

Index

- Abercromby, James, 50, 68
- An Act for emitting one hundred Thousand Pounds, Rhode Island, 299–302
 amendments to, 301–2
 purpose of, 300–1
- An act for instituting a Court for the trial of impeachments and the correction of errors, New York, 250
- An Act For the recovery of small Debts, in an expeditious way and manner, New Hampshire, 260–61
- Act of Settlement, England, 78, 80, 82
- An Act To prevent the Bodies of Debtors from being taken on execution, New Hampshire, 260–61
- Adams, John, 77–78, 90, 99, 132
 letter to Sullivan, J., 105, 108, 120
 on unicameral legislatures, 101
- aldermen, in New York City, 220, 243–46
- Alienism bill, in New York, 222–23
 as violation of New York Constitution, 223
- amendment process, for state constitutions, 89–90
 Delaware Constitution (1776), 89
 Maryland Constitution (1776), 89
 North Carolina Constitution (1776), 378
 South Carolina Constitution (1778), 89
- American Judicial Review. *See* judicial review
- American Revolutionary War
Case of the Prisoners (Va.) and, 175–76
Holmes v. Walton (N.J.) and, 151–52
- Provisional Treaty of Peace, 218–19, 345–47
Rutgers v. Waddington (N.Y.) and, 217
- Anderson, John (N.J.), 173
- annual elections. *See* elections
- anti-loyalist laws, in New York, 220–22
- anti-suspension clause, in North Carolina Constitution, 355
- Arnold, Benedict, 175
- Ashe, Samuel (N.C.), 361, 370, 373, 385
- Bacon, Francis, 64
- Bartlet, Joseph Hall (plaintiff and petitioner in case of *Bartlet v. French*, N.H.), 286
- Bartlet, Thomas (justice of peace and lawyer who represented Joseph Hall Bartlet before legislature, N.H.), 284–85
- Bayard, Elizabeth (née Cornell), 336, 338, 349–50
Bayard v. Singleton (N.C.), 149–50, 215, 336–54
 constitutional issues raised in, 333, 351–52, 359, 360, 375
 Johnston, Samuel and, 334, 348–51, 359, 362, 377
 North Carolina Superior Court decision by (May 1787), 375–78
 hearing at (May 1786), 359–62
- Bedford, Gunning, 391–92
- Benson, Egbert (N.Y.), 227–28
- bicameral legislatures
 in proprietary colonies, 34

- bicameral legislatures (cont.)
 in royal colonies, 34
 in states, 107, 118
- Bilder, Mary, 1, 5–6, 40, 43, 54, 76–77, 172, 402, 414
- Bill of Rights, in New Hampshire
 Constitution, 262, 266, 269–70, 272–73, 277, 289
- Blackstone, William, 20
 on judicial review, 67
 on Parliamentary supremacy, 20, 67
- Blackstone's Commentaries*, 20, 67, 197, 235–36, 238–39
- Rules of Construction, 20, 197, 237–38
- Rutgers v. Waddington* and, 235–39
- Blount, William (N.C.), 345
- Board of Trade, 6, 40–45, 47, 49, 59–60, 153
- Boudinot, Elias, 390
- Bradford, William (R.I.), 327
- Brearley, David (N.J.), 155, 391–92, 417–18
- Breen, T. H., 105, 337
- Butler, Pierce (S.C.), 335
- Call, Daniel, 181–82
- Carlton, Guy, 346
- Case of the Prisoners (Commonwealth v. Caton)* (Va.), 17–18, 24, 135, 149–50, 176–84, 193
 execution dates for, 176–77, 178
 published law reports on, 181–82
 Revolutionary War and, 175–76
- Caswell, Richard (N.C.), 338
- Caton, John (Va.), 176
- Channing, William (R.I.), 326–27, 330
- Citation Act (N.Y., 1782), 220–21, 222, 256
- Clinton, George (N.Y.), 114, 222, 255
- Coercive Acts, in New York City, 106
- Colden, Cadwallader (N.Y.), 36–37
- colonial governments and legislatures.
See also colonial statutes; *specific colonies*
 British system as model for, 35
 conflicts with governors, 35–38
 over veto powers, of governors, 36, 37
 “horizontal” constitutional constraints, 34–35
 judicial courts in, authority of, 55–71
 in South Carolina, 55–65, 69–70
 Privy Council Review of colonial statutes, 39–55
- declarations of nullity, 42–43, 50–51
- disallowances and, 7, 40–41, 43, 44–45, 49–50
- passage of laws and, 40
- proprietary colonies, 33
 appointment to upper house in, 33–34
 bicameral legislatures in, 34
 structure of, 33–34
- royal colonies, 33
 appointment to upper house, 33–34
 bicameral legislatures in, 34
 structure of, 33–34
- structure of governments, 33–39
 as corporate colonies, 33
 as proprietary colonies, 33–34
 as royal colonies, 33–34
- colonial statutes, Privy Council Review of
 through judicial review, 46–55
 through legislative review, 39–46, 48–52
 retroactive repeal of laws, 52–53
- Commonwealth v. Caton* (Va.). *See Case of the Prisoners*
- Confederation Congress, 26, 257, 391, 422
- Confiscation Act, North Carolina (1785), 350–51, 379
- Confiscation Act, N.Y. (1779), 220–21
- confiscation of property, in North Carolina
 under Confiscation Acts, 339–43, 350–51, 379
- Maclaine opposition to 1785
 Confiscation Act, 352–54
 under Provisional Treaty of Peace, 345–47
- Connecticut
 constitution in
 ambiguous status of, 303–7
 Swift on, 306–7
- as corporate colony, 33
- Declaration of Independence and,
 approval of, 304–5
- Form of Government, 304–5
- General Court in, as legislative body, 277
- judicial authority in, 279–81
- legislative adjudication in, 278–81
- legislative supremacy in, 285
- Constitution, U.S., *See also specific topics*
 legalistic view of, 27–28, 406, 409–10, 420, 424
- Supremacy Clause, 28, 232, 258–59, 417, 418, 419–21
- Constitutional Convention of 1787, 401–10, 413–22. *See also* Federal Convention

- constitutional conventions, 202–3, 268–69.
See also specific conventions
- Constitutional History of New York*
(Lincoln), 124
- constitutionalism, traditional
Hamilton on, 225–27
judicial review and, 198
in New Hampshire, 295–96
in North Carolina, Spaight on, 371–75
of *Rutgers v. Waddington* (N.Y.) decision
and, 239–55
- constitutionality of laws
in *Bayard v. Singleton* (N.C.), 333,
351–52, 359, 361, 375
Forcing Act (R.L.), 307, 318–19, 326–27,
330
under New York Constitution, 95–96,
124–25
Randolph on, 187–89
Ten Pound Act (N.H.), 263–66, 272, 283
in traditional constitutionalism, 192
Treason Act (Va.), 208–9, 212–14 (*see*
also Case of the Prisoners)
- Continental Congress of 1777, 336–37
- Cornell, Elizabeth, 338, 341, 349–50. *See*
also Bayard, Elizabeth
- Cornell, Samuel, 336, 338–43, 376–77. *See*
also Bayard v. Singleton
- corporate colonies
Connecticut, 33
Rhode Island, 33
- Corwin, Edward S., 1, 49–50, 128–29, 143,
159, 200, 278, 418
- Council of Appointment, in New York, 220,
247, 407
- Council of Censors, in Pennsylvania and
Vermont, 94–96, 289
- Council of Revision
at Federal Convention
judges as member of, 403–10
Madison on, 397–413
objections to Council, 403–6
rejection of Council, 409–10
Jefferson on, 398–99
in New York, 124–28, 134–41, 219–20,
222, 224, 228
- Court for Correction of Errors (N.Y.),
127–28, 129, 130–31, 140, 245, 253
establishment of, 249–50
Rutgers v. Waddington (N.Y.) and, 245,
249, 250–51, 253–54
- Dana, Francis (Mass.), 77–78
- Davie, William (N.C.), 350, 359, 360
- Deare, John (N.J.), 161, 163
- Declaration of Independence, 74–75
Connecticut's approval of, 304–5
New York Constitution and, 229–30
Rhode Island approval of, 305–6
- Declaration of Rights
in Maryland, 100
in Massachusetts, 286–87
in North Carolina Constitution, 100,
351–52, 354, 355–57, 376
anti-suspension clause in, 355
separation of powers under, 356–58
in Pennsylvania, 100, 109
in Virginia, 81
- Delaware
Constitution of 1776 and 1792, 80, 89,
90–91
as proprietary colony, 33
Democracy in America (Tocqueville), 426
- Dickinson, John (Del.), 392, 404, 421
- disallowances, of colonial legislation in
Privy Council Review, 7, 40–41, 42,
43, 44–45
- Dobbs, Arthur (N.C.), 347–48
- drafting processes, for state constitutions,
87–88
in Massachusetts, 268–69
in New Hampshire, 88, 269
for New York Constitution, 87–88
North Carolina Constitution (1776), 354
in South Carolina, 88
special elections for, 88
in Virginia, 88
- Duane, James (N.Y.), 29, 218, 220, 391
Law of Nations and, 236
New York Constitution and, 110, 123, 128
Rutgers v. Waddington (N.Y.) decision,
235–39, 243–44, 284
on Trespass Act, 235–36, 238–39
- Duer, William (N.Y.), 110
- Durfee, Thomas, 308, 309, 310
- elections, annual, 98–121. *See also* suffrage;
voting
English Revolution and, 99
Glorious Revolution of 1688 and, 98–99
legislative inclination to alter, 100–3
Adams on, 101
under New York Constitution, 113, 123

- elections, annual (cont.)
 Septennial Act and, 98–99
 English Bill of Rights of 1689, 78
 early state constitutions and, 82, 90–91
- Federal Convention of 1787. *See also specific constitutions; specific states*
 Council of Revision and
 Jefferson on, 398–99
 judges as member of, 403–10
 Madison on, 397–413
 objections to, 403–6
 rejection of, 409–10
 Hamilton and, 225, 403, 406, 415–16, 422
 judicial check on states, at adoption of, 417–21
 judicial review at, 403–5, 413, 417–21
 judicial review on eve of, 389–97
 legislative veto at, rejection of, 413–15, 418–19
 Morris, G., and, 133–34, 391–92, 402–3, 406, 419
 on New York Constitution, 132, 133–34
 origins and purpose of, 27–29, 401
 Randolph and, 401
 separation of powers arguments at, 404–5, 406–9
 Wilson, James and, 133–34, 402–3, 404, 406
- First Judiciary Act, U.S. (1789), 145, 424
 first U.S. constitutions. *See* state constitutions
- Forcing Act, Rhode Island, 300–1, 307, 318–19, 326–27, 328, 330
- fundamental law, constitutions as, 82, 85–86
- General Assembly, in Rhode Island, 309–10, 327, 331
- General Court, 277–78
 in Connecticut, as legislative and adjudicative body, 277–80
 in Massachusetts, 277
 in New Hampshire, as legislative and adjudicative body, 277–78
- Gerry, Elbridge (Mass.), 391–92, 403–5, 418
- Gilman, Nathaniel (N.H.), 288
- Goebel, Julius, Jr., 42–43, 49–50, 51, 54, 216, 255
- Goodricke, Henry, 85
- Goodwin, Henry (R.I.), 318, 327, 330
- Gough, J. W., 86
- governors
 in colonial governments, 33–34
 conflicts with lower houses of legislatures and, 35–38
 veto power, conflicts over, 36
 veto power of, 34
 under first state constitutions, 37, 75
 under New York Constitution, 122–24
 in South Carolina, 37
- Hamburger, Philip, 51, 85, 86, 139, 179, 216, 321, 330
- Hamilton, Alexander, 19, 20–21, 28, 67, 104–5, 130, 133, 227–28, 316
 on Alienism bill (N.Y.), opposition to, 222–23
 Federal Convention and, 225, 403, 406, 415–16
 on judicial review, as advocate of, 207, 366, 396–97
 “horizontal” judicial review, 422–23
 “vertical” judicial review, 232–33, 422
 on Law of Nations, 228–29, 230, 234
 on New York Constitution, 132, 223
Rutgers v. Waddington (N.Y.) and, 220–21, 228–35
 Law of Nations argument, 228–29, 230
 Treaty of Peace argument, 230–33, 234, 255–56
 “Second Letter from Phocion,” 223–27
 on traditional constitutionalism, 225, 226–27
 on Trespass Act (N.Y.), 216, 220, 227–28, 234, 256–57
- Harper, Robert (N.Y.), 113
- Harper, William (N.Y.), 247–50
- Harrison, Benjamin (Va.), 176, 185
- Henry, Patrick (Va.), 176, 398
- Hogg, James (N.C.), 353
- Holmes, John (N.J.), 154–56
- Holmes v. Walton* (N.J.), 17–18, 45–46, 128–29, 149–50, 151–52, 155–57, 164–74, 390
 legacy of, 172–74
 New Jersey Supreme Court and, 173–74
 Privy Council review and, 152–54
 retrial of, 168–72
 reversal of justice of the peace’s judgment, 169–71
 Small Causes Act and, 156–58, 160
- Hooper, William (N.C.), 76, 77, 109, 362

- Hopkins, Joshua (Va.), 176
 “horizontal” constitutional constraints, in
 colonial governments, 5–6, 34–35
 “horizontal” judicial review
 definition of, 1
 development of, 4, 8–10, 54–55, 422
 Hamilton on, 28, 233, 422–23
 rejection of, in colonial South Carolina,
 55–71
 House of Commons, 38
 House of Lords, 38
 Hulsebosch, Daniel, 36–37
- Inferior Court of Common Pleas, in New
 Hampshire, Ten Pound Act and,
 261–65, 283–85, 291–93
- Iredell, James (N.C.), 2, 19, 20–21, 101–2,
 106–7, 316, 334–35, 346–47,
 377–78
 as Attorney General of North Carolina,
 341–42
 Butler and, 335
 as judicial review advocate, 190–91, 207,
 390, 396–97
 on legislative supremacy, rejection of,
 362–64
 Maclaine and, 353
 opposition to broad suffrage, 108
 Spaight and, correspondence with, 378–82
 “To the Public,” 362–68
- Jay, John (N.Y.), 104–5, 109–10, 112–13,
 136, 138–39, 255
 at New York Constitutional Convention,
 110, 112–14, 123–24, 128–29, 136
- Jefferson, Thomas (Va.), 15–16, 75, 88,
 175, 180
 on Council of Revision, 398–99
 Madison and, 200, 398
 Pendleton and, 399
 Virginia Constitution and, 199–200, 202,
 306
- Johnson, William Samuel (Ct.), 50
- Johnston, Samuel (N.C.), 101–2, 106–7,
 334, 348–51, 353, 377
Bayard v. Singleton (N.C.) and, 348–51,
 359
- judges
 in early state constitutions, tenure and
 security for, 78–81
 under New York Constitution, 127–31
 Council of Revision and, 140–41
 tenure of, 124–25, 246
 on proposed Federal Council of Revision,
 407–10
 in Rhode Island, *Trevett v. Wedeen* and,
 302–3, 318–19, 320–31
 legal representation for, 322
 Tucker (Va.) on, authority of, 197–98,
 205–6
 judicial authority of legislatures. *See also*
 Court for Correction of Errors
 (N.Y.)
 in Connecticut, 57, 196, 278–81
 in New Hampshire, 276–78
 in New Jersey, 162–63
 in Rhode Island, 309–10
 judicial review, 149–50, 215. *See also*
 specific cases; specific states
Bayard v. Singleton (N.C.), 332–54
 constitutional issues raised in, 333,
 351–52, 359–60, 375
 Johnston and, 348–51, 359, 362–63
 North Carolina Superior Court,
 359–62, 375–78
 Blackstone on, 67
 early state constitutions and, 72–73
 judges’ tenure and, security of, 78–81
 emergence of
 from 1779–82, 149–50
 from 1784–87, 215–16
 on eve of Federal Convention, 389–97
 at Federal Convention, 403–5, 413, 417–21
 Hamilton as advocate for, 207, 366, 396–97
 “horizontal” judicial review, 422–23
 “vertical” judicial review, 232–33, 422
 “horizontal”
 definition of, 1
 development of, 8–10, 54–55, 422
 Iredell as advocate for, 190–91, 207, 390,
 396–97
 lawyers as advocates for, 26, 389–90,
 392–94
 Madison on, 411–13
 Morris, G., on, 22, 174
 in New Hampshire, legislative battle over,
 283–85, 286–92
 in New Jersey (*see Holmes v. Walton*)
 in New York, 26, 129
 under New York Constitution, 127–31
 Court for the Correction of Errors and,
 127–29, 249–51

- judicial review (cont.)
 in North Carolina, 355, 371–75. *See also*
Bayard v. Singleton
 establishment of, 375–78, 382–86
 Plumer as advocate of, 276, 288, 366,
 396–97
 in Rhode Island, 26. *See also* *Trevett v.*
Weeden
 during 1780s, failure to establish,
 330–31
Rutgers v. Waddington (N.Y.) and, 29,
 215–16
 Spaight on, as opponent of, 371–73,
 379–81, 390
Ten Pound Act cases (N.H.), 149–50,
 215, 260–98
Trevett v. Weeden (R.I.), 149–50, 215,
 299–331
 Tucker on, 195–208, 396
 interpretive authority of judges, 197–98
 Varnum as advocate of, 366, 396–97
 “vertical” (*see also* Supremacy Clause)
 definition of, 1
 development of, 6, 7–8, 54, 422
 Hamilton on, 232–33, 422
 in Virginia. *See also* *Case of the Prisoners*
 judges’ authority and, 205–6
 Pendleton on, 208–14
 Randolph opposition to, 186–89
 traditionalist arguments against,
 189–93, 207–8
 Tucker rationale for, 195–208
 in Virginia Court of Appeals, 180–81,
 182–83
 Judiciary Act, U.S. (1789), 145, 424
 juries and jury trials. *See* *Bayard v. Singleton*;
Holmes v. Walton; *Ten Pound Act*
 cases; *Trevett v. Weeden*
- Kennedy, Duncan, 210
 Ketcham, Solomon (N.J.), 154–56
 King, Rufus (Mass.), 391, 404
 Kramer, Larry, 3, 15, 22, 191–92, 393. *See*
also *The People Themselves*
- LaCroix, Alison, 51, 420
 Lamb, James, *Case of the Prisoners* and,
 176
 Lambert, Richard, 292, 294, 389
 Lamboll, Thomas (S.C.), 61
 Lansing, John (N.Y.), 418
- Law and Judicial Duty* (Hamburger), 3. *See*
also Hamburger, Philip
- Law of Nations
 Duane and, 236
 Hamilton on, 228–29, 230, 234
 New York Constitution and, 229
Rutgers v. Waddington (N.Y.) and, 219,
 228–29
 Trespass Act (N.Y.) and, 236
- Law of the Land, constitutions as a
 in New Hampshire, 270, 272
 in U.S. Constitution, 28, 419–21
- Lawrence, Jonathan (N.Y.), 239–40
- lawyers, as advocates for judicial review, 26,
 389–90, 392–94
- Lee v. Bude and Torrington Junction*
Railway Company (U.K.), 242
- legislative review of laws
 by New York Council of Revision,
 124–25, 129
 by Privy Council, 39–46, 74
 Declaration of Independence and, 74–75
- legislatures. *See* *specific states*
- Lewis, Morgan (N.Y.), 228
- Lincoln, Charles Z., 124
- Livingston, Robert R. (N.Y.), 109–10, 346
 New York Constitution and, 110–12,
 123, 128–29, 136
 on voter qualifications, 111–12
- Livingston, William (N.J.), 164–65
- Loyalist property, confiscation of, in North
 Carolina. *See* *Bayard v. Singleton*
- Lyons, Peter (Va.), 178, 208–9
- Macgregore, James (N.H.), 282–83, 294.
See also *Ten Pound Act* cases
Macgregore v. Furber (N.H.), 264–65
- Maclaine, Archibald (N.C.), 337, 344, 347,
 348–49, 351–53, 362, 369–72, 374
- Madison, James (Va.), 27, 73, 134, 177–80,
 252, 274, 317–18, 391
 on Council of Revision, 397–413
 at Federal Convention, 397–419
 Jefferson and, 398, 399
 on judicial review, 411–13
 Randolph and, 186, 189, 401
 Virginia Plan, 401–2, 413–15
 Wallace, Caleb (Ky.) and, 400
- Magna Carta, 82, 103
- Maier, Pauline, 268–69
- Main, Jackson Turner, 115, 221–22, 293

- Marbury v. Madison* (U.S.), 191, 425
- Marchant, Henry (R.I.), 302, 321. *See also* *Trevett v. Weeden*
- Marshall, John (Va.), 191
- Martin, Luther (Md.), 392, 405, 417, 419
- Maryland
- Constitution (1776), 78, 89
 - Declaration of Rights, 100
 - as proprietary colony, 33
- Massachusetts
- election to upper house in colony and, under early constitutions, 33, 37
 - General Court in, 277
 - veto power in, 37
- Massachusetts Constitution (1780), 16–17, 76
- Adams on, 132–33
 - convention for, 202–33
 - veto powers under, 132–33
 - voting and office holding requirements under, 117–18
- Mayor's Court, in New York City, 219–20, 231, 234, 244, 248. *See also* *Rutgers v. Waddington*
- Mays, David, 175, 212
- McClary, Elizabeth (N.H.), 288
- McCulloh, Henry Eustace, confiscation of lands in North Carolina, 346–47, 365
- McIlwain, C. H., 80
- Mercer, James (Va.), 178, 181, 208–9
- Mercer, John Francis (Md., Va.), 181, 392, 421
- Merrill v. Sherburne* (N.H.), 290–91
- Michie, James (S.C.), 63–64, 66–68
- money bills, upper houses of the legislature and, 162
- Montesquieu, Baron de, 196, 324
- Moore, Alfred (N.C.), 369
- Morris, Gouverneur (N.Y., Pa.), 2, 22, 106, 109–12, 114, 391–92
- Federal Convention and, 132, 133–34, 402–3, 406
 - on judicial review, 22, 174
 - New York Constitution and, 109–12, 114, 122–23, 128–29, 132, 133–34
 - on proposed national legislative veto, 419
 - on voter qualifications, 111–12
- Morris, Robert (N.J.), 155
- Mumford, Paul (R.I.), 302, 319, 330
- Nash, Abner (N.C.), 341, 348, 350–51, 354, 359–60, 379, 390. *See also* *Bayard v. Singleton*
- New Hampshire. *See also* Ten Pound Act
- An Act For the recovery of small Debts, in an expeditious way and manner, New Hampshire, 261
 - An Act To prevent the Bodies of Debtors from being taken on execution, New Hampshire, 260–61
 - drafting procedures for, constitutions in, 88, 267, 269
 - election to upper house in early constitutions, 37
 - General Court in, legislature as, 277–78
 - Inferior Court of Common Pleas, Ten Pound Act and, 261–65, 283–85, 291–93
 - judicial review in, legislative battle over and establishment of, 283–85, 286–92
 - jury trials in, 261–65
 - legislative adjudication in, by General Court, 277–78
- Merrill v. Sherburne* (1818), 290–91
- separation of powers in, 272–73, 286, 289
 - state Senate in, 286, 293
 - Ten Pound Act* cases, 149–50, 215, 261–66, 291–92
- New Hampshire Constitution (1784), 16, 78, 267–70
- Bill of Rights in, 269–70, 272–73, 289
 - drafting of, 269
 - judicial authority under, 277–78
 - Law of the Land Clause, 269–70
 - Repugnancy Clause, 269–70
 - role of the people in establishment of, 267–68
 - supremacy of legislature under, 276–79
 - debate over, 287–88
 - multidimensional judicial assault on, 286–91
- New Jersey. *See also* *Holmes v. Walton*
- judicial review in, 128–29
 - trial by jury in, 152–54, 156–57
 - under constitution, 158–60
- New Jersey Constitution (1776), 89–90, 92, 93, 158–60
- New Jersey Supreme Court
- Holmes v. Walton* and, 173–74

- New Jersey Supreme Court (cont.)
 legislature and, cooperations between, 174
- New York (state). *See also* Court for Correction of Errors; New York Constitution; *Rutgers v. Waddington*
An act for instituting a Court for the trial of impeachments and the correction of errors, 250
 Alienism bill in, 222–23
 as violation of New York Constitution, 223
 anti-Loyalist laws in, 220–22
 Citation Act in, 220–21, 222, 256
 Confiscation Act in, 220–21
 Council of Appointment, 247
 Council of Revision in, 124–26, 222, 224, 228
 Council of Safety in, 136–38
 judicial review in, 26
 Trespass Act, 218–19, 231–32
 Hamilton and, 216, 220, 227–31, 234
 Law of Nations and, 236
 veto power in, 37, 122–25
- New York City
 aldermen in, 220, 243–44
 Coercive Acts in, 106
 Law of Nations and, 219, 228–29
 Mayor's Court, 219–20, 231–32, 234, 239–43, 248
- New York Constitution (1777), 12–13, 73, 75–76, 95–96. *See also* Court for Correction of Errors
 Alienism bill as violation of, 223
 Council of Revision and, 12–13, 96–97, 124–26, 134–45
 elimination of, in 1821, 125–26
 establishment of, 124–26, 134
 goals and purposes of, 124–25
 judges' role in, 124–26, 140–42
 legislative review by, 96–97, 124–25
 vetoes of, 131–32, 136–37
 Council of Safety, 136–38
 Declaration of Independence and, 229–30
 drafting processes for, 87–88
 Federal Convention and, 132–34
 gubernatorial elections under, secret ballots and, 113–14, 123–24
 judges under, 127–31
 in Council of Revision, 124–26, 140–42
 tenure of, 124–25, 246
 judicial review, Court for the Correction of Errors under, 127–28, 130–31, 245
 Law of Nations and, 229, 236
 legislative review by Council of Revision under, 124–25, 127–29
 Livingston, R., and, 109–10, 112, 123, 128–29, 136
 Morris, G., and, 110, 112, 122–23, 128–29, 132–34
 suffrage qualifications under, 111–13, 114–16
 term of governor under, 123–24
 veto power exercised by Council of Revision under, 123–25
The New York Packet and the American Advertiser, 242–43, 244–45
- North Carolina
Bayard v. Singleton, 149–50, 215, 336–54
 constitutional issues raised in, 333, 351–52, 354–58, 360, 371–75
 Johnston and, 348–51, 359, 362–63, 377
 North Carolina Superior Court, 359–62, 375–78
 confiscation of property in
 under Confiscation Acts, 339–43, 350–51, 379
 Maclaine opposition to 1785
 Confiscation Act, 352–54
 under Provisional Treaty of Peace, 345–47
 judicial review in, 355, 371–78
 establishment of, 375–78, 382–86
 regulator movement in, 334
- North Carolina Constitution (1776), 78, 90–92, 354–58
 amendment procedures for, lack of, 378
 Declaration of Rights, 100, 351–52, 354, 355–57, 376
 anti-suspension clause in, 355
 separation of powers under, 356–58
 drafting of, 354
 judicial authority under, 379–80
 legislative authority under, 355–56

- Paterson, William (N.J.), 391–92, 416–18
- Pendleton, Edmund (Va.), 24, 177, 179–81, 193–95, 208–14. *See also* *Case of the Prisoners*
 Jefferson and, 399
- Pennsylvania
 Declaration of Rights in, 100, 109
 as proprietary colony, 33
 state constitution (1776), 91–92
The People Themselves (Kramer), 3. *See also* Kramer, Larry
- Philips, Josiah (Va.), 149–50
Philips v. Savage, 49–50
- Pierrepont, Evelyn, *Rutgers v. Waddington* and, 217–19
- Pinckney, Charles (S.C.), 416, 418
- Plumer, William (N.H.), 19, 263, 275, 276, 288–89, 290–91
 as advocate for judicial review, 366, 396–97
- Privy Council Review, 1, 6–8, 129
 of colonial statutes, 39–55
 judicial review of, 46–55
 legislative review of, 39–46, 48–52, 74
 retroactive repeal of laws, 52–53
- Declaration of Independence and, 74–75
 declarations of nullity and, 42–43, 50–51
 disallowances and, 7, 40–41, 43, 44–45
Holmes v. Walton and, 45–46, 152–54
 passage of laws and, 40
Philips v. Savage and, 49–50
Winthrop v. Lechmere (Ct.) and, 47–48, 49, 53
- property-owning requirements
 under Constitution of 1780
 (Massachusetts), 117
 to hold public office, 109, 111, 112–13
 to vote, 112–13, 117–18
- proprietary colonies
 Delaware, 33
 Maryland, 33
 Pennsylvania, 33
- Provisional Treaty of Peace, 218–19, 345–47
- Rakove, Jack, 99–100
- Randolph, Edmund (Va.), 17–18, 97, 135, 177–79. *See also* *Case of the Prisoners*
 on constitutionality of laws, 187–89
 Federal Convention and, 401
 judicial review and, opposition to, in *Case of the Prisoners*, 184–95
 Madison and, 186–87, 189
 regulator movement, in North Carolina, 334
- Reid, John Phillip, 25, 53, 66, 103, 262, 278, 289, 290
- Repugnancy Clause (1784), New Hampshire Constitution, 269–70
 repugnancy standards, in English law, 39–40, 61, 62–63
 Privy Council Review and, 52–53
 in South Carolina, applied by judicial courts, 59–61, 69–70
 in *Winthrop v. Lechmere* (Ct.), 53
- Rhode Island
 An Act for emitting one hundred Thousand Pounds, 299–302
 amendments to, 301–2
 purpose of, 300–1
 constitution of, 38
 ambiguous status of, 303–7, 322–23
 legislative supremacy in, 308–10, 320–21
 limitations on legislative power,
 Varnum's argument, 312–13
 Varnum on, 307, 312–13, 320
 as corporate colony, 33
- Court of Common Pleas in, collection of debts and, 300
- Declaration of Independence and,
 approval of, 305–6
- economic crisis in, 316–17
- Forcing Act in, 300–1, 307, 318–19, 326–27, 328, 330
- government structure in, defects of, 317–18
- judges in, *Trevett v. Weeden* and, 302–3, 318–19, 320–31
 legal representation for, 322
- judicial authority of General Assembly, 309–10, 331
 Varnum on, 314–16
- judicial review in, 26
 failure to establish, during 1780s, 330–31
 legislative adjudication in, 308–10
Trevett v. Weeden, 149–50, 215, 302–3, 313, 320, 389
 decision in, 318–19, 320
 press response to, 318–19, 390–91

- Rhode Island (cont.)
 Superior Court arguments of Varnum in, 311–19
- Ricker, Peter (N.Y.), 239–40
- royal colonies, 33
 appointment of governors and members of the upper house in, 33–34
 bicameral legislatures in, 34
 structure of, 33–34
- Rules of Construction, in *Blackstone's Commentaries*, 20, 197, 237–38
- Rutgers, Anthony (N.Y.), 218, 240, 242
- Rutgers v. Waddington* (N.Y.), 20, 29,
 130–31, 149–50, 215–19, 390–91
 American Revolutionary War and, 217
Blackstone Commentaries and, 235–39
 Court for Correction of Errors and, 245,
 249–51, 253–55
 debates over decision in, 239–55
 Duane decision, 235–39, 284
 Trespass Act and, 235–36
- Hamilton and, 220–21, 228–29
 arguments made by, 228–35
 Law of Nations argument, 228–29,
 230
 Treaty of Peace argument, 230–33,
 234, 255–56
 Trespass Act (N.Y.) and, 218–19, 255–57
- Rutledge, Edward (S.C.), 110
- Rutledge, John (S.C.), 418, 420
- Sager, Lawrence, 420
- Scott, Austin, 417–18
- “Second Letter from Phocion” (Hamilton), 223–26
- secret ballots, *viva voce* voting at New York Constitutional Convention and, 113–14
- separation of powers
 in early state constitutions, 76–77
 at Federal Convention, 404–5, 406–9
 in New Hampshire, 272–73, 286, 289
 in North Carolina Constitution, 356–58
 under Virginia Constitution, 195–96, 197
- Septennial Act (1716), England, 83–84
 annual elections and, 98–99
- Shay's Rebellion, 275, 316
- Sherburne, John Samuel (N.H.), 263,
 263–66, 270–72
- Sherman, Roger (Ct.), 391, 417,
 419, 421
- Singleton, Spyers (N.C.), 336, 339, 340–43,
 345, 349–50. *See also* Bayard
v. Singleton
- Small Causes Act (1775) (N.J.), 152,
 156–58, 160
- Smith, Joseph (Appeals to the Privy
 Council), 42–43, 54
- Smith, Joseph (N.Y.), New York Constitution
 of 1777 and, 34, 122–23
- Smith, Melancton (N.Y.), 240, 242–43
- Smith, William (N.Y.), 109
- Snowiss, Sylvia, 85–86, 191–92
- South Carolina
 election to the upper house in early state
 constitutions, 37
 gubernatorial veto in early state
 constitutions, 37
 long conflict between legislature and
 judicial courts over judicial review in
 colony of, 55–62
 rejection of “horizontal” judicial review
 in colony of, 61–71
 as royal colony, 56–57, 59
 state constitution in
 amendment procedure for, 89
 drafting procedure for, 88
- Spaight, Richard Dobbs (N.C.), 191,
 347–48, 365, 368–69, 370–72, 390
- Iredell and, correspondence with, 378–82
 on judicial review, as opponent of, 383,
 390
 traditional constitutionalism and, 371–75
- Stamp Act (1765), 193–94
- state constitutions, early. *See also specific
 states*
 amendment processes for, 89–94
 in Connecticut, ambiguous status of,
 303–7
 conservative reaction to, 11–12, 94–95, 122
 in corporate colonies, 38
 Council of Censors in Pennsylvania and
 Vermont and, 94–96, 289
 Council of Revision (*see* Council of
 Revision; New York Constitution)
 in Delaware, 89, 90–91
 drafting processes for, 87–88
 in New Hampshire, 88
 in New York, 87–88
 in South Carolina, 88
 special conventions for, 202–3, 268–69
 in Virginia, 88

- English Bill of Rights of 1689 and, 78, 90–91
 gubernatorial vetoes in, 75–78
 judicial review and, 72–73
 judges' tenure and, security of, 78–81
 in Maryland, 89
 in New Jersey, 89–91, 92, 93
 in New York, 95–96 (*see also* Council of Revision; New York Constitution)
 drafting processes for, 87–88
 in North Carolina, 90–91
 in Pennsylvania, 91–92
 property ownership and voting
 qualifications under, 104–21 (*see also* property-owning requirements)
 Rhode Island (*see* Rhode Island; *Trevett v. Weeden*)
 role “of the people” under, 104–5
 second-generation, 394–95
 separation of powers in (*see* separation of powers)
 as social compacts, 200
 in South Carolina, 88–89 (*see also* South Carolina)
 suffrage under (*see* property owning requirements)
 as superior to ordinary laws, 19
 written constitutions, 15–16
- Steilen, Matt, 53, 65, 149
 Stiness, Edward, 310
 suffrage. *See also* property-owning requirements; voting
 Adams on, 108, 120
 Iredell on, 108
 movement to enfranchise taxpayers, 111, 116
 under New York Constitution (1777), 114–16
 struggle over, at early conventions, 116–21
- Sullivan, James (Mass.), 108, 120
 Sullivan, John (N.H.), 264–65
 Supremacy Clause, U.S. Constitution, 28, 232, 258–59, 417–21
 Supreme Courts. *See specific states*
 Swift, Zephaniah (Ct.), 102–3, 196, 278–81, 285
 on Connecticut constitution, 306–7
Symsbury Case (Ct.), 149–50
- Tarleton, Banastre, 175
 taxpayers, suffrage for, 111, 116
- Ten Pound Act, New Hampshire, 261–66, 290–91
 constitutionality of, 265, 271, 272, 275, 276, 283, 293–94
 Inferior Court of Common Pleas and, 261–65, 283–85, 291–93
Macgregore v. Furber and, 264–65
 repeal of, 296–98
Treferrin v. Cate and, 265–66
 trial by jury and, 262
Wallace v. Tarlton and, 263
- Ten Pound Act* cases, 149–50, 215, 292
 Tocqueville, Alexis de, 426
 Treason Act, in Virginia, 177, 180–81, 209.
 See also Case of the Prisoners
 constitutionality of, 212–14
- Treaty of Peace, 230–33, 234, 255–56. *See also* Provisional Treaty of Peace
- Treferrin v. Cate* (N.H.), 265–66
- Trespass Act, New York (1783), 218–19.
 See also Rutgers v. Waddington
 Duane and, 218, 238–39
 Hamilton and, 216, 220, 227–28, 231–32, 234, 256
 Law of Nations and, 234–36
 repeal of, 255–59
 Rutgers v. Waddington, Duane opinion and, 235–36
- Trevett*, John (R.I.), 302–3
Trevett v. Weeden (R.I.), 149–50, 215, 302–3, 313, 320, 389. *See also* Rhode Island
 decision in, 318–19, 320–23, 328–29
 press response to, 318–19, 390–91
 Superior Court, arguments of Varnum in, 311–19
- trial by jury. *See Bayard v. Singleton; Holmes v. Walton; Ten Pound Act cases; Trevett v. Weeden*
- Triennial Act (1694), England, 83–84
- Tucker, St. George (Va.), 17–18, 20–21, 181–83, 190–91, 316. *See also Case of the Prisoners*
 on judicial review, 195–208, 396
 interpretive authority of judges, 197–98
 on Virginia Constitution, 201–2
- United States (U.S.). *See* American Revolutionary War; Constitution, U.S.; Constitutional Convention of 1787; Federal Convention of 1787; Supremacy Clause

- Varick, Richard (N.Y.), 219–20
 Varnum, James (R.I.), 19, 302–3, 307,
 390–91. *See also* *Trevett v. Weeden*
 as judges' legal advocate before the
 legislature, 322
 on judicial authority, 314–16
 on judicial review, 366, 396–97
 press response to, 318–19
 on Rhode Island Charter, 311–12
 on Rhode Island Constitution, 312–13,
 320
 Superior Court arguments, 311–19
 Vermont, Council of Censors in, 289
 “vertical” judicial review. *See also* *Rutgers*
v. Waddington; Supremacy Clause
 definition of, 1
 development of, 6, 7–8, 422
 Hamilton on, 232–33, 422
 veto power. *See also* governors
 under Constitution of Massachusetts
 (1780), 132–33
 of governors
 in American colonies, 34
 colonial disapproval of, 36
 in early state constitutions, 37, 75–78
 of national legislature, at Federal
 Convention, rejection of, 413–26
 under New York Constitution
 Council of Revision and, 124, 136–37
 Virginia
Case of the Prisoners (Commonwealth
v. Caton), 17–18, 24, 135, 149–50,
 176–84, 193
 execution dates for, 176–77, 178, 179
 published law report on, 181–82
 Revolutionary War and, 175–77
 English Loyalists in, 175–76
 judicial review in
 judges' authority and, 205–6
 Pendleton on, 208–14
 Randolph opposition to, 186–89
 traditionalist arguments against,
 189–93, 207–8
 Tucker rationale for, 195–208
 Stamp Act in, Pendleton and, 193–94
 Treason Act, 177–78, 180–81, 209
 constitutionality of, 212–14
 Virginia Constitution (1776), 78, 162
 adoption of, 177–78
 alterability of, by legislature, 199–200
 convention for, 202
 drafting procedures for, 88
 Jefferson and, 199–200, 306
 nullity of statutes under, Tucker
 argument, 204–5
 Pendleton and, 209–10
 separation of powers clause, 195–96,
 197, 211
 Tucker and, 201–2, 203–4
 Virginia Court of Appeals, 180–81, 182–83,
 212, 397–98
 Virginia Plan, 27, 401–2, 413–15, 417
 voting. *See also* property-owning
 requirements; state constitutions;
 suffrage
 Adams on, 108, 120
 Iredell on, 108
 property ownership and, 106, 111–13,
 117–18
 under Constitution of 1780
 (Massachusetts), 117
 Waddington, Benjamin, 217–19
 Waddington, Joshua, 217–19
 Wallace, Caleb (Ky.), 400
Wallace v. Tarlton (N.H.), 263. *See also*
 New Hampshire; *Ten Pound Act*
 cases
 Walton, Elisha (N.J.), 154–56
 Wedderburn, Alexander, 41, 50
 Weeden, John (R.I.), 302–3
 Whitaker, Benjamin (S.C.), 53, 61–63
 Wilks, Francis (Ct.), 49
 Willcocks, William (N.J., N.Y.), 155–61,
 390
Williams, Administrator de bonis non
v. Executors of Watson (S.C.),
 63–64
 Williamson, Hugh (N.C.), 345
 Wilson, James (Pa.), 80, 391–92
 Federal Convention and, 133–34, 402–3,
 404, 406
Winthrop v. Lechmere (Ct.), 47–48, 49, 53
 Wood, Gordon, 75, 81, 203, 224–25,
 267–68
 Wright, Robert (S.C.), 59–61