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New York's First Constitution

Sketching a Map for Becoming American

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In January 1779, London cartographer Claude Joseph Sauthier published an enormous "Chorographical Map of the Province of New York." Dedicating it to "Major General William Tryon, Governor," Sauthier depicted New York as it had existed in 1774, when resistance to specific British policies was starting to yield to independence—the goal of the American Revolution. The map showed Long Island, Staten Island, Manhattan, and the upper Susquehanna and St. Lawrence, Delaware, Hudson, and Mohawk Rivers, as well as the Connecticut River and the mountains between it and the Hudson. The Catskills and Shawangunks were portrayed, but the Adirondacks were barely sketched. Sauthier also showed Wood Creek, almost touching the Mohawk at its headwater, and Oneida Lake with its outflow into Lake Ontario, but he ignored the Finger Lakes, the Genesee Valley, and the headwaters of the Allegheny. These were just white space, the country of the Six Nations.

Wishful Thinking

Sauthier showed nothing of the Empire State's modern shape. Like many New Yorkers, Loyalist and Revolutionary alike, what interested him was not firm borders but the blurry borderland between New York and New England. Though surveyors and politicians had drawn the lines that separated New York from Massachusetts and Connecticut, Sauthier extended a few New York claims beyond those borders and

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drew detail all the way to the Connecticut River, as if to suggest that New York had an interest there. The Green Mountains were entirely New York's. But east of the Connecticut, New England was just more white space.

There was no evidence on Sauthier's map of either the Revolution or imminent American independence. But by 1779, the map's year of publication, only Long Island, Staten Island, and Manhattan were still under British military control. A front and a no-man's-land crossed Westchester County. The Mohawk Valley, the upper Delaware and Susquehanna, and the territory of the Six Nations were aflame with civil war. William Tryon was governor only by an empty commission. The Green Mountains had become Vermont.

Sauthier's map was wishful thinking. Ulster County's George Clinton, a former provincial assemblyman and in 1779 a Continental brigadier general, was the true governor of New York State. His military commission was from Congress, not the British king, and he owed his governorship to election, not royal favor. Clinton would have agreed that most of what the map showed belonged to New York, including the British-controlled Southern District and the "pretended State of Vermont." But New York was remaking itself in ways that went beyond independence. If Sauthier's map displayed the memory of an old order, the State Constitution of 1777, which created Clinton's governorship, outlined both possibilities and problems for the state's future.

An Undefined Existence

There was little precedent for New York's constitution-makers to follow. The Dutch mandate of 1614 simply permitted the West India Company to make four trading voyages without competition. The English conquest in 1664 was based on a directive from James Stuart, Duke of York. Though he would become King James II, Stuart's "Duke's Laws" of 1665 were the act of a lord proprietor, not a sovereign. As king, Stuart melded by decree the chartered New England colonies, together with New York and New Jersey, into the abortive Dominion of New England. In 1683, an Act of Assembly established counties, but that was just a local statute, and like previous documents it left New York's outer boundaries undefined. New York did exist, without question. But neither as a well-defined place nor as a set of institutions did colonial New York enjoy the firm legal basis that "charter colonies" like Massachusetts and Connecticut could claim.

The 1777 State Constitution's preface reflects these historical insecurities, suggesting an awareness that old New York had a weak legal foundation and that the nascent state needed a firmer basis for existence. But the language of the preface offers no basis for codifying a system of government other than a call to elect a

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convention. That body was elected with the specific power to write a constitution. But neither the convention's mandate nor the constitution itself said anything about how it would take effect. After the convention assembled, New York City's "Committee of Mechanicks" demanded that the "elected delegates" submit their work to the public. But the completed State Constitution was proclaimed, not submitted, and no official ratification ever took place.

Both Visionary and Provincial

The state constitutions that predate the federal Constitution of 1787 were experiments in visionary government, addressing the hopes and concerns of their drafters and the political balance within each new state. New York's constitution actually presaged many features of the federal document. Its strong, directly elected governor, who served a multiyear term and had a role in public appointments and in approving or vetoing laws, pointed toward the powers of the presidency. With a state senate whose members served overlapping terms, as well as an independent judiciary, the New York Constitution foreshadowed the structure of Congress and the federal courts. But in other ways it spoke only to "state" issues of the time, the most pressing of which was the state's own existence. The document was written as if the Southern District counties were not still occupied by British forces and could thus send members to the legislature. It could not recognize hostile military occupation, because to do so might amount to renouncing the occupied territory's independence. In fact, the state constitutional convention appointed those counties' first assemblymen and senators, and until 1784 the legislature filled vacancies among them. The State Constitution also granted representation to Cumberland and Gloucester Counties, even though most of their population identified themselves as Vermonters. Not until 1791 would New York acknowledge Vermont as a separate state.

Ignoring these realities was wishful thinking almost to the same degree as Sauthier's map. Clarity prevailed, however, in the document's permission of bills of attainder, which convicted a person by legislative decree rather than by court proceedings, until "the termination of the present war." This made possible the Act of 1779, which named more than seventy Loyalists, confiscated their property, and banished them under penalty of death. The act was harsh, but it also recognized that the Revolution posed fundamental questions of identity and allegiance. To Revolutionaries, the act was both necessary for the state's survival and a just punishment for choosing the crown; to outright Loyalists and to would-be neutrals, it was tyrannical, as were the political police known as "Commissioners for Detecting and Defeating Conspiracies."

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Grappling with "the People"

The framers of New York's constitution also tried to address three immediate, fundamental issues that confronted the state. They solved two: survival as an entity through the Revolution and division of power into the modern American triad of bicameral legislature, strong executive, and independent judiciary. But the third problem was what historian Edmund S. Morgan has called "inventing the people": how to invest popular sovereignty as an abstract authority superior to all others. Early state proclamations referred to "subjects of this state" and closed with the incantation "God Save the People," but those phrases were just variations on the language of the royal era. The new constitution did "ORDAIN, DETERMINE and DECLARE, that no authority shall . . . be exercised over the people or members of this State, but such as shall be derived from and granted by them"—but the Massachusetts Constitution of 1780 was the first American document to use the elegant, straightforward, and poetic phrase "we the people."

John Jay's Vision

The Constitutional Convention, first headquartered in White Plains, retreated in 1776 to Kingston, the state's de facto capital. Writing the constitution took nine months; it was drafted primarily by John Jay, whose mixture of militancy about independence and caution about change within America is reflected in the document. Jay and his sons would become prominent critics of slavery. But though neighboring Vermont's constitution flatly abolished slavery, New York's ignored the issue. Many white New Yorkers held slaves with no intention of freeing them, and New York's last slaves would not become free until 1827. On the issue of separation of church and state, however, Jay was firmer. His voice is clear in the long paragraph that condemns the political influence of "wicked priests" and casts off the Church of England's tie to government. But Jay also revered private property, and the constitution makes no mention of Trinity Church's large property in Manhattan.

Yet Jay's was not the only vision represented in the document. Secret ballots were permitted once the "present war" ended, but only as an experiment that the legislature could rescind. Drafting committee chairman Abraham Yates was already moving toward the vision of white male democracy and state autonomy that would underpin his (and George Clinton's) anti-Federalism in 1788. It seems likely that Yates, or a similar thinker, was probably responsible for the secret ballot proposal.

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A Matter of Property

New York's constitution did not grant the economic powers that would be given to Congress (and denied to the states) in 1787. In 1779, New York's Confiscation Act declared "the sovereignty of the people of this state in respect of all property within the same." That statute, not the constitution, presaged the active economic role that the state would take in peacetime. But what property the legislature actually meant remains uncertain. Was it Loyalist land, to be seized? Was it Vermont, to be reclaimed? Or did it mean the white spaces that Sauthier's map showed as belonging to the Six Nations, including the short, vitally important portage known as the "Carrying Place" that Sauthier noted between the Mohawk River and Wood Creek? This last possibility seems plausible. The constitution did grant the state government exclusive power over Indian affairs, a matter over which the state and Congress would soon conflict and which is still in litigation today.

Between the constitution's proclamation on April 20, 1777, and its replacement in 1821, New York bootstrapped itself into the Empire State, very different from the province that Sauthier drew. Like Sauthier's map, New York's original constitution was far from complete and showed only a sketch of the enormous changes that were to come. Statutes, rather than the constitution itself, would underpin the state's strong role in economic development, in securing its modern geographic boundaries, and in the destruction of both slavery and the Iroquois' Six Nations. But the map of government outlined in New York's first constitution helped set the public agenda for ceasing to be British and for becoming American.

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