

Introduction to the Ratification of the Constitution in North Carolina

The Founding of North Carolina

The English colonization of North Carolina began in 1663, when King Charles II granted a charter to eight men who had been instrumental in the restoration of the Stuart monarchy in 1660 following the English Civil War and the execution of Charles I in 1649. The royal charter gave the eight lords proprietors extensive control over the land that would become North and South Carolina, including “all the royalties, properties, jurisdictions, and privileges of a county palatine.” Two years later, in an attempt to lure settlers to the colony, the lords proprietors issued their Concessions and Agreement, which provided for a governor and council, a unicameral legislature, and a system of courts, as well as the collection of taxes.¹

In 1669, with some settler dissatisfaction with the Concessions and Agreement, Anthony Ashley Cooper, the first earl of Shaftesbury and one of the lords proprietors, and his secretary John Locke, the philosopher, devised a plan of government for the new colony called the Fundamental Constitutions of Carolina. The plan was approved but never fully implemented and was eventually revoked forty years later. The document consisted of 120 “Constitutions” (what would now be referred to as “Articles”). The Constitutions created a feudalistic society that provided social and political stability while guarding against the dangers of democracy. The social hierarchy consisted of the lords proprietors and their descendants; hereditary noblemen (each county would have one landgrave and two caziques); wealthy lords of the manor, farmers, merchants, and tradesmen, all of whom could own property; serfs (called leetmen), who could not vote or hold office and were permanently under the control of a master; and slaves. Ownership of fifty acres of land was necessary to vote and the secret ballot was used. Those who owned 500 acres of land could be elected to the colonial parliament, which was chosen biennially. Parliament consisted of the eight lords proprietors (or their descendants), the landgrave and caziques from each county, and four elected members from each county. A grand council consisting of the eight lords proprietors and forty-two councilors served as a court of last resort, set the agenda for parliament, and controlled all expenditures authorized by parliament. Free males between the ages of seventeen and sixty were required to bear arms in a colonial militia. Although the Anglican Church became the colony’s establishment in 1704, religious toleration extended to dissenters, Jews, and heathens.²

Without a major seaport of its own, Carolina developed in relative isolation from neighboring colonies and from England. Carolina’s vastness and its regional differences, north and south, made administering the colony difficult. In 1691, the lords proprietors appointed a governor for the entire colony, but a deputy governor presided over the northern section. In 1712, a formal split

¹ The Fundamental Constitutions of Carolina opened with a re-statement of the prerogatives given to the lords proprietors in the royal charter (Thorpe, V, 2772). For the early documents of North Carolina’s founding, including the royal charter, the Concessions and Agreement, and the further extension of the royal charter in 1665, see Thorpe, V, 2743–53, 2756–61, 2761–71.

² For the Fundamental Constitutions of Carolina, including the provisions highlighted in this paragraph, see Thorpe, V, 2772–86. See also William S. Price, Jr., “‘There Ought to Be a Bill of Rights’: North Carolina Enters a New Nation,” in Patrick T. Conley and John P. Kaminski, eds., *The Bill of Rights and the States: The Colonial and Revolutionary Origins of American Liberties* (Madison, Wis., 1992), 427.

occurred between North and South Carolina, with South Carolina becoming a royal colony in 1719. In 1729, North Carolina also became a royal colony, when King George II bought the shares of seven of the lords proprietors. The transition from a proprietary to a royal colony produced few noticeable changes except that the king now appointed the governor.³

Carolina drew from surrounding colonies as it grew. Settlers from Virginia came as early as the 1650s in search of fertile land to grow tobacco, wheat and corn and to raise livestock. In the 1720s, South Carolinians came to the Cape Fear River area to grow rice and other staples. When Wilmington developed as a port in the 1740s, the exportation of naval stores (tar, pitch, and turpentine) made a significant contribution to the economy. By the time of the Revolutionary War, North Carolina had become the fourth most populous colony behind Virginia, Massachusetts, and Pennsylvania. Although more homogenous than its neighbors, with few aristocrats and fewer urban developments, North Carolina still had a wide range of inhabitants—wealthy families, subsistence farmers, and many slaves.

The Regulator Movement

In the late 1760s and early 1770s backcountry North Carolinians protested against inequitable taxation and representation as well as corrupt local government. Soon the rhetorical battles escalated into an armed rebellion with both sides appealing to the British government for support. Government forces won a decisive victory at the Battle of Alamance in May 1771 and executed seven regulator leaders. The movement against unjust rule by the wealthy coastal regions soon melded with the growing conflict against the new imperial policy (an end to benign, or salutary, neglect and the imposition of revenue-generating measures) after the end of the French and Indian War.⁴

The political conflict between east and west in North Carolina persisted. In June 1784, the General Assembly ceded the state's western lands to Congress, but when other states failed to do the same, the General Assembly repealed its cession in November 1784. The repeal, however, did not stop an ongoing separatist movement to create the district of Franklin in the mid-1780s with General John Sevier as its governor. Indian policy was a constant irritant between the easterners and those in the backcountry. Finally, in December 1789, the General Assembly again ceded the state's western lands to Congress. A relieved Archibald Maclaine wrote "that we are at last rid of a people who were a pest and a burthen to us."⁵

The Revolution

From North Carolina's origins, settlers believed that they retained the rights of Englishmen. North Carolinians vigorously objected to the king's Proclamation Line of 1763 that prohibited western settlement beyond the crest of the Appalachian Mountains. In response to the hated

³ For North Carolina's colonial history, see William S. Powell, *North Carolina through Four Centuries* (Chapel Hill, N.C., 1989); and Jack P. Greene, *The Quest for Power: The Lower House of Assembly in the Southern Royal Colonies, 1689–1776* (Chapel Hill, N.C., 1963).

⁴ For the Regulator movement, see Alan D. Watson in Lindley S. Butler and Alan D. Watson, eds., *The North Carolina Experience: An Interpretive and Documentary History* (Chapel Hill, N.C., 1984).

⁵ Archibald Maclaine to James Iredell, 22 December 1789, Kelly, *Iredell*, III, 552.

Stamp Act of 1765, Maurice Moore, a judge on the colony's supreme court, wrote a pamphlet stating that "The inhabitants of the Colonies . . . have always thought, and I believe ever will think, all the constitutional rights and liberties enjoyed in Great-Britain . . . their Birth-Right."⁶ Like the other mainland colonies, North Carolina's opposition to the new imperial policy steadily grew. Local opposition groups organized. In February 1776, 1,600 loyal Highland Scots from the Upper Cape Fear Valley marched to suppress the opposition. They were soundly defeated by patriot militia at the Battle of Moores Creek Bridge. On 12 April 1776, the Fourth Provincial Congress meeting at Halifax unanimously adopted the Halifax Resolves that called on the Second Continental Congress to declare independence. North Carolina's three delegates to the Second Continental Congress (William Hooper, Joseph Hewes, and John Penn) signed the Declaration of Independence.⁷

The Declaration of Rights and the State Constitution

In late 1776, the Fifth Provincial Congress meeting in Halifax formulated and adopted a declaration of rights on 17 December 1776 and a constitution on the following day. The 25 sections of the Declaration of Rights were similar to those of Virginia, Pennsylvania, Delaware and Maryland.⁸ Virtually all of the rights that would later be enshrined in the U.S. Bill of Rights were protected, including the right to be informed of charges against oneself, to confront witnesses, not to incriminate oneself, to grand jury indictments, and to jury trials in criminal cases with unanimous verdicts. Convictions had to be under the law of the land. Excessive bail or fines, cruel and unusual punishments, general warrants, and ex post facto laws were all prohibited. Jury trials in civil cases were required. Freedom of the press, the right of assembly, the right to petition for redress of grievances, the right to bear arms, and freedom of religion were all guaranteed. The Declaration of Rights also mandated the separation of powers and prohibited the suspension of laws. Elections to the General Assembly were to be frequent and a frequent recurrence to fundamental principles was prescribed. Monopolies, standing armies in peacetime, and hereditary emoluments, privileges, and honors were prohibited. The military was always to be subordinate to the civil authority. Only freemen or their representatives in the General Assembly could approve taxes. Freemen could instruct their representatives. The state's boundary with South Carolina was described, and Indian hunting rights were guaranteed. The Constitution declared that the Declaration of Rights was part of the Constitution "and ought never to be violated, on any Pretence whatsoever."

The Constitution began with a preamble that justified independence from Great Britain. A bicameral legislature called the General Assembly was to be composed of a senate and a house of commons. Each county could choose one senator and two members of the Commons annually by ballot. Six borough towns could also elect one member of the Commons. Members of both houses needed at least one year's residency in their home county or town. Senators needed to own 300 acres of land, while members of the Commons needed 100 acres. Suffrage was held by

⁶ Price, "'There Ought to Be a Bill of Rights,'" 429.

⁷ Alan D. Watson, "States' Rights and Agrarianism Ascendant," in Patrick T. Conley and John P. Kaminski, eds., *The Constitution and the States: The Role of the Original Thirteen in the Framing and Adoption of the Federal Constitution* (Madison, Wis., 1988), 251–52.

⁸ For all references to the North Carolina Declaration of Rights and the state constitution, see Appendix I (RCS:N.C., 823–29).

twenty-one-year-old men, with fifty acres of land required to vote for the Senate and simply paying taxes required to vote for the Commons. All legislators and other officeholders were required to take an oath of allegiance to the state.

The General Assembly elected judges, the governor, and the attorney general by joint ballot. Judges served for good behavior, while the governor was eligible to serve no more than three annual terms within a six-year period. The governor needed to be at least thirty years old, a resident of North Carolina for at least five years, and owning land worth at least £1,000. He was to have all executive power, could grant pardons and reprieves, and was to be commander of the state militia. Upon the governor's death or disability, he was to be succeeded by the speaker of the Commons. The governor and all other officers were subject to impeachment. The General Assembly also annually elected by joint ballot a seven-member council of state that was to advise the governor, the state treasurer, and the secretary of state, who had a three-year term. All judges, the governor, and the attorney general were to receive adequate salaries.

Members of the military (state and continental), judges, and clergymen could not serve in the General Assembly or the Council of State. Members of the Council could not serve in the General Assembly. Dual office-holding was prohibited. Justices of the peace were recommended by the General Assembly and appointed by the governor. They served during good behavior. Delegates to Congress were annually chosen by ballot by the General Assembly, could be recalled, and could serve no more than three consecutive years.

Although there was to be no established church and religious toleration was broadly allowed, state officeholders were required to be Protestants who believed in God and the divine authority of the Old and New Testaments. Debtors' prisons were forbidden. Naturalization could occur after a residency of one year. Upon taking an oath of allegiance to the state, foreigners could purchase and sell land. The General Assembly was to establish schools. No person could purchase land from Indians. Entails were to be regulated so as to prevent "perpetuations." Members of the General Assembly could dissent from legislative measures and have their dissent entered on the journals. The journals of both houses were to be printed "immediately after their Adjournments."

The Confederation

The North Carolina General Assembly unanimously approved the Articles of Confederation on 24 April 1778. The state's three delegates to Congress (John Penn, Cornelius Harnett, and John Williams) signed the engrossed Articles on 21 July 1778.⁹ The state quickly approved Congress' recommended amendments to the Articles of Confederation, including the Impost of 1781, the Impost of 1783, and the 1784 grant of power to Congress allowing it to regulate foreign commerce. The General Assembly also appointed five commissioners to attend the Annapolis Convention. But Hugh Williamson, the only North Carolina commissioner to make the journey, arrived in Annapolis after the Convention made its report and adjourned. On 22 December 1787 the General Assembly agreed to Congress' resolution of 13 April 1787 making the Treaty of Peace (1783) the law of the land, thus empowering state judges to declare state laws null and void if they interfered with the attempts of British creditors to collect their prewar debts.

Like the other states, North Carolina experienced a brief period of prosperity at the end of the

⁹ On the North Carolina General Assembly's unanimous approval and its delegates' signing of the Articles of Confederation, see CDR, 94, 124–26.

war. An increase in agriculture and natural resources occurred as exports greatly expanded. But soon the glutted markets drove prices down precipitously. Huge numbers of imports flooded the state that were paid for by specie that was shipped abroad to pay British merchants, thus creating a severe shortage of a circulating medium. Funds were unavailable to pay interest or principal on the state's wartime debt, to pay returning soldiers from the Continental Line, and to pay the state's requisition assessed by the Confederation Congress. Soon the state found itself in the throes of an economic depression. Demand grew for a new emission of paper money.¹⁰

Paper money had been used by all of the British American colonies during time of war and during economic depressions. The paper currency usually circulated successfully and was redeemed in payment of taxes. After initial success, the wartime experience with paper money was a disaster as the huge issuance of state and continental currency resulted in runaway inflation. Thus, when demand grew in April 1783 for a new emission of paper money, North Carolina was severely divided. The General Assembly approved an emission of £100,000 in paper money to be legal tender to pay the arrears to Continental soldiers, to pay for confiscated Loyalist estates, and to redeem wartime paper money at a rate of 800 for one. The bulk of the money (£72,000) went to pay returning soldiers. The legislature also passed a stay act that suspended all legal actions involving debts for one year.

Although initially opposed by merchants, the paper money held its value fairly well. Within the first year, the currency depreciated 25% when used to purchase goods and from 12.5% to 15% when exchanged for hard money. In the fall of 1784, the General Assembly officially allowed that it would consider the 1783 currency to be valued at 77.66% of hard money in collecting the state impost.

Although most people accepted the currency—even merchants—it offered little permanent relief from the economic difficulties of the mid-1780s. Consequently, debate over another emission of paper money dominated the political landscape. Fears of another emission caused a further depreciation of the 1783 currency to a 35% discount for purchases and a 25% discount in exchange for hard currency. In April 1785, the House of Commons passed the paper money bill by a vote of 52 to 21, while the Senate approved the measure by a vote of 31 to 7. The act provided for another £100,000 of legal tender paper money, which was not well received by merchants. In an attempt to stabilize the currency, the bill provided for a "sinking tax" assessed against property and payable in the 1785 currency. Paper money paid into this sinking tax was not to be re-circulated. Within a year, the new currency had depreciated by one-third. After two years it circulated at a 40% discount, which by 1788 increased to a 53% discount. In a report in the 1789 General Assembly, only about 22% of the paper money had been retired. By November 1789, seven-eighths of the 1783 and 1785 emissions still circulated. North Carolina's two ratifying conventions proposed amendments to the U.S. Constitution that would allow the states alone to retire state paper money already in circulation before the adoption of the Constitution. In 1790, the General Assembly terminated the sinking tax and provided that both paper money and specie be receivable in payment for public lands.

¹⁰ James R. Morrill, *The Practice and Politics of Fiat Finance: North Carolina in the Confederation, 1783–1789* (Chapel Hill, N.C., 1969), 3–14. For the politics of paper money in North Carolina, see Morrill, 72–99.

The Constitutional Convention

On 6 January 1787 the North Carolina General Assembly responded to the Annapolis Convention's report by authorizing the appointment of five delegates to the proposed convention to meet in Philadelphia in May 1787.¹¹ According to the act, the Articles of Confederation were found to be "far inadequate to the enlarged purposes which they were intended to produce." Congress, the act said, had tried to convince the states "of the truly critical and alarming situation into which they must be unavoidably cast, unless measures are forthwith taken to enlarge the powers of Congress" so as "to avert the dangers which threaten our existence as a free and independent people." North Carolina, in the words of the act, had been "at all times ready to make every concession to the safety and happiness of the whole, which justice and sound policy could vindicate." By joint ballot, the General Assembly then appointed Governor Richard Caswell, Alexander Martin, Richard Dobbs Spaight, William R. Davie, and Willie Jones as delegates to the convention. The delegates were to report any act of the convention to the state legislature. The governor was authorized to fill vacancies that might occur due to resignation or death. When Caswell and Jones declined to serve, Governor Caswell recommended and the Council approved the appointment of Hugh Williamson on 14 March and William Blount on 16 April.

Except for Blount, the North Carolina delegates attended the beginning of the Convention during the third week of May 1787. Blount did not attend until 20 June. Williamson and Spaight stayed for the entire Convention. Davie left in mid-August, while Martin left toward the end of August. Blount left the Convention on 2 July to attend Congress, which was then sitting in New York City. He returned to the Convention on 7 August and stayed until the end. Williamson, Spaight, and Blount signed the Constitution on the last day of the Convention. Williamson was the most active North Carolina delegate, being the ninth most prolific speaker with seventy-seven speeches and thirty-five motions. He also served on six committees. Davie spoke five times with two motions, and Spaight spoke four times with thirteen motions. Blount spoke only once, and Martin never delivered a speech. Neither Blount nor Martin served on a committee, while Martin made only three motions and Blount made none.¹² Coming from the fourth most populous state, North Carolina's delegates often supported the large state position and wanted a stronger central government. They almost always supported the Southern States' position on key issues. On 18 September, the day after the Constitutional Convention adjourned, North Carolina's delegates sent their report to Governor Caswell. The report enclosed the newly proposed Constitution, which the delegates hoped "will obviate the defects of the present Federal Union and procure the enlarged purposes which it was intended to effect."¹³

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¹¹ For North Carolina's appointment of delegates to the Constitutional Convention, see Appendix II (RCS:N.C., 830–32).

¹² For the speeches, motions, and committee assignments in the Constitutional Convention, see the listing compiled by John P. Kaminski and Michael E. Stevens on the Center for the Study of the American Constitution's website (<https://csac.history.wisc.edu/>).

¹³ RCS:N.C., 5–7n.