

# Constitutional History of New York

## PFD Page No. 57 of 789

*Introduction.*

—Page 23

It may be observed here that there was some similarity between the powers conferred on the Duke of York by this charter, and the powers conferred on the Dutch West India Company by its charter of 1621. The Duke has been called the first proprietor of New York, and his government is known as a proprietary government. This is doubtless true because, in general terms, the charter was equivalent to a conveyance of land conferring on him the right of possession, control, and government, subject only to the limitation that the government must be consistent with the laws of England. **But the charter did not carry with it a transfer of sovereignty; that was reserved to the Crown by the provision for tribute, by the right of appeal, and by other incidental provisions.** I think the powers conferred on the Dutch West India Company by its charter were essentially proprietary. **It received a grant of territory with the right to exercise extraordinary, if not always exclusive, jurisdiction over it, and it was expressly charged with the duty of establishing settlements and colonizing the territory.** As interpreted by the order of the States General bearing date January 23, 1664, from which I have already quoted, the company was "empowered to establish colonies and settlements on lands unoccupied by others," and establish and maintain government therein. **The States General retained sovereignty by several provisions similar to those included in the Duke's charter, among them one requiring the company's officers to take an oath of allegiance, not only to the company, but to the home government; another, requiring commissions to the chief officers to be issued by the States General, and another, giving the right of appeal from colonial tribunals to the home**

government. The "Freedoms and Exemptions" of 1629 and of 1650 indicate the same general policy of conferring on the company the proprietary control of the colony, subject to the limitations already suggested. From a merely administrative point of view, it may fairly be said that, by the charter to the Duke and the possession of the colony which he soon afterward acquired by conquest, the colony ceased to be the property of a Dutch corporation, and became the property of an English duke.

#### FORM OF GOVERNMENT.

The Duke of York might have come to his new possessions and might there have established a government under his personal direction, with himself as chief executive; but he elected to administer his government through governors, councils, and other officers appointed by himself. These appointments were held during his pleasure, and he seems to have maintained a careful personal supervision of colonial affairs. This is manifest from the official correspondence of the period, and is particularly illustrated by the code known as the Duke's Laws, which the Duke caused to be promulgated in the colony on the 1st of March, 1665. He found an organized government, and by the Articles of Capitulation local officers were continued until the customary time for new elections.

Colonel Richard Nicolls, who was placed in charge of the expedition to reduce New Netherland, under the Duke's charter, brought with him a commission as deputy governor, and assumed the duties of that office after the capitulation. The commission, dated April 2, 1664, recited the substance of the Duke's charter, and appointed Nicolls "to perform and execute all and every the powers which are, by the said letters patent, granted"

unto the Duke, to be executed by his "Deputy, Agent, or Assignes." The inhabitants of the new territory were required to give obedience to the deputy governor "in all things, according to the tenor of His Majesty's said Letters Patents," and Nicolls was commanded to obey such instructions as he might, from time to time, receive from the Duke. The commission was accompanied by a set of instructions concerning the details of administration. I have not had access to this document, which seems to have been lost, and I am therefore unable to state the provisions contained in it. This commission and the accompanying instructions continued a custom initiated by the Dutch, and which was followed during the remainder of the colonial period. The general authority of the governor was expressed in a commission, and his powers were amplified, sometimes with considerable detail, in the instructions. In many subsequent appointments both documents have been preserved, and we are therefore able to study the scope of the authority conferred on the governor and other colonial officers, and ascertain the kind of government instituted, and the methods of administration.

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."

The reader cannot fail to mark the spirit of this provision, and to note its similarity with the provision incorporated in the first state Constitution and which

still continues as the guaranty of religious liberty. The provision is also quite similar to that contained in the Charter of Liberties of 1683, the full text of which appears in a subsequent part of this Introduction, and also in the new Charter of Liberties of 1691; but there a proviso was added that "nothing herein mentioned or contained shall extend to give liberty for any persons of the Romish religion to exercise their manner of worship contrary to the laws and statutes of their majesties kingdom of England." In the chapter on the Colonial Period I have called attention to the fact that the proviso relating to Catholics was not in the charter as it came from the assembly, but was added while the bill was pending in the legislative council.

All legal process was required to be in the King's name.

The governor and council constituted the colonial legislature until the assembly was created in 1683. It seems that immediately after the accession of Andros as governor the people of the colony demanded a legislative assembly. In letters transmitted near the end of the year 1674 Andros communicated this demand to the Duke, who replied in the following April, denying the request, for the reason, among other things, that it was inconsistent with the form of government established in the colony, and not necessary "for the ease or redress of any grievance that may happen."

September 30, 1682, Thomas Dongan was appointed governor of New York, and received instructions dated the 27th of the following January, which show a marked advance in ideas concerning constitutional government. The Duke's views had evidently experienced a material change since the appointment of Andros, in 1674. I note some of the more important provisions in the Dongan instructions.

Under the commission issued to Governor Sloughter, the members of assembly were required to take “the oaths appointed by act of Parliament to be taken instead of the oaths of Allegiance and Supremacy, and the Test.” The first oath referred to was prescribed by 1 William and Mary, c. 8 (1688 [ 9 ] ) , in the following form :

I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Their Majesties King William and Queen Mary ; so help me God.” “ I, A . B . , do swear that I do from my heart abhor and detest and ab jure, as impious and heretical, that damnable doctrine and Position , that Princes excommunicated or deprived by the Pope or any authority of the See of Rome may be deposed or murdered by their subjects, or any other whatsoever.”

“And I do declare, that no foreign Prince, Person, Prelate, State, or Potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, with in this realm. So help me God, etc.” This statute applied to all cases after the 1st of May, 1689.

#### A. COLONIAL LAWYER'S OATHS

Oaths are an ancient tradition and lawyer's oaths hark back to the founding of the legal profession.” In the 1700s, when lawyer's oaths were first introduced in the American colonies, **taking an oath was a solemn, life-changing ritual.”**? Oaths were understood then to directly implicate the oath-taker's personal sense of honor. Taking an oath and swearing

**in blood, in the name of a god, or on a grave, struck listeners with awe."** Many people believed nothing would be able to dissuade the oath-taker from carrying out their intentions. Oaths were important enough that one of the first acts of the first Congress of the United States in 1789 was to pass a bill regarding the oath for office holders."

Though today 37% of lawyers are women, and 14% are people of color, 2 when many lawyer's oaths in the United States were first enacted in the 1700s, only upper-class white men were admitted to practice law. Therefore, the state bar associations, court committees, and others that drafted and enacted the first lawyer's oaths in the United States in the 1700s were likely made up of only upper-class white men.

[law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2023/11/GT-GJLE230020.pdf](http://law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2023/11/GT-GJLE230020.pdf)

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#### Opening Hook / Transition (1-2 min)

- After reading these four pages from Charles Z. Lincoln's *Constitutional History of New York* (Vol. 1), what stands out is how New York went from Dutch corporate control to English proprietary rule under the Duke of York in 1664.
- This isn't just land grab history—it's the blueprint for early colonial government, oaths of loyalty, and surprising religious freedom that shaped what came later in America.
- Key theme: Proprietary power with limits—Duke gets control and government rights, but sovereignty stays with the Crown.

#### **Proprietary Similarities: Dutch to English Shift (2-3 min)**

- Duke's 1664 charter mirrors the Dutch West India Company's 1621 charter: grant of territory, right to settle/colonize, exercise jurisdiction, but with home government oversight.
- Examples of retained sovereignty: tribute payments, right of appeal to the Crown, officers swear allegiance not just to Duke but to the King/home authority.
- Bottom line: New York changes hands from Dutch corporation to English duke's "property," but it's administrative/property control—not full independent sovereignty.
- From the text: "From a merely administrative point of view... the colony ceased to be the property of a Dutch corporation, and became the property of an English duke."

### **Form of Government: Delegated Rule via Governors (3-4 min)**

- Duke could have ruled personally but chose deputies: appointed governors, councils, officers—all at his pleasure, with close supervision.
- Evidence: Official correspondence, Duke's Laws (promulgated March 1, 1665), continuity of local officers after 1664 capitulation.
- Key figures:
  - Colonel Richard Nicolls (1664): Brought commission as deputy governor, executes Duke's powers via "Deputy, Agent, or Assignes." Inhabitants obey him per King's letters patent; he obeys Duke's instructions.
  - Edmund Andros (1674, post-Dutch re-occupation): Similar commission as "lieutenant and governor," plus instructions for administration.
- Pattern: Commission gives broad authority; separate instructions detail it (some lost, but later ones preserved). Governor appoints council (≤10 members, local inhabitants), consults on big issues; all officers/magistrates hold at Duke's pleasure.

### **Oaths: Dual Loyalty Built In (2-3 min)**

- Officers and councilors required to take:
  - Oath of allegiance to the King.
  - Oath of fidelity to the Duke.
- This dual structure reinforces hierarchy: ultimate loyalty to Crown (Protestant monarch), personal fealty to proprietor (Duke, who converted to Catholicism around 1668-70).
- Reflects English common law traditions—oaths bind conscience to temporal authority, with punishments for breach (e.g., perjury, disqualification).
- Ties to broader colonial oaths: allegiance to sovereign, fidelity to local power—precedent for later republican shifts.

### **Religious Toleration: Broad for the Era (3-4 min)**

- Starts with 1664 Articles of Capitulation: Dutch enjoy "liberty of their consciences in Divine worship and church discipline."
- Dutch background: Required reformed religion publicly, but allowed private diversity (many non-Protestants present).
- Duke's instructions to Andros (1674): Explicit toleration clause—
  - "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."
- Note: Duke's recent Catholicism likely motivated this—pragmatic inclusivity to avoid alienating settlers in a diverse colony.
- Text highlights similarity to later state constitutions (e.g., first NY Constitution's religious liberty provision).

### **Wrap-Up: Connection to 1789 Oath Act & Broader Importance (2-3 min)**

- These pages show colonial New York with Christian-influenced structures (e.g., oaths tied to Protestant King, toleration within limits), but pragmatic pluralism—not a strict "Christian state" enforcement.
- Framers in 1787-89 (many familiar with NY precedents via Hamilton, etc.) knew this history: oaths as loyalty tools, but shift from personal/monarchical to document-based ("support the Constitution"), no religious test (Article VI).
- 1789 Oath Act: Simple, neutral—"I do solemnly swear (or affirm) that I will support the Constitution"—allows affirmation for conscience reasons, strips doctrinal elements.
- Lesson from these pages: Early America built on toleration experiments and oath frameworks, evolving into secular republican unity.
- This proprietary era set the stage—proprietary control with sovereign limits, delegated government, dual oaths, broad toleration—echoing in our founding documents.

### **Closing (30-60 sec)**

- These four pages nail down a key pre-Revolutionary foundation: how power, loyalty, and conscience were balanced in colonial New York.
- I'll highlight specific lines on camera next time—stay tuned for deeper dives.
- Thanks for following along—drop thoughts below!
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## **Grok's insights**

Key Sections/Quotes to Use:

- **Colonial Origins and Solemnity (pp. 139-140):** Expands on your excerpt. Emphasize how oaths were "life-changing rituals" implicating honor, sworn "in blood, in the name of a god, or on a grave." This ties to your NY pages' oaths of allegiance/fidelity as binding conscience with temporal punishments.

Quote: "Oaths were understood then to directly implicate the oath-taker's personal sense of honor. Taking an oath and swearing in blood, in the name of a god, or on a grave, struck listeners with awe. Many people believed nothing would be able to dissuade the oath-taker from carrying out their intentions."
- **Example Colonial Oath: Massachusetts 1701 (p. 140):** Claimed as the oldest U.S. lawyer's oath (pre-Revolution). Use this as a verbatim example of colonial ethical oaths—similar to NY's dual oaths in structure (fidelity to courts/clients, no falsehood). It ends with "So help me God," showing religious invocation.

Full Quote (as in doc): "I (repeat the name) solemnly swear that I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any false, groundless or unlawful suit, nor give aid or consent to the same; I will delay no man for lucre or malice; but I will conduct myself in the office of an attorney within the courts according to the best of my knowledge and discretion, and with all good fidelity as well to the courts as my clients. So help me God."

*Why use?* Parallels your NY text's toleration but with Christian oath—shows oaths as early regulation tools before professional codes (early 1900s).
- **Religious Elements and Evolution (pp. 140-141, 148):** Oaths rooted in Christianity, requiring "swearing to God." By 1960s, most states mandated religious oaths; now, all but Oklahoma allow "affirmation" (post-1961 *Torcaso v. Watkins* ruling on religious

freedom). Ties to your theme of conscience-ruled oaths allowing adaptations (e.g., Jews on Torah).

Quote: "Oaths in the colonies were deeply rooted in Christianity, with traditions requiring swearing to God and ending with 'So help me God.' As late as the 1960s, many jurisdictions mandated such religious oaths."

*Why use?* Reinforces your point on colonial "Christian state" vibes in oaths, but with toleration evolution—mirrors Duke's instructions and 1789 Act's neutral "swear or affirm."

- **Demographics and Exclusion (p. 140):** Directly from your excerpt, but expanded: Only upper-class white men practiced law/drafted oaths in 1700s. Language like "delay no man" persists in some states (e.g., Maine, Mass., Rhode Island)—gender-specific, reflecting exclusion. Modern stats: 37% women, 14% people of color.

Quote: "Though today 37% of lawyers are women, and 14% are people of color, when many lawyer's oaths in the United States were first enacted in the 1700s, only upper-class white men were admitted to practice law."

*Why use?* Adds critical lens to your NY history—framers (white men) knew these demographics when crafting 1787-89 docs, influencing secular shifts.

- **Tie to 1789 Oath Act (p. 139):** Echoes your *Respublica v. Sweers*/1789 focus—one of Congress's first acts was on oaths, underscoring their foundational role.

Quote: "Oaths were important enough that one of the first acts of the first Congress of the United States in 1789 was to pass a bill regarding the oath for office holders."

*Why use?* Direct bridge: Colonial lawyer oaths (like Mass. example) informed the 1789 Act's simple, conscience-friendly form—evolving from religious/proprietary loyalty to constitutional support.

## Why These? Overall Suggestions:

- **Relevance to Your Theme:** These bits strengthen your wrap-up on oaths as conscience-bound with religious roots, but evolving toward inclusivity—fits NY's toleration clause and Duke's Catholicism influence. Avoid the article's modern reform proposals (e.g., model oaths with human rights) unless you want to speculate on "what if" updates.
- **Length/Use in Video:** Keep it concise—read 1-2 quotes on camera (e.g., Mass. oath) for 1-2 min. Bullet them like your prior outline: e.g., "Colonial Lawyer Oaths: Solemn, Religious, Exclusive—Example from Mass. 1701."
- **Not Much Else Colonial-Specific:** The doc is light on pre-1800 details (no NY colonial oath text), focusing 70% on current oaths/enforceability (Appendix A charts all states). Skip if not needed—e.g., no deep constitutional history ties beyond 1789 mention.
- **If Adding More:** If you want the full Mass. oath or appendix for NY's current one ("I do solemnly swear [or affirm] that I will support the Constitution of the United States, and the Constitution of the State of New York..."), let me know—I can pull exact text.

This should slot right into your script without bloating time. If you need a revised bullet outline incorporating this, say the word!

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