

Constitutional History NY Volume 1

INTRODUCTION.

Annotations by theGiantKiller

The Constitutions of New York.

Sources of constitutional history; colonization transfers home customs and institutions, 3.—American colonists were freemen; constitutional principles early established in colony, 4.—**Three periods in colonial history: (1) Dutch, (2) Proprietary (Duke of York), (3) royal province, 5.**—Early Dutch charters similar to modern Constitutions; Dutch West India Company, 1621; company vested with commercial and political powers, 6.—Freedoms and Exemptions, 1629; patroon possessed extensive judicial and political authority, 8.—Freedoms and Exemptions, 1640; municipal government established with home rule characteristics, 9.—**Reformed religion supreme; other religions prohibited,**

Noting: While this overview captures New Netherland's foundational religious establishment under the 1621 Dutch West India Company charter – where "Reformed religion" (Calvinist Protestantism) reigned supreme and alternatives were barred – it glosses over the pivotal transitions that followed. What hidden tensions arose when English rule absorbed this Protestant framework in 1664, only for the Duke of York's Catholicism (ca. 1668) to ignite sovereignty fears? How did oaths of allegiance, supremacy abjurations, and religious tests (e.g., under Governor Sloughter in 1691) enforce conformity, tying honor to fidelity and planting seeds for later liberty? For the untold story of this evolution – from fused church-state to constitutional neutrality – explore the deeper dive [here](#), uncovering the oaths and conflicts that bridged Dutch origins to revolutionary reforms

10.—Dutch West India Company reserves general judicial authority; governor and council, 11.—Freedoms and Exemptions, 1650; Dutch Directors and councils; Director's extraordinary powers; Peter Stuyvesant's commission, his powers and duties defined, 12.—Dr.

O'Callaghan's summary of Director's powers, 13.—Council a part of colonial government; council often ignored by Director; Director charged with exercising arbitrary power, 14.—**Evolution of council, which becomes the colonial executive and legislative council, and afterwards the state senate, 16.—Duke of York; sovereignty of colony passes from the Netherlands to England, 1664, 17.—Historical sketch of conflicting claims, 17.—**New York included in territorial limits of Virginia charter of 1606, 18.—Charter to Duke of York, 1664, 19.—Proprietary government established; right of appeal to home government, 20.—Duke authorized to appoint colonial officers, and prescribe forms of government not inconsistent with laws of England; martial law limited to trade; Dutch surrender; Articles of Capitulation, 22.—Comparison of powers conferred on Duke of York and Dutch West India Company, 23.—Duke's form of government; Duke's Laws, 1665; Richard Nicolls appointed deputy governor, 24.—Edmund Andros appointed in 1674 as Duke's lieutenant and governor; Governor to

xxii

xxii

Contents.

appoint council of not more than ten members, residents of colony, **25.—Official oath, allegiance to King, and fidelity to Duke; religious toleration guaranteed, 26.—**Legal process to be in King's name; Thomas Dongan appointed governor, 1683, 27.—Council a constituent part of the government; council possessed freedom of debate; assembly established in 1683 with eighteen members; powers of new legislature defined; freeman's rights guaranteed; civil service, 28.—Governor's military power restricted; judicial system to be established; governor's pardoning power; customs houses and militia, 29.—Indian lands to be purchased; Dongan plan of government earliest model of state constitutions; political liberty established through commercial policies, 30.—Royal commissions and instructions; **Duke of York becomes King James II, 1685, and New York becomes a royal province; Governor Dongan reappointed, 1686; no assembly; legislative power vested in governor and council, 31.—**Edmund Andros appointed governor of New England, 1688; New York included in new domain; office of lieutenant governor mentioned for first time in Andros commission; press censorship established, 32.—James abandons English throne, December 11, 1688; **William and Mary become sovereigns of England; Henry Sloughter appointed governor, November 14, 1689;**

assembly revived and permanently established, 1691; legislature consists of governor, council, and assembly; laws approved subject to royal veto; religious worship prescribed according to church of England service; religious toleration guaranteed to all except Papists; this rule continued through colonial period, 33.—Governor admonished to facilitate conversion of negroes and Indians; school teachers to be licensed; property qualifications of officers; value of current coin not to be changed; form of government established under Governor Sloughter continued without substantial change through colonial period, 34.—Commissions and instructions constitute colonial Constitution; William Tryon appointed governor, 1771; retired from office, 1775, succeeded by Governor James Robertson, 35.—Tryon's commission and instructions; New York ratifies Declaration of Independence, July 9, 1776, 36.—Governor Tryon's report on constitution of government, 37.—Gubernatorial succession prescribed, eldest councilor to act, 43.

THE INTERREGNUM, 43–54.

No new assembly chosen during Governor Tryon's administration; assembly dissolved, April 17, 1776, because not further prorogued; legislative powers thus suspended not revived during colonial period, 44.—**New York under two governments, military and state;**

Contents.

xxiii

southern part of colony under British martial law; residents take oath of allegiance to Crown, 45.—Population of New York City, 1777; attempt to revoke powers of Provincial Congress; General Clinton's power to restore civil government, 46.—King disclaims intention to govern colony by military law; House of Commons, 1782, protests against further prosecution of war, 47.—Governor Robertson attempts to re-establish civil authority; **council rejects proposition, 48.**—**Provisional treaty of peace, November 30, 1782; definitive treaty signed September 3, 1783; British evacuate New York, November 25, 1783, 49.**—**General Washington enters New York the same day; Governor George Clinton assumes civil authority; Governor Clinton convenes legislature in New York; legislature organized in New York, January 21, 1784, 50.**—**Constitutional government in northern part of state; martial law limited to field of actual military operations;** provincial congress and committees of safety, 51.—First constitutional convention, 1776; convention exercises governmental powers; first Constitution adopted April 20, 1777; ordinance establishing new government, May 8, 1777, 53.—New state government instituted, September, 1777, 54.

STATE CONSTITUTIONS, 54–409.

Chronological statement of Constitutions and amendments, 54–60.—National Constitution supreme, 60.—Conclusion; New York's actual constitutional history covers 284 years; **39th Article of Magna Charta connecting link between ancient and modern constitutional systems, 62.**—Magna Charta, sketch of its origin; text, **64–94.**—**Charter of Liberties and Privileges, 1683, 95–107.**—**Declaration of Independence, 1776, 108–114.**—Articles of Confederation, 1778, 115–129.—**Constitution of United States, 1787, 130–150.**—First ten amendments to Federal Constitution, 1789, 151–155.—Eleventh Amendment, 1798; Twelfth Amendment, 1804, 155.—Thirteenth Amendment, 1865; **Fourteenth Amendment, 1868, 157.**—**Fifteenth Amendment, 1870; New York attempts to rescind ratification, 159.**—**New York Constitution, 1777, with notes, 162–188.**—Amendments, 1801, 189–191.—Constitution, 1821, with notes, 192–221.—Amendments, 1846, with notes, 226–280.—Amendments, 1847–1894, 281–324.—Judiciary Article, 1869, 281.—Amendments of 1874, 295.—Miscellaneous Amendments, 311.—Constitution of 1894, 325–402.—Amendments to Constitution of 1894, 403–409.

Contents.

XXV

Agitation for representative government, 1675; Duke rejects proposition, 426.—Trouble over customs duties, 1681; its effect in promoting popular government, 427.—Petition for assembly, 1681, 428.—Thomas Dongan appointed governor, September, 1682; instructions to Governor Dongan, January, 1683; Governor directed to call assembly, 1683, 429.—Laws subject to veto by governor and Duke, 430.—Laws approved by governor were binding until notice of disapproval by Duke; representative government inevitable, personal government impossible, in New York, 431.—First general assembly, October, 1683; assembly journals lost, 432.—Charter of Liberties and Privileges, 433.—James, as Duke, approves charter, but afterwards, as King, rejects it; Duke of York becomes King of England, February, 1685, 434.—Governor Dongan dissolves assembly, August, 1685; second assembly, October, 1685; dissolved January, 1687; Governor Dongan receives new commission, June, 1686, 435.—Legislative power vested in governor and council of seven members; New York annexed to New England, 1688; Edmund Andros appointed governor; James abandons English throne, December, 1688; succeeded by William and Mary, 436.—Henry Sloughter appointed governor, November, 1689;

Leisler's assembly, 1690, 437.—Assembly revived and established; new assembly meets, April 9, 1691; new Charter of Liberties, 1691, 438.

THE COLONIAL LEGISLATURE, 441–454.

Principles of representation; locality and population apportionment; colonial council; its powers and functions defined, 442.—Governor not permitted to act as member of legislative council, 443.—Procedure in legislative council, 443–445.—Assembly asserts exclusive jurisdiction to originate and control money bills; assembly procedure similar to that of House of Commons, 447.—Governor's speech on opening of legislature, 450.—Official oath of members of assembly, 451.

THE COLONIAL JUDICIARY, 454–463.

Dutch West India Company exclusively entrusted with administration of justice, 454.—Original courts, 455.—Courts established by Stuyvesant, 456.—**Courts of admiralty and probate; appellate tribunal consisted of Director and council; courts prescribed by Duke's Laws, 1665, 458.**—Province divided into three ridings; general assizes, 459.—Mayor's court; jury of twelve in civil cases; province retaken by the Dutch, August, 1673; second English conquest, 1674; English courts reorganized, 1674; province divided into twelve counties, 1683; four courts established, 1683; a

xxvi

Contents.

petty local court, county court of sessions, oyer and terminer, and court of chancery; judicial system reorganized, 1691; court of chancery; supreme court, common pleas, courts of sessions, and justice courts, 461.—Supreme court organized, 1691; courts of exchequer and admiralty, 462.

GROWTH OF THE COLONY, 463–470.

Constitutional History of New York Volume 1

“free exercise of their religion.”

On the 1st of July, 1674, following the re-establishment of the Duke's authority after a temporary re-occupation of the territory by the Dutch, a commission was issued to Edmund Andros, who was thereby appointed to be the Duke's "lieutenant and governor;" otherwise the commission is substantially in the same form as that issued to Colonel Nicolls. Andros received instructions concerning **his administration, embracing many prudential regulations, and also others of a fundamental character. The governor was recommended to**

continue existing courts of justice, and was vested with the power of appointment of new officers and magistrates. The governor was required to appoint a council

of not more than ten members, who were to be inhabitants of the colony, with whom he was commanded to consult on all extraordinary occasions relating to the Duke's service and the good of the country. **The councilors were to hold office during the Duke's pleasure, and they and all other officers and magistrates were required to take an oath of allegiance to the King and an oath of fidelity to the Duke.**

The Articles of Capitulation of 1664 contained a provision that "the Dutch here shall enjoy the liberty of their consciences in Divine worship and church discipline." The Dutch were Protestants and were required to maintain the reformed religion, and the "Freedoms and Exemptions" of 1640 declared that no other religion should be publicly admitted in New Netherland. This was evidently not construed as excluding adherents of other religious faiths, for it seems clear that there were many such persons in the colony at a time when the law recognized the established church only. All persons, without regard to their religious faith, were welcome in the colony, and their rights of conscience were respected. The Duke of York, who had recently become a Roman Catholic, made, in the instructions to Governor Andros, the following provision for religious toleration:

"You shall permit all persons of what religion soever, quietly to inhabit within the precincts of your jurisdiction, without giving them any disturbance or disquiet whatsoever, for or by reason of their differing opinions in matter of religion; provided they give no disturbance to the public peace, nor do molest or disquiet others in the free exercise of their religion."