their commissions immediately on receipt of such recommendation.

[Art.] 49. [President of Senate, etc., To Act as Governor When Office Vacant; Speaker of House to Act When Office of President of Senate Is also Vacant.] Whenever the chair of the Governor shall become vacant, by reason of his death, absence from the State, or otherwise, the president of the Senate shall, during such. vacancy, have and exercise all the powers and authorities which, by this Constitution the Governor is vested with, when personally present; but when the president of the Senate shall exercise, the office of Governor, he shall not hold his office in the Senate.

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

[Art.] 5l. [Powers and Duties of Governor as Commander-in-Chief.] The Governor of this State for the time being, shall be commander in chief of the army and navy, and all the military forces of the State; by sea and land; and shall have full power by himself, or by any chief commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy, and for the special defence and safety of this State to assemble in martial array, and put in warlike posture the inhabitants thereof, and to lead and conduct them, and with them to encounter, repulse,. repel, resist and pursue by force of anus, as well by sea as by land, within and without the limits of the State, and also to kill, slay, destroy if necessary, and conquer by all fitting ways enterprise and means, all and every such person and persons as shall at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment or annoyance of this State; and to use and exercise over the army and navy, and over the militia in actual service, the law martial in time of war, invasion, and also in rebellion, declared by the

Legislature to exist as occasion shall necessarily require and surprise by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall in a hostile manner invade, or attempt the invading, conquering or annoying this State; and in fine, the Governor hereby is entrusted with all other powers. incident to the office of captain general and commander in chief and admiral, to be exercised agreeably to the unless and regulations of the Constitution and the laws of the land: provided, that the Governor shall not at any time hereafter, by virtue of any power by this Constitution granted or hereafter to be granted to him by the Legislature, transport any of the inhabitants of this State, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the con sent of the General Court, nor grant commissions for exercising the law martial in any case, without the advice and consent of the Council.

[Art.] 52. [Pardoning Power.] The power of pardoning offences, except such as persons may be convicted of before the Senate by impeachment of the house, shall be in the Governor, by and with the advice of the[2] Council: but no charter of pardon granted by the Governor with advice of Council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offence. intended to be pardoned.

[Art.] 53. [Militia Officers, Removal of.] (Repealed 1976) No officer duly commissioned to command in the militia shall be removed from his office, but by the address of both houses to the Governor, or by fair trial in court-martial, pursuant to the laws of the State for the time being.

[Art.] 54. [Staff and Non-commissioned Officers, by Whom Appointed.] (Repealed 1976) The commanding officers of the regiments shall appoint their adjutants and quarter-masters; the brigadiers, their brigade-majors; the major-generals, their aids; the captains

and subalterns, their non-commissioned officers.

[Art.] 55. [Division of Militia into Brigades, Regiments, and companies.] (Repealed 1976.) The division of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper division of the militia of this State, until the same shall be altered by some future law,

[Art.] 56. [Disbursements from Treasury.] No monies shall be issued nut of the treasury of this State and disposed of (except such sums as may be appropriated for the redemption of bills of credit, or Treasurer's notes, or the payment of interest arising thereon) but by warrant under the hand of the Governor for the time being, by and with the advice and consent of the Council, for the necessary support and defence of this State, and for the necessary protection and

[2]The Is omitted in the original,

preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court.

[Art.] 57. [Accounts of Military Stores.] (Repealed l950) All publick boards, the commissary-general, all superintending officers of publick magazines and stores belonging to this State, and all commanding officers of forts and garrisons within the same, shall once in. every three months, officially and without requisition, and at other times when required by the Governor, deliver to bin an account of all goods, stores, provisions, ammunition, cannon, with their appendages, and all small arms with their accouterments, and of all other public property under their care respectively, distinguishing the quantity and kind of each, as particularly as may be, together with the condition of such forts and garrisons; and the commanding officer shall exhibit to the Governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbour or harbours adjacent.

[Art.] 58. [Compensation of Governor and Council.] The Governor and Council shall be compensated for their services, from time to time, by such grants as the General Court shall think reasonable. **[Art.] 59. [Salaries of Judges.]** Permanent and honorable salaries shall be established by law, for the justice of the superior court.

COUNCIL..

[Art.] 60. [Councilors; Mode of Election, etc.] There shall be annually elected by ballot five counsellors, for advising the Governor in the executive part of government. The freeholders and ether inhabitants in each county, qualified to vote for Senators, shall some time in the month of March, give in. their votes for one counsellor; which votes shall be received, sorted, counted, certified and returned to the Secretary's office, in the same manner as the votes for Senators, to be by the Secretary laid before the Senate and House of Representatives on the first Wednesday of June.

[Art.] 6l. [Vacancies, How Filled, if No Choice.] And the person having a majority of votes in any county, shall be considered as duly elected a counsellor; but if no person shall have a majority of votes in any county, the Senate and House of Representatives shall take the names of the two persons who have the highest number of votes in each county, and not elected, and out of those two, shall elect by joint ballot the counsellor wanted for such county: and the qualifications for counsellors shalt be the same as for Senators.

[Art.] 62. [Subsequent Vacancies; Governor to Convene; Duties.] If any person thus chosen a counsellor shall be elected Governor or member of either branch of the Legislature, and shall accept the trust, or if any person elected a counsellor, shall refuse to accept the office, or in case of the death, resignation, or removal of any counsellor out of the State, the Governor may issue a

precept for the election of a new counsellor in that county where such vacancy shall happen, and the choice shall be in the same manner as before directed; and the Governor shall have full power and authority to convene the Council, from time to time, at his discretion; and with them, or the majority of them, may and shall from time to time hold a Council for ordering and directing the affairs of the State according to the laws of the land.

[Art.] 63. [Impeachment of Councilors.] The members of the Council may be impeached by the house and tried by the Senate, for bribery, corruption, mal-practice or mal-administration.

[Art.] 64. [Secretary to Record Proceedings of Council.] The resolutions and advice of the Council shall be recorded by the Secretary in a register, and signed by all the members present agreeing thereto; and this record may be called for at any time by either house of the Legislature; and any member of the Council may enter, his opinion contrary to the resolutions of the majority, with the reasons, for such

opinion.

[Art.] 65. [Councilor Districts Provided for.] The Legislature may, if the publick good shall hereafter requite it, divide the State into five districts, as nearly equal as may be, governing themselves by the number of rateable polls and proportion of publick taxes; each district to elect a counsellor; and in case of such, division, the manner of the choice shall be conformable to the present mode of election in counties.

[Art.] 66. [Elections by Legislature May Be Adjourned From Day to Day; Order Thereof.] And whereas the elections appointed to be made by this Constitution on the first Wednesday. of June annually by the two houses cii the Legislature may not be completed on that lay, the said elections may be adjourned from day to day, until the same be completed; and the order of the, elections shall be as follows: the vacancies in the Senate (if any) shall be first filled up; the Governor shall then be elected, provided there shall ‘be no choice of him by the people; and afterwards the two houses shall proceed to fill up the vacancy (if any) in the Council.

SECRETARY, TREASURER, COMMISSARY GENERAL, &C..

[Art.] 67. [Election of Secretary and Treasurer.] The Secretary, Treasurer, and commissary-general, shall be chosen by joint ballot of the Senators and Representatives assembled in one room.

[Art.] 68. [State Records, Where Kept; Duty of Secretary.] The records of the State shall be kept in the office of the Secretary; and he shall attend the Governor and Council, the Senate and

Representatives in person or by deputy, as they may require.

[Art.] 69. [Deputy Secretary.] The Secretary of the State shall at all times have a deputy, to be by him appointed; for whose conduct in office he shall be responsible: and in case of the death, removal, or inability, of the Secretary, his deputy shall exercise all the duties of the office of Secretary of this State, until another shall be appointed.

[Art.] 70. [Secretary to Give Bond.] The Secretary before be enters upon the business of his office, shall give bond with sufficient, sureties, in a reasonable sum, for the use of the State; for the punctual performance of his trust.

COUNTY TREASURER &C

[Art.] 7l. [County Treasurers, Registers of Probate, County Attorneys, Sheriffs, and Registers of Deeds Elected.] (paragraphs combined) The county Treasurers and registers of deeds, shall be elected by the inhabitants of the several towns in the several counties in the State, according to the method practised, and the laws of the State.

Provided nevertheless, The Legislature shall have authority to alter the manner of certifying the votes and the mode of electing those officers, but not so as to deprive the people of the right they now have of electing them.

[Art.] 72. [Counties May Be Divided into Districts for Registering Deeds.] And the Legislature, on the application, of the major part of the inhabitants of any county, shall have authority to divide the same into two districts for registering deeds, if to them it shall appear necessary, each district to elect a register of deeds: and before they enter upon the business of their offices, shall be respectively sworn faithfully to discharge the duties thereof, and shall severally give bond, with sufficient sureties in a reasonable sum for the use of the county, for the punctual performance of their respective trusts.

JUDICIARY POWER

[Art.] 73. [Tenure of Office To Be Expressed in Commissions; Judges to Hold Office During Good Behavior, etc.; Removal.] The tenure that all commissioned officers shall have by law in their offices, shall be expressed in their respective commissions -- all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behaviour, excepting those concerning whom there is a different provision made in this Constitution:

Provided nevertheless, the Governor, with consent of counsel, may remove them upon the address of both houses of the Legislature.

[Art.] 74. [Judges to Give Opinions, When.] Each branch of the Legislature, as well as the Governor and Council shall have authority to require the opinions of. the justices of the superior court, upon .important questions of law and upon solemn occasions.

[Art.] 75. [Justices of Peace Commissioned for Five Years.] In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justices of the peace shall become void at the expiration of five tears from their respective dates, and upon the expiration of any commission the same may if necessary be renewed, or another person appointed as shall most conduce to. the well being of. the State.

[Art.] 76. [Divorce and Probate Appeals, Where Tried.] All causes of marriage, divorce and alimony and all appeals from the respective judges of probate, shall be heard and tried, by the superior court until the Legislature shall. by law make other provision.

[Art.] 77. [Jurisdiction of Justices in Civil Causes.] The General Court are empowered to give to justices of the peace jurisdiction in civil causes, when the damages demanded shall not exceed four pounds, and title of real estate is not concerned; but with right of appeal to either party, to some other court so that trial by jury in the last resort may be had.

[Art.] 78. [Judges and Sheriffs, When Disqualified by Age.] No person shall hold, the office of judge of. any court or judge of probate, or sheriff of any county, after he has attained the age of seventy years.

[Art.] 79. [Judges and Justices Not to Act as Counsel.] No judge of any county, or justice of the peace, shall act as attorney, or be of counsel to any party, or originate any civil suit in matters which shall come, or be brought before him as judge or justice of the peace.

[Art.] 80. [Jurisdiction and Term of Probate Courts.] All matters relating to the. probate of wills and granting letters of administration, shall be exercised by the judges of probate in such manner as the Legislature have directed, or may hereafter direct; and the judges of probate shall hold their courts at such place or places, on such fixed days, as the conveniency of the people

may require, and the Legislature from time to time appoint.

[Art.] 8l. [Judges and Registers of Probate Not to Act as Counsel.] No judge, or register of probate, shall be of counsel, act as advocate, or receive any fees as advocate or counsel, in any probate business which is pending, or may be brought into any court of probate in the county of which he is judge or register.

CLERKS OF COURT.

[Art.] 82. [Clerks of Courts, by Whom Appointed.] The judges of the courts (those of probate excepted) shall appoint their respective clerks, to hold their office during pleasure: and no such clerk shall act as an attorney, or be of counsel in any cause in the court of which lie is clerk, nor shall be draw any writ originating a civil action.

ENCOURAGEMENT OF LITERATURE &C

[Art.] 83. [Encouragement of Literature, etc.; Control of Corporations, Monopolies, etc.] Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government to cherish the interest of literature and the sciences, and all seminaries and publick schools, to encourage private and publick institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, publick and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people.

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OATHS AND SUBSCRIPTIONS; EXCLUSION FROM OFFICES; COMMISSIONS ; WRITS; CONFIRMATION OF LAWS; HABEAS CORPUS ; THE ENACTING STILE ; CONTINUANCE OF OFFICERS ; PROVISION FOR A FUTURE REVISION OF THE CONSTITUTION, &C.

[Art.] 84. [Oath of Civil Officers.] Any person chosen Governor, counsellor, Senator, or Representatives, military or civil officer, (town officers excepted) accepting the trust, shall, before he proceeds to execute the duties of his office, make and subscribe the following

declaration, viz

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1, A. B., do solemnly swear, that I will bear faith and true allegiance to the State of New Hampshire, and will support the Constitution thereof. *So help me God*.

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

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

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

[Art.] 85. [Before Whom Taken.] And the oaths or affirmations shall be taken and subscribed by the Governor, before the president of the Senate, in presence of both houses of the Legislature, and by the Senators and Representatives first elected under this Constitution, as altered and amended, before the president of the State, and a majority of the Council then in office, and forever afterwards before the Governor and Council for the time being; and by all other officers, before such persons and in such manner as the Legislature shall from time to time appoint.

[Art.] 86. [Form of Commissions.] All commissions shall be in the name of the State of New-Hampshire, signed by the Governor and attested by the Secretary, or his deputy, and shall have the great seal of the State affixed thereto.

[Art.] 87. [Form of Writs.] All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the State of New-Hampshire; shalt be under the seal of the court whence they issue, and bear test of the chief, first, or senior justice of the court; but when such justice shall be interested, then the writ shall bear test of some other justice of the court to which

the same shall be returnable; and be signed by the clerk of such court.

[Art.] 88. [Form of Indictments, etc.] All indictments, presentments, and informations, shall conclude, *against the peace and dignity of the State*.

[Art.] 89. [Suicides and Deodands.] The estates of such persons as may destroy their own lives, shall not for that offence be forfeited, but descend or ascend in the same manner as if such persons had died in a natural way; nor shall any article which shall accidentally occasion the death of any person be henceforth deemed a deodand, or in any wise forfeited on account of such misfortune.

[Art.] 90. [Existing Laws Continued if Not Repugnant.] All the laws which have heretofore been adopted, used and approved, in the province, colony, or State of New-Hampshire, and usually practised on in the courts of law, shall remain and be in full force until altered and repealed by the Legislature; such parts thereof only excepted, as are repugnant to the rights and liberties contained in this Constitution; provided that nothing herein contained, when compared with the 23d article in the bill of rights, shall be construed to affect the laws already made respecting the persons, or estates, of absentees.

[Art.] 9l. [Habeas Corpus.] The privilege and benefit of the habeas corpus, shall be enjoyed in this State, in the most free, easy cheap, expeditious, and ample manner, and shall not be suspended by the Legislature; except upon the most urgent and pressing occasions, and for a time not exceeding three months.

[Art.] 92. [Enacting Style of Statutes.] The enacting stile in making and passing acts, statutes, and laws, shall be — *Be it enacted by the Senate and House of Representatives, in General Court convened*.

[Art.] 93. [Governor and Judges Prohibited From Holding Other Offices.] No Governor, or judge of the supreme judicial court shall hold any office or place under the authority of this State, except such as by this Constitution they are admitted to hold, saving that the judges of the said court may hold the office of justice of the peace throughout the State; nor shall they hold any place or office, or receive any pension or salary, any other State, government or power whatever.

[Art.] 94. [Incompatibility of Offices; Only Two Offices of Profit to Be Holden at Same Time.] No person shall be capable of exercising at the same time more than one of the following

offices within this State, viz. judge of probate, sheriff, register of deeds; and never more , -

than two offices of profit, which may be held by appointment of the Governor, or Governor and Council, or Senate and House of Representatives, or superior or inferior courts; military offices and offices of justices of the peace excepted.

[Art.] 95. [Incompatibility of Certain Offices.] No person holding the office of judge of any court (except special judges,) Secretary, Treasurer of the State, attorney-general, commissary-general, military officers receiving pay from the continent of this State (excepting officers of the militia, occasionally called forth on an emergency) register of deeds, sheriff, or officers of the customs, including naval officers, collectors of excise and State and continental taxes, hereafter appointed and not having settled their accounts with the respective officers with whom it is their duty to settle such accounts, members of congress, or any person holding any office under the United States, shall at the same time hold the office of Governor, or have a seat in the Senate, or House of Representatives, or Council, but his being chosen and appointed to and accepting the same, shall operate as a resignation of their seat in the chair, Senate or House of Representatives, or Council; and the place so vacated shall be filled up. No member of the Council shall have a seat in the Senate or House of Representatives.

[Art.] 96. [Bribery and Corruption Disqualify for Office.] No person shall ever be admitted to hold a seat in the Legislature, or any office of trust or importance under this government, who in the due course of law has been convicted of bribery or corruption in obtaining an election or appointment.

[Art.] 97. [Value of Money, How Computed.] (Repealed 1950) In all eases where sums of money are mentioned in this Constitution, the value thereof shall he computed in silver at six shillings and eight pence. per ounce.

[Art.] 98. [Constitution, When to Take Effect.] To the end that there may be no failure of justice, or danger to the State by. the alterations and amendments made in the Constitution, the General Court is hereby fully authorized and directed to fix the time when the alterations and amendments shall take effect, and make the necessary arrangements accordingly.

[Art.] 99. [Revision of Constitution Provided For.] (Repealed 1980 incorporated in Article 100) It shall be the duty of the selectmen and assessors, of the several towns and places in this State, in warning the first annual meetings for the choice of Senators, after the expiration of seven years from the adoption of this Constitution as amended to insert expressly in the warrant, this purpose among the others for the meeting, to wit, to take the sense of the qualified voters on the subject of a revision of the Constitution; and the meeting being warned accordingly (and not otherwise) the moderator shall take the sense of the qualified voters present, as to the necessity.

of a revision; and a return of the number of votes for and against such necessity, shall be made by the clerk, sealed up and directed to the General Court, at their then next session; and if it shall appear to the General Court by such return, that the sense of the people of the State has been taken, and that in the opinion of the majority of the qualified voters in the State, present and voting at said meetings, there is a necessity for a revision of the Constitution, it shall be the duty of the General Court to call a convention for that purpose, otherwise the General Court shalt direct the sense of the people to be taken, and then proceed in the manner before mentioned. The delegates to be chosen in the same manner, and proportioned as the Representatives to the General Court; provided that no alterations shall be made in this Constitution before the same shall be laid before the towns and unincorporated places and approved by two thirds of the qualified voters present and voting on the subject. And the same methods of taking the sense of the people, as to a revision of the Constitution, and calling a convention for that purpose shall be observed afterwards, at the expiration of every seven years.

[Art.] 10l. [Enrollment of Constitution.] This form of government shall be enrolled on parchment and deposited in the Secretary's office, and be a part of the laws of the land and printed copies thereof shall be prefixed to the books containing the laws of this State, in all future editions thereof.

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