

The Constitution of North Carolina from 1776

What follows is the Constitution of North Carolina which was drafted in the fall of 1776. Notice the structure of the constitution. It consists of a number of rights retained by the people followed by the structure of the government. See what you can glean by studying this constitution about what liberty and government meant to the rebels.

CONSTITUTION OF NORTH CAROLINA

A DECLARATION OF RIGHTS, &C.¹

- I. That all political power is vested in and derived from the people only.²
- II. That the people of this State ought³ to have the sole and exclusive right of regulating the internal government and police⁴ thereof.
- III. That no man or set of men are entitled to exclusive or separate emoluments⁵ or privileges from the community, but in consideration of public services.
- IV. That the legislative, executive, and supreme judicial powers of government, ought to be forever separate and distinct from each other.⁶
- V. That all powers of suspending laws, or the execution of laws, by any authority, without consent of the Representatives of the people, is injurious to their rights, and ought not to be exercised.⁷

¹ Why do the rights here precede the body of the constitution which contains the powers of government? Think back to what we told you about Locke and his notion of the formation of a government that is contractual in nature. In case you have any doubts about whether these rights are part of the constitution see provision XLIV.

² Simply stated but revolutionary. At the time this government was established there was no other government like it in the world.

³ Why the use of the word “ought”? Compare the wording of these rights with those in the Bill of Rights attached to the U.S. Constitution. The rights in the Bill of Rights are wooden. These are not. Why the difference? Some have suggested it is because the drafters of this constitution and others like it were not sure whether they really wanted these rights protected or not? Do you find this a credible analysis?

⁴ This is a reference to the police power, which is the power that a government has to regulate the health, safety, and morals of those subject to its jurisdiction.

⁵ Emoluments are profits arising from holding an office. Numerous royal officeholders had benefitted from the salary of various positions in governments even if they did not perform the tasks associated with that office. The King also had the right to decree that a person would receive sums from the government even if the person was not holding any office.

⁶ Compare this assertion with what you find in the constitution about the various branches and decide if they really separate the powers or not. If you find that they do not then why make such an assertion? This is the first time you have run across the concept of separation of powers. See how that concept changes over time and realize that there are multiple conceptualizations for how to apply the concept.

⁷ The King had often exercised a right to suspend laws passed by Parliament; the King also retained the right to void laws passed by colonial government under royal charters also.

VI. That elections of members, to serve as Representatives in General Assembly, ought to be free.⁸

VII. That, in all criminal prosecutions, every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself.⁹

VIII. That no freeman shall be put to answer any criminal charge, but by indictment, presentment, or impeachment.¹⁰

IX. That no freeman shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used.¹¹

X. That excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.¹²

XI. That general warrants -- whereby an officer or messenger may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons, not named, whose offences are not particularly described, and supported by evidence -- are dangerous to liberty, and ought not to be granted.¹³

XII. That no freeman ought to be taken, imprisoned, or disseized of his freehold liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the law of the land.

XIII. That every freeman, restrained of his liberty, is entitled to a remedy, to inquire into the lawfulness thereof, and to remove the same, if unlawful; and that such remedy ought not to be denied or delayed.

XIV. That in all controversies at law, respecting property, the ancient mode of trial, by jury, is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.¹⁴

XV. That the freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained.¹⁵

⁸ Why not frame the right here as, "That elections of members, to serve as Representatives in General Assembly, shall be free."?

⁹ Notice that this right uses the word "shall." Can this right be compromised? In other words, could an individual ever be compelled to give testimony against himself? Why is this right wooden and so many others are not?

¹⁰ Compare this Right with the Fifth Amendment? Why isn't this right wooden?

¹¹ What is the difference between this provision and provision XIV below?

¹² Compare this right with the Eighth Amendment?

¹³ Compare this right with the Fourth Amendment?

¹⁴ Compare this right with the Sixth Amendment?

¹⁵ Compare this with the First Amendment? What is different and why?

XVI. That the people of this State ought not to be taxed, or made subject to the payment of any impost or duty, without the consent of themselves, or their Representatives in General Assembly, freely given.

XVII. That the people have a right to bear arms, for the defence of the State; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.¹⁶

XVIII. That the people have a right to assemble together, to consult for their common good, to instruct their Representatives, and to apply to the Legislature, for redress of grievances.¹⁷

XIX. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences.

XX. That, for redress of grievances, and for amending and strengthening the laws, elections ought to be often held.

XXI. That a frequent recurrence to fundamental principles is absolutely necessary, to preserve the blessings of liberty.

XXII. That no hereditary emoluments, privileges or honors ought to be granted or conferred in this State.

XXIII. That perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.

XXIV. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no ex post facto law ought to be made.¹⁸

XXV. The property of the soil, in a free government, being one of the essential rights of the collective body of the people, it is necessary, in order to avoid future disputes, that the limits of the State should be ascertained with precision; and as the former temporary line between North and South Carolina, was confirmed, and extended by Commissioners, appointed by the Legislatures of the two States, agreeable to the order of the late King George the Second, in Council, that line, and that only, should be esteemed the southern boundary of this State as follows: that is to say, beginning on the sea side, at a cedar stake, at or near the mouth of Little River (being the southern extremity of Brunswick county) and running from thence a northwest course, through the boundary house, which stands in thirty-three degrees fifty-six minutes, to thirty-five degrees north latitude; and from thence a west course so far as is mentioned in the Charter of King Charles the Second, to the late Proprietors of Carolina. Therefore all the territories, seas, waters, and harbours, with their appurtenances, lying between the line above

¹⁶ Compare this right with the Second Amendment?

¹⁷ Compare this right with the First Amendment?

¹⁸ Compare this right with the provision prohibiting ex post facto laws found in Article I, Section 9, provision 3?

described, and the southern line of the State of Virginia, which begins on the sea shore, in thirty-six degrees thirty minutes, north latitude, and from thence runs west, agreeable to the said Charter of King Charles, are the right and property of the people of this State, to be held by them in sovereignty; any partial line, without the consent of the Legislature of this State, at any time thereafter directed, or laid out, in anywise notwithstanding: -- Provided always, That this Declaration of Rights shall not prejudice any nation or nations of Indians, from enjoying such hunting-grounds as may have been, or hereafter shall be, secured to them by any former or future Legislature of this State: -- And provided also, That it shall not be construed so as to prevent the establishment of one or more governments westward of this State, by consent of the Legislature: -- And provided further, That nothing herein contained shall affect the titles or repossessions of individuals holding or claiming under the laws heretofore in force, or grants heretofore made by the late King George the Second, or his predecessors, or the late lords proprietors, or any of them.

THE CONSTITUTION, OR FORM OF GOVERNMENT, &c¹⁹

WHEREAS allegiance and protection are, in their nature, reciprocal, and the one should of right be refused when the other is withdrawn:²⁰

And whereas George the Third, King of Great Britain, and late Sovereign of the British American Colonies, hath not only withdrawn from them his protection, but, by an act of the British Legislature, declared the inhabitants of these States out of the protection of the British crown, and all their property, found upon the high seas, liable to be seized and confiscated to the uses mentioned in the said act; and the said George the Third has also sent fleets and armies to prosecute a cruel war against them, for the purposed reducing the inhabitants of the said Colonies to a state of abject slavery; in consequence whereof, all government under the said King, within the said Colonies, hath ceased, and a total dissolution of government in many of them hath taken place.²¹

And whereas the Continental Congress, having considered the premises, and other previous violation of the rights of the good people of America, have therefore declared, that the Thirteen United Colonies are, of right, wholly absolved from all allegiance to the British crown or any other foreign jurisdiction whatsoever: and that the said Colonies now are, and forever shall be, free and independent States.²²

Wherefore, in our present state, in order to prevent anarchy and confusion, it becomes necessary that government should be established in this State; therefore we, the Representatives of the freemen of North-Carolina, chosen and assembled in Congress, for the express purpose of framing a Constitution, under the authority of the people, most conducive to their happiness and

¹⁹ So here begins the actual substance of the government being established. The previous section was a statement of essential rights of the citizenry.

²⁰ Is this from Locke? Where in the Second Treatise does this come from? Do you believe this contention? Do You have some developed sense of your rights. What are your responsibilities?

²¹ Why this statement? Is this necessary for a Lockean conceptualization of how government is formed? Is this a declaration that the inhabitants of North Carolina are in a state of nature?

²² One of the ongoing debates is whether there was a national government first or state governments? Can you so clearly answer this question? What answer to the question might you give?

prosperity, do declare, that a government for this State shall be established, in manner and form following, to wit:

I. That the legislative authority shall be vested in two distinct branches both dependent on the people, to wit, a *Senate* and *House of Commons*.

II. That the Senate shall be composed of Representatives annually chosen by ballot, one for each county in the State.

III. That the House of Commons shall be composed of Representatives annually chosen by ballot, two for each counts and one for each of the towns of Edentown, Newbern, Wilmington, Salisbury, Hillsborough and Halifax.

IV. That the Senate and House of Commons, assembled for the purpose of legislation, shall be denominated, *The General Assembly*.²³

V. That each member of the Senate shall have usually resided in the county in which he is chosen for one year immediately preceding his election, and for the same time shall have possessed, and continue to possess in the county which he represents, not less than three hundred acres of land in fee.

VI. That each member of the House of Commons shall have usually resided in the county in which he is chosen for one year immediately preceding his election, and for six months shall have possessed, and continue to possess, in the county which he represents, not less than one hundred acres of land in fee, or for the term of his own life.²⁴

VII. That all freemen, of the age of twenty-one years, who have been inhabitants of any one county within the State twelve months immediately preceding the day of any election and possessed of a freehold within the same county of fifty acres of land for six months next before, and at the day of election, shall be entitled to vote for a member of the Senate.

VIII. That all freemen of the age of twenty-one Years, who have been inhabitants of any one county within this State twelve months immediately preceding the day of any election, and shall have paid public taxes shall be entitled to vote for members of the House of Commons for the county in which he resides.²⁵

²³ Why have a Senate and a House? Why not just have one representative assembly? As you read on try to discern the differences between the Senate and House? Remember to reflect back upon these differences when we study the Constitution.

²⁴ Notice that consistent with Lockean theory the representatives have to be property holders. There is a different property qualification between the representative who serve in the House and Senate. How might the outlook of a Senator be different from a Representative? How is the perspective of a very wealthy man different from a modestly wealthy man? Do you think there were any poor people who might be elected to the House or Senate? What impact might that have on the policies of government?

²⁵ So you have to own land to vote for the Senators but only pay taxes to vote for the House. What difference would this make in the character of the two houses.

IX. That all persons possessed of a freehold in any town in this State, having a right of representation and also all freemen who have been inhabitants of any such town twelve months next before and at the day of election, and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the House of Commons: -- Provided always, That this section shall not entitle any inhabitant of such town to vote for members of the House of Commons, for the county in which he may reside, nor any freeholder in such county, who resides without or beyond the limits of such town, to vote for a member for said town.²⁶

X. That the Senate and House of Commons, when met, shall each have power to choose a speaker and other their officers; be judges of the qualifications and elections of their members; sit upon their own adjournments from day to day, and prepare bills, to be passed into laws. The two Houses shall direct writs of election for supplying intermediate vacancies; and shall also jointly, by ballot, adjourn themselves to any future day and place.

XI. That all bills shall be read three times in each House, before they pass into laws, and be signed by the Speakers of both Houses.

XII. That every person, who shall be chosen a member of the Senate or House of Commons, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take an oath to the State; and all officers shall also take an oath of office.

XIII. That the General Assembly shall, by joint ballot of both houses, appoint Judges of the Supreme Courts of Law and Equity, Judges of Admiralty, and Attorney-General, who shall be commissioned by the Governor, and hold their offices during good behavior.²⁷

XIV. That the Senate and House of Commons shall have power to appoint the generals and field-officers of the militia, and all officers of the regular army of this State.

XV. That the Senate and House of Commons, jointly at their first meeting after each annual election, shall by ballot elect a Governor for one year, who shall not be eligible to that office longer than three years, in six successive years. That no person, under thirty years of age, and who has not been a resident in this State above five years, and having, in the State, a freehold in lands and tenements above the value of one thousand pounds, shall be eligible as a Governor.²⁸

²⁶ So what is the difference between X and VII and VIII?

²⁷ Today we assume that the judiciary function in any government is separate from the executive and legislative functions. We think of judges checking executives and legislatures. At the time of this constitution there were considered to be only two primary functions: executive and legislative. The Judiciary was a branch of the executive. Judging by this provision who controlled the courts? Would the judicial function be more likely to fall within the ambit of the executive or the legislature? What does "good behavior" mean? Who would be the one making the decision about whether a judge was not acting in "good behavior"? If you were a judge who, as most officials do, wanted to keep his job would you be inclined to test this standard by issuing rulings that challenged legislative authority?

²⁸ Remember that in the British imperial system, the governors, like Pownall, were appointed by the British government. The governors, as agents of the crown in the colonies, were often at odds with the colonial assemblies. Now the governor is to be appointed by the legislature and is limited in his tenure in office. What role does the Council of State, referenced in provision XIV, play in the governor's power? Does the Council of State empower

XIV. That the Senate and House of Commons, jointly, at their first meeting after each annual election, shall by ballot elect seven persons to be a Council of State for one year, who shall advise the Governor in the execution of his office; 2nd, that four members shall be a quorum; their advice and proceedings shall be Altered in a journal, to be kept for that purpose only and signed by the members present; to any part of which, any member present Nay enter his dissent. And such journal shall he laid before the General Assembly when called for by them.²⁹

XVII. That there shall be a seal of this State, which shall be kept by the Governor, and used by him, as occasion may require; and shall be called, *The Great Seal of the State of North Carolina*, and be affixed to all grants and commissions.

XVIII. The Governor, for the time being, shall be captain-general and commander in chief of the militia; and, in the recess of the General Assembly, shall have power, by and with the advice of the Council of State, to embody the militia for the public safety.³⁰

XIX. That the Governor, for the time beings shall have power to draw for and apply such sums of money as shall be voted by the general assembly, for the contingencies of government, and be accountable to them for the same. He also may, by and with the advice of the Council of State, lay embargoes, or prohibit the exportation of any commodity, for any term not exceeding thirty days, at any one time in the recess of the General Assembly; and shall have the power of granting pardons and reprieves, except where the prosecution shall be carried on by the General Assembly,³¹ or the law shall otherwise direct; in which case he may in the recess grant a reprieve until the next sitting of the General Assembly; and may exercise all the other executive powers of government, limited and restrained as by this Constitution is mentioned, and according to the laws of the State. And on his death, inability, or absence from the State, the Speaker of the Senate for the time being -- (and in case of his death, inability, or absence from the State, the Speaker of the House of Commons) shall exercise the powers of government after such death, or during such absence or inability of the Governor (or Speaker of the Senate,) or until a new nomination is made by the General Assembly.³²

XX. That in every case where any officer, the right of whose appointment is by this Constitution vested in the General Assembly, shall, during their recess, die, or his office by other means become vacant, the Governor shall have power, with the advice of the Council of State, to fill up such vacancy, by granting a temporary commission, which shall expire at the end of the next session of the General Assembly

the governor in the way an advisory body to the President might or does the Council of State serve to limit the governor's power and make the governor, effectively, a tool of the legislature?

²⁹ A Council of State is something you have no modern experience with so study this council carefully, focusing on who controls it and why it was needed? Who appoints the member of the Council of State? What was its function?

³⁰ So even as the governor and the Council of State are yoked together in the executive function, the Council of State serves to check the governor and insure legislative control of the executive function of government.

³¹ Notice that the Assembly has the power to carry on functions that you think of as judicial in nature. The sharp distinctions between the executive, judicial, and legislative functions that support our modern notions of separation of power did not exist at this time.

³² You have to evaluate these powers and consider how powerful the governors were in this government against the scope of powers that governors wielded in the imperial era. Refer back to the piece by Erwing on how these constitutions constrained the power of the governors.

XXI. That the Governor, Judges of the Supreme Court of Law and Equity, Judges of Admiralty, and Attorney-General, shall have adequate salaries during their continuance in office.

XXII. That the General Assembly shall, by joint ballot of both Houses, annually appoint a Treasurer or Treasurers for this State.³³

XXIII. That the Governor, and other officers, offending against the State, by violating any part of this Constitution, mal-administration, or corruption, may be prosecuted, on the impeachment of the General Assembly, or presentment of the Grand Jury of any court of supreme jurisdiction in this State.

XXIV. That the General Assembly shall, by joint ballot of both Houses, triennially appoint a Secretary for this State.

XXV. That no persons, who heretofore have been, or hereafter may be, receivers of public monies, shall have a seat in either House of General Assembly, or be eligible to any office in this State, until such person shall have fully accounted for and paid into the treasury all sums for which they may be accountable and liable.

XXVI. That no Treasurer shall have a seat, either in the Senate, House of Commons, or Council of State, during his continuance in that office, or before he shall have finally settled his accounts with the public, for all the monies which may be in his hands at the expiration of his office belonging to the State, and hath paid the same into the hands of the succeeding Treasurer.

XXVII. That no officer in the regular army or navy, in the service and pay of the United States, of this or any other State, nor any contractor or agent for supplying such army or navy with clothing or provisions, shall have a seat either in the Senate, House of Commons, or Council of State, or be eligible thereto: and any member of the Senate, House of Commons, or Council of State, being appointed to and accepting of such office, shall thereby vacate his seat.

XXVIII. That no member of the Council of State shall have a seat, either in the Senate, or House of Commons.

XXIX. That no Judge of the Supreme Court of Law or Equity, or Judge of Admiralty, shall have a seat in the Senate, House of Commons, or Council of State.

XXX. That no Secretary of this State, Attorney-General, or Clerk of any Court of Record, shall have a seat in the Senate, House of Commons, or Council of State.

XXXI. That no clergyman, or preacher of the gospels of any denomination, shall be capable of being a member of either the Senate, House of Commons, or Council of State, while he continues in the exercise of the pastoral function.³⁴

³³ As you read the remainder of this constitution look at the breadth of control that the legislature has.

³⁴ What function might this provision have served? Why is it here?

XXXII. That no person, who shall deny the being of God or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State.³⁵

XXXIII. That the Justices of the Peace, within their respective counties in this State, shall in future be recommended to the Governor for the time being, by the Representatives in General Assembly; and the Governor shall commission them accordingly: and the Justices, when so commissioned, shall hold their offices during good behaviour, and shall not be removed from office by the General Assembly, unless for misbehaviour, absence, or inability.

XXXIV. That there shall be no establishment of any one religious church or denomination in this State, in preference to any other; neither shall any person, on any presence whatsoever, be compelled to attend any place of worship contrary to his own faith or judgment, nor be obliged to pay, for the purchase of any glebe, or the building of any house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, of has voluntarily and personally engaged to perform; but all persons shall be at liberty to exercise their own mode of worship: -- *Provided*, That nothing herein contained shall be construed to exempt preachers of treasonable or seditious discourses, from legal trial and punishment.

XXXV. That no person in the State shall hold more than one lucrative office, at any one time: -- *Provided*, That no appointment in the militia, or the office of a Justice of the Peace, shall be considered as a lucrative office.

XXXVI. That all commissions and grants shall run in the name of the State of North Carolina, and bear test, and be signed by the Governor. All writs shall run in the same manner and bear test, and be signed by the Clerks of the respective Courts. Indictments shall conclude, *Against the peace and dignity of the estate.*

XXXVII. That the Delegates for this State, to the Continental Congress while necessary, shall be chosen annually by the General Assembly, by ballot; but may be superseded, in the mean time, in the same manner; and no person shall be electoral, to serve in that capacity, for more than three years successively.

XXXVIII. That there shall be a Sheriff, Coroner or Coroners, and Constables, in each county within this State.

XXXIX. That the person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering up, *bona fide*, all his estate real and personal, for the use of his creditors in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient sureties, unless for capital offences when the proof is evident or the presumption great.

³⁵ What was the purpose of this provision?

XL. That every foreigner, who comes to settle in this State having first taken an oath of allegiance to the same, may purchase, or, by other means, acquire, hold, and transfer land, or other real estate; and after one year's residence, shall be deemed a free citizen.

XLI. That a school or schools shall be established by the Legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and all useful learning shall be duly encouraged, and promoted, in one or more universities.

XLII. That no purchase of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.³⁶

XLIII. That the future Legislature of this State shall regulate entails, in such a manner as to prevent perpetuities.³⁷

XLIV. That the Declaration of Rights is hereby declared to be part of the Constitution of this State, and ought never to be violated, on any presence whatsoever.

XLV. That any member of either House of General Assembly shall have liberty to dissent from, and protest against any act or resolve, which he may think injurious to the public, or any individual, and have the reasons of his dissent entered on the journals.

XLVI. That neither House of the General Assembly shall proceed upon public business, unless a majority of all the members of such House are actually present: and that, upon a motion made and seconded, the yeas and nays, upon any question, shall be taken and entered on the journals; and that the journals of the proceedings of both Houses of the General Assembly shall be printed, and made public, immediately after their adjournment.

This Constitution is not intended to preclude the present Congress from making a temporary provision, for the well ordering of this State, until the General Assembly shall establish government, agreeable to the mode herein before described.

RICHARD CASWELL, *President.*

December the eighteenth, one thousand seven hundred and seventy-six, read the third time, and ratified in open Congress.

By order, JAMES GREEN, *jun. secretary.*

³⁶ Why this provision? Was this done to protect the Indians?

³⁷ Entails and the Rule against Perpetuities raise complex real estate issues that we need not explore. What is significant that you should take away from this provision is that the legislature was going to regulate real estate inheritance in a way that prevented large landholders to tie up land in their estates long after they were dead. The effect of this reform made the inheritance of land more like what we are used to today. Previous to the change large landholdings could be passed down in a way that enabled families to maintain control over ancestral lands for extended periods of time.

