

SUPERIOR COURT OF JUDICATURE.

HILLSBOROUGH, MAY TERM, 1803.

JOHN MUZZY *v.* SAMUEL WILKINS, JONATHAN SMITH, AND  
DANIEL CAMPBELL.

Presbyterians and Congregationalists are different sects in religion, within the meaning of the Constitution. Hence a Presbyterian cannot be taxed for the support of a Congregational minister.

TRESPASS. First count, for making a parish tax (First Parish in Amherst), Dec. 31, 1795, and illegally assessing the plaintiff seventy-five cents; making a warrant, directed to N. Kendall, by virtue of which he arrested the plaintiff, Jan. 1, 1798, and imprisoned him four days, till he was compelled to pay the tax and one hundred dollars to obtain his release.

Second count, similar to the first, except that the tax is said to be to pay the Rev. J. Barnard his salary, and the sum assessed on the plaintiff was two dollars and twenty-three cents.

The action was commenced returnable to March Term, 1800.

I. The defendants pleaded not guilty to the whole declaration, and issue was joined.

II. By leave of court they pleaded a second plea to each count.

1. To the first count, as to every thing, except the force and arms and whatever is against the peace, *actio non*, because they

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say that on and before Dec. 31, 1795, there was a parish in Amherst, called the First Parish; that the defendants were duly chosen assessors for said parish, March 16, 1795, and accepted the office; that the parish duly and legally voted to raise a tax to defray current charges, &c., amount, ninety-three dollars and thirty-two cents; that N. Kendall was duly chosen collector, and accepted the office; that the plaintiff, on March 16 and Dec. 31, 1795, long before and ever since, was an inhabitant of and belonged to said parish, having ratable property therein, and liable by law for the payment of his proportion of all taxes legally assessed on said parish; that the defendants duly assessed the inhabitants of said parish, and, among others, the plaintiff seventy-five cents, being his just proportion of the sum aforesaid; and made a warrant to N. Kendall, authorizing him to collect the same, agreeably to law; that N. Kendall proceeded according to law, and, because the plaintiff, though duly notified of the assessment aforesaid, and required to pay, neglected, &c., arrested the plaintiff, and imprisoned him till he paid, &c.; all which doings of the defendants and N. Kendall were lawful, which is the residue, &c.

2. The second plea to the second count was the same, except in the description of the tax and sum, and except that it was not alleged that the plaintiff belonged to the said parish, but only that he was an inhabitant, liable, &c.

To the second plea to the first count the plaintiff replied *precludi non*, because, March 16, 1795, long before and ever since, Mr. Barnard was, hath been, and now is a public teacher of that religious persuasion, sect, or denomination of Christians known by the name of Congregationalists, and the majority of the members of the said first parish in Amherst, of which he is the public teacher, were, during the time aforesaid, and now are, of the same persuasion, sect, or denomination; and that the said Muzzy, during all the time aforesaid, was, and now is, of another and different religious persuasion, sect, or denomination, namely, of the religious persuasion, sect, or denomination called and known by the name of Presbyterians, and this he is ready to verify, &c.

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re Dec. 31, 1795, there was a parish in First Parish; that the defendants were for said parish, March 16, 1795, and at the parish duly and legally voted to current charges, &c., amount, ninety-two cents; that N. Kendall was duly accepted the office; that the plaintiff, on , 1795, long before and ever since, was elonged to said parish, having ratable liable by law for the payment of his legally assessed on said parish; that assessed the inhabitants of said parish, plaintiff seventy-five cents, being his sum aforesaid; and made a warrant to him to collect the same, agreeably to proceeded according to law, and, be-ugh duly notified of the assessment to pay, neglected, &c., arrested the him till he paid, &c.; all which doings N. Kendall were lawful, which is the

the second count was the same, except the tax and sum, and except that it plaintiff belonged to the said parish, inhabitant, liable, &c.

the first count the plaintiff replied arch 16, 1795, long before and ever hath been, and now is a public teacher on, sect, or denomination of Christians ongregationlists, and the majority of first parish in Amherst, of which he e, during the time aforesaid, and now on, sect, or denomination; and that l the time aforesaid, was, and now is, religious persuasion, sect, or denomi-igious persuasion, sect, or denomina-the name of Presbyterians, and this

Similar replication to the second plea in bar of the second count.

To the first replication the defendants rejoined that the plaintiff was not, during the time aforesaid, of the religious persuasion, sect, or denomination called and known by the name of Presbyterians, and of this they put themselves on the country, and issue was joined.

To the second replication the defendants demurred, and the plaintiff joined in demurrer.

The following is the opinion of SMITH, C. J.:<sup>1</sup>—

By these pleadings, as it respects the second count, in which the plaintiff sets up a claim to exemption from the Rev. Mr. Barnard's salary for 1795, it is admitted that the plaintiff was and is a Presbyterian; and the only question referred to the decision of the court is whether Presbyterians are, within the meaning of our Constitution, of another or different persuasion, sect, or denomination, from Congregationalists. If they are, the plaintiff is entitled to recover upon this count. If not, he was rightfully taxed, the replication is sufficient, and the defendants must have judgment. The question is important, inasmuch as there is involved in it the construction of a great and fundamental article of the Constitution, an article in which every individual is concerned, and which has at all times, when drawn into discussion, excited a great degree of interest and zeal. It is of importance that we should decide aright, and that the grounds of our judgment should be clearly and certainly known, as a rule to be followed hereafter in all cases of the like nature. The best, if not the only, way to arrive at the true sense of any particular clause in the Con-

<sup>1</sup> A large portion of the author's notes to this opinion were evidently made after the delivery of the opinion, and after it had been copied into the manuscript volume from which it is now printed. The blank leaves of the manuscript seem to have been used as a sort of commonplace-book, in which to record references to, and extracts from, later reading, not always sustaining the text. The notes so made are of unequal value; and, if the manuscript had been revised by the author with a view to publication, some notes would probably have been omitted, and others condensed. A few of these notes have been omitted in the present publication.

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stitution, is to examine all the parts of that instrument which relate to the same subject, compare them together, and then put that sense upon it which, on a fair consideration of the whole, we collect the framers intended it should bear. This is the more necessary, as it is apprehended that very erroneous opinions have been entertained on the clause of the Constitution which relates to religion and the right of conscience.

I. By the fourth, fifth, and sixth articles of the Bill of Rights it is declared "that the rights of conscience are founded in nature and are unalienable; that every individual has a right to worship God according to the dictates of his own conscience and reason; and that no one shall be hurt, molested, or restrained, in his person or his estate for thus worshipping his Maker, or for his religious profession, sentiments, or persuasion, provided he doth not disturb the public peace or disturb others in their religious worship; that 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." (a)

That society, or, which is the same thing, that the civil magistrate, should ever undertake to prescribe to men what they shall believe and what they shall not believe, is a thing so absurd that we should hardly believe it upon less evidence than that of experience. Opinions are not the proper objects of human authority. The mind of man was not intended by its wise Creator to be subjected to the control of finite and limited beings like itself. Freedom of thought is the prerogative of human kind (Eden, 91), (b) a quality inherent in the

(a) 4 Belsham, Geo. III. 264, 265. No man ought to be molested on account of his opinions, not even his religious opinions, provided his avowal of them does not disturb the public order.

The law ought only to prohibit actions hurtful to society. Articles V. and X., French Declaration of Rights, 1789.

(b) Conscience is the royalty and prerogative of every private man. He is absolute in his own breast, and accountable to no earthly power for

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very nature of a thinking being, a privilege which ought never  
to be denied. And yet we find an English Parliament making  
it treason to be willingly withdrawn or converted to the  
Popish religion. Eden, 144. (a) Equally absurd was the  
Act of the same Prince which made it treason to believe that  
he was married to Anne of Cleves. Eden, 93. (b)

The infallible Church of Rome condemned the Copernican  
System as a heresy, and the famous Galileo was imprisoned  
for believing and teaching it. He was obliged to recant and  
curse his former opinions, and swear that he would believe so  
no more. This was compelling him to promise what he could  
not perform. (c) Mere difference of opinion has been deemed  
an offence. The weaker body, though perhaps the stronger  
mind, was always the offender. It is still more unjust and  
absurd for government to extend its jurisdiction over the

that which passes only betwixt God and him. Those who are driven into  
the fold are, generally speaking, hypocrites, rather than converts. 1 Dry-  
den, 234, preface to Hind and Panther.

Of all the tyrannies on human kind,  
The worst is that which persecutes the mind.

1 Dryden, 246.

46 Monthly Review, 650. The most deplorable degree of slavery is the  
subjection of opinion, &c.

(a) Protestants have conscientiously become Catholics. This was the  
case with George Calvert, first Lord Baltimore. Upon his conversion, he re-  
signed his office of Secretary of State. 2 Belknap, American Biography, 364.

(b) See 67 Monthly Review, 15.

Strange legislation, to make the exercise of the understanding penal.  
Impolitic and unjust. 21 Edinburgh Review, 182.

(c) To destroy people for points of mere speculation, and which have  
no ill effects on practice and civil government, seems very remote from the  
spirit of Christianity. Supposing truth on the persecuting side, yet to  
burn a man, because he will not belie his conscience and turn hypocrite,  
is strangely unaccountable. Men cannot believe what they please. Their  
understandings are not all of a size. Things do not stand in the same  
light and strike with the same force on everybody. Besides, if the perse-  
cutors believe the persecuted will be so ill received in the other world, why  
do not they use them better in this? Why do they hurry them to eternal  
destruction before their time? Such wisdom does not proceed from above  
It is earthly, sensual, and devilish. Collier, 2 Rep. 48, n. 6. See 1 Lord  
Erskine's Speeches, 307.

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opinions of men in matters of religion. (a) Religion is that sense of Deity, that reverence for the Creator, which is implanted in the minds of rational beings. It is seated in the heart, and is conversant with the inward principles and temper of the mind. It must be the result of personal conviction. It is neither to be produced by fines and penalties, nor can it be extirpated by them. It is a concern between every man and his Maker. The laws which regulate faith come immediately from the author of the human soul. They are not like human laws to-day, commanding us to believe what to-morrow we are roasted alive for believing. They are always the same, and will remain the same when the laws and constitutions of men shall have only an historical existence or be utterly forgotten.

No human government has a right to set up a standard of belief, because it is itself fallible. (b) It has not pleased God to enlighten by his grace any government with the gift of understanding the Scriptures. Uniformity of opinion in matters of faith is not practicable, and, if it were, is not desirable. (c) All the means that have been used for the purpose at all times and in all places have multiplied, instead of diminishing,

(a) They alone who abhor toleration deserve little. They are enemies to the freedom of religion, over which God alone can have any right of empire. Horace Walpole, Works, II.; 5 Senator, 785, &c.

*Religionem imperare non possumus, quia nemo cogitur ut credat invitus.*  
Theoderic. 68 Monthly Review, 71.

(b) An Act of Parliament passed (1 Rapin, 827), declaring that whatever the King should enjoin in matters of religion should be believed and obeyed by all his subjects. 1 Rapin, 829.

(c) It is the interest of a despot to have but one religion in his dominions, because it is his interest that there should be none. 67 Monthly Review, 14.

It is not in the power of men to believe what they please; and, therefore, I think they should not be forced in matters of religion, contrary to their persuasions and their consciences. I wish all good men were of one mind. However, in the mean time, I would have them live peaceably and love one another. Mass. Hist. Coll. I. 251; 14 Edinburgh Review, 372, 397; Queen Mary, 1689.

God above alone can look into the heart; and man, could he look into it, has no jurisdiction over it, until society is disturbed by its actions. 1 Lord Erskine's Speeches, 422.

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sects and opinions. In the English statute book we find an act for abolishing diversity of opinion in certain articles of the Christian religion. (a) The preamble recites that great advantages result from unity of sentiment, and that many evils flow from diversity of opinion, in religious matters, that the King had summoned Parliament and the Convocation for the express purpose of putting an end to this diversity; that among other questions he had submitted this to these two venerable assemblies, "Whether, after consecration in the sacrament of the Eucharist, the substance of the bread and wine remains, or no?" that his Majesty had commanded this question to be discussed, and, what is more, to be understood; and, to accomplish so desirable an object, had himself mingled in the debate, and given a specimen of his princely knowledge. The result of this assemblage of talents, wisdom, and piety is stated in the enacting clause: "Therefore it was resolved, agreed, and enacted, by authority of Parliament, that, in the sacrament, by the strength and efficacy of the word of Christ spoken by the priest, the natural body and blood of Christ, conceived of the Virgin Mary under the form of bread and wine, is really present, and of course the bread and wine no longer remain."

In truth, this question was no better understood after this act passed than before. Things remained exactly as before, unless it was that the opinions of men became still more diverse, from this absurd attempt to unite them. (b) Persecu-

(a) 31 Henry VIII. ch. 14; 1 Rapin, 821, 822; Cooper's Justinian's Institutes, 633, 663; 1 Haz. Eloq. Brit. Sen. 406; 67 Monthly Review, 15.

(b) An absurd attempt was made in Salem, 1631, to introduce uniformity in dress, wearing of veils. Mass. Hist. Soc., 1799, VI. 245, 253.

46 Monthly Review, 77. It is difficult to determine whether the princi- ple of religious persecution be most wicked or most weak. Calvin, imag- ining Servetus to be wandering in the darkness of error, seems to have concluded that no light could so surely guide him to the truth as that of a bonfire, in which the convert himself was to be the principal fagot. How abominable, and, at the same time, how absurd!

He that's convinced against his will,  
Is of the same opinion still.

Hudibras.

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tion on account of religious opinions is no less opposed to sound policy, to the sentiments of nature and humanity, than it is to the mild precepts of the Gospel of Peace.

A celebrated Englishman of the present day (*a*) observes that it is his ardent wish to extirpate heresy by fire, — not, indeed, in the old mode of burning heretics, but by burning all the statutes which declared the offence of heresy and thus formed the code of persecution. This is precisely the course taken by our Constitution. It cuts up persecution by the roots. It secures to every man the free enjoyment of his opinions on religious subjects. It prescribes no articles of faith. It forbids the legislature to prescribe any. It leaves every man free to examine and judge for himself. Let it not be imagined that this provision was unnecessary and useless. (*b*) Mankind have always been disposed to persecute their fellow men. (*c*) But, as long as this charter of our liberties remains inviolate, there can be no persecution in this State on account of religion. Every man may worship God according to the dictates of his own conscience and reason; and even those who deny their Maker this “most reasonable service,” who refuse to worship him, or who entertain erroneous opinions of him, his attributes, and his religion, are referred for trial and punishment to him whose judgment cannot err, and who will surely render to every man the just reward of his own doings. (*d*)

(*a*) Mr. Fox. 4 Belsham, Geo. III. 364.

(*b*) They who tell us that the days of persecution and superstition are past, and that we shall never see any more of them, pay too high a compliment to human nature. The same poison still subsists, though it does not appear so openly. Some symptoms of this plague break out from time to time, enough to infect the earth. Voltaire, 1742.

See 5 Burke's Works, 202, 205, 207; 1 Brit. Cicero, 132; Burke's Speech to the Electors of Bristol, 1780.

(*c*) The simple and effectual expedient of permitting the different sects in religion to profess and enjoy their opinions with equal freedom was, in the time of Henry IV. of France, 1598 (at commencement of seventeenth century), and long after, untried in practice, and almost unknown in speculation. The toleration of error and the permission of crimes were treated alike. Mackintosh, Rev. 1688, 224.

(*d*) The provision in this article, according to what has been just stated,

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religious opinions is no less opposed to sentiments of nature and humanity, than to the precepts of the Gospel of Peace.

The philosopher of the present day (*a*) observes that the best way to extirpate heresy by fire, — not, indeed, by burning heretics, but by burning all the offenders of heresy and thus forming a new religion. This is precisely the course taken by the State. It cuts up persecution by the roots. It secures the free enjoyment of his opinions and prescribes no articles of faith. It forbids to prescribe any. It leaves every man free to think for himself. Let it not be imagined that this is unnecessary and useless. (*b*) Mankind are not to be persecuted their fellow men. (*c*) The center of our liberties remains inviolate, and no man in this State on account of religion is to be punished for worshipping God according to the dictates of his own reason; and even those who deny the utility of a reasonable service," who refuse to give up certain erroneous opinions of him, his opinions, are referred for trial and punishment cannot err, and who will surely receive the just reward of his own doings. (*d*)

Geo. III. 364.

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2, 205, 207; 1 Brit. Cicero, 132; Burke's Speech, 1780.

The expedient of permitting the different sects to hold their opinions with equal freedom was, in France, 1598 (at commencement of seven years), untried in practice, and almost unknown. The errors of error and the permission of crimes were the result. 1688, 224.

Article, according to what has been just stated,

II. But our Constitution goes further. It wholly detaches religion, as such, from the civil State. By the mixture of civil and spiritual powers, both become polluted. 3 Warb. Serm. 300, 301. The civil uses religion for an engine of State to support tyranny, and the spiritual becomes invested with the sword of the civil magistrate to persecute. Under our Constitution there is no such union, no such mixture. No one sect is invested with any political power, much less with a monopoly of civil privileges and civil offices. The particular sect, or denomination, to which a citizen belongs neither promotes nor hinders his political advancement. It is his character, not his opinions; his works, not his faith, — that is to be regarded. All denominations are equally under the protection of the law, are equally the objects of its favor and regard. No one denomination is subordinate, that is inferior in degree, to another, for all are equal. Nothing could be better calculated to promote the peace and tranquillity of society than this excellent provision. It is admirably calculated to prevent religious hate; to assuage the bitterness of religious contests, which (when religion is connected with the State) are the

is considered in England, by all parties and sects, as securing the rights of conscience in the most ample degree. 4 Belsham, Geo. III. 126.

Mere opinions ought not to be punished by the civil magistrate. LORD MANSFIELD, Blackst. Appendix, 145-152; Cowper, 383-393; 4 Belsham, Geo. III. 215, 280, 364; Articles V. and X., French Declaration of Rights, 1789; 2 Anach. 364, 365, &c.

(Contra. 2 Boswell's Life of Johnson, 105-113; 3 Boswell, 363; 64 Monthly Review, 499-503; New England Platform, Wise, 228.)

Blackst. Appendix, Furneaux Lett. 27, n.; Dr. Tucker's Remarks on Parsons, 8, &c.; Private Opinions, 33 Monthly Review, 554.

Voltaire. The only case in which intolerance is justifiable by human laws is when the errors of a people become criminal. Government hath then a right to punish them. They become criminal only when they disturb the peace of society and inspire fanaticism. No fanatics of any religion can lay claim to toleration. 30 Monthly Review, 531.

Marmontel, Speech, II. 196. In religion, thought is absolutely free, for it appertains to man in his relation to God.

Action in worship is but conditionally free, for it appertains to man in society. It may be restrained when it disturbs the public tranquillity.

Religion is an innocent thing, &c. 17 Edinburgh Review, 394.

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bitterest of all contests. It holds forth no motive to incite each man to divine the opinions of his neighbor, and to deduce mischievous consequences from them. It furnishes no motives to hypocrisy, nothing to gratify the passions of avarice and ambition. On the contrary, the collision of opinions in open and liberal discussion among men living under the same government, which it permits and cherishes, cannot fail to produce the most happy effects in the promotion of knowledge, candor, and charity. In a word, our Constitution regards men as they are regarded by the great Governor of the world, who bestows the blessings of his providence on all the children of men, however diversified by modes of faith, and however divided into sects and denominations. (a)

III. Under the two preceding heads we have seen that the Constitution secures the citizens of this State against persecution on account of their religious faith and worship. It declares that all men are equal in the sight of the law, are equally eligible to honors, places, and employments, without any other distinction than that created by their talents and virtues. (b) Religious opinions form no ground of distinction. But we are not from hence to infer that the civil magistrate may not lawfully punish certain offences against the unalterable and essential principles of natural and revealed religion, for these principles are said to make a part of the common law. Of this description are the offences of blasphemy, (c) reviling religion, profanation of the Sabbath, &c. Nor are we

(a) There is a small deviation from this liberal doctrine in the Constitution, where it is provided that Governor, Councillors, Senators, and Representatives shall be of the Protestant religion.\* There is no religious qualification as it respects electors.

See Mr. Pitt's speech in favor of excluding Dissenters from offices: 4 Belsham, Geo. III. 124, &c.

(b) Article VI., French Declaration of Rights, 1789; 4 Belsham, Geo. III. 265.

(c) Atheism. LORD MANSFIELD (Blackst. Appendix), Speech, 145, 152; Bishop of St. David's (Dr. Horsley), 4 Belsham, Geo. III. 220.

\* Judge Smith, in the Constitutional Convention of 1791, voted in favor of expunging the Protestant test. Journal of Convention; 10 Provincial and State Papers, 46. The test was finally abolished by the constitutional amendments adopted in 1877.

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s. It holds forth no motive to incite opinions of his neighbor, and to deduce reasons from them. It furnishes no motives to gratify the passions of avarice and contrary, the collision of opinions in open among men living under the same governments and cherishes, cannot fail to produce in the promotion of knowledge, candor, and our Constitution regards men as they are at the Governor of the world, who bestows wisdom on all the children of men, in the modes of faith, and however divided opinions.

(a) Receding heads we have seen that the citizens of this State against persecutions of religious faith and worship. It declares equal in the sight of the law, are in all places, and employments, without distinction that created by their talents and opinions form no ground of distinction. We are to infer that the civil magistrate has no power to punish certain offences against the unalterable principles of natural and revealed religion, but that which is said to make a part of the common law are the offences of blasphemy, (c) and violation of the Sabbath, &c. Nor are we

to infer from this liberal doctrine in the Constitution that the Governor, Councillors, Senators, and the Protestant religion.\* There is no religious test for office-holders.

in favor of excluding Dissenters from offices.

Declaration of Rights, 1789; 4 Belsham, Geo.

FIELD (Blackst. Appendix), Speech, 145, Dr. Horsley), 4 Belsham, Geo. III. 220.

Constitutional Convention of 1791, voted in favor of extension of the Convention; 10 Provincial and State Papers, by the constitutional amendments adopted in 1877.

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to infer that religion is a thing of no consequence to society. The reverse is the case. (a) Religion, in the strict sense of the word, is a personal concern. It is a matter between God and every one of his rational creatures. Yet religious principles have the most unbounded and the most salutary influence on the affairs of men united in society. It is declared in our Constitution that morality and piety rightly grounded on evangelical principles, that is, on the principles of the Gospel, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection, or, in other words, will make the best citizens and subjects; that the knowledge of these is most likely to be propagated through society by the institution of the public worship of the Deity, and by public instruction in morality and religion. It is then declared that, to promote these important purposes, the legislature may empower the several towns, corporate bodies, and religious societies in the State, to make adequate provision for the support and maintenance of public teachers of piety, religion, and morality; to be elected by the majority of the corporation. The legislature have done as they were required, and have given to towns and parishes the authority they were thus enabled to give.<sup>1</sup>

(a) 47 Monthly Review, Sept. 1772, p. 236; Dr. Kippis, 47 Monthly Review, 105; 67 Monthly Review, 15, 6, 7; 3 Senator, 585.

<sup>1</sup> The Statute of Feb. 8, 1791, § 10, enacts that the inhabitants of each town, at any legal meeting, "may, agreeably to the Constitution, grant and vote such sum or sums of money as they shall judge necessary for the settlement, maintenance, and support of the ministry, schools, meeting-houses, school-houses, . . . to be assessed on the polls and estates in the same town, as the law directs."

The Provincial Statute of May 14, 1714, empowered towns to choose ministers, and raise money by taxation for their support: "Provided always, that this act does not at all interfere with Her Majesty's grace and favor in allowing her subjects liberty of conscience; nor shall any person, under pretence of being of a different persuasion, be excused from paying towards the support of the settled minister or ministers of such town aforesaid; but only such as are conscientiously so, and constantly attend the publick worship of God on the Lord's day, according to their own persuasion, and they only shall be excused from paying towards the support of the ministry of the town."

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The principles upon which towns and parishes, in their corporate capacity, are enabled to support and maintain public instruction in religion and morality, which have just been detailed, are not the more true and solid for being recognized in our Constitution; but their being found there justly authorizes those whose duty it is to interpret that instrument to weigh and consider them in judging of the extent, the limitation, and the restrictions of the power conferred; and, taking those principles into consideration, we are bound to suppose that a power so beneficial and salutary in its consequences, so necessary to the well-being, if not to the very existence, of a free government, was not intended to be rendered wholly nugatory by any thing contained in other parts of the same instrument. We are bound to give that construction to the various clauses which will give effect and meaning to every part. We are to collect the meaning from the whole instrument, not from disjointed parts. Under these impressions, and with these rules of construction for our guide, let us examine that clause of the sixth article of the Bill of Rights which the plaintiff relies upon in support of his claim to exemption. It is this: "No person of any 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 here it may be useful to observe that, if this clause had been omitted altogether, there would have been neither any violation of the rights of conscience, nor any proper religious establishment in the State. (*a*)

A religious establishment (*b*) is where the State prescribes

(*a*) And yet a law which should tax the State, all sects and denominations, for the support of religious worship according to the articles and tenets of one sect alone, would be considered as altogether oppressive and intolerable; in the same manner as a tax on the whole people to educate the children of Congregationalists alone. See 21 Edinburgh Review, 211.

(*b*) See, on this subject, 17 Edinburgh Review, 6.

Toleration. See 17 Edinburgh Review, 394, and above reference. 5 Senator, 785.

Establishment. 5 Quarterly Review, 352.

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y *Review*, 352.

a formulary of faith and worship for the rule and government  
 of all the subjects. 5 Senator, 742. Here the State do neither.  
 It is left to each town and parish, not to prescribe rules of  
 faith or doctrine for the members of the corporation, but barely  
 to elect a teacher of religion and morality for the society, who  
 is to be maintained at the expense of the whole. The privi-  
 lege is extended to all denominations. There is no one in this  
 respect superior or inferior to another. The minority of each  
 corporation can neither be molested on account of their re-  
 ligious opinions, nor subjected to any civil disabilities.

The Constitution, viewing religion in some form or other as  
 useful if not indispensably necessary to make good subjects;  
 not being able to decide between contending sects as to which  
 is most agreeable to the Word of God, the infallible standard,  
 but viewing them all as equally good for the purposes of civil  
 society, because they all inculcate the principles of benevolence,  
 philanthropy, and the moral virtues (*Blackst. Appendix, Fur-  
 neaux Lett. 94*); (a) considering, too, that public instruction  
 in the general principles of religion and morality can only be  
 maintained by enabling corporate bodies to support and main-  
 tain it,—under these impressions and with these views, confers  
 the powers in question.

Independent of the exempting clause, it is true an indi-  
 vidual member of the corporation would sometimes be com-  
 pelled to pay towards the support of a teacher of a different  
 denomination from his own, but still the conscience would be  
 left free.<sup>1</sup> He need not believe as the teacher or the majority  
 believe. He need not worship as they worship. He may be-  
 lieve and worship in his own way, or not believe and not  
 worship, just as he pleases. His conscience is free, his civil  
 rights unimpaired. It is his misfortune that, in electing a  
 teacher of religion and morality, he happens to be in the

(a) 3 Senator, 585. The experience of past centuries and the contem-  
 plation of present times prove that religionists of all descriptions may be  
 equally good subjects. 40 *Monthly Review*, n.s. 150.

<sup>1</sup> Compare PARSONS, C. J., in *Barnes v. First Parish in Falmouth*, 1810,  
 6 Mass. 401, 408, 409.

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minority.<sup>1</sup> His situation, in this respect, is precisely the same as it is in other civil concerns of the State. The minority are compelled to pay for instruction in learning, though they may be of opinion that the schoolmaster chosen by the majority neither promotes learning nor good manners, but the contrary. So the minority are compelled to pay towards the support of a governor, judges, &c., because the majority think these men advance the happiness and promote the good of society, though the minority may think they corrupt and injure the community. Public teachers of religion and morality chosen by a corporate body, are to every purpose civil officers of the State, as much so as schoolmasters and magistrates. The corporation choose them and maintain them because they believe their instructions will promote the good of society. Public instruction in religion and morality, within the meaning of our Constitution and laws, is to every purpose a civil, not a spiritual, institution. The relation that subsists between a minister and the town is civil; that which subsists between a minister and the church is spiritual. Hence, the former is regarded in our laws, and the latter is not. Society has a right to judge what will promote the good of society, and to provide for it at the expense of the whole. (a) The minority must submit to the judgment of the majority. No civil regulation can be made or adopted which does not militate with the opinions and the wishes of individuals. Some there are who profess to believe that learning is no way useful to the State. They are permitted to enjoy their opinions; but they are not on that account excused from paying. There are persons who profess to believe that war of every kind is unlawful; "they are conscientiously scrupulous about the lawfulness of bearing arms." Thirteenth

(a) The celebrated Mr. Locke, in framing a Constitution for the Carolinas, allowed the Church of England a maintenance by Parliament (of the Colony). 1 Holmes, *American Annals*, 408, n.

<sup>1</sup> See RICHARDSON, C. J., in *Baptist Society v. Wilton*, 1822, 2 N. H. 508, 512.

The Congregationalists, although at that day often in the majority, were not so in every town. Sometimes "the tables were turned." See instances cited by DOR, J., in *Hale v. Everett*, 1868, 53 N. H. 9, 148, 149.

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situation, in this respect, is precisely the same as in the civil concerns of the State. The minority are not to be left for instruction in learning, though they may be left at the schoolmaster chosen by the majority for learning nor good manners, but the contrary. They are compelled to pay towards the support of a school, &c., because the majority think these men necessary to business and promote the good of society, though they think they corrupt and injure the community. The majority of religion and morality chosen by a corporate body for the purpose of civil officers of the State, as much as of judges and magistrates. The corporation choose them because they believe their instructions necessary to the good of society. Public instruction in a school, within the meaning of our Constitution, is for every purpose a civil, not a spiritual, institution. The relation subsists between a minister and the town is the same as subsists between a minister and the church. The former is regarded in our laws, and in our Constitution, as a Society has a right to judge what will promote the good of society, and to provide for it at the expense of the Society. The minority must submit to the judgment of the majority. No civil regulation can be made or adopted which is contrary to the opinions and the wishes of the majority. There are those there who profess to believe that a regulation is useful to the State. They are permitted to do so; but they are not on that account exempted from the law. There are persons who profess to believe that a regulation is unlawful; "they are conscientiously of opinion that the lawfulness of bearing arms." Thirteenth

Mr. Locke, in framing a Constitution for the Carolina, gave to the King of England a maintenance by Parliament (of the American Annals, 408, n.

C. J., in *Baptist Society v. Wilton*, 1822, 2 N. H. 301.

ists, although at that day often in the majority, were not. Sometimes "the tables were turned." See C. J., in *Hale v. Everett*, 1868, 53 N. H. 9, 148, 149.

article N. H. Constitution; 1 Gibb. 492, 493. And this is the scruple of a respectable religious sect. They are indulged in their scruples, but they must pay an equivalent, they must pay those who do fight. (a) An individual may in his conscience believe that his nation wages an unjust war, but as long as he continues a member of the State, he must contribute his quota towards carrying it on.

In short, on this subject of conscience, there is no mistake more common than for men to mistake their wills and their purposes for their consciences. (b) Whatever other objections, therefore, may lie against the plan of authorizing towns to elect and support public teachers of religion and morality at the expense of every member, it is clear that it would be no infringement of the rights of conscience. (c) The question

(a) 3 Boswell's Life of Johnson, 359. Dr. Johnson says: "My friend, Tom Cuming, the Quaker, in 1745, said he would not fight, but he would drive an ammunition wagon. And we know that the Quakers have sent flannel waistcoats to our soldiers, to enable them to fight better."

(b) 1 Minot, 235. Pennsylvania, under the influence of the pacific principles of the Quakers, in 1755, declined furnishing troops for the war, but voted to raise £10,000, to be expended in provisions for the use of the forces raised by the other colonies. "They were willing to furnish stomach ammunition, — the *materiel* of all battles and bloodshed they cause others to fight." Nat. Gaz., Oct. 15, 1825.

(c) 35 Quarterly Review, 226, n. Quaker casuistry, a notable instance.

(b) The good Mr. Vane could not in conscience dine with Governor Winthrop in company with Lord Ley. Winthrop's Journal, 133.

It is the opinion of some that it would very much enlarge and establish liberty of conscience, that great bulwark of our nation, if the Christian religion should be abolished. 3 Swift, 114, Argument against abolishing Christianity. See *id.* p. 124.

(c) 2 Belknap, American Biography, 248, Life of Governor Bradford. Certain persons excused themselves from working for the public on Christmas Day, on the score of conscience. In the course of the day, the Governor found them at play. He commanded the instruments of their game to be taken from them. At the same time, he informed them that it was against his conscience to suffer them to play while others were working for the public.

There is nothing which has not, at some time or other, been used as a pretext of the conscientious kind.

The rioters in London, in 1780, pretended to be actuated by religious motives; the outrages they committed were all in defence of the Protestant

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before the Court, therefore, does not involve in it a matter of conscience. It is a mere question of the extent of a civil obligation and a civil duty; that is, how far a corporate body can compel its members to support the public teacher chosen by the corporation pursuant to the Constitution.

IV. It is admitted that the plaintiff is a Presbyterian, and that a majority of the persons composing the First Parish in Amherst, and their teacher, are Congregationalists. Are these different sects, or are they one and the same? What is the criterion by which we may be enabled to decide the question? Is it a difference in faith, in doctrinal points; or is it a difference in the form of church government, discipline, and worship, which constitutes different sects and distinguishes one set of Christians from another?

Most, if not all, the religious sects have their confessions of faith and their platform or directory of church government, discipline, and worship. We find that many sects agree in the main as to matters of faith, but differ in their platforms of government and discipline.

The Episcopalian, Presbyterian and Congregational Churches agree in articles of faith, and differ in government, discipline, and worship. Warb. Sermons, 207. (a) Presbyterians, Independents, Baptists, in England, all subscribe doctrinal articles of the Episcopal Church. 4 Blackstone, 53. (b) They are still nonconformists, Mass. Hist. Coll. IX. 42, n.; that is

religion. It went against their consciences that the Roman Catholics should enjoy the liberty of conscience. 1 Pol. Mag. 504; 2 Boswell's Life of Johnson, 105-113.

(a) Mass. Hist. Soc., 1795, pp. 135, 222; 3 Senator, 140.

The subjects of these colonies (Massachusetts, Plymouth, New Haven, and Connecticut, including New Hampshire) are of the same faith and belief, in all points of doctrine, with the Church of England and other reformed churches, though not alike persuaded in some matters of order, &c. Mass. Hist. Coll. I. 175. The synod which framed the New England Platform of Church Discipline recommended to the General Court and the churches the Westminster Confession of Faith. Mass. Hist. Coll. VII. 25; Mass. Hist. Coll. IX. 40, &c. See 1 Holmes, American Annals, 345, 484; Winthrop's Journal, 194.

(b) This is expressed too strongly. All are required to subscribe; some refuse. 47 Monthly Review, 102.

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efore, does not involve in it a matter of mere question of the extent of a civil duty; that is, how far a corporate body is to support the public teacher chosen pursuant to the Constitution.

that the plaintiff is a Presbyterian, and the persons composing the First Parish in Hillsborough, are Congregationalists. Are these the same and the same? What is the law that may be enabled to decide the question? Is it a difference in doctrinal points; or is it a difference in church government, discipline, and worship, which different sects and distinguishes one set of people?

The religious sects have their confessions of faith or directory of church government, &c. We find that many sects agree in the substance of faith, but differ in their platforms of discipline.

Presbyterian and Congregational Churches differ in government, discipline, &c. Sermons, 207. (a) Presbyterians, Independent Churches, all subscribe doctrinal articles of the Church of England. 4 Blackstone, 53. (b) They differ in discipline, Mass. Hist. Coll. IX. 42, n.; that is

to test their consciences that the Roman Catholics do not have. 1 Pol. Mag. 504; 2 Boswell's Life

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The colonies (Massachusetts, Plymouth, New Haven, and New Hampshire) are of the same faith and doctrine, with the Church of England and other churches, though not alike persuaded in some matters of order, &c. 175. The synod which framed the New England platform recommended to the General Court and the House of Representatives the Confession of Faith. Mass. Hist. Coll. VII. 25; &c. See 1 Holmes, American Annals, 345, 484;

too strongly. All are required to subscribe; some dissenters, 102.

they refuse to conform to the peculiar rites, ceremonies, discipline, government, and externals of religion as practised in the Episcopal Church, because they profess to believe them unscriptural. But, notwithstanding this agreement between the different sects as sects, bodies of men, or distinct societies, yet the individual members of each of these sects differ widely in faith and doctrine. (a)

In the Episcopal Church there are Calvinists, Arminians, Universalists, &c. The same may be said of the Presbyterian and Congregational Churches. If we say that articles of faith are what only distinguishes sects, then Episcopalians, Presbyterians, and Congregationalists are of the same sect. If we say that doctrinal points enter into the discrimination at all, then individuals among Presbyterians, Congregationalists, and Episcopalians are of the same sect, for they are Calvinists, Arminians, Universalists, &c.; and individuals in the Episcopal Church are of different sects, for some are Calvinists, some Arminians, some Universalists, &c. But according to the common and usual acceptation of the term sects, (b) matters of faith are not considered. The Episcopalians are a sect; the Presbyterians are a sect, &c. The individual members do not agree in doctrine, and among Episcopalians there are not many sects, though there is much diversity of opinion in articles of faith, and perhaps no two Episcopalians understand the Thirty-nine Articles precisely in the same sense; yet they are all of one denomination.

(a) 1 Doug. 440, says the Synod at Cambridge, N. E., 1648, agreed to the Westminster Confession of Faith of 1646, in matters of faith and doctrine, but composed a platform of their own for discipline.

In 1680, the Confession of Faith nearly the same with that of the Independents in England, called the Savoy Confession of Faith (Oct. 12, 1658), and seemed to renounce the models of Geneva and Scotland. See *id.* 442, not different in doctrine, but church government, &c.

Plymouth Colony address to Charles II, Chalmers, 105, 106, agreeing in doctrinal points of religion with the profession of the Church of England and other reformed churches, &c.

(b) Dr. Tucker, in his remarks on Mr. Parsons's sermons, in which the latter had spoken of Calvinists as a denomination, says, This is the first time I ever heard of them as a distinct sect or denomination of Protestants.

If, therefore, we allow doctrinal articles to enter into the definition of sect, the term becomes immediately indefinite and uncertain in its meaning; and, what is more to our purpose, affixing this sense to the term will render altogether nugatory that clause in the Constitution which enables corporate bodies to support and maintain public instruction in religion and morality. To illustrate this idea, let us suppose a whole town or parish to be composed of Episcopalians. They elect an Episcopalian teacher. An individual refuses to pay, because the majority or the parson is a Calvinist, and he an Arminian. How is this matter to be tried? Who shall determine as to the creed of the parson or the person claiming exemption? We must take the parties' word for it; we cannot have better evidence. Then the corporation may make a contract as a corporate body, and yet every individual upon his own declaration merely may be loosed from the bond. What is this but saying that the corporation may coerce all who choose to be coerced; may force the willing, but not the unwilling; or, in other words, the corporation shall not exercise any of the powers of a corporate body.

This absurdity is not attached to the other opinion, namely, that a difference in government, discipline, and worship alone constitutes the difference of sects and denominations. (a) If an individual claims exemption on the ground that he is a Baptist, &c., the truth or falsehood of his plea may be examined and tried by a jury. Though God alone is the absolute judge of a man's faith and of his conscience, yet the world can judge as to what sect he belongs.<sup>1</sup> Circumstances will serve to evince whether he is what he professes to be or not,

(a) Forms, ceremonies, &c., of the Church of England caused the settlement of New England. See 1 Hubbard, 154, &c. "Conscience in point of God's worship" was the main end of coming here, — those of different persuasions respecting church government cannot join us, &c. Morton's Mem. 418.

"Sects, in England, are formed by reason of disagreement in points of discipline and external forms of worship." Middleton on Miracles, exiii. The Church and dissenters agree on essentials, and differ only about things indifferent. *Id.*

<sup>1</sup> Blackst. Appendix, 151.

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*Id.*  
151.

whether he is sincere in his declarations that he belongs to this or that sect. Is he consistent throughout? do his actions correspond with his declarations? All these things may be and must be manifested by overt acts. It is a just and excellent maxim, which will hold good in this as in all other cases, "By their fruits ye shall know them." If he is really and truly a Baptist, as he professes to be, it will appear. He will attend their meetings, not now and then, but frequently, constantly. He will join with them in divine worship in their way, not occasionally, but stately. He will conform to their rites and ceremonies, submit himself to their government and discipline. Is his profession assumed merely that it may serve as a cloak to screen him from paying taxes in the society to which he belongs? His actions will demonstrate. If his actions show this, he is a pretended, not a real, Baptist; and his profession shall not avail him. So if he has joined different sects at different times, and especially if he has done so from improper views. (a) So if he appear to be an atheist, deist, a reviler and contemner of religion, or a person of no religion. (b) All these things are capable of proof. But how shall it be proved what is the doctrinal belief of a parish, or even of a parish priest, or any individual member? Who is capable of ascertaining precisely who are Calvinists and who Arminians, who are Arians and who Socinians? It would many times puzzle a jury of theological doctors to decide. I may add, it would puzzle many people to pronounce as to their own creed. Most people, I presume, have opinions in matters of religion; but there are few who can tell what they are, and fewer still who can compare them with the opinion of others and mark their agreement and their disagreement. It would require a very nice compass and a skilful theological surveyor to run the divisional line between Calvinists and

(a) But merely worshipping with other denominations occasionally, and even conforming to their rites, is not evidence that the person is insincere in his profession. The famous Baxter, a Presbyterian, who refused the bishopric of Hereford, 1661, frequently attended divine service in the Church of England, went to the sacrament, and persuaded others to do the same. 2 Rapin, 744, n. 4.

(b) LORD MANSFIELD, Blackst. Appendix, 145-152.

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Hopkinsians. What allowance shall he make for the variation of the needle? We have new and old Calvinists, rigid and liberal Hopkinsians, new and old divinity. (a)

Disagreement in opinion as to the doctrines maintained by sects may have many times occasioned new sects to spring up. But every difference of opinion has not proceeded to this length; and even where it has occasioned a separation, the dissenters generally, if not always, differ more in government, discipline, and worship, that is, in the externals, than in articles of faith. It is wholly immaterial to our present purpose whether doctrine, or government and discipline, is of the greater or less importance. The former does not, and the latter do, admit of being known and established by evidence. At the same time, it may be proper to remark that mankind have at all times more obstinately adhered to the ceremonies of religion than to the doctrinal parts. The externals of religion have always made a greater impression on the multitude than the internals. (b)

We may then safely conclude that by sects spoken of in the Constitution we are to understand a body of Christians cut off or separated from the rest, — for this is the strict meaning of the word (3 Senator, 585), (c) — who live apart and by themselves, having a form of church government, discipline, and worship different from others, and especially from those from whom they separated, and who thus, forming a distinct sect, section, or society, acquire a name or denomination.

In ascertaining the sense and meaning of laws and constitutions, little confidence, perhaps, is to be placed in the strict meaning of words, or on arguments deduced from nice and critical construction. If it would not be thought refining too much in this way, I would observe that each of the words

(a) The original Congregationalists have always held that the distinguishing character of sect is polity, not doctrines. 65 Christian Examiner, 200; Lamson's Dudley Lecture.

(b) 1 Gibb. 460; 2 Rapin, 363.

(c) 1 Gibb. 467, 503. If mere difference in doctrine should exempt any, it should be Unitarians. Blackst. Appendix, Priestley to Blackstone, 17, n.

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Rapin, 363.

3. If mere difference in doctrine should exempt  
itarians. Blackst. Appendix, Priestley to Black-

used in the paragraph under consideration has a particular  
and appropriate meaning, and that altogether they bear  
the sense I have put upon them. Persuasion refers to the  
opinion, conviction, or belief which occasions the separation.  
Sect means the party persuaded, or who, entertaining opin-  
ions different from the rest, are cut off or separated from  
the main body. Denomination is the next step in the process.  
It signifies the name the sect acquires when actually separated,  
and which is generally descriptive of the principal points in  
difference. (a) Thus Episcopacy is the government of the  
church by bishops, in opposition to Presbyterianism, or the  
government of the church by presbyteries or presbyters.  
Independents are so called from their maintaining, in opposi-  
tion to both the other sects, that each congregation is a complete  
church, and is in no respect subject to the control of others.  
The same observations may be made respecting Baptists,  
Quakers, &c. Where the difference is respecting matters of  
faith, the founder of the particular opinions generally gives  
his name to the disciples of that faith, as Calvinists, Lutherans,  
Arminians, Arians, Socinians, &c. It is true, as has been  
observed, that the word persuasion is oftentimes used with  
reference to sentiments or belief in doctrines. It is so used  
in Article V. But it is also used as synonymous with the  
words sect and denomination. (b) In this place it cannot  
alter the sense. In another part of this Article the same idea  
is conveyed by the word denomination alone. So sect and  
denomination are in this very paragraph used as equivalent to  
the three words, persuasion, sect, and denomination. This  
construction gives us solid ground to stand upon. Persuasion,  
sect, or denomination comprehend Episcopalians, Baptists,  
Congregationalists, Quakers, &c. Among these the discrim-

(a) Presbyterians and Independents spoken of as distinct sects. 1  
Holmes, American Annals, 442, 448, n.

X. Lingard, 158, &c. Principles of Presbyterians and Independents  
essentially different.

(b) Province Laws, p. 55; Temporary Laws, 49, 50. In 4 Belsham,  
Geo. III. 216, it is applied to Methodists, Dissenters, Churchmen.

2 Rapin, 742, n. 6; 1 Rapin, 849; 1 Dryden, Preface to Hind and  
Panther, 235.

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inating features are well marked, —it is true, with lines of different degrees of distinctness and boldness, but still, with respect to all, marked and known. There are known bounds and limits to sects and denominations. But, if matters of doctrine discriminate, how far shall it be carried, where shall we stop? There are a great number of divisions which have acquired a name of distinction, but the real divisions are still more numerous. No two persons precisely agree together, and the same man at different times differs from himself. (a)

V. Our next inquiry is, Do Presbyterians differ from Congregationalists in discipline, church government, and worship, in the external forms; are they a separate and distinct society; do they usually associate and worship by themselves? (b) If we apply these tests to deists (for as to atheists, it is not proper to consider them as a religious sect), Calvinists, Arminians, Hopkinsians, Universalists, &c., it will appear that these are not distinct sects: they are found blended with all sects. Among Episcopalians there are Calvinists and Arminians; there are also many Universalists. Some of the dignitaries of the Church have embraced the Universal scheme; Bishop Newton was a Universalist. Among the Congregationalists and Independents we may mention Dr. Priestley, Dr. Chauncey, Dr. Huntingdon, &c. Generally speaking, the Universalists have no distinct formulary of government and discipline. In large towns they sometimes associate and worship together. (c) But embracing this tenet makes, in general, no more difference as to the

(a) 1 Rapin, 322; 67 Monthly Review, 13.

(b) See Hubbard, I. ch. 28, p. 182, 183, &c.; 2 Hubbard, 415, 416.

*Id.* 418. "A Presbyterian spirit" was a term of reproach, as excluding the brethren.

(c) So do Calvinists, &c. Now and then we find a Calvinistic society in the country.

That Universalists are not a distinct sect from Congregationalists must now be considered as settled by the decision in *Henderson & Peckham v. Erskine*, in error, Cheshire, October Term, 1802.

In the nature of things there is no more ground to exempt Universalists than Arminians from paying towards the support of a Hopkinsian teacher.

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well marked, — it is true, with lines of distinctness and boldness, but still, with plain and known. There are known bounds and denominations. But, if matters of fact, how far shall it be carried, where shall a great number of divisions which have no distinction, but the real divisions are still between two persons precisely agree together, and different times differs from himself. (a) Query is, Do Presbyterians differ from Congregationalists, church government, and worship; are they a separate and distinct society usually associate and worship by themselves? Apply these tests to deists (for as to atheists to consider them as a religious sect), and Hopkinsians, Universalists, &c., it will be seen they are not distinct sects: they are found in all. Among Episcopalians there are Calvinists; there are also many Universalists. The various series of the Church have embraced the same. Bishop Newton was a Universalist. Among Congregationalists and Independents we may name Dr. Chauncey, Dr. Huntingdon, &c. The Universalists have no distinct form of government and discipline. In large towns they usually attend worship together. (c) But embracing in general, no more difference as to the

Monthly Review, 13.

1. 28, p. 182, 183, &c.; 2 Hubbard, 415, 416. "Rational spirit" was a term of reproach, as excluding

c. Now and then we find a Calvinistic society

is not a distinct sect from Congregationalists must be decided by the decision in *Henderson & Peckham v. Peckham*, October Term, 1802.

there is no more ground to exempt Universalists from paying towards the support of a Hopkinsian

form of church government and discipline than embracing the Calvinist, Arminian, Hopkinsian opinions does.

Let us now apply these tests to Presbyterians and Congregationalists.

1. The Presbyterians have a distinct directory of church government and discipline set forth in the same volume with their Confession of Faith, but separate and distinct from it. (a) Just so the Congregationalists have their code, called the Platform of Church Discipline, agreed upon at Cambridge, 1648, and afterwards ratified in 1680. They have also their Confession of Faith, in substance agreeing with the Presbyterian and the Episcopal, and differing little from the Romish.

2. Presbyterians usually worship by themselves, and form a distinct society from the other sects. Let us look at their origin. ("Presbyterians," "Independents," Encyclopedia.) They are as old as the Reformation. With the Lutherans they separated from the Church of Rome, but they soon separated from each other. The Lutherans established the Episcopal form of church government. The disciples of Calvin established the Presbyterian, and it has existed ever since on the continent. It was afterwards established in Scotland, and carried by the Scotch, who immigrated in great numbers to Ireland, and planted there. It was brought both from Scotland and Ireland to this country, and churches have been formed here on the model of the Church of Scotland, and professing to be governed by the same directory. Presbyterians, as Bishop Warburton justly observes, did not spring from fanaticism, as many wild sects have done. (b)

The Independents are a sect of modern date. (c) The hierarchy established by Queen Elizabeth, the vestments (d) worn by the clergy in the celebration of divine worship, the

(a) See 18 Quarterly Review, 428; peculiarly fitted for Scotland.

(b) Rapin considers Independents as springing from the Presbyterians. Indeed, he uses the word Presbyterian as a general term in opposition to Episcopal. 2 Rapin, 352, 514, n. 1.

(c) See Mass. Hist. Coll. V. 206. Origin of Congregational Churches. See Origin of Congregationalism, Mass. Hist. Coll. VII. 265.

Separation from Episcopal Church. Mass. Hist. Coll. IX. 101.

(d) Mass. Hist. Coll. IX. 171; 1 Holmes, American Annals, 95, n., and 483.

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Book of Common Prayer, (a) the sign of the cross used in baptism, &c., were considered by many persons as too nearly resembling Popery; and a purer worship and more perfect reformation were demanded. These persons were called Puritans. (b) They divided from the Church, or rather the Church cast them out. Brown (c) first, and Robinson afterwards, moulded a certain portion of this mass into the sect now known in England by the name of Independents. From thence sprung Congregationalists in this country. (d) Both

(a) Mather's Magnalia, III. 157; 19 Quarterly Review, 91.

See First Formation of Congregational or Independent Churches. 1 Mass. Hist. Coll. I. n. s. 165, 166. See *id.* 200, *ante* and *post*. Congregationalism. *Id.* ix., Davis's Disc.

1 Heart of Mid-Lothian, 90. "The air of Scotland was alien to the growth of Independence, though favorable to fanaticism under other colors."

The Presbyterian Church seems no better disposed to Congregationalism than the Episcopal.

(b) 42 Monthly Review, 27; 19 Quarterly Review, 91, 95. The grounds of dissenting at this day. 47 Monthly Review, 102, 103, &c.; Mass. Hist. Coll. IX. 10-12, &c.; McCrie's Life of Knox, 82, 83, 427, 1 Neal's Hist. Puritans, 108, 563-570. The Council ordered the altars to be removed from the churches (as the retaining them would serve only to nourish in the minds of the people the opinion of a propitiatory mass), and tables for sacramental occasions to be used in their stead. Day, Bishop of Chichester, and Heath, Bishop of Worcester, refused to comply, insisting on the Apostle's words, "We have an altar;" and, rather than comply, they suffered themselves to be deprived of their bishoprics for contumacy. Oct. 1551.

See vindication of this, 1 Neal, 568-570, and 108, after the above passage.

(c) The Brownists spoken of as a sect. 2 Rapin, 471; Mass Hist. Coll. IX. 10, 11, &c., n.

(d) Mass. Hist. Soc. 1795, IV. 134; Mass. Hist. Soc. 1800, VII. 265, &c.

Congregationalists; origin of name. 1 Holmes, American Annals, 271.

(It would seem this account is not correct. See 1 Holmes, American Annals, 484.) Puritans. 1 Holmes, American Annals, 240, 243. It is not easy to say what they were; but they were non-conformists, some more and some less hostile to the Church; perhaps none of the Brown sect, at least they ceased to be so long.

See Robbins, New England Fathers: Brownists, 43, 120, 125, 139; Independents, 43, 122, 128; Savoy Confession, 128.

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prayer, (*a*) the sign of the cross used in considered by many persons as too nearly and a purer worship and more perfect emanated. These persons were called divided from the Church, or rather the t. Brown (*e*) first, and Robinson after-rtain portion of this mass into the sect nd by the name of Independents. From regationalists in this country. (*d*) Both a, III. 157; 19 Quarterly Review, 91.

1 of Congregational or Independent Churches. s. 165, 166. See *id.* 200, *ante* and *post.* Congre- vis's Disc.

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in the Old World and in this, Presbyterians, Independents, or Congregationalists form distinct religious societies or churches.

The same learned prelate I have already quoted, treating of the origin of the Independents, says they are the spawn of the persecuted Puritans. 3 Warb. Serm. 267, 272; 2 Rapin, 802. (*a*)

3. So much for the origin of the two sects; but still it may be asked, Do Presbyterians and Congregationalists differ from each other? They think they differ, for they live apart from each other, and form distinct societies. Winthrop's Journal, 308, 309. The Independents in England and the Congregationalists here have not yet adopted the Westminster Confession of Faith, and directory and form of Presbyterian church government and discipline. And the Established Church of Scotland have yet manifested no desire to exchange it for the New England Platform. (*b*) But Presbyterians and Independents have given higher, if not better, evidence of their being, at least in their own opinion, distinct sects; for they have persecuted each other even unto the death, with all the rancor of religious hate, when either could get the sword of the civil magistrate into their own hands. 2 Rapin, 546. (*c*)

4. It has been mentioned that Presbyterians and Congregationalists have distinct directories or platforms of church government and discipline. If we look into these, we shall find that they differ as much as other sects.

(1.) As it respects different orders of men in the church, ordination, &c.

The Presbyterians believe that there is a permanent order of ministers in the church; that the authority of those

(*a*) As to the rise of the Independent sect, see 2 Rapin, 514, and n. 1.

(*b*) An attempt was made before 1648 to introduce the Presbyterian government and discipline in one of the New England churches. This was almost as opposite to the principles of the fathers of New England as the Church of England. Mass. Hist. Coll. IX. 48; 1 Holmes, American Annals, 339; 2 *id.* 72, 73.

Origin of Congregationalists in New England. 1 Holmes, American Annals, 95, 196, 484.

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ministers to preach the gospel, to administer the sacraments, is derived from the Holy Ghost by the imposition of the hands of the presbytery; that in all the externals of religion, the great body of Christians are bound to obey. In short, they agree with the Episcopalians, that there is a permanent order of ministers; but they differ from Episcopalians in the number of orders and in the manner of their creation, — the Episcopalians maintaining that there are divers orders, bishops, presbyters, and deacons, and that the highest only has the power of ordination; while the Presbyterians maintain that there is only one order, namely, presbyters. Both deny the validity of lay ordination.

The Independents and Congregationalists (*a*) differ from both. They deny that there is any permanent order of ministers constituted by Christ or his Apostles; [they believe] that a man may become a minister without the sanction of any permanent order of men. They believe that the imposition of the hands of a bishop or presbytery conveys no spiritual powers or prerogatives; that a man may be constituted a pastor by election of the church and acceptance on his part; (*b*) these are every thing; "ordination is nothing but the putting a man into his place and office, whereunto he had right before," and may be performed by the brethren of the church. (*c*) They attribute no virtue

(*a*) Encyclopedia; "Independent." New England Platform: Wise, &c.; Mass. Hist. Soc. 1794, 67, 68; Mass. Hist. Soc. 1799, VI. 242, 260; Bentley's History of Salem.

As to the elders, who usually assisted in ordination, see History of Salem, above.

Winthrop's Journal, 95, 96; Mass. Hist. Soc. VII. 1800, 265, 272.

(*b*) Mass. Hist. Coll. VI. 242, &c., 260; VII. *id.* 125.

It seems ministers who had been before ordained were ordained over again. Mass. Hist. Coll. VII. 125; and Bentley's History of Salem; Mass. Hist. Coll. VI. *passim*; Winthrop's Journal, 123, 124.

*Sed vide*, Mass. Hist. Coll. IX. 12, &c.

(*c*) How a church is formed. See Mass. Hist. Coll. VII. 14, 15, &c.; Mass. Hist. Coll. IX. 192, 193.

Ordination by the brethren of the church. Mass. Hist. Coll. VII. 39. One ordained by a bishop ordained again as a Congregationalist.

See President Stiles's Election Sermon, 2d ed. 103. Ordination.

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th the gospel, to administer the sacraments, the Holy Ghost by the imposition of the presbytery; that in all the externals of religion, Christians are bound to obey. In short, the Episcopalians, that there is a permanent order; but they differ from Episcopalians in the manner of their creation, — maintaining that there are divers orders, elders, and deacons, and that the highest only is by ordination; while the Presbyterians maintain only one order, namely, presbyters. Both are by lay ordination.

Methodists and Congregationalists (a) differ from the former in that there is any permanent order of ministers instituted by Christ or his Apostles; [they say a man may become a minister without the permanent order of men. They believe that the hands of a bishop or presbytery confer powers or prerogatives; that a man may become a pastor by election of the church and acquiescence of the people; (b) these are every thing; “ordination is the putting a man into his place and he had right before,” and may be performed by the church. (c) They attribute no virtue

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Mass. Hist. Soc. VII. 1800, 265, 272.

II. VI. 242, &c., 260; VII. *id.* 125.

who had been before ordained were ordained over again. Mass. Hist. Coll. VII. 125; and Bentley's History of Salem; Mass. Hist. Soc. Winthrop's Journal, 123, 124.

Mass. Hist. Coll. IX. 12, &c.

is formed. See Mass. Hist. Coll. VII. 14, 15, &c.; VIII. 192, 193.

brethren of the church. Mass. Hist. Coll. VII. 39. A man who had been ordained again as a Congregationalist. See Bentley's Election Sermon, 2d ed. 103. Ordination.

whatever to the rite of ordination, upon which Presbyterians, as well as Episcopalians, lay so much stress.

(2.) The Presbyterians maintain that ministers constituted in their mode, together with a certain number of laymen (chosen and ordained by them), form a judicature (1 Hubbard, 184, 189), and are clothed with certain powers in ecclesiastical matters, extending over all Presbyterians in the same kingdom or state. Such society or parish has its own session; a number of parishes form a presbytery; a larger division a synod, — and the whole are united under a general assembly. Churches or societies are not independent of each other, but connected and dependent. These different judicatories have cognizance of all questions relative to the government and discipline of the church and congregation. They examine, admit, ordain, and censure ministers; they license probationers; censure gross and contumacious sinners; direct the sentence of excommunication; resolve cases of conscience; explain difficulties in doctrine or discipline. In these particulars consist the external order, strength, and steadfastness of the Presbyterian Church.

Mass. Hist. Coll. IX. 3, 39; 1 Holmes, American Annals, 198, 199, 250, 251, 308, 309, 315, 354, 372. 1 Hazard's Collection, 490.

There is this difference (in ancient times at least) between Congregationalists, and Episcopalians and Presbyterians. In the two latter, ordination does not connect a man with a particular church; with the former it does; the consent of the people is every thing; at first the church was every thing; since the town consent. It seems the establishment of a new church does not affect the contract made by the old with a minister, and it seems consent of the town is now necessary to dissolve ministerial connection (unless perhaps where there is the advice of council to authorize the church to do it.)

Mass. Hist. Coll. IX. 135, 136; badly reported.

Ordained minister connected with a church, but not congregation — common. Mass. Hist. Coll. IX. 156. How church formed. Mass. Hist. Coll. IX. 154. Locality of a church. 2 Holmes, American Annals, 33, 34, 42.

Winthrop's Journal, 213. A church in early time, 1640, might ordain a pastor privately; but the common practice then was to give notice of the ordination to the neighboring churches and to the magistrates. This latter is now disused. Winthrop's Journal, 268.

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Among Congregationalists (*a*) each church is independent, if it chooses to be so. Each chooses and expels its members and its officers, and the sentence is final. Mass. Hist. Coll. IV. 134, 135; Mass. Hist. Coll. IX. 12, &c., 15, &c. Winthrop's Journal, 55, 56, and *ante*, 57; Colony Laws, 101. Among Presbyterians, if a member is expelled or excommunicated, he may be restored by a higher tribunal, and those who expelled him sentenced to take his place. The Episcopalians, in matters of faith, discipline, and government, acknowledge, as superior, the king, bishops, &c. The Presbyterians, in matters of government and discipline, acknowledge, as superior, synods and general assemblies. (*b*) Each Congregational church acknowledges no superior on earth (Winthrop's Journal, 57), Colony Laws, 101. Congregationalists also differ from Presbyterians in the mode of admission into the church. They generally require written or oral declarations of faith and religious experiences. Mass. Hist. Coll. IX. 16, n. (*c*) Some Congregational churches also differ as to baptism, denying it to all but children of believers in full communion; others require a sort of half communion. To conclude what

(*a*) Encyclopedia; "Independents." Wise, 206, 209, 221, 224.

This is that which principally characterizes the sect. 2 Rapin, 514, and n. 1.

Mass. Hist. Coll. IX. 14, 15.

Some say the Congregationalist is a middle way between Presbyterians and Brownists.

Wherein Congregationalists differ from others. Mass. Hist. Coll. IX. 15, &c.

(*b*) And each contends that his form of government, Episcopal and Presbyterian, is most suitable to the word of God and *jure divino*. 2 Rapin, 510, n. 1; *id.* 573.

Congregationalists have synods, but they have no authority, &c. Mass. Hist. Coll. IX. 32.

Independency. Ministers ordained over again; members dismissed from one church received into another in the same manner as if they never had been members of any church. Winthrop's Journal, 64; *passim*, 95.

(*c*) 1696-1717. The church of Cambridge voted that a formal and public relation of religious experiences as a qualification for church fellowship was unnecessary. Mass. Hist. Coll. VII. 32; Mass. Hist. Coll. IX. 3. See Winthrop's Journal, 166, 167.

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I have to say on church government, the Episcopalian Church is monarchical, the Presbyterian aristocratical, (a) and the Congregational democratical. (b)

(3.) In worship there is little difference between the two sects. But still there is some. In the administration of the Lord's Supper the Presbyterian mode is reckoned the most solemn. Many Presbyterians esteem the difference as matter of consequence, though perhaps few carry it so far as the present plaintiff. He thinks it important that the bread should have no leaven in it. Even this seems to be of as much consequence as one of the stumbling-blocks to the Puritans, and which was one of the causes that led to the separation from the Episcopal Church, — the matter of the altar, and the garments worn by the priests on these occasions.

5. From this very brief view of the two sects, I think myself warranted in saying that Presbyterians and Congregationalists differ from each other as much at least as Baptists do from either. (c)

(a) Republican. 27 Edinburgh Review, 335.

(b) The Scriptures do not lay down any precise rules as to the arrangement of public worship, the form of church government, discipline, &c. It is not, therefore, wonderful that persons professing to take the Scriptures as their guide should entertain different opinions on these subjects.

5 Quarterly Review, 334, calls Presbyterian establishment a republican government.

18 Quarterly Review, 429; 4 Burke, 112.

2 Burnet, Own Times, 406, 407.

(c) And as much as Presbyterians differ from Episcopalians.

Few foreign Protestants (Presbyterians) scruple to communicate with the Church of England. 2 Rapin, 784, 804.

The hierarchy is the principal point on which Presbyterians and Episcopalians are divided. 2 Rapin, 802, 805.

Mather's Magnalia, *passim*, et 13, 14, 20; N. H. Hist. Coll. I. 77; Penhallow.

See Heart of Mid-Lothian. Presbyterians hold that the General Assembly represent the Head of the Church, and have the sole and exclusive right of regulating whatever belongs to public worship. There is the *jus divinum* of Presbytery as well as of Episcopacy. Independents will not admit that any assembly of churchmen have any coercive power.

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They were distinct sects and formed separate religious societies at the time our Constitution was made. And I am confident if it had then been understood that they were not to be so considered, no Presbyterian would have assented to that instrument. The Constitution, in using the words persuasion, sect, or denomination, no doubt had reference to the sects at that time in being. Episcopalians, Baptists, Quakers, were at that time exempt. I do not know that the question at that time had arisen respecting Presbyterians. (a) Perhaps it would be going too far to say that these words shall not be construed to extend to sects that may spring up in future. When they arise and become distinctly marked, they will doubtless be entitled to claim the privilege of exemption.

From the construction now given to the Constitution, I apprehend that it will follow that towns and parishes are authorized to tax atheists, deists, revilers and contemners of religion, and persons of no religion at all, and who consequently belong to no particular denomination of Christians. It is only persons of a religious sect that are under any circumstances exempt from taxation in the corporate body to which they belong. And in this case the public are supposed to suffer no loss from the exemption, because such persons maintain religious instruction according to their own persuasion; but this will not apply to those who have no religion. (b)

VI. It has been said that Presbyterians and Congregationalists agree in many things; that they differ only in

(a) It has since arisen in the case *Steele v. The Assessors of Hillsborough*, and it was then the unanimous opinion of the Court, in their direction to the jury, that Presbyterians were a different sect from Congregationalists.

The jury found for the defendants; it is presumed on the ground that Steele was not a real Presbyterian, but a pretended one; such was the weight of evidence.

(b) In England the penal laws are in force as it respects persons of no religion. The toleration only extends to such serious, sober-minded dissenters as shall have taken the oaths and subscribed the declaration required, and who shall regularly repair to some registered place of public worship. Blackst. Appendix; Answer to Priestley, 40.

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our Constitution was made. And I am  
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pendix; Answer to Priestley, 40.

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trifling matters; and that they often unite in worship and  
communion. (a)

It is true they agree in many things. So do all sects.  
It is sufficient that they differ in such matters as are deemed  
by themselves essential. It is sufficient that many serious  
Christians of both these denominations cannot overcome their  
scruples; cannot give up their preference for the order,  
discipline, worship, and government of the church, which  
prevails in their own sect, and constitutes its difference from  
all others.

Dissenters in England (b) are allowed to say that they  
cannot in conscience join the Established Church; that they  
cannot take the sacrament according to her rites and cere-  
monies. The substance of the thing is the same among all  
Protestants. Our Constitution allows all sects to say the  
same of each other. Where the denomination is different,  
and they do not in fact unite, they shall not be compelled  
to pay. Each sect has a right to prefer its own form, and  
each individual of the sect to appropriate his money to the  
support of public instruction in religion and morality in his  
own society. It must not be permitted to the prevailing  
sect to say, "Those who differ from us do it upon matters  
of indifference, or for no reasons." The majority have no

(a) Dr. Tucker (remarks on Parsons's Sermons, 8) says Presbyterians  
and Congregationalists differ but in smaller matters, in which they can  
bear with each other, and often do, peaceably uniting in the same reli-  
gious society.

See also New York Review, V., 90; McCrie's Life of Knox, 124.

The more sober and learned Puritans inclined to that form which is  
known by the name of Presbyterian, &c. Robertson, History of America,  
144.

First settlers of New England not Brownists: *id.*; though agreeing in  
many things, Brown went further and was out of credit in 1630; though  
Robertson seems to consider them as Brownists, 153, 189. If Brownists,  
it was in a milder form. The settlers at Plymouth and Boston were evi-  
dently different, though both had imbibed Puritanical notions. Robertson  
says they were Puritans of the strictest form, 158. Some of the num-  
ber retained a veneration for the ritual of the church. *Id.* 159.

(b) LORD MANSFIELD, Blackst. Appendix, 150.

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right to judge in this matter. It is no matter whether the points in difference between sects be great or small, as long as the parties concerned think them of sufficient consequence to induce a separation. (a) All the Protestant churches set out together, but they parted on the road. They fell out by the way. And yet, if we coolly and impartially examine the points on which they differed and separated, they will be found few in number and trifling in amount.

It is true Presbyterians and Congregationalists (b) have been for some time approximating towards each other, but they have not yet formally united. Both sects have increased in catholicism, all sects are approximating, the shades of difference have been for some time gradually wearing away, and a more liberal way of thinking generally prevails. (c) There have been times when toleration was reckoned among the number of the deadly or mortal sins. (d) He who be-

(a) Who has not seen Congregationalists commune with Presbyterians; and, instead of sitting at a table in the true Presbyterian mode, take the elements in a pew? This is said to be the case with Mr. Adams, at Dr. Green's, Philadelphia. In Pembroke, the same minister governs one part of his society in the Presbyterian, and the other in the Congregational, mode.

Presbyterians in Scotland make no scruple in communicating with the Church of England. 3 Senator, 141.

(b) Presbyterians and Congregationalists considered as distinct sects at early times in New England. Connecticut, 1680. Mass. Hist. Coll. IV. 222. Mass. Hist. Coll. IX. 47. Presbyterians not allowed even to hold lands.

There has been a time when members of the Church of Scotland have been refused communion in the New England churches. Mass. Hist. Coll. IX. 47.

An attempt was made, in 1643, to establish Presbyterian government at Boston, under the authority of the assembly of divines at Westminster, but it was baffled by the General Court. 1 Holmes, American Annals, 328; 1 Hutchinson, 112. See 1 Holmes, American Annals, 409. Episcopal worship against the conscience of Congregationalists in their meeting-houses. See 2 Holmes, American Annals, 486. Congregationalists inimical to Presbyterian government. Winthrop's Journal, 57.

(c) "The bitterness of sectaries against sectaries exceeds all common wrath."

(d) 19 Quarterly Review, 92-97. Toleration is a new virtue in any

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lieved that he had the command of God to extirpate heresy  
would not suffer the execution of the divine will to be  
retarded by the weakness of humanity. But the laws of  
humanity at length triumphed, and toleration came to be  
considered as a duty. With us it is exploded, for it implies  
an establishment which we have not. Here the doctrine  
of toleration has given place to the most perfect equality of  
rights. If this system of ours is suffered to remain for any  
length of time, I should hope that discordant sects may in  
time be brought to assimilate, and then to unite. (a)

Our Constitution has a tendency to produce these effects,  
as far as human means can accomplish it. Force, however  
gentle, has no tendency to unite. (b) It will produce a  
contrary effect. It is of the nature of the human mind to  
revolt at compulsion. Men have in all ages suffered martyr-  
dom for what appear to be the merest trifles. It is the  
usual effect of persecution (and though the present question  
does not involve the rights of conscience, yet many suppose  
they are involved), it is the usual effect of what is deemed  
persecution, and every species of oppression, to harden and  
contract the will, (c) to inflate and inflame the imagination,

country; 5 Burke, 154. Toleration is odious to the intolerant; freedom  
to oppressors; property to robbers; and all kinds and degrees of prosperity  
to the envious. Burke; 1 Brit. Cicero, 158, 159.

Toleration. 2 Brit. Cicero, 67, &c.

(a) If they should never unite, they may perhaps be as useful apart.  
See 21 Edinburgh Review, 181.

(b) See 3 Shaft. 88; 4 Burke, 113; 1 Haz. Eloq. Brit. Sen. 406.

(c) It was enacted by law, in France, that, if any Jew embraced Chris-  
tianity, he forfeited all his goods. I am inclined to think that such a law  
would be more likely to make converts to Christianity than a law declar-  
ing that all who remained Jews should incur the same forfeiture. 2  
Hume's England, 227, 237. 1 Haz. Eloq. Brit. Sen. 406.

The diseases of the body may be sometimes cured by salutary violence,  
but neither steel nor fire can eradicate the erroneous opinions of the mind.  
The reluctant victim may be dragged to the foot of the altar, but the  
heart still abhors and disclaims the sacrilegious act of the hand. Religious  
obstinacy is hardened and exasperated by oppression. 2 Gibb. 308. See  
19 Edinburgh Review, 155, 160.

Louis XIV., finding his persecution of the Protestants ineffectual, de-

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to magnify trifles into matters of importance. Zeal becomes ardent, then rancorous. When the current of zeal and devotion is contracted into a narrow channel, it runs with the strength, and sometimes with the fury, of a torrent. It provokes persecution, and the furious zealot expires in the flame his own zeal has kindled. But from the ashes of every martyr,—whether a victim to the truth or to error, whether to great or to small things,—spring up a thousand ready to encounter the pains for the crown of martyrdom. Policy, therefore (though, as a judge, I disclaim being influenced by it), policy dictates that we should not hurry the good work of catholicism and union of sects. This zeal too much resembles the profane and impious zeal of the Hebrew priest, who must needs put forth his hand to guide the ark. The greatest bigot I ever knew, was a bigot to freedom of inquiry,—illiberal in favor of liberality, and uncatholic towards all who were not as catholic as himself.

In this country there is perhaps less difference in the actual government and discipline of the Presbyterian and Congregational Churches, than what appears in their platforms. Still, there is a difference in practice. In judging of the sects, we are not to compare the lax administration of the systems, but the systems themselves. This would be like judging of a work by a spurious impression, one which the author himself disavows; like judging of an original by a bad copy. It is the same error which infidels have fallen into,—ascribing to the Christian system the faults of its unworthy professors. (a) Mild as the present times are, liberal as I know

sired Fénelon to try if he could not convert them with his preaching. "That I will, with all my heart, Sire," replied the Archbishop, "if you will be so good as to call off your dragoons, for 'tis they that drive them so much farther from us." Spence's Anecdotes, 29.

(a) The question is not what some persons calling themselves Presbyterians think and do, but what the great body of religious men, who conscientiously adopt and adhere to this sect, and firmly believe in the great importance of the points in which this sect of their choice differs from all others, think and do. See 32 Edinburgh Review, 108.

There are catholic, liberal-minded Presbyterians, and there are Presbyterians who care as little about religion as about the difference of sects.

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le about religion as about the difference of sects.

Mr. Barnard and the respectable members of his society are,  
still I believe they have no fancy to go over to the plaintiff's  
sect. They prefer their own. They think it most agreeable  
to Scripture. They are willing the plaintiff should come to  
them, but do not choose to go to him. But, if he is really  
and truly a Presbyterian, he has a right to remain where  
he is, and to enjoy his own peculiarities while they enjoy  
theirs. (a)

#### VII. To recapitulate.

The Constitution secures the citizens of this State against  
persecution on account of their religious opinions and re-  
ligious worship.

It provides that religious opinions shall in no case form any  
ground of civil distinction, declaring that all men are equal  
in the sight of the law, and equally eligible to civil honors  
and offices.

It provides for public instruction in religion and morality,  
because they promote the good of society; and declares that  
it can only be maintained by authorizing towns, in their  
corporate capacity, to support and maintain it.

It exempts persons who are really and truly of a different  
denomination from the majority of the corporation from pay-  
ing towards the support of the teacher elected by the cor-  
porate body. It leaves them at liberty to apply their means  
towards the support of public instruction in religion and  
morality according to their own persuasion, which is supposed  
to be equally useful to society.

From the pleadings in this cause it appears that the plaintiff  
is a Presbyterian, and the First Parish in Amherst, Congre-  
gationalist.

(a) McCrie's Life of Knox, 124. See 3 Brit. Cicero, 424.

One man has no right to touch the religious prejudices of another. 27  
Edinburgh Review, 337.

The Presbyterian, in his tenets, differs slightly from the Church of Eng-  
land; the Roman Catholic differs greatly. But to the conscientious be-  
liever in the superior purity of his own persuasion, the smaller step (to  
coalesce) is not less impossible than the greater, &c. 61 Edinburgh  
Review, 262.

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These are different sects, because they differ in church government and discipline, though they agree in doctrines.

The consequence of all which is, that —

*The demurrer must be overruled, and the plaintiff must have judgment on the second count (a).*<sup>1</sup>

Judge LIVERMORE, of that opinion.

Judge WINGATE, of a different opinion.

Judge ATKINSON, not present.

Judge FARRAR, who heard the arguments, fully agreed with the majority of the Court, but had resigned his seat before judgment was given.

(a) See, as to religious establishment, toleration, persecution, 17 *Edinburgh Review*, 6. See also 19 *Edinburgh Review*, 149-164.

Note. Origin of Dissenters, 15 *Swift's Works*, 18mo ed. 132.

Mr. Hollis (donor of Harvard College) appears to have considered Presbyterians and Congregationalists different sects. See 1 *Art. Morse*, 10. So the College considers them: Presbyterian ministers are not overseers.

Establishments in religion; 5 *Senator*, 742. Toleration, 1 *Belknap*, 82. See *Methodists*, 2 *Wendeborn's View of England, &c.*, 229, 233, 258, 260-263.

Origin of Presbyterianism, 1 *Hooker, Eccl. Pol.* 135, *ante et post*, and 141.

There will be a time when three words uttered with charity and meekness shall receive a far more blessed reward than three thousand volumes written with disdainful sharpness of wit (*i.e.*, in different spirit from that of meekness and charity). 1 *Hooker, Eccl. Pol.* 142.

In New England the doctrines of Westminster Confession of Faith always regarded highly, but the divine right of Presbyterian government with greater unanimity. 2 (*Sav.*) *Winthrop*, 77, n. (1). See *Id.* 91, fear of Presbyterianism. See *Id.* 137, "Mr. H., being of a *Presbyterial* spirit, did manage all affairs without the church's advice, &c." *Winthrop, II.*, 235-249, 330, n., 331.

Wise, 19. The ref. [reformation ?] in King Edward's time good; of Geneva and Scotland, better. But the Congregational way far exceeds them all in purity, is the highest step towards reformation, and

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<sup>1</sup> In *Henderson et al. v. Erskine, defendant in error*, Cheshire, October Term, 1802, 3 *Manuscript Reports*, 33 (also cited in *Universalist Quarterly* for April, 1876, 154-160, and for July, 1876, 161-163), *Caleb Ellis*, counsel for Erskine, proposed to argue that "Universalists and

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for the substance, is the same that was established and practised in primi- tive times, according to the institution of Jesus Christ. President Coke's [?] Sermon.

Wise, 104. Difference between Congregationalism and Presbyterianism.

*Id.* 172. Mass. Hist. Coll. IX. 48.

[Notes have been omitted which contain references to the following : — 2 Aiken's Eliz. 95; 1 Millar's Account of Presb. and Indep. 130; 2 Hooker, Eccl. Pol. 268; Library Useful Knowledge, No. 199, 36; 1 Aiken's James I. 57; Eliz. 189; Mackintosh's Rev. 1688, 285, 236, &c. IX. Lingard, 10, &c.]

Congregationalists are different persuasions, sects, or denominations." "But, being informed that the Court had, upon full consideration, decided this point against him, he waived it," and argued another point. The action was brought to try the validity of a tax assessed on Erskine, a Universalist, for the salary of a Congregational minister. The decision of the Court of Common Pleas, at April Term, 1801, in favor of Erskine, was reversed in the Superior Court, at October Term, 1802, by FARRAR and LIVERMORE, JJ. WINGATE, J., was absent; and SMITH, C. J., did not concur, because he doubted whether the plaintiffs in error had taken their objections in the proper form. The previous decision, referred to by the Court in *Henderson v. Erskine*, was undoubtedly made before the appointment of Judge SMITH. This appears from the following certificate by his predecessor, Chief Justice OLCOTT, which is among the papers in *Henderson v. Erskine* (and evidently refers to a prior case).

"I certify that it has been settled by the Superior Court, that persons called Universalists are not such a sect, persuasion, or denomination as by the Constitution of New Hampshire are exempt from the payment of taxes for the support of a regularly settled minister of a Congregational Society in the town where such persons live. And I think that, in establishing this practice, the Court were unanimous.

April y<sup>o</sup> 3d, 1801.

SIMEON OLCOTT."

"Those decisions were manifestly wrong in this: they were based solely on the indisputable proposition that Universalists are Congregation- alists, in disregard of the two other propositions, equally indisputable and equally important, that Universalists are one of several Congregational sects, and that religious liberty is the object of the constitutional provision. In 1804 the Freewill Baptists, in 1805 the Universalists, and in 1807 the Methodists, applied to the Legislature for relief from the tax-paying consequences of being held not to be religious sects distinct from the Puritans, and procured the passage of resolutions declaring them to be religious sects entitled to the constitutional privilege. Whether they were religious sects within the meaning of the Constitution, or not, was a judicial and not a legislative question; but, by the unconstitutional and void resolutions of the Legislature, the erroneous decisions of courts,

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juries, towns, and town officers, were practically reversed." Doe, J., in *Hale v. Everett*, 1868, 53 N. H. 9, 138.

The power given to towns, by the act of Feb. 8, 1791, to raise money by taxation for the support of the ministry, was taken away by the so-called "Toleration Act" of 1819 (Laws of 1819, c. 76), excepting so far as was necessary for the fulfilment of contracts then existing. As to the passage of the "Toleration Act," see reporter's note in 55 N. H. 468, 469. Besides the references there given, see, generally, as to taxation for the support of the ministry, Life of William Plumer, 185-187; Life of Isaac Hill, 44, 52; Sanborn's History of New Hampshire, c. 79; Doe, J., in *Hale v. Everett*, *ubi sup.* 148, 149.

In *The Dublin Case*, 1859, 38 N. H. 459, it was decided that the term, "minister of the Congregational persuasion," as used in a will made in 1817, was broad enough to include a Unitarian minister.

The Constitution of Massachusetts provided that all taxes paid by any person for religious teaching shall, if he require it, be applied to the support of the public teacher "of his own religious sect or denomination," if "there be any one whose instructions he attends."

Under this clause it was decided that Universalists were a different denomination from Congregationalists. *Murray v. Inhabitants of First Parish in Gloucester*, Supreme Court, Essex County, June, 1786; 2 Dane, Abr. 330. And Presbyterians were held to be a different sect from Congregationalists. *Annan v. Inhabitants of West Parish in Salisbury*, Supreme Court, Essex County, 1796; 2 Dane, Abr. 335.

In *Holbrook v. Holbrook*, 1822, 1 Pick. 248, 256, PARKER, C. J., said, "Having no reports of judicial decisions prior to the year 1804, we have lost an important part of our history in relation to the construction of the Constitution and the Declaration of Rights; but we have a traditionary account that it was early decided that difference of denomination, as the term is used in the Declaration, consists in a difference of church discipline and mode of administering some of the Christian ordinances; not in difference of opinion on doctrines of theology. Episcopalians, Congregationalists, Presbyterians, Baptists, and others were each of different denominations; but Christians belonging to either of those sects were of the same denomination, however widely they might differ as to the essential or non-essential matters of faith or doctrine."

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## CHAPTER 1320.

*RESOLVED by the Senate and House of Representatives in General Court convened,* That His Excellency the Governor, in reply to the letter of the Hon. Marshall P. Wilder, of Nov. 22, in behalf of the "Sons of New Hampshire" resident in Boston, inviting the executive and legislative branches of the government to unite with them as a distinct association in attending the obsequies of the late Daniel Webster in Boston on the 30th of November instant, be requested to inform him that the Senate and House of Representatives respectfully accept the invitation.

Approved, Nov. 26, 1852.

## CHAPTER 1321.

*RESOLVED by the Senate and House of Representatives in General Court convened,* That His Excellency the Governor, with advice of the honorable Council, be requested to appoint a suitable person, or persons, not exceeding three, whose duty it shall be to cause to be erected over the grave of Hon. Meshech Weare, in Hampton Falls, a suitable monument to his memory, to his patriotism and many virtues; and to defray the expenses of the same the Governor is hereby authorized to draw his warrant on the treasury of this State for a sum not exceeding one thousand dollars, of any money in the treasury not otherwise appropriated.

Approved, Jan. 8, 1853.

## CHAPTER 1322.

*RESOLVED by the Senate and House of Representatives in General Court convened,* That the provision of our State constitution, commonly called the "religious test," which makes the possession of a certain religious faith an essential qualification for certain offices, is unjust, anti-republican, contrary to the spirit of the present age, and when the proper time arrives for again calling a convention to revise the constitution, we will spare no efforts to induce the people to assent to the calling of such convention and to the abrogation of a principle, which should find no place in the constitution of a free State.

Approved, Jan. 8, 1853.

*RESOLVED by the General Court convened,* electors of President and House in Concord, on Thursday in December next of the Wednesday next the Legislature of the next office; and if the requis do not accept, the Senate immediately meet in number wanting to chosen do not accept, the vacancy. That the open of chapter twenty-eight one year.

Approved, Nov. 25, 18

*RESOLVED by the General Court convened,* sum of twenty-two dollars and twenty-four dollars allowed the sum of fifteen be allowed the sum of five hundred dollars. That Daniel B. Baker be allowed in full for their services as agent of the United States secretary of said board of dollars, and that Moses C. dollars, and that the Treasury the same out of any money appropriated.

Approved, Dec. 1, 185

*RESOLVED by the General Court convened,*

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THE  
GENERAL LAWS

OF THE  
STATE OF NEW HAMPSHIRE;

TO WHICH ARE PREFIXED

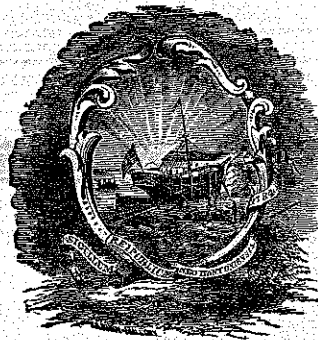
THE CONSTITUTIONS

OF THE

UNITED STATES AND STATE OF NEW HAMPSHIRE.

WITH

A GLOSSARY AND DIGESTED INDEX.



MANCHESTER:  
JOHN B. CLARKE, STATE PRINTER.  
1878.

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# CONSTITUTION

OF THE

## STATE OF NEW HAMPSHIRE.

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60. Councilors, mode of election, etc.  
 61. Vacancies, how filled if no choice.

## ARTICLE

62. Occurring afterward; new election; governor to convene; duties.  
 63. Impeachment of councilors.  
 64. Secretary to record proceedings of council.  
 65. Councilor districts provided for.  
 66. Elections by legislature may be adjourned from day to day; order thereof.

## SECRETARY, TREASURER, COMMISSARY-GENERAL, ETC.

67. Election of secretary, treasurer, and commissary-general.  
 68. State records, where kept; duty of secretary.  
 69. Deputy-secretary.  
 70. Secretary to give bond.

## COUNTY TREASURERS, ETC.

71. County treasurers and registers of probate, solicitors, sheriffs, and registers of deeds elected.  
 72. Counties may be divided into districts for registering deeds.

## JUDICIARY POWER.

73. Tenure of office to be expressed in commissions; judges to hold office during good behavior, etc.; removable by address.  
 74. Judges to give opinions, when.  
 75. Justices of the peace commissioned for five years.  
 76. Divorces and appeals, where tried.  
 77. Jurisdiction of justices in civil causes.  
 78. Judges and sheriffs, when disqualified by age.  
 79. Judges and justices not to act as counsel.  
 80. Jurisdiction and terms of probate courts.  
 81. Judges and registers of probate not to act as counsel.

## CLERKS OF COURTS.

82. Clerks of courts, by whom appointed.

## ENCOURAGEMENT OF LITERATURE, ETC.

83. Encouragement of literature, etc.

## OATHS AND SUBSCRIPTIONS, EXCLUSIONS FROM OFFICE, ETC.

84. Oath of civil officers.  
 85. Before whom taken.  
 86. Form of commissions.  
 87. Form of writs.  
 88. Form of indictments, etc.  
 89. Suicides and deodands.  
 90. Existing laws to continue in force, if not repugnant to constitution.  
 91. *Habeas corpus*.  
 92. Enacting style of statutes.  
 93. Governor and judges prohibited from holding other offices.  
 94. Incompatibility of offices; only two offices of profit to be holden at same time.  
 95. Incompatibility of certain offices.  
 96. Bribery and corruption disqualify for office.

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ARTICLE

- 97. Value of money, how computed.
- 98. Constitution, when to take effect.
- 99. Revision of constitution provided for.
- 100. Question on revision to be taken every seven years.

ARTICLE

- 101. Enrollment of constitution.

Note, showing when the different constitutions of the State and the constitutional amendments were adopted.

PART FIRST.

BILL OF RIGHTS.

ART. 1. 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.

Equality of men. Origin and object of government.

ART. 2. 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.

Natural rights. liii, 9, 398; liv, 530.

ART. 3. When men enter into a state of society, they surrender up some of their natural rights to that society, in order to insure the protection of others; and, without such an equivalent, the surrender is void.

Society, its organization and purposes.

ART. 4. Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or conceived for them. Of this kind are the RIGHTS OF CONSCIENCE.

Rights of conscience unalienable. liii, 9.

ART. 5. 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 worshiping 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.

Religious freedom recognized. liii, 9.

ART. 6. As morality and piety, rightly grounded on evangelical 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 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.

Public worship of the Deity to be encouraged. liii, 9.

*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 person of any one particular religious sect or denomination shall ever be compelled to pay toward the support of the teacher or teachers of another persuasion, sect, or denomination.

Right of electing religious teachers. liii, 9.

And every denomination of Christians, demeaning themselves quietly and as good subjects of the State, shall be equally under the

Free toleration. liii, 9.

Existing contracts not affected.

State sovereignty.

Accountability of magistrates and officers.

No hereditary office or place.

Right of revolution.

Elections and elective franchise.

Protection and taxation reciprocal.

Private property for public use, etc.  
i, 120, 130; ii, 22; iii, 534; vii, 35; viii, 398; xvii, 47, 64; xxv, 541; xxvii, 183; xxxv, 141; xxxvi, 404; xlvii, 444; lvi, 514.

Conscientiously scrupulous, not compellable to bear arms.

Legal remedies to be free, complete, and prompt.  
xxv, 539, 540.

Accused entitled to full and substantial statement of charge; not obliged to furnish evidence; may produce proofs and be fully heard, etc.

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 as if this constitution had not been made.

ART. 7. 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.

ART. 8. 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.

ART. 9. No office or place whatsoever in government shall be hereditary, the abilities and integrity requisite in all not being transmissible to posterity or relations.

ART. 10. Government being instituted for the common benefit, protection, and security of the whole community, and not for the private interests 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 non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

ART. 11. All elections ought to be free; and every inhabitant of the State, having the proper qualifications, has equal right to elect and be elected into office.

ART. 12. 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, or an equivalent. 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.

ART. 13. No person who is conscientiously scrupulous about the lawfulness of bearing arms shall be compelled thereto, provided he will pay an equivalent.

ART. 14. 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 any delay; conformably to the laws.

ART. 15. 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. And 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

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himself and counsel. And 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.

ART. 16. 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.

No person to be again tried after an acquittal; trial by jury in capital cases.

ART. 17. In criminal prosecutions, the trial of facts in the vicinity where they happen 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 than that in which it is committed, except in cases of general insurrection in any particular county, when it shall appear to the judges of the superior court that an impartial trial cannot be had in the county where the offense may be committed, and, upon their report, the legislature shall think proper to direct the trial in the nearest county in which an impartial trial can be obtained.

Criminal trials in county, except in general insurrection. xx, 250; lvi, 175.

ART. 18. 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.

Penalties to be proportioned to offenses.

True design of punishment.

ART. 19. 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 object of search, arrest, or seizure; and no warrant ought to be issued but in cases and with the formalities prescribed by law.

Searches and seizures regulated. i, 140; xxv, 541; xxxvi, 64.

ART. 20. In all controversies concerning property and in all suits between two or more persons, except in cases in which it has been heretofore otherwise used and practiced, and except in cases in which the value in controversy does not exceed one hundred dollars and title of real estate is not concerned, the parties have a right to trial by jury; and this method of procedure shall be held sacred, unless, in cases arising on the high seas and such as relate to mariners' wages, the legislature shall think it necessary hereafter to alter it.

Trial by jury in civil causes. ii, 422; ix, 336; xi, 19; xviii, 389, 415; xix, 361; xxv, 541; xxxv, 134; xli, 550; xlii, 635; xlviii, 57; lv, 179; lvii, 55, 110, 146, 334.

ART. 21. In order to reap the fullest advantage of the inestimable privilege of 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.

Only qualified persons to serve as jurors, and to be fully compensated.

Liberty of the press.

ART. 22. The *liberty of the press* is essential to the security of freedom in a State; it ought, therefore, to be inviolably preserved.

Retrospective laws prohibited. i, 213; iii, 481, 534; iv, 287; v, 386; xviii, 547; xxlii, 382; xxiv,

ART. 23. 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. 351; xxvii, 294; xxxii, 413; xxxix, 314; liv, 167; lvi, 466.

Militia.

ART. 24. A well-regulated militia is the proper, natural, and sure defense of a State.

Standing armies.

ART. 25. Standing armies are dangerous to liberty, and ought not to be raised or kept up without the consent of the legislature.

Military subject to civil power.

ART. 26. In all cases and at all times, the military ought to be under strict subordination to, and governed by, the civil power.

Quartering of soldiers.

ART. 27. 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 magistrate, in a manner ordained by the legislature.

Taxes only to be levied by the people or legislature.

ART. 28. 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.

Suspension of laws by the legislature only.

ART. 29. 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.

Freedom of speech.

ART. 30. 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.

Meetings of legislature, for what.

ART. 31. The legislature shall assemble for the redress of public grievances and for making such laws as the public good may require.

Rights of assembly, instruction, and petition.

ART. 32. The people have a right, in an orderly and peaceable manner, to assemble and consult upon the common good, give instructions to their representatives, and to request of the legislative body, by way of petition or remonstrance, redress of the wrongs done them and of the grievances they suffer.

Excessive bail, fines and punishments prohibited. i, 374, 376; xxxv, 541.

ART. 33. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

Martial law limited.

ART. 34. 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.

The judiciary; tenure of office, etc. xxxiii, 89.

ART. 35. 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.

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ART. 36. Economy being a most essential virtue in all States, <sup>Pensions.</sup> especially in a young one, no pension should 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.

ART. 37. 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. <sup>The legislative, executive, and judicial departments to be kept separate. lli, 387.</sup>

ART. 38. 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 law-givers and magistrates an exact and constant observance of them in the formation and execution of the laws necessary for the good administration of government. <sup>Social virtues inculcated.</sup>

PART SECOND.

FORM OF GOVERNMENT.

ART. 1. The people inhabiting the territory formerly called <sup>Name of body politic.</sup> 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. 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. <sup>Legislature, how constituted.</sup>

ART. 3. The Senate and House shall assemble biennially, 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 biennially, and shall be styled THE GENERAL COURT OF NEW HAMPSHIRE. <sup>General court, when to meet and dissolve.</sup>

ART. 4. 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, offenses, pleas, processes, complaints, actions, causes, matters, and things whatsoever, arising or happening within this State, or between or concerning persons inhabiting or residing or brought within the same, whether the same be criminal or civil, or whether the crimes be capital or not capital, and whether the said pleas be real, personal, or mixed, and for the awarding and issuing execution thereon; to which courts and judicatories are hereby given and granted full power <sup>Powers of general court to establish courts.</sup>

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.

To make laws, elect officers, define their powers and duties, impose fines, and assess taxes. i, 53; xiii, 536; xv, 88; xxviii, 176; xxx, 279; xxxviii, 427; xli, 415; liii, 9; liv, 590.

ART. 5. 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 defense of the government thereof; and to name and settle biennially, or provide by fixed laws for the naming and settling of, 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 stock or bonds.

Valuation of estates. viii, 573.

ART. 6. And, while the public charges of government or any part thereof shall be assessed on polls and estates in the manner that has heretofore been practiced, 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.

Members of legislature not to take fees or act as counsel.

ART. 7. 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.

Legislature to sit with open doors.

ART. 8. 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.

HOUSE OF REPRESENTATIVES.

Representatives elected biennially.

ART. 9. There shall be, in the legislature of the State, a representation of the people, biennially elected, and founded upon the principles of equality, and, in order that such representation may be as equal as circumstances will admit, every town, or place enti-

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tled to town privileges, and wards of cities having six hundred inhabitants by the last general census of the State, taken by authority of the United States or of this State, may elect one representative; if eighteen hundred such inhabitants, may elect two representatives; and so proceeding in that proportion, making twelve hundred such inhabitants the mean increasing number for any additional representative. *Provided*, that no town shall be divided or the boundaries of the wards of any city so altered as to increase the number of representatives to which such town or city may be entitled by the next preceding census; *and provided, further*, that, to those towns and cities which since the last census have been divided or had their boundaries or ward lines changed, the general court, in session next before these amendments shall take effect, shall equitably apportion representation in such manner that the number shall not be greater than it would have been had no such division or alteration been made.

Ratio of representation.

Number of representatives not to be increased by dividing towns.

ART. 10. Such towns, places, and wards as have less than six hundred inhabitants shall be classed by the general court for the purpose of choosing a representative so that every such class shall contain at least six hundred inhabitants, and be seasonably notified thereof; and, in every such class, the first meeting shall be held in the town, place, or ward wherein most of the inhabitants reside, and, afterwards, in that which has the next highest number; and so on, biennially, in rotation through the several towns, places, and wards forming the district.

Small towns to be classed; but every class must contain 600 inhabitants.

ART. 11. Whenever any town, place, or city ward shall have less than six hundred such inhabitants and be so situated that it cannot be conveniently classed with any other town, place, or ward, the general court may authorize such town, place, or ward to elect and send to the general court such proportionate part of the time as the number of its inhabitants shall bear to six hundred; but the general court shall not authorize any town, place, or ward to elect and send such representative, except as herein provided.

Small towns that cannot be classed may be represented a proportionate part of time.

ART. 12. 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.

Biennial election of representatives in November.

ART. 13. All persons qualified to vote in the election of senators shall be entitled to vote, within the district where they dwell, in the choice of representatives.

Qualification of electors.

ART. 14. 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, parish, or place he may be chosen to represent; and shall cease to represent such town, parish, or place immediately on his ceasing to be qualified as aforesaid.

Representatives, how elected, and qualifications of. liii, 9.

ART. 15. 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.

Compensation of legislature.

ART. 16. 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.

Vacancies in House, how filled.

House to impeach before the Senate.

Money bills to originate in House.

Power of adjournment limited.

Quorum, what constitutes.

Privileges of members of the legislature.

House to elect speaker and officers, settle rules of proceedings, and punish misconduct.

Senate and executive have like powers; imprisonment limited.

Journals and laws to be published; yeas and nays, and protests.  
xxxv, 579.

Senate, how constituted; tenure of office.

Senatorial districts, how constituted.

ART. 17. 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. 18. All money bills shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills.

ART. 19. The House of Representatives shall have power to adjourn themselves, but no longer than two days at a time.

ART. 20. 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. 21. 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.

ART. 22. 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 ill-treating 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.

ART. 23. The Senate, governor, and council shall have the same powers in like cases, *provided*, that no imprisonment by either for any offense exceed ten days.

ART. 24. 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, 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 same time for that purpose, to have his protest or dissent, with the reasons, against any vote, resolve, or bill passed, entered on the journal.

#### SENATE.

ART. 25. The Senate shall consist of twenty-four members, who shall hold their office for two years from the first Wednesday of June next ensuing their election.

ART. 26. And, that the State may be equally represented in the Senate, the legislature shall, from time to time, divide the State into twenty-four 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.

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ART. 27. 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.

Election of senators. xliv, 635; xlv, 597.

ART. 28. The Senate shall be the first branch of the legislature, and the senators shall be chosen in the following manner, viz.: every male inhabitant of each town, and parish with town privileges, and places unincorporated, in this State, of twenty-one years of age and upward, excepting paupers and persons excused from paying taxes at their own request, shall have a right, at the biennial or other meetings of the inhabitants of said towns and parishes, to be duly warned and holden biennially, forever, in the month of November, to vote, in the town or parish wherein he dwells, for the senator in the district whereof he is a member.

Senators, how and by whom chosen; right of suffrage. xliv, 398, 407.

ART. 29. *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.

Qualifications of senators. liii, 9.

ART. 30. And every person qualified as the constitution provides shall be considered an inhabitant, for the purpose of electing and being elected into any office or place within this State, in the town, parish, and plantation where he dwelleth and hath his home.

Inhabitant defined. xliv, 635; xlv, 595, 603.

ART. 31. And the inhabitants of plantations and places unincorporated, qualified as this constitution provides, who are or shall be required to assess taxes upon themselves toward the support of government, or shall be taxed therefor, shall have the same privilege of voting for senators, in the plantations and places wherein they reside, as the inhabitants of the respective towns and parishes aforesaid have. And the meetings of such plantations and places, for that purpose, shall be holden biennially in the month of November, at such places respectively therein as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerks have in their several towns by this constitution.

Inhabitants of unincorporated places; their rights. xliv, 635; xlv, 595, 603.

ART. 32. 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 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 purport thereof; and the said town clerk shall cause such attested copy to be delivered to the sheriff of the county in which said 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

Annual meetings, how warned, governed, and conducted; return of votes, etc. xliv, 398, 407, 635; xlv, 597. liii, 416, 640.

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.

Governor and council to count votes for senators and notify the persons elected. lili, 476, 640; lvi, 574.

ART. 33. And, that there may be a due meeting of senators on the first Wednesday of June, biennially, 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.

Vacancies in Senate, how filled.

ART. 34. 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 manner, 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 State, or otherwise, shall be supplied, as soon as may be after such vacancies happen.

Senate judges of their own elections. lvi, 576.

ART. 35. The Senate shall be final judges of the elections, returns, and qualifications of their own members, as pointed out in this constitution.

Adjournments limited except in impeachment cases.

ART. 36. 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.

Senate to elect its own officers; quorum.

ART. 37. 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.

Senate to try impeachments; mode of proceeding.

ART. 38. 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 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 previous to the returned, ment, giving of production himself a ing to app render ju and such person im

ART. 39. than removal of honor, victed shall and punish

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ART. 41. shall be s whose title

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ART. 43. regard to governor, v prorogue tl time, as he shall dissol of June. the place other cause members f sion to be l the State.

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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 non-appearance notwithstanding; and such judgment shall have the same force and effect as if the person impeached had appeared and pleaded in the trial.

ART. 39. 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.

Judgment on impeachment limited.

ART. 40. 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.

Chief-justice to preside on impeachment of governor.

### EXECUTIVE POWER.

#### GOVERNOR.

ART. 41. There shall be a supreme executive magistrate, who shall be styled Governor of the State of New Hampshire, and whose title shall be *His Excellency*.

Title of governor.

ART. 42. 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 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 qualifications 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 a 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.

Election of governor; return of votes; electors; if no choice, legislature to elect one of two highest candidates. lili, 9.

ART. 43. In case 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 the 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 in 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.

Qualifications for governor.

In cases of disagreement, governor to adjourn or prorogue legislature.

If infectious distemper or other cause exists, may convene them elsewhere.

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Veto of governor to bills, provisions as to. xiv, 600.

ART. 44. 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 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 names 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 which case it shall not be a law.

Resolves to be treated like bills.

ART. 45. 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.

Governor and council to nominate and appoint officers; nomination three days before appointment.

ART. 46. All judicial officers, the attorney-general, coroners, 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.

Governor and council have negative on each other.

ART. 47. 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.

Field officers to recommend, and governor to appoint, company officers.

ART. 48. 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.

President of Senate to act as governor when office vacant.

ART. 49. 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.

Governor to prorogue or adjourn legislature, and call extra sessions.

ART. 50. The governor, with advice of council, shall have full power and authority, in 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.

Powers and duties of governor as commander-in-chief, limitation.

ART. 51. 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 from time to time and navy to assemble in parts thereof by sea as by law, also, to kill, ways, enterpris as shall at an terprise the d State; and to the militia in sion, and, also occasion shall means whatso ships, arms, a manner, inva this State; and other powers mander-in-chi and regulation that the gover power by this him by the State or oblig out their free court, nor gra case without t

ART. 52. Persons may be the House, sl council; but i advice of coun same, notwith tained therein pardoned.

ART. 53. Militia, shall be Houses to the the laws of th

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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 defense 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 arms, as well by sea as by land, within and without the limits of this 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 enterprize 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 intrusted with all other powers incident to the office as captain-general and commander-in-chief and admiral, to be exercised agreeably to the rules and regulations of the constitution and 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 consent 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. 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 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. Pardoning power.

ART. 53. 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. Militia officers, removal of.

ART. 54. The commanding officers of the regiments shall appoint their adjutants and quartermasters; the brigadiers, their brigade-majors; the major-generals, their aids; the captains and subalterns, their non-commissioned officers. Staff and non-commissioned officers, by whom appointed.

ART. 55. 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. Division of militia into brigades, regiments, and companies.

ART. 56. 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 Moneys drawn from treasury only by warrant of governor, pursuant to law.

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.

Accounts of military stores, etc., to be rendered quarterly.

ART. 57. All public boards, the commissary-general, all superintending officers of public 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 him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and all small arms with their accoutrements, and 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 harbor or harbors adjacent.

Compensation of governor and council.

ART. 58. The governor and council shall be compensated for their services, from time to time, by such grants as the general court shall think reasonable.

Salaries of judges.

ART. 59. Permanent and honorable salaries shall be established by law for the justices of the superior court.

#### COUNCIL.

Councilors; mode of election, etc. lili, 9.

ART. 60. 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 of June.

Vacancies, how filled if no choice.

ART. 61. And the person having a majority of votes in any county shall be considered as duly elected a councilor; 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 councilor wanted for such county; and the qualifications for councilors shall be the same as for senator.

Occurring afterward; new election.

ART. 62. 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 this State, according to the laws of the land.

Governor to convene; duties.

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ART. 64. recorded by bers present any time by the council n majority, wit

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ART. 71. sheriffs, and the several t the method nevertheless, of certifying not so as to c ing them.

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ART. 63. The members of the council may be impeached by the House and tried by the Senate for bribery, corruption, malpractice, or maladministration. Impeachment of councilors.

ART. 64. 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 resolution of the majority, with the reasons for such opinion. Secretary to record proceedings of council.

ART. 65. 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 ratable polls and proportion of public taxes, 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. Councilor districts provided for.

ART. 66. And, whereas the elections appointed to be made by this constitution on the first Wednesday of June 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. Elections by legislature may be adjourned from day to day; order thereof.

SECRETARY, TREASURER, COMMISSARY-GENERAL, ETC.

ART. 67. The secretary, treasurer, and commissary-general shall be chosen by joint ballot of the senators and representatives, assembled in one room. Election of secretary, treasurer, and commissary-general.

ART. 68. 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. State records, where kept; duty of secretary. xxxv, 579.

ART. 69. 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. Deputy-secretary.

ART. 70. 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. Secretary to give bond.

COUNTY TREASURERS, ETC.

ART. 71. The county treasurers, registers of probate, solicitors, 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. County treasurers, registers of probate, solicitors, sheriffs, and registers of deeds. vii, 604.

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Counties may be divided into districts for registering deeds.

ART. 72. 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.

Tenure of office to be expressed in commissions; judges to hold office during good behavior, etc.

ART. 73. 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 behavior, excepting those concerning whom there is a different provision made in this constitution; provided, nevertheless, the governor, with consent of council, may remove them upon the address of both Houses of the legislature.

Judges to give opinions, when.

ART. 74. 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.

Justices of peace commissioned for five years. lviii, 148.

ART. 75. 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 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.

Divorces and probate appeals, where tried.

ART. 76. 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.

Jurisdiction of justices in civil causes.

ART. 77. 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.

Judges and sheriffs, when disqualified by age.

ART. 78. 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.

Judges and justices not to act as counsel.

ART. 79. 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.

Jurisdiction and terms of probate courts.

ART. 80. 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 shall from time to time appoint.

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ART. 81. No judge or register of probate shall be of counsel, <sup>Judges and reg-</sup> act as advocate, or receive any fees as advocate or counsel, in any <sup>isters of probate</sup> probate business which is pending or may be brought into any court <sup>not to act as</sup> of probate in the county of which he is judge or register. <sup>counsel.</sup>

CLERKS OF COURTS.

ART. 82. The judges of the courts (those of probate excepted) <sup>Clerks of courts,</sup> shall appoint their respective clerks, to hold their office during <sup>by whom ap-</sup> pleasure; and no such clerk shall act as an attorney or be of coun- <sup>pointed.</sup> sel in any cause in the court of which he is clerk, nor shall he draw <sup>7, 386.</sup> any writ originating a civil action.

ENCOURAGEMENT OF LITERATURE, ETC.

ART. 83. Knowledge and learning generally diffused through a <sup>Encouragement</sup> community being essential to the preservation of a free govern- <sup>of literature, etc.</sup> ment, 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 or institutions of any religious sect or denomination.

OATHS AND SUBSCRIPTIONS. — EXCLUSION FROM OFFICES. — COMMISSIONS. — WRITS. — CONFIRMATION OF LAWS. — HABEAS CORPUS. — THE ENACTING STYLE. — CONTINUANCE OF OFFICERS. — PROVISION FOR A FUTURE REVISION OF THE CONSTITUTION. — ETC.

ART. 84. Any person chosen governor, councilor, senator, or <sup>Oath of civil</sup> representative, military or civil officer (town officers excepted), <sup>officers.</sup> accepting the trust, shall, before he proceeds to execute the duties of his office, make and subscribe the following declarations, viz: —  
I, 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 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."

Before whom taken.

ART. 85. 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 afterward 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.

Form of commissions.

ART. 86. 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.

Form of writs. xix, 394.

ART. 87. 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 teste of the chief, first, or senior justice of the court; but, when such justice shall be interested, then the writ shall bear teste of some other justice of the court, to which the same shall be returnable; and be signed by the clerk of such court.

Form of indictments. ix, 468; x, 347. Suicides and deodands.

ART. 88. All indictments, presentments, and informations shall conclude, "against the peace and dignity of the State."

ART. 89. The estate 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.

Existing laws to continue in force, if not repugnant to constitution. i, 58, 173; ii, 44; viii, 550; xiii, 542; xiv, 284; xxiv, 223; xxvii, 512; xliii, 502.

ART. 90. 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.

Habeas corpus.

ART. 91. 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.

Enacting style of statutes.

ART. 92. 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.*

Governor and judges prohibited from holding other offices.

ART. 93. 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 justices

of the peace or office or government, or for

ART. 94. time more than of probate, sheriff's offices of professor or governor or superior or of the peace

ART. 95. (except specially general, commission the continent sionally called or officers of cise and state having settled it is their duty any person he same time he or House of appointed to of his seat in council, and the council sives.

ART. 96. legislature, or ment, who, in or corruption

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ART. 98. danger to the constitution, rected to fix take effect, a

ART. 99. the several tual meeting seven years insert expres the meeting, subject of a warned acco the sense of vision; and necessity sh general cour the general State has be

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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.

ART. 94. No person shall be capable of exercising at the same time more than one of the following offices in 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.

Incompatibility of offices; only two offices of profit to be holden at same time.

ART. 95. 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 or 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 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.

Incompatibility of certain offices.

ART. 96. 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.

Bribery and corruption disqualify for office.

ART. 97. In all cases where sums of money are mentioned in this constitution, the value thereof shall be computed in silver at six shillings and eightpence per ounce.

Value of money, how computed.

ART. 98. 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.\*

Constitution, when to take effect.

ART. 99. 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

Revision of constitution provided for.

\* See Act of December 14, 1792.

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 shall 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 alteration 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.

Question on revision to be taken every seven years.

ART. 100. And the same method of taking the sense of the people as to a revision of the constitution and calling a convention for that purpose shall be observed afterward, at the expiration of every seven years.

Enrollment of constitution.

ART. 101. 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.

[NOTE.— After the withdrawal of the royal governor, John Wentworth, in May, 1775, this province was governed, so far as there was any State government, by a convention, of which Matthew Thornton was president.

On the fifth day of January, 1776, a temporary constitution was adopted, which was the first written constitution adopted by any of the States now constituting the American Union. Under this constitution, Meshech Weare was unanimously elected president of the council and chairman of the committee of safety; and the State was prosperously governed for eight years.

In June, 1784, a new constitution, which had been approved by the people and established by the convention, October 31, 1783, took effect, and continued in force until 1793. In 1792, a new constitution was submitted to the people and adopted by them, and took effect in June, 1793. Most of its provisions were similar to those in the constitution of 1784, with several important amendments. This constitution remained unchanged until 1852.

The constitutional convention of 1850 proposed several important amendments, but they were all rejected by the people. At an adjourned meeting in 1851, the convention proposed three amendments, only one of which was adopted, the one removing the property qualification in the case of governor, senator, and representative. The governor, by his proclamation of September 16, 1852, gave notice that this amendment had been adopted.

In 1876 a new convention was called and holden, which proposed amendments changing the constitution in thirteen particulars, all of which, except two, were adopted by the people in March, 1877, as appeared by the proclamation of the governor of April 17, 1877. By legislative enactment, most of these amendments took effect on the first day of August, 1877, and the rest were to take effect at such times that the election in March, 1878, should be held under the old constitution, and the officers then elected should hold one year, till June, 1879, and that, in November, 1878, the first election should be held under the new constitution, and officers elected who should hold two years from June, 1879. The constitution as above printed contains all the amendments hitherto adopted, and will all be in force on and after the first Wednesday of June, 1879.]

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JOURNAL  
OF THE  
CONSTITUTIONAL CONVENTION  
OF 1902.

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CONCORD, N. H., December 2, 1902.

The delegates of the Constitutional Convention assembled in the hall of the House of Representatives on Tuesday, December 2, 1902, at 11 o'clock a. m., and were called to order by the Hon. Isaac N. Blodgett of Franklin.

On motion of James F. Briggs of Manchester, Henry O. Kent of Lancaster was chosen temporary chairman.

Messrs. Sanborn of Franklin and Briggs of Manchester were chosen a committee to escort the temporary presiding officer to the chair.

On assuming the chair, Mr. Kent addressed the Convention as follows:

There can no higher duty come to citizens of a state than to be charged by its people with examination and revision of its organic law—that instrument that has unified government and the elements of prosperity; that has voiced the stern integrity, reverence of Deity, and crowding energy that from feeble beginnings have developed a prosperous commonwealth.

It is an instrument to be approached almost with reverence. So abounding is it in the evidences, the incentives, the experiences of the past, that it is to be considered in those points only, wherein changes in the world's progress or developing demands, require restriction or expansion at any point, with wise care and a sense of profound responsibility.

Its consideration brings to us faces and memories from the past. Patriots and soldiers of the early days of privation, daring and elemental heroism look down upon us from these walls. Memories of noble and worthy events come to us adown the aisles of memory—from Louisbourg, Bunker Hill, Bennington, Yorktown, Lundy's Lane, Chapultepec, Gettysburg, and from the isles of the ocean.

We love our state! We are here to do her service. Her mountains, her valleys, her clear air and alternations of shade and sun upon her hillsides or lakes—they are ours in memory and fond recollection, wherever we are dispersed. The old New Hampshire character, too, abides with us. The stern, self-denying, persistent, patient, helpful lives, revering Deity and sustaining law and order, have found the commonwealth expanding into the life of the federal republic, embracing an empire of freemen, existing by right for the advancement, elevation, comfort, and content of humanity.

To have in charge the original charter and promise of this result is no light or unmeaning formalism. Hasty action may strike at the root of fundamental truths; untoward results will follow superficial conclusions.

It is natural that her people should send up to such a grand council as is here assembled, from among her best and wisest sons. Not young men chiefly, in the heyday of youth, with all the world before them from which to choose their course; but grave men, who have borne the burden of life's affairs, who have seen illusions fade before experiment, who desire of all things to preserve as intact as changes of environment will permit, that grand charter of our liberties under which our present well being has been secured.

I do not think it invidious to any prior convention to sug-



serting after the word "thousand" wherever it occurs in said subparagraphs the words, dollars.

Amend subsection (c) of section 6 of chapter 306-A as inserted by section 1 of said bill by striking out "paragraph 8" in the third line and inserting in place thereof the figure, (8).

Amend subsection (b) of section 10 of chapter 306-A as inserted by section 1 of said bill by striking out "paragraph 8" in the fifth line and inserting in place thereof the figure, (8).

On motion of Mr. Carr of Orford the House voted to adopt the amendments proposed by the Committee on Engrossed Bills.

The bill was sent to the Senate for concurrence.

#### Senate Message

A message sent down from the Honorable Senate by its Clerk, announced that the Senate had voted to adopt the following concurrent resolution and the Senate asks the concurrence of the House of Representatives:

*Resolved, that Whereas, today Tuesday, June 14, is Flag Day and is the 179th Anniversary of the creation of our glorious flag, and*

*Whereas, the birth of our beloved Stars and Stripes comes this year at a time when the United States of America is engaged in a cold war that threatens the continuance of our principles of freedom and democracy, it is most appropriate that we vigorously reaffirm our continued and everlasting belief in those ideals and institutions for which our great banner stands, and for what it has stood and fought for in years past, therefore be it*

*Resolved, that when the Senate and House of Representatives adjourn today, it be in commemoration of Flag Day, June 14, 1955.*

On motion of Mr. Sherwin of Rindge the House concurred in the adoption of the concurrent resolution sent down from the Honorable Senate.

The message further announced that the Senate had voted to adopt the amendments offered by the Committee on Engrossed Bills, to the following House bills, in the adoption of

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