

Making Revolutionary State Constitutions

During and immediately after the American Revolution, the colonies that became the original thirteen states began writing constitutions that would govern them. (In some cases, these preceded the Declaration of Independence itself, since the Continental Congress had advised the states to begin preparation for the departure of the then-colonies from the British empire.)

Some of these constitutions made relatively little change. For example, Rhode Island and Connecticut continued to use lightly modified versions of their colonial charters (after eliminating allusions to the British monarchy, for example). Others used provisional constitutions that they soon replaced once the conclusion of the war offered more time for deliberation.

But almost all of the now-states looked on this as an important moment in history, when they could form, with the consent of the people, a new government. Or, as Alexander Hamilton would later write in Federalist 1, they had the chance “to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.” The creation of the 1780 Massachusetts Constitution in particular became a model illustrating the idea of deliberation and consent, as it went through a complicated process of citizens selecting convention members, the convention (and especially John Adams) drafting a constitution, and it being debated, modified, and finally ratified by the people of Massachusetts.

Reflecting the ideals and geography of a diverse union, the constitutions differed in important ways – differing on issues such as how the state and towns interacted with one another, or the relationship of the church to the state, or how widespread suffrage would be. Some created widespread suffrage among male citizens, whereas other states, more aristocratic, imposed fairly steep property requirements. Some states extended suffrage only to whites – in some cases, to poor whites, in others, only to affluent ones – but other states had racially neutral suffrage. Only New Jersey allowed women to vote, though its comparatively steep property requirements meant relatively few of either sex participated.

There were striking deviations from the traditional understanding of the separation of powers; this was because of the moment in history when the constitutions were being written. The Declaration of Independence, whose contents were largely duplicated in the preambles of many revolutionary constitutions, bristled with hostility to what the colonists viewed as imperial overreach into their legislative prerogative, both in terms of local government and in terms of the proper focus of lawmaking. Thus, in the words of the Declaration, the monarchy “refused ... Assent to Laws, the most wholesome and necessary for the public good [and had]...forbidden his Governors to pass Laws of immediate and pressing importance”

Unsurprisingly considering the poor track record of the king and governors in approving legislation passed by the territorial legislatures, revolutionary constitutions created extremely weak governors.

On the whole, the executive powers of the governors (or, as called in Pennsylvania and briefly in New Hampshire, the president) were and are broadly similar to those today. Thus, governors had such obligations and powers to “take care that the laws be faithfully executed,” the pardon power, serving as commander in chief of the state militia, and appointment of various officials, especially judges.

There were some notable exceptions: for example, the 1776 Virginia Constitution authorized the two houses, not the governor, to choose state judges; the Georgia Constitution of 1777 moved the pardon power to the legislature. In other words, some stripped quintessentially executive powers such as the pardon power; most significantly limited the influence of governors on the legislative power by either altogether removing or otherwise sharply constraining the ability of governors to veto legislation. (Tilting the other way, John Adams's initial draft of the Massachusetts Constitution had an absolute gubernatorial veto – meaning it could not be overridden at all – but the state's constitutional convention insisted on a two-thirds override, which was later modeled in the US Constitution.)

But the most significant difference was that governors were clearly made to be secondary to the legislature, who in many cases chose the governor, for single year terms. In other words, an unsatisfactory governor would soon be replaced.

This was part of the overall spirit of the age, when state-constitution makers sought to maximize popular sovereignty and include as much direct democracy as possible. Thus, some early state constitutions eliminated bicameralism (having two houses) in order to make lawmaking simpler; most created very frequent elections so that the people's will could be constantly expressed.

In other words, they sought to have weaker separation of powers and checks and balances, and instead focus on maximizing responsiveness. Eventually, the American founders concluded that this experiment had overreached; these early constitutions, they decided, had created institutions that were too majoritarian, at the expense of the protection of deliberation and individual rights both, in ways that threatened the long-term viability of republican self-government.

As such, the more directly democratic features of these state constitutions fell out of favor, and the more traditional Massachusetts Constitution became a model for subsequent state constitutions as well as the United States Constitution itself. This more republican Adams model, with its stronger separation of powers and checks, has continued to shape most state constitutions to this day, though some constitutions, especially in the western United States, have important philosophical similarities to these early constitutions.

Below are excerpts from revolutionary era state constitutions from seven of the original thirteen states: Pennsylvania (1776), Virginia (1776), New York (1777), Georgia (1777), South Carolina (1778), Massachusetts (1780), and New Hampshire (1784). About half the states were included, with a balance in terms of geography as well as political philosophy, representing the more directly democratic versus more aristocratic models.

As you read the constitutions you are assigned, answer the following questions of each:

Which citizens get to vote?

How many houses make up the state legislature?

How often are the state legislators elected?

Who chooses the executive (the governor or president)?

How long does the governor serve/how long between elections/selections?

Are there limits on how long or how often one can be governor? (That is, can a governor be reappointed or re-elected?) Are there limits on how long or how often one can serve in the legislature?

What veto, if any, is this state's executive empowered to use?

Are there any other important parallels or differences between the constitutions you are examining?

