

THE PROVINCIAL CONGRESS OF NORTH CAROLINA

1774-1776

APPROVED:

Joseph M. Ayer
Major Professor

Russell C. Adkins
Minor Professor

Jack B. Stagg
Director of the Department of History

Robert B. Toulson
Dean of the Graduate School

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Jerry L. McCarty, B. S.

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PREFACE

During the period immediately prior to the American Revolution, the citizens of North Carolina witnessed the gradual weakening and final collapse of their royal government and all semblance of civil authority in their province. The causes of the demise of royal control in North Carolina were peculiar to that colony and the actions taken by its people were unprecedented. Seeking a method to reinstate civil authority, the leaders of North Carolina took a bold and dangerous step by summoning a representative colonial congress, independent of royal control or approval. It was the first such assembly to take place in the American colonies.

The Provincial Congress assumed the leadership of North Carolina at a time when, almost simultaneously, the seeds of the American Revolution were beginning to take root throughout the neighboring provinces. The task faced by that body was, therefore, not only one of reinstating their own civil government, but also of providing for the protection of North Carolina and working, in union, for the defense of the entire continent.

The Provincial Congress of North Carolina was in session for a total of only seventeen weeks over a period of less than two years, scarcely a period commensurate with the

significance of its accomplishments. Through the dedicated efforts of the men who composed the Provincial Congress and the provisional government which it instituted, North Carolina was led from a position of civil impotence and disorder to one of strength and stability. The success which rewarded the actions of the Provincial Congress was seen not only in the successful defense of their home colony, but also in the establishment of an effective system of local representative government based on the principle of popular sovereignty, and ultimately in the drafting, adoption and implementation of a Declaration of Rights and Constitution. Thus, a colony was transformed into a state.

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CHAPTER I

PROLOGUE TO REVOLUTION

The decline and fall of the royal government in North Carolina was neither an event born in violent popular revolution, nor was it the sole and direct result of the British mercantile practices as applied to the Colony. While, without doubt, these factors had their effect, when viewed in their entire context, they must, nevertheless, be considered secondary in the search for cause. Although there had been open mutterings of discontent and protest with regard to Britain's mercantile policies, North Carolina, unlike many of the more prominent commercial colonies, had suffered little from these laws. It remained, therefore, for causes involving local interests to bring this colony's royal government to its knees.

The importance of the role played by the government in its own demise cannot be overlooked. Comprised of separate executive and legislative branches, the actual functioning of the government was much less distinct in practice than in theory. The twelve members of the Upper House, or Council, were recommended by the Governor and appointed by the King. One of the greatest defects in the system, this procedure placed the Council in a position of complete dependence

on the executive. Although intended as a check on the other departments, the Council was in practice a mere tool of the Governor and it soon lost the confidence of the people. With the Council's advice, the Governor convened, prorogued and dissolved the Assembly. The Governor alone exercised the power of veto, but an act of the popular House, fortunate enough to receive the approval of the subservient Council and escape the veto of the Governor, was still subject to rejection by the Crown. Thus, within this intricate framework, the voice of the people was effectually stifled.¹

If it were possible to credit one individual with the demise of royal authority in North Carolina, that man would be Josiah Martin, who, in August, 1771, became the Province's last royal governor. As historian William Saunders observed, Martin was a man "totally ill calculated to conduct an administration successfully, even in ordinary times, and the times were by no means ordinary." His life as a soldier had "dwarfed his mind" and instilled in him an exaggerated concept of duty to his superior officers, a trait he now transferred to the King, whom he regarded "literally as a master." Though doubtless a sincere man, he knew nothing of "duplicity or diplomacy."² Having little faith in the

¹Joseph Seawell Jones, A Defense of the Revolutionary History of the State of North Carolina, From the Aspersions of Mr. Jefferson (Raleigh, 1834), pp. 66-67. (Hereafter cited as A Defense of North Carolina Revolutionary History.)

²William Saunders, editor, The Colonial Records of North Carolina, 10 vols. (Raleigh, 1866-1890), IX, Prefatory notes, p. iv. (Hereafter cited as Colonial Records.)

sincerity of Americans and totally unable to rationalize their demands for constitutional rights, Martin was continually frustrated by his inability to reconcile his varying positions. It is doubtful that any man could have been more ill suited to the time, place, and temper of the people, and it is not surprising that the Governor's personality became one of the chief factors which drove North Carolina "headlong into revolution."³

During the Martin administration three local issues arose to produce disturbance and political discontent. The issues, often considered the seeds of revolution, were a financial crisis, a disputed boundary line, and a critically deficient judicial system. Amid the efforts to resolve these problems, the foundation of royal authority in North Carolina began to crumble and within less than four years the Governor became a fugitive from his own capital.

When Governor Martin called his first meeting of the North Carolina Assembly in November, 1771, there was no question of unjust Parliamentary taxation or navigation laws to plague the meeting, but rather the purely local problem of colonial money matters. The financial condition of the Province was deplorable. Of American "hard money" there was none; coins of England, Spain and France circulated in varying quantities. What metallic money existed soon left the colony

³Robert Diggs Wimberly Connor, Cornelius Harnett, An Essay in North Carolina History (Raleigh, 1909), pp. 68-69.

due to an excessively unfavorable balance of trade.⁴ Paper money was also found only in limited amounts, consisting of various kinds of provincial notes. To help compensate for this shortage, certain commodities had been made legal tender at rates specified by law. With the increases in population, however, this practice was soon found to be cumbersome and inadequate.⁵

The natural remedy for such a state of affairs would seem to have been the issuance of currency under proper governmental limitations. Such action was prevented, however, by a 1764 act of Parliament, passed in the interest of British merchants, forbidding an American colony to issue any further bills of credit as legal tender. None of the attempts at remedial legislation ever became law, despite the many appeals for relief and former Governor William Tryon's continual promise to exert his influence at Court in their behalf.⁶ To this lack of a suitable currency, many of North Carolina's troubles were directly traceable.

Unlike his predecessor, Governor Martin was without diplomatic tact and he had no great influence in England. It was, therefore, his unfortunate fate to fall heir to the money problem.⁷

⁴Saunders, Colonial Records, IX, Prefatory notes, p. xiii.

⁵Ibid.

⁶Ibid., p. xiv.

⁷Ibid.

While Parliament continued to prohibit the issuance of provincial bills of credit, the use of commodities as a currency had been strained to the utmost limit. The only remaining alternative was the creation of a new debt. To this end the Assembly proposed the issuance of "promises to pay," called debenture notes, receivable for everything except debts due to British merchants.⁸ Permission was granted by Parliament with the condition that the newly issued bills should not be recognized as legal tender. Lord Hillsborough wrote to Governor Martin that "a paper currency based on a just foundation of credit, without making it a legal tender" was acceptable, indicating that the colony could do as it pleased with the currency so long as the British merchants were not required to accept it.⁹

Accordingly, debenture notes, to the extent of £60,000 were issued, along with the assurance that they would be redeemed by the Assembly. This was to be accomplished by a special tax of two shillings upon each taxable item in the Province, to be collected over a maximum ten-year period.¹⁰

The notes had no difficulty getting into circulation in a situation where even counterfeit bills had been openly passed without much question. The North Carolinians, eager

⁸Ibid.

⁹Ibid.

¹⁰Ibid., pp. 123-124.

for relief, accepted the debenture notes, but only after it became obvious that they would be unable to secure a legal currency.¹¹

The colony had, over the years, become heavily indebted, due in large part to the considerable cost of the French and Indian War and the expenses of the late campaign against the Regulators. With the advent of Josiah Martin, the debt amounted to nearly £115,000. Of this amount, part was in the form of legal tender obligations, for the payment of which special taxes had been levied; a part was in the form of interest bearing treasury notes, not legal tender; and part was in the form of non-interest bearing debenture notes.¹²

On December 6, 1771, the clerk of the Committee of Accounts presented an account of the public funds to the Assembly. He stated that due to the special tax of one shilling levied on each poll, and an impost duty of four pence on imported liquors, levied for the same purpose, more than enough had been collected to pay the appropriation amounting to £61,350.¹³ Thereupon, the Assembly concluded that the special taxes had accomplished their objective and ought no longer to be collected. A bill to that effect was immediately introduced. Governor Martin, declaring the plan to be

¹¹Robert DeMond, The Loyalists In North Carolina During The Revolution (Durham, 1940), p. 23.

¹²Saunders, Colonial Records, IX, Prefatory notes, p. xiv.

¹³Ibid., pp. 124, 166.

"teeming with fraud" and inconsistent with the public faith, rejected the bill.¹⁴ Confidently anticipating the Governor's action, the Assembly prepared resolutions discontinuing the tax and indemnifying the sheriffs for non-collection. It was the Assembly's intent to enter the resolutions in their official journal at such time as the Governor should reject their proposal. Martin, however, upon somehow learning of the plan, shrewdly prorogued the Assembly at the same time he rejected the bill, thereby preventing the resolutions from being recorded.¹⁵

Upon learning of the Governor's action, the Speaker of the Assembly, Richard Caswell, in an attempt to outwit Martin, communicated the resolutions to the treasurer as an order from the Assembly, and as a result, the taxes were omitted from the tax lists sent to the counties for collection.¹⁶

An enraged Governor Martin, viewing the Assembly's action as a "monstrous usurption of authority" and as proving irrevocably the propensity of the colonists for democracy, immediately called together the Council to seek advice on how to prevent "the ill consequences that might attend a Procedure so contrary to the public faith."¹⁷ The Council, inclined

¹⁴Ibid., p. 232.

¹⁵Ibid., p. 233.

¹⁶Ibid.

¹⁷Ibid., pp. 229-230.

as they were toward unquestioning support of the Governor, thought it expedient for Martin to issue a proclamation stating that until such time as the act establishing the taxes be formally repealed, the sheriffs were ordered to collect the taxes under penalty of being sued on their bonds.¹⁸

In transmitting a record of the various actions of the Assembly to Parliament, Governor Martin claimed the clerk's report was false and "wickedly contrived" to create in the people a suspicion that they were "unduly loaded with taxes." He further stated that the taxes had not been utilized solely for the purpose of retiring the debenture notes, but for various other purposes as well, and that many of the notes redeemable by the taxes were actually still in circulation.¹⁹ In this contention, the Governor was probably correct. North Carolina historian Enoch Sikes claimed that the disbursement of the collected funds had not been made strictly for the purpose of redemption.²⁰

On June 6, 1772, Lord Hillsborough wrote from Whitehall his wholehearted approval of Martin's action relating to the incidents of the last Assembly:

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Enoch Walter Sikes, The Transition of North Carolina From Colony to Commonwealth, Vol. XVI of Johns Hopkins University Studies in Historical and Political Science (Baltimore, 1898), 12.

It certainly has become highly necessary to lose no time in putting an end to the existence of an Assembly which seems to have so little regard for the true interests of their constituents and to have acted upon principles so inconsistent with the public faith and justice.²¹

While expressing the hope that the action of Speaker Caswell in delivering the Assembly's resolutions to the treasurer was a result of "fears of the resentment of the Assembly," rather than that of a willing participant, Hillsborough, nevertheless, ordered that should Caswell again be elected Speaker, the Governor should refuse his consent.²²

The question of the tax did not come before the Assembly again until December, 1773, at which time resolutions were again passed declaring that the special tax "had long since had its effect."²³ With vivid recollections of their past efforts in abrogating the tax, the Assembly went a step further. On March 24, terming the tax a "great grievance to the inhabitants of this Province," they issued an order to the sheriffs not to receive from any of the citizens the poll tax for the year 1774, or for any subsequent year. It was further asserted that failure on the part of any collector to comply with the Assembly's order would be deemed a "great contempt" of the House and would "merit its highest censure."²⁴

²¹Saunders, Colonial Records, IX, 301.

²²Ibid.

²³Ibid., p. 943.

²⁴Ibid., p. 944.

When the Governor learned of the Assembly's action, he denounced it as an unconstitutional attempt to abrogate a solemn statute without the consent of the Governor, and again dissolved the legislature by formal proclamation, thereby preventing any further action.

It must be reasoned that from a purely legal standpoint, the Governor was correct. Financial distress had, however, forced upon the Assembly a situation in which the distinction between legality and illegality was becoming increasingly insignificant. It must also be recognized that when the Assembly advised public officers to break, or ignore, a public law they were setting a "pernicious example." By their action they were undermining the foundations of civil government and establishing an excuse for "every little rogue" to ignore any law that did not accord with his interests.²⁵

Although the legislature had failed in its first major confrontation with the royal authority, its strength had been demonstrated, not only to the executive but, more significantly, to the Assembly itself. Thus the matter stood until the end of royal rule came, and "the end was not now more than a Sabbath Day's Journey Distant."²⁶

Coinciding with the dispute over the financial crisis, a second problem, centered around the boundary between the

²⁵ Francois-Xavier Martin, A History of North Carolina From the Earliest Period, 2 vols. (New Orleans, 1829), II, 165.

²⁶ Saunders, Colonial Records, IX, Prefatory notes, p. xix.

two Carolinas, arose to hasten the demise of royal authority. The problem was not a new one. As early as 1736 the King had ordered the establishment of a line to divide the two provinces. At his direction, commissioners, jointly appointed by the legislatures of both provinces, had begun the line at the northeast end of Long Bay, with orders to continue it in a northwestwardly direction to the thirty-fifth degree north latitude, and then westward to the "South Seas." After completing only sixty-four miles, however, the colonial authorities agreed that the eastern and northeastern frontiers of the Catawbas and Cherokee Indian lands should be considered the boundary until further extension could be effected. By 1763, however, the line had only been continued westward as far as the Salisbury and Charleston road.²⁷

In 1768, South Carolina Governor Charles Grenville Montague had conferred with former Governor William Tryon of North Carolina concerning the prospects for drafting a permanent boundary line. Tryon was greatly opposed to the suggestion and condemned it as being "ruinous to the province." Despite his objections to the home government, Tryon was overruled and Montague, being currently in favor at the Court, received approval of the line he had suggested. Such was

²⁷Martin, A History of North Carolina, II, 26; Sikes, The Transition of North Carolina From Colony to Commonwealth, p. 14.

the standing of the dispute when Governor Martin assumed office in August, 1771.²⁸

Within four months of his arrival in North Carolina, Martin received his first instructions from the King regarding the boundary. The instructions, while approving the completed portion of the boundary, called for its extension not in a due west course, but rather from a point some distance further to the north.²⁹

With characteristic loyalty, Governor Martin presented the King's message to the Assembly, although his personal feelings, as expressed in an earlier communique to the Earl of Hillsborough, were in opposition to the plan. Martin, relating a local feeling which was causing great alarm, stated that under the King's plan the province would be "dis-membered of a large tract of well-peopled, flourishing Country," which had long been recognized as belonging to North Carolina. Beyond this, however, Martin saw himself as the greatest sufferer under the plan which would greatly diminish the payments arising to him from the granting of royal lands. He complained to Lord Hillsborough that the portion of land being taken was almost the "whole field of his profit" as it was the part most in demand by new settlers.³⁰ Regardless

²⁸Sikes, The Transition of North Carolina From Colony to Commonwealth, pp. 14-15; Saunders, Colonial Records, IX, 211.

²⁹Saunders, Colonial Records, IX, 191.

³⁰Ibid., p. 49.

of any personal opposition, however, Martin accepted His Majesty's decision as just and promptly requested that the Assembly allocate funds to carry out the orders.

Reaction from the gentlemen of the Assembly was not long in coming. Within four days after receiving the Governor's request, the legislature informed Martin that it would not approve the appropriation, for such consent could only bring the "highest unjust" to North Carolina. They argued that it would deprive the colony of "many useful inhabitants, counteract a number of established laws," take from them a large tract of valuable land, and disrupt communications and commerce between the colony and the western Indians. They further maintained that to approve the cost of such a line would be to defraud the colony, and this they refused to do. Viewing the proposed action as a great injustice resulting in numberless injuries to North Carolina, they determined to communicate their grievances directly to the King in hopes that the previously run line might become the permanent boundary. Accordingly, a committee composed of Robert Howe, Cornelius Harnett, and Maurice Moore was appointed to prepare the address.³¹

Again demonstrating a characteristic lack of political tact or moderation, Governor Martin chose to ignore the Assembly and proceeded to appoint commissioners with orders

³¹Ibid., pp. 211-212.

to run the line according to the new instructions. In compliance with these orders, the line was drawn during the summer of 1772.³²

The Assembly did not meet again until March, 1773, at which time Governor Martin officially informed the legislature of his action and requested that the commissioners be paid for their work. At the same time he informed the Assembly that the reasons for their failure to carry out the royal instructions during the previous session had been "ill-received" by the King. In this connection, Martin relayed to the Assembly the King's assurance that the royal determination had been made "upon the maturest consideration," with the strictest regard to the general interests of both provinces, and "with no predilection" to the interests of South Carolina or Lord Charles Montague, as was previously suggested.³³

The Assembly, nevertheless, clung steadfastly to its position and immediately issued its reply to the Governor. They maintained that in addition to the loss of more than a million acres of land and a number of useful citizens and taxpayers, North Carolina gained nothing from this action. As South Carolina was to be the only benefactor, it then became incumbent on South Carolina to stand the expense. Hence, for the second time, the Assembly declared its refusal either

³²Ibid., p. 562.

³³Ibid.

to approve the new line or to pay the expenses of the commissioners, adding that since the colony already labored under an enormous debt incurred in subduing a dangerous insurrection against the "peace, safety, honor, and dignity" of the royal government, they felt they should be deemed excusable for not adding to that burden when no visible benefit was forthcoming.³⁴ Although completely rejecting the present line, the Assembly, still sustaining the belief that their appeal to the King would result in a more equitable settlement of the dispute, passed a resolution declaring its willingness to absorb the entire expense of a new and more just line.³⁵

Josiah Martin appears never seriously to have doubted the justness of either the King's instructions or that of his own actions in opposition to the Assembly. In writing to Lord Hillsborough, in July, 1772, he stated that the House's action was totally unjustified. He further classified as "without foundation" the Assembly's claim that a large number of useful inhabitants would be removed from North Carolina under the present plan. Rather, he described the people of the southern border countries as a "licentious and lawless Banditti, equally useless and troublesome to both the Provinces,"³⁶

³⁴Ibid.

³⁵Ibid., p. 578.

³⁶Ibid., p. 312.

As the colony was awaiting the King's answer to its petition, the dispute never again arose in the royal Assembly. Even though the 1776 Bill of Rights attempted to clarify the issue and make a final determination of the boundary, the line remains, even today, much as Governor Montague's royal commission prescribed it.³⁷ The dispute, although remaining unsettled prior to the revolution, succeeded in again demonstrating the independent and democratic tendencies of the Assembly and resulted in further undermining the power of the royal government. In the succeeding months, an even greater and more serious struggle demonstrated an increased vigor on the part of the Assembly, traceable in large measure to lessons learned in the past.

Of all the problems which confronted the last royal governor, the most difficult was the controversy over the colonial judiciary. The situation resulted not only in a heated confrontation between the Governor and the Assembly, but also in an open rupture between the Governor and his traditionally faithful Council. In the end, Governor Martin was forced to succumb to the opposition.

The problem resulting from the court system was, as in the case of the boundary, not a new one. The instability of the court laws had made it the most discussed political topic of every royal administration. All previous court laws had

³⁷Sikes, Transition of North Carolina From Colony to Commonwealth, p. 17.

been passed on a temporary basis, usually for no longer than two years. As a result the need for frequent legislation succeeded in keeping the subject not only before the law makers but before their constituents as well.³⁸ The primary points of contention had, in the past, always been the method by which judges would be paid and the question of jurisdiction of the associate judges.³⁹ When it became time for renewal of the law in 1773, however, an altogether different point arose to stir the seeds of dissension--the question of foreign attachment.

The right of creditors to attach the property of debtors who absconded had existed in North Carolina from its beginning. With the growth of the colony, however, there was an ever increasing British practice of carrying on colonial business through resident agents, rather than in person. Likewise, men in England came to own large tracts of colonial land. Neither of these groups could be sued by North Carolina creditors in a colonial court. Such action could only be brought in a British court.⁴⁰ In an attempt to overcome this injustice, a new court law was passed in 1768, under Governor Tryon. While most of the previous judicial features were retained, an important addition was made enabling

³⁸Ibid., p. 20.

³⁹Jones, A Defense of North Carolina Revolutionary History, p. 83.

⁴⁰Saunders, Colonial Records, IX, Prefatory notes, p. xx.

creditors to utilize the right of attachment against non-resident debtors.⁴¹ Although the law was opposed by the British authorities, it was, nevertheless, allowed to stand, under the assumption that when the court law was renewed the attachment clause would be omitted.⁴²

When the new Assembly convened in New Bern in January, 1773, Governor Martin's opening address showed no signs of the political distress which was ahead. He made no mention of the controversial attachment clause, but merely advised the Assembly of the fact that the present court laws establishing Superior and Inferior Courts were due to expire at the end of the present session of the Assembly, and he urged that attention be given to the matter.⁴³

Responding to the Governor's request, the Lower House immediately appointed a select committee to carry out the task of formulating a new court law. The committee was instructed to provide for the establishment of superior and inferior courts, to grant to the inferior, rather than the superior courts, the power to issue letters of administration and testamentary, and to extend the jurisdiction of single magistrates to cases of the value of five pounds.⁴⁴ When the

⁴¹Ibid., p. 373.

⁴²DeMond, The Loyalists in North Carolina, p. 27.

⁴³Saunders, Colonial Records, IX, 378.

⁴⁴Sikes, Transition of North Carolina From Colony to Commonwealth, p. 22; Martin, A History of North Carolina, II, 294.

committee report was made to the Assembly, it included a clause providing for foreign attachments. Learning of the committee's action, Governor Martin informed the Assembly that under his instructions from the Crown he would be unable to accept the bill in its present form. The King, fearing that such laws might affect the public credit and disrupt commerce between England and the colonies, had ordered the Governor not to allow the passage of such a law "on any pretense whatsoever," unless a suspending clause be added and execution deferred until a royal judgment was made.⁴⁵

The Lower House remained impervious to all suggestions to the contrary and refused to give up the attachment clause. Their communications contained lengthy arguments in justification of their position. They maintained that to abandon their stand would be to relinquish all the benefits consistent with the commercial policy of the colony since attachment was their only security against nonresident creditors. Perhaps their strongest argument was that North Carolina was receiving unjust and unequal treatment, as the same privilege was enjoyed not only throughout England, but by most, if not all, of the other American colonies.⁴⁶ A resolution passed by the House declared that as the laws and statutes of Great

⁴⁵Saunders, Colonial Records, IX, 235-236.

⁴⁶Sikes, Transition of North Carolina From Colony to Commonwealth, p. 24; Saunders, Colonial Records, IX, 558-559.

Britain made no specific provisions for the use of attachments, the privilege must be deemed a purely "municipal custom" governed by particular circumstances of "place and people," and "so essentially local in application as not to permit being extended by any analogy to the province."⁴⁷

The Upper House, or Council, took its usual position in support of the Governor and the Crown. They argued that in light of the King's explicit instructions, the attachment clause must be omitted or there could be no court bill passed. Regardless of the merit or logic of their claims, their arguments fell upon deaf ears.⁴⁸

The House, in rejecting the Council's amendment deleting the clause, conceded that if a court bill were not passed many disadvantages would certainly result. Regardless of any future consequences, however, they reaffirmed their unwillingness to give up the benefits that had accrued to them from this right and stated their determination to "suffer" before submission.⁴⁹

With a permanent deadlock between the Assembly and the Crown appearing imminent, the Council reluctantly agreed to the passage of the Assembly bill. In like manner, Governor Martin, staying within the bounds of his instructions, signed

⁴⁷ Saunders, Colonial Records, IX, 436.

⁴⁸ Ibid., p. 558.

⁴⁹ Ibid., pp. 558-560, passim.

the bill, but added a suspending clause until a royal decision could be obtained.⁵⁰ The steadfast determination of the Assembly had won them the first battle, but the war was far from over.

Fully realizing the possible consequences without a workable court law and anticipating a considerable delay in receiving the Crown's answer, the Assembly determined to take more immediate measures. Consequently, two other bills were introduced providing for the extension of the former court law for six months or until the next session of the Assembly.⁵¹ The Council gave its approval to the bill for the continuation of the inferior courts, but due to the attachment clause, refused to pass the superior court bill. The Governor, as anticipated, refused his assent to either,⁵² thus destroying any hope of sustaining the administration of law in North Carolina. The following day, March 6, 1773, the House defended their position with a unanimous resolution in justification of their stand, adding that the right of attachment had long been exercised not only by North Carolina, but by other American colonies and the trading cities of England. Determining to bring the dispute fully before the people, they ordered that this resolve and all communications on the

⁵⁰Ibid., p. 656.

⁵¹Ibid., pp. 525-526.

⁵²Ibid., p. 534.

subject which had passed between them and the Council be immediately published in the gazettes of North Carolina, Virginia, and South Carolina.⁵³

Later the same day, Governor Martin, disturbed by the Assembly's action and hoping for some kind of compromise, prorogued the body for a two-day period.⁵⁴ On Tuesday, March 9, the scheduled day of the next session, however, the members of the Assembly failed to appear. Martin, after conferring with the Council, sent a message to Speaker John Harvey stating that as only fifteen members were necessary to constitute a quorum, he felt it their duty to appear and proceed with their business.⁵⁵ Speaker Harvey was quick to reply that it was the general opinion of the members who were still in town that it would be "inconsistent with the duty owed to their constituents to proceed to business without a majority of the representatives of the people."⁵⁶ The Governor, after again consulting with the Council, sent a second message to Harvey requesting to know "whether you have or have not the expectation or assurance that more members of the House Assembly than are now in town will appear this day to carry on the public business of this Country."⁵⁷ As

⁵³Ibid., p. 581.

⁵⁴Ibid., p. 587.

⁵⁵Ibid., p. 595.

⁵⁶Ibid.

⁵⁷Ibid.

requested, Harvey replied that he had "not the least expectation of the arrival of any more members, and that most of those who are now in town are preparing to return home."⁵⁸ A disappointed and angry Governor returned to the Council and denounced the Assembly for deserting "the business and Interests of their Constituencies," and flagrantly insulting "the dignity and Authority of Government after the Governor had, by all proper means, invited them to their duty."⁵⁹ At that point, there seemed to be no alternative left to Martin. He, therefore, with the advice of the Council, issued a proclamation dissolving the Assembly.⁶⁰

What had before been only a relatively minor division between the Governor and the Assembly had now become a "complete and open rupture." By the refusal of the Assembly to make laws, and the dissolution of that body by the Governor, the colony was left in an unenviable position. There remained no representative body responsible to the people, but only a Governor and his Council whose true allegiance lay elsewhere.⁶¹

Josiah Quincy, Jr., of Massachusetts, traveling in the Province during this period, described the situation as "curious," as there were only five provincial laws in force

⁵⁸Ibid.

⁵⁹Ibid., p. 596.

⁶⁰Ibid.

⁶¹Sikes, Transition of North Carolina From Colony to Commonwealth, p. 27.

throughout the Colony and "no courts at all in being." All action for debts had to be brought before a single magistrate, whose jurisdiction was very limited, with the result that "offenders escaped with impunity." Quincy recorded that the people were in "great consternation" about the matter; what the consequences would be was "problematical."⁶²

Finding himself representing the sole authority of government, Martin determined to take action to procure the public peace. According to the King's instructions, Martin had the authority to issue commissions of Oyer and Terminer for the purpose of bringing to trial the criminals in the various provincial jails. This he proceeded to do in early April, 1773.⁶³

During the summer and autumn months the newly established courts were very active in their appointed duties. To a large extent they proved quite effective and were generally well received by the population. This was due in large part to the fact that Governor Martin had appointed, as associate justices, three prominent leaders of the Whig movement--Maurice Moore, Richard Caswell, and Martin Howard.⁶⁴ The acceptance of the courts was, however, not universal. Several points were raised by some of the colony's "restless

⁶²Saunders, Colonial Records, IX, 613.

⁶³Ibid., p. 631.

⁶⁴Ibid., pp. 686, 687, 691.

politicians" as to the legality of the Governor's action. It was claimed that that part of the royal prerogative was "incommunicable" and could only be exercised by the King, himself, under certain restrictions. Others asserted that such courts could only be established under the sanction of an act of the legislature of the province. Martin, however, maintained his self-confidence as he was assured by his law councils that they saw "not a shadow of doubt of the legality" of his action.⁶⁵

The next session of the Assembly had been scheduled to convene in early March, but events convinced the Governor that such a meeting would be both inappropriate and unrewarding. Since the King's decision on the previously passed court law had not yet been received there appeared little chance that any real progress could be accomplished. To this was added the fact that in the interim elections, the people had voiced their approval of the House's actions by returning most of the same representatives to the next session. That the provincial inhabitants were of the same general mind as the Assembly was evidenced in part by the instructions delivered by Orange County to its legislative delegates. In the event the Courts of Oyer and Terminer should again become the subject of debate, the delegates were directed never to admit that such courts could be erected by any power except

⁶⁵Ibid., pp. 686-687, passim.

with their consent through the legally constituted Assembly.⁶⁶ Realizing that his opposition had, therefore, grown in strength, the Governor again postponed the Assembly until December.⁶⁷

When the legislature convened on December 4, 1773, they were informed by the Governor that the Crown had seen fit to disallow the court bill passed during the previous session. Martin added, with respect to the attachment clause, that the King, having the "most tender and partial solicitude for the welfare and happiness of all his people," was pleased to permit such a law in cases where the cause of action arose within the colony, and in which ordinary processes could not be served upon him.⁶⁸ The Governor emphasized the expediency of passing a permanent court law, and urged the members to rise to their duty. He also called upon the body to defray the charges incident to the Courts of Oyer and Terminer which had operated so successfully since the close of the last Assembly.⁶⁹

The Council was unanimous in their vote of appreciation sent to the Governor. They praised not only his frank address to the Assembly, but his "wisdom and prudence" in acting to

⁶⁶Ibid., pp. 704-705.

⁶⁷Ibid., pp. 686, 697.

⁶⁸Ibid., p. 707.

⁶⁹Ibid., p. 708.

stem the tide of lawlessness by creating the Courts of Oyer and Terminer.⁷⁰ The reply from the House, on the other hand, more than balanced the scale. They expressed their concern over the unhappy state of affairs which presently existed due to the lack of courts and added their intention to proceed with the task of framing new laws which would be adapted to the situation and the best interests of their constituents. As to the concession made by the King concerning attachments, the House considered it totally "inadequate" and unacceptable. To the Governor, himself, they maintained that the power of issuing commissions of Oyer and Terminer could not legally be executed without the aid and consent of the Assembly. The House could not "with the justice due to their constituents," make provisions for defraying the expenses attending a measure of which they disapproved.⁷¹

When the new court bill was introduced the repetition of old arguments began in earnest. On December 18, the Council sent a message to the House urging them to abandon their position on attachments and concur with the other two legal branches of the government, lest the "wretchedness of the country" be doubled. They argued that without the court law the inhabitants would be forced to desert the province and force "an end to its name and political existence." They

⁷⁰Ibid., p. 711.

⁷¹Ibid., pp. 730-731, passim.

viewed the bill as one of "inestimable good," and thought that to reject it for the sake of the comparatively small advantage supposed to lie in a procedure by attachment would be cause for considerable grief.⁷²

As the House had not accepted the appeals for logic on the part of the Governor, neither did they succumb to the arguments for expediency from the Council. In a lengthy reply to the Council's plea, the House stated their regret for the unhappy consequences that followed the demise of civil and criminal jurisdiction in the colony, but maintained that the "grand object" of all their endeavors was the "interest and happiness" of all their constituents. Being the elected representatives of the people, they saw as their duty the guardianship of all their rights and privileges from all encroachment of a private or public nature, "to preserve them secure and inviolate at the present age, and to transmit them unimpaired to posterity."⁷³ On the subject of foreign attachments the Assembly claimed that it was a right exercised by most of their sister colonies with every latitude to promote their commercial interests and to protect the property of their inhabitants. They asserted that in a colony where trade was as vital as in their own, the right of attachment was an inseparable security and that any circumstance that placed them in a more uncomfortable footing than their neighbors

⁷²Ibid., pp. 721-722.

⁷³Ibid., p. 729.

was to increase the trade of others upon the ruin of North Carolina. The members of the House had not yet given up hope of receiving redress of their grievances from the King, for to accept such an idea would be to "impeach the justice of the British Government and to distrust the virtues of the King." This they were not yet prepared to do.⁷⁴

The following day, December 21, the Governor's secretary delivered a verbal message to the House requiring the "immediate attendance" of the members at the palace. Fearing the dissolution of their body, the House decided a committee should be immediately appointed to prepare an address to the King urging him to reconsider his decision, and permit Governor Martin to pass a law including the attachment clause, but so framed as to be, in no way, harmful to Great Britain.⁷⁵ They further decided to appoint an eight-man committee to confer with former Governor William Tryon, presently Governor of New York, and urge him to exercise his influence at Court in their behalf.⁷⁶ This act no doubt caused Governor Martin to suffer great mortification to be so slighted.

Arriving at the palace, the members of the House were informed by the Governor that in light of their refusal to adopt any plan for the administration of justice with which

⁷⁴Ibid., pp. 730-731, passim.

⁷⁵Ibid., p. 786.

⁷⁶Ibid., p. 787.

he was empowered to comply, and in view of the time and expense consumed in a fruitless meeting, he saw no reason to prolong the effort and, therefore, saw no alternative but to prorogue the Assembly until March 1, 1774. Feeling that the House's position was untenable, and expressing confidence that they would not be upheld by the people, Martin urged the members to use the time thus afforded them to return home and consult with their constituents. Insisting that the attachment clause was of little value, Governor Martin desired to know if the people were willing to "relinquish all the blessings, all the advantages and all the securities for their lives and property. . ." in contention for a law which would not benefit "one in one thousand."⁷⁷

The Governor wrote to the Earl of Dartmouth on December 24, that the "spirit of discontent," evidenced in earlier sessions of the Assembly, had been even more present in the last meeting. He stated that the temper of the House was such that he had feared the passage of further measures "even more offensive to government" if the meeting continued.⁷⁸

Thus, with the dissolution of the Assembly, after only seventeen days, the colony was left without even a Court of Oyer and Terminer. The rebellious attitude of the Assembly

⁷⁷ Ibid., pp. 787-788.

⁷⁸ Ibid., pp. 791-792.

had grown stronger while the authority and influence of the royal government had grown still weaker.⁷⁹

On March 2, 1774, the Assembly again gathered in Newbern to receive the opening address by Governor Martin. The message was devoted entirely to the subject of the administration of justice. No doubt the Governor's tone was, from his point of view, totally logical and even conciliatory. While stating the hope that the inhabitants of the province had seen fit to wish their representatives to accept modifications of their previous position on attachments, he expressed his confidence that the Assembly would, under any condition, consider the welfare of the province above all else. He urged the members to concede that a law of attachment made no part of the general plan for the distribution of justice, and was not so considered in any other colony. He admonished them that to adopt no system for the administration of justice was to abandon their country to "disorder, rapine and violence," but to act positively would be to rescue the country, restore its credit and commerce, and fulfill their duty of advancing the "interests and happiness" of their constituents.⁸⁰

For the first time since the confrontation had begun, the Council, in its reply to the Governor, showed some signs

⁷⁹Sikes, Transition of North Carolina From Colony to Commonwealth, p. 31.

⁸⁰Saunders, Colonial Records, IX, 831-834.

of weakening. Although they pledged their continued support of the Governor's position, they stated their willingness to include the attachment clause in the new court bill under the terms proposed by the Crown. Above all, they could see no reason for abandoning all they possessed to "rapine and disorder."⁸¹

The House, on the other hand, far from showing signs of weakness, displayed an increased vigor, bolstered as they were by the "warmest approbation" of the people, and their positive instructions to persist in their endeavors for their past efforts. While stating their own intentions to do all possible to lessen the calamities accompanying the cessation of the executive powers of government, they admonished the Governor that if he were truly mindful of the "welfare and happiness" of the colony, he might desire to use his influence to bring about a modification of the King's decision.⁸²

Two days later, on March 7, a select House committee introduced a new court bill, again containing the controversial attachment clause.⁸³ Over the period of the following week both the House and the Council sought to reach an agreement by which both sides might find the bill acceptable.⁸⁴ Finally, on March 17, the Council informed the House that they

⁸¹Ibid., p. 835.

⁸²Ibid., pp. 879-880.

⁸³Ibid., p. 881.

⁸⁴Ibid., pp. 901-904, passim.

had agreed to an amendment which, while slightly altering the wording, accepted the basic principle of the foreign attachment clause as a separate bill. In spite of warnings received from the Governor to the contrary, the Council requested that a House delegation be sent to witness the passage of the bill.⁸⁵ Prior to appearing before the Governor to seek his consent, a joint resolution was unanimously passed declaring that both houses of the Assembly had "pursued every useful measure within their power to relieve the colony from the distressed condition to which it had been reduced for lack of court laws," and that they had exercised their utmost endeavors to lessen the "future calamities of the colony."⁸⁶ Governor Martin, however, upheld his convictions and refused his consent despite the loss of the support of his faithful Council.⁸⁷

Returning again to their task, the House found that for the first time the Council began to vote with them, and together they were soon able to reach agreement on bills for establishing Inferior Courts of Oyer and Terminer and General Goal Delivery. The Governor was greatly displeased with the content of the bill, calling it "new-fangled" and "inadequate," but tiring of the long struggle and lacking any suitable

⁸⁵Ibid., p. 919.

⁸⁶Martin, A History of North Carolina, II, 323.

⁸⁷Saunders, Colonial Records, IX, 928.

alternative, he granted his consent.⁸⁸ The long and arduous effort at passage of the law was soon to be nullified, however, by the actions of the associate judges, under the leadership of Maurice Moore.⁸⁹ Seizing upon the gross defects of the law, they questioned its legality and ultimately adjourned.⁹⁰

Governor Martin prorogued the Assembly on March 25, 1774. As the royal Assembly would meet only once again, for four stormy days in April, 1775, the end result of it all was that until she became a sovereign state, there were no more courts in North Carolina.

The first three years of Governor Josiah Martin's administration had witnessed the gradual evolution of a strong spirit of democracy and independence on the part of the colony's elected representatives. Stirred by these emotions and the feeling that North Carolina had been consistently neglected by the authorities in England, the Assembly, with the ever growing support of the people, assumed the firm stand that soon brought them into open conflict with the Crown. Had Governor Martin been more adept in the art of politics and personal relations, he might have been able to

⁸⁸ Ibid., pp. 946, 966.

⁸⁹ This was possibly an act of retaliation on his part against the Assembly for having destroyed the Court of Oyer and Terminer, of which he had been appointed a judge by the Governor.

⁹⁰ Sikes, Transition of North Carolina From Colony to Commonwealth, pp. 34-35.

forestall the resulting crisis, but these characteristics were virtually submerged under his unflinching fealty to his King. The seemingly inevitable clash between the opposing factions thus left the colony in a state of upheaval and administrative chaos, and the royal government crippled and ineffective. As the confrontations in North Carolina over local interests occurred almost simultaneously with the general colonial unrest stimulated by British mercantile policies, the citizens of the colony were doubtless bolstered in their feelings of opposition to the Crown and its government. The two developments, however, were only indirectly related. Royal authority collapsed in North Carolina because of basic weaknesses in the frame of government, faulty administration, misunderstanding and ineptitude on the part of the royal governor. Uniting with their sister colonies in the forthcoming conflicts with England over taxation and navigation laws provided the North Carolinians with a previously unforeseen solution to a long and perplexing problem. One outstanding consequence was that the people of North Carolina, wearied with this state of confusion and anarchy, were prepared to embrace the cause of the coming revolution and, ultimately, were motivated to carry into it much of the "enthusiasm and zeal" inherited from the conflicts of the Martin era.⁹¹

⁹¹Jones, A Defense of North Carolina Revolutionary History, p. 86.

CHAPTER II

GOVERNMENT BY COMMITTEE

When Governor Josiah Martin dissolved the North Carolina General Assembly in March, 1774, he was, in effect, bringing to an end any further effectiveness the royal government might have enjoyed. Although the Assembly would meet once again and Martin would continue for a short time to play his assigned role, the citizens of North Carolina were now forced to look to other sources for the effective exercise of civil authority.

The mounting crisis within the colonial government had been of prime concern to its leaders for several months, with the result that many an anxious conference was held in the hope of devising an effective plan for united action. One of the most important of those meetings was that of Josiah Quincy, Jr., of Massachusetts, with Cornelius Harnett and Robert Howe, of North Carolina. Quincy, while traveling through the Cape Fear region, spent the night of March 30, 1773, at the home of Harnett, whom he described as "the Samuel Adams of North Carolina (except in point of fortune.)" Quincy recorded that the "plan of continental correspondence" was highly relished, much wished for, and resolved upon as proper

to be pursued."¹ The idea of continual correspondence between the colonies did not originate during that meeting as such a system was already in operation in both Massachusetts and Virginia. The meeting did, however, bring to the attention of North Carolina's leading Whigs the desirability and benefits of such a plan.²

The General Assembly, meeting in early December, 1773, several months after the meeting of Quincy and Harnett, received a number of messages from neighboring colonies urging North Carolina to establish committees to communicate with corresponding groups from their colonies. On the second day of the session a nine-man committee was appointed with instructions to obtain the "most early and authentic" intelligence of all acts of Parliament relating to the American colonies; to maintain a correspondence with the sister colonies relating to all such information; and to inform themselves, without delay, of the "principles and authority" of a Court of Inquiry, recently established in Rhode Island, with power to transmit persons accused of crimes committed in America to places "beyond the seas" for trial. The committee, consisting of the most prominent leaders of the Whig movement, was composed of Speaker John Harvey, Robert Howe, Cornelius Harnett, William Hooper, Richard Caswell, Edward

¹Saunders, Colonial Records, IX, 611.

²Connor, Cornelius Harnett, p. 80.

Vail, John Ashe, Joseph Hewes, and Samuel Johnston.³ The actions of the committee quickly brought North Carolina into the forefront of the gradual movement toward independence. They declared that the inhabitants of the colony "ought to consider themselves interested in the cause of the town of Boston as the cause of America in general." They resolved that North Carolina would "concur with and cooperate in such measures as may be concerted and agreed on by their sister colonies" and repeatedly emphasized the absolute necessity for a continental congress to promote "conformity and unanimity in the councils of America."⁴ Of this committee, historian John Fiske said it "was nothing less than the beginning of the American Union. . . . It only remained for the various inter-volonial committees to assemble together, and there would be a congress speaking in the name of the Continent."⁵

The next session of the General Assembly had been scheduled to meet in May, 1774, but on the basis of the current state of affairs, Governor Martin foresaw it as an exercise in futility. He, therefore, determined not to summon the Assembly until he saw some chance of improvement over the

³Saunders, Colonial Records, IX, 740-741.

⁴William Clark, editor, The State Records of North Carolina, 19 vols. (Winston, 1895-1914), XI, 245-248, passim. (Hereafter cited as State Records.)

⁵John Fiske, The American Revolution, 2 vols. (Boston, 1919), I, 81.

preceeding session. When the decision was conveyed to Speaker John Harvey, he displayed a "violent mood" and declared that ". . . the people will call one themselves." To Samuel Johnston, Harvey declared himself in favor of assembling a convention independent of the Governor and he determined to lead the way personally by issuing a call under his own name. The idea, though revolutionary, received the general support of the province's leading citizens, as the only remaining measure to save the colony from ruin.⁶ William Hooper expressed an ever spreading sentiment when he wrote that the colonies were rapidly moving toward independence and before long would "build an empire upon the ruins of Great Britain."⁷

The inhabitants of the Wilmington District took the lead in moving toward a convention independent of Governor Martin. On July 21, a general meeting, led by William Hooper, appointed a committee to prepare a circular letter to the several counties of the province calling for a general provincial meeting to debate the alarming state of the American colonies and to adopt and prosecute whatever measures would appear effective to avert the impending crisis.⁸ The Wilmington meeting not only called for a provincial convention but

⁶ Saunders, Colonial Records, IX, 968.

⁷ Ibid., p. 985.

⁸ Peter Force, editor, American Archives, 4th series, 6 vols. (Washington, 1837-1853), I, 618.

proceeded, at the same time, to state their belief that a general congress of all the colonies was a necessity in order to produce an alteration in British policies. Restating the belief that ". . . the cause of the town of Boston was the common cause of British America. . . ," they suggested Philadelphia as the "most proper place" and September 20 as the "most suitable time" for such a continental assembly.⁹

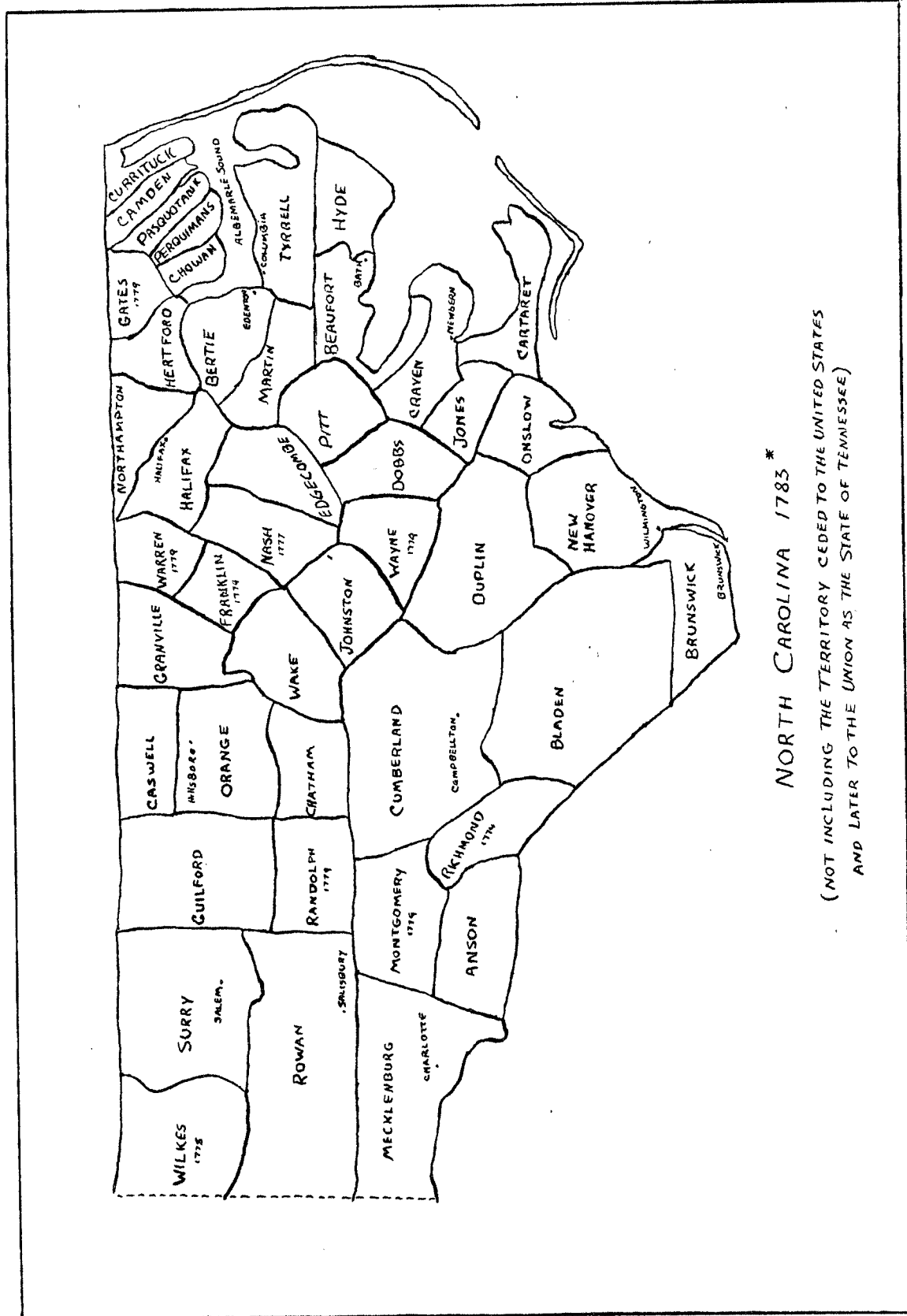
Throughout the summer of 1774, the various counties and towns met to elect delegates to the provincial convention called by John Harvey. Although the North Carolinians continued to swear allegiance to King and country, they swore to uphold their rights against a "wicked ministry," and never to become the slaves of any power.¹⁰ In justification of their support of the provincial convention, they declared that since the constitutional legislature was prevented from providing security and liberty for the citizens that right must revert to the people as the source of all power.¹¹

Governor Martin, seeking to prevent the meeting he considered "inflammatory, disloyal, and indecent," summoned his Council to seek their advice. On August 12, with the Council's unanimous approval, he issued a proclamation enjoining

⁹Ibid., pp. 618-619; Saunders, Colonial Records, IX, 1016-1018, passim.

¹⁰Saunders, Colonial Records, X, 63.

¹¹Ibid., IX, 1030-1041, passim.



NORTH CAROLINA 1783 *

(NOT INCLUDING THE TERRITORY CEDED TO THE UNITED STATES AND LATER TO THE UNION AS THE STATE OF TENNESSEE)

* SOURCE OF MAP: LEFLER AND NEWSOME, NORTH CAROLINA, p. 253.

all citizens to refrain from attending the meeting and to do all within their power to prevent it.¹²

With total disregard of Martin's threats and proclamation, the first Provincial Congress, in a determined spirit of opposition, convened at New Bern on August 25, 1774, under the very eyes of the Governor. The significance of that meeting can hardly be overstated. It was the first representative assembly ever to meet in North Carolina without royal authority. Instead, its authority came from the people, in open defiance of the Crown and the Governor.¹³

On the opening day of the Congress, seventy-one delegates took their seats. Of the existing thirty-eight North Carolina counties, only Edgecombe, Guilford, Hertford, Surry and Wake were not represented. All the eligible towns sent delegates except Hillsboro, Brunswick, and Campbelton. Much to the displeasure of Governor Martin, even the members of the Council, despite their voiced disapproval of the Congress and their support of the Governor's proclamation, attended the meeting and mixed freely with the delegates. Only James Hassell, the President of the Council, remained faithful to Martin and refused to compromise.¹⁴

¹²Ibid., pp. 1028-1029.

¹³Fletcher Green, Constitutional Development in the South Atlantic States, 1776-1860, A Study in the Evolution of Democracy (Chapel Hill, 1930), p. 35. (Hereafter cited as Constitutional Development.)

¹⁴Saunders, Colonial Records, IX, 1056.

The membership of the Congress represented the most well known and talented men in North Carolina. John Harvey, considered by all to be the leading figure in the Whig movement, was unanimously chosen as moderator. Representing New Hanover was William Hooper, who having graduated from Harvard College at the head of the class of 1760, was reputed to be the most educated man in the colony. Hooper would later be a delegate to the Continental Congress and, as such, a signer of the Declaration of Independence.¹⁵

The Congress remained in session for only three days, scarcely, it would seem, a time proportionate to the significance of its accomplishments. The delegates began their deliberations with a declaration of respect for the British Constitution and a resolution to maintain the succession of the House of Hanover, but at the same time declaring their determination to voice their sentiments "in the most publick manner," lest silence should be mistaken for acquiescence. They stated that although they accepted George III as the "lawful and rightful King of Great Britain," to whom they bore true and faithful allegiance, the unwarranted assumption of powers by Parliament could not go unchallenged. Rather, it was their duty to uphold the Constitution and preserve their rights as Englishmen.¹⁶ They further resolved that it was

¹⁵DeMond, The Loyalists in North Carolina, pp. 63-64.

¹⁶Force, American Archives, 4th series, I, 734.

the very essence of the British Constitution that no subject should be taxed without his own consent, and that since the colonies had no legal representative in Parliament, any act imposing a tax on them was illegal, unconstitutional, and a gross violation of their liberties. In condemning the Coercive Acts in general, and the Boston Port Bill in particular, the delegates praised the citizens of Massachusetts for the support of the rights of America and stated that the "cause in which they now suffer is the cause of every honest American who deserves the blessings which the Constitution holds forth to them." Voicing strong opposition to the British practice of exporting accused colonials to England for trial, the Congress resolved that such persons were not ". . . victims to publick justice, but. . . a sacrifice to the powers of tyrrany and high-handed oppression."¹⁷

As a means of bringing pressure to bear upon Great Britain, the Provincial Congress resolved that after January 1, 1775, all British goods, from any source whatsoever, would be barred from the colony. They then declared that if their grievances had not been redressed before October 1, North Carolina would cease the exportation of "tobacco, pitch, tar, or any other article." In an act of total commitment to the plan, it was then resolved that any persons who failed

¹⁷Ibid., p. 735.

to comply with the resolution would be declared "enemies to their country."¹⁸

On August 27, the Congress voiced its approval of the Continental Congress to be held in Philadelphia in September, selected as North Carolina's delegates William Hooper, Joseph Hewes, and Richard Caswell, and invested them with such powers as to make any act passed by them, in concert with the Congress in general, ". . . obligatory in honour upon every inhabitant. . ." of North Carolina.¹⁹

One of the most significant acts of the first Provincial Congress was a recommendation to the deputies of the various counties that a committee of five men be chosen in each county to see that the resolutions of the Congress would be properly observed, and to confer regularly with the Provincial Committee of Correspondence. These committees would, in the coming months, become the sole authority in the counties, embodying all branches of the government.²⁰ As its final act, the Congress empowered John Harvey, or in the case of his death Samuel Johnston, to call a second meeting of the Congress at such time and place as he considered proper.²¹

The accomplishments of the first Continental Congress, which met in Philadelphia in the autumn of 1774, are well

¹⁸Ibid.

¹⁹Ibid., p. 736.

²⁰Ibid.

²¹Ibid.

known and may be briefly summarized. The Congress pledged its support to Massachusetts; it drew up a Declaration of Rights and Grievances, a Petition to the King, and Addresses to the People of Great Britain and British America. Probably the most significant and far reaching act was the adoption of the Continental Association, a "non-importation, non-exportation, non-consumption agreement." This association was, to a very great extent, an "economic declaration of war on England."²² To enforce the measures they prescribed a system of "Committees of Safety" for each county and town to observe the conduct of the people and publicize all violations. Public disapproval and scorn was, therefore, to be used as a tool to force compliance. The final act of the Congress was to call for a second meeting on May 10, 1775, unless the state of affairs had improved by that time.²³

During the autumn and winter months of 1774, the various county committees recommended by the Provincial Congress took up the task of enforcing the convention's resolutions in North Carolina. As these committees constituted the only source of authority within a county, their jurisdiction knew few bounds. The first of the committees to meet was that of Rowan County, followed closely by those of Pitt and Halifax

²²Hugh Talmage Lefler and Albert Ray Newsome, The History of A Southern State, North Carolina (Chapel Hill, 1934), p. 189.

²³Enoch Lawrence Lee, The Lower Cape Fear in Colonial Days (Chapel Hill, 1965), pp. 256, 257.

Counties. The records of these early meetings reveal, to a large degree, the extent to which committee authority was stretched. In an effort to prevent the ever increasing prices of gun powder, the Rowan County committee resolved that anyone buying or selling powder at more than five shillings a pound would be branded an enemy to his country and treated accordingly. Another resolution of the Rowan County committee demonstrated the punitive power of the local groups by publicly censuring two businessmen for a false advertisement deemed by the committee as derogatory to the interest of the colony.²⁴

In several counties the oath to uphold the Continental Association was made a test of one's patriotism. One such county was Halifax. When its safety committee convened on December 21, 1774, it was reported that a prominent local merchant had refused to sign the Association on the grounds that debts of merchandise which he owed to British merchants should be honored. The committee, judging his reasons totally unsatisfactory and sensing his intention to continue exporting, unanimously resolved to recommend to the inhabitants of the county that they purchase no "Goods, Wares, or Merchandise from said Andrew Miller or any person acting for or in partnership with him. . . ." ²⁵

²⁴DeMond, The Loyalists in North Carolina, p. 64; Saunders, Colonial Records, IX, 1072.

²⁵Saunders, Colonial Records, IX, 1101-1102.

As the exercise of committee government took root and expanded, Governor Martin realized that by his failure to call the last royal assembly he had not only failed to improve the state of affairs, he had, quite the contrary, provided the stimulus needed by the Whig movement. By closing the legitimate avenues of procedure, he had left the people with no discernable choice but to proceed by extra-legal means. In a final effort to stem the tide of revolution he summoned the assembly to meet at New Bern on April 4, 1775. Speaker John Harvey, in a determined act of defiance, quickly issued a public call to the several counties and towns urging them to elect delegates to represent them at the second session of the Provincial Congress to meet at New Bern on April 3, 1775. Thus the final clash between these two opposing forces appeared imminent.²⁶

In an attempt to forestall the meeting of the Provincial Congress, Governor Martin again summoned his Council and after informing them of the impending meeting, which he described as "highly derogatory to the dignity of the legislature," illegal, and in every sense inconsistent with the good order of government, he sought their advice on the proper measures to prevent it. As they had done previously, the Council responded with a unanimous vote of "detestation" for the Congress and advised the Governor to issue a proclamation

²⁶Ibid., pp. 1125-1126.

forbidding it.²⁷ On March 1 the proclamation was published, calling on the inhabitants to renounce the "insidious attempts of evil-minded and designing men" which could only tend to introduce "disorder and anarchy" to the detriment of the real interests of the province and result only in ". . . confusion, disgrace, and ruin."²⁸

The Governor's proclamation, notwithstanding, the delegates began to assemble in New Bern on April 3. Of the General Assembly and the Provincial Congress, the latter was somewhat larger, having some twenty more delegates; by and large, however, the membership was identical. The resulting situation was unique, with one group of men sitting as two separate assemblies, one legally constituted by royal authority and the other a revolutionary body sitting in open defiance of their King and Governor. Both bodies met in the same hall and were presided over by the same man, as John Harvey was chosen Speaker of the one and Moderator of the other.²⁹ The delegates would meet as the Provincial Congress until the Governor's secretary was announced at the door, and ". . . in an instant, in the twinkling of an eye, Mr. Moderator Harvey...

²⁷At the time of the first Provincial Congress, the Council had reacted in a similar manner. Then, disregarding the Governor's proclamation, they attended the meeting themselves. It would seem that their attitude was partially determined by the presence or absence of the Governor.

²⁸Saunders, Colonial Records, IX, 1145-1146.

²⁹Connor, Cornelius Harnett, p. 83.

would become Mr. Speaker Harvey. . . and gravely receive his Excellency's message."³⁰

Governor Martin's wrath grew in intensity with every passing hour. On the opening day of the session, he received instructions from the King to use ". . . his utmost endeavors" to prevent the appointment of deputies to the Continental Congress. Accordingly, Martin issued still another proclamation vividly denouncing the Congress as "offensive" and "dishonourable," and in the name of His Majesty strictly forbidding the meeting to continue.³¹ It is doubtful, however, that the Governor, in light of his past failures, had any real hope of success at this time.

The second Provincial Congress met for only a short time and accomplished comparatively little. The stated purpose for the meeting was to choose delegates to the next Continental Congress, scheduled to meet in Philadelphia on May 10. To that end, William Hooper, Joseph Hewes, and Richard Caswell were again appointed to represent North Carolina, with the expressed appreciation of the Congress for their past services. Resolutions were passed in approval and support of the Continental Congress and the Continental Association. As a test of loyalty, the delegates were required to sign the Association. One delegate, Thomas MacKnight, refused to comply and withdrew from the assembly. In a graphic

³⁰Saunders, Colonial Records, IX, Prefatory notes, xxxiv.

³¹Force, American Archives, 4th series, II, 253-254.

demonstration of its punitive power, the Congress resolved that MacKnight's conduct was not in keeping with the cause of American liberty and recommended that every citizen sever all connections and have no future commercial dealings with him. They further ordered that the recommendation be published in the gazettes of North Carolina and all neighboring colonies.³²

On the final day of the meeting, April 7, the Congress, expressing feelings of "common prudence and regard. . ." for the colony, resolved to do everything possible to encourage "Arts, Manufacturing, agriculture" and every kind of economy, and recommended premiums for those citizens who might undertake such activities. As the final act before adjournment, a resolution was passed authorizing John Harvey, or in the case of his death, Samuel Johnston, to direct delegates to be chosen to meet at a third Congress in Hillsborough at such time as he should consider it necessary and proper.³³

Viewed from the standpoint of deviation from past sessions, the proceedings of the General Assembly were more revolutionary than those of the Provincial Congress. In complete disregard of Governor Martin's long and tedious efforts to force repudiation of the Congress, the delegates proceeded to pass resolutions which, in effect, placed the

³²Ibid., p. 269.

³³Ibid., p. 270.

royal Assembly squarely in line with the Provincial Congress. In answer to the Governor's charges of "illegality," the Assembly stated that while they felt the "highest sense of allegiance" to their King and Constitution, it was, nevertheless, the undoubted right of all His Majesty's subjects to petition for a redress of grievances, either in a "separate or collective" capacity; that in order to reach agreement on such petitions, they had a right to meet together; and that while conducting themselves in a peaceable and orderly manner, they did not deserve to be called an "illegal meeting" or have the "imputation of sedition cast upon them."³⁴ A resolution was also passed in defense of the safety committees established at the request of the Continental Congress. They resolved that this was an action resulting not from choice, but from necessity, as the only means left to them by which they might prevent the operation of the ". . . oppressive and unconstitutional Acts of Parliament. . . ."³⁵ On the fourth and final day of the meeting, the delegates voiced their concerted approval of the proceedings of the Continental Congress and pledged strict adherence to their resolutions. They further expressed their warmest appreciation to delegates Hooper, Hewes, and Caswell for the faithful and judicious service rendered at the last General Congress.³⁶

³⁴Ibid., pp. 261-262.

³⁵Ibid., p. 262.

³⁶Ibid., p. 265.

The final resolutions of the Assembly were the most direct insult yet suffered by the Crown and its government. Governor Martin's anger, bolstered by his acceptance of the futility of continuing, drove him to dissolve the meeting on April 8. Thus ended the last royal Assembly, and with it, British rule in North Carolina. In his report to Lord Dartmouth, the Secretary of State for the Colonies, Martin reported that the authority of the royal government "was absolutely prostrate. . . and nothing but the shadow of it is left." Unless effective measures were taken, he declared all British influence over the colonies would disappear. Martin described his own situation as "despicable and mortifying," adding that his dignity was daily "reviled, traduced and abused" while his rights and authority were arbitrarily usurped.³⁷

On May 8, news reached North Carolina that battles had been fought between Massachusetts colonists and British soldiers.³⁸ Governor Martin, fearing for his safety, dispatched emissaries into the back counties to enlist the aid of the loyalists of that area, and ordered cannon placed before the palace. When one of Martin's letters, requesting arms and ammunition from General Gage, was intercepted, the inhabitants

³⁷ Saunders, Colonial Records, X, 47; Lefler and Newsome, North Carolina, pp. 190-191.

³⁸ Saunders, Colonial Records, IX, 1238.

of New Bern took overt action and seized the palace cannon.³⁹ On the night of May 31, finding himself under strict surveillance and without a man or a gun with which to defend himself, Governor Martin deserted his palace and on the pretext of visiting Chief Justice Hassel, fled to Fort Johnston, near Wilmington, on the Cape Fear River.⁴⁰ Amid rumors that the Governor would attempt to gather a coalition of loyalists, Negroes, and others of the disaffected for the purpose of fomenting civil war, excitement reached a fever pitch. On July 19, a group of Wilmington citizens, led by John Ashe, Robert Howe, and Cornelius Harnett, entered the fort and destroyed it.⁴¹ Martin, however, had again managed to elude his antagonists and had escaped to a British warship, Cruiser, lying offshore.⁴²

Thus matters stood as the summer of 1775 approached. The Provincial Congress had succeeded in inaugurating a system of purely popular government that, in less than twelve months, swept away every vestige of royal government. There remained only an exiled governor whose only defensive weapons were meaningless proclamations. Governmental power now resided entirely with the local committees. Bounded in their

³⁹Saunders, Colonial Records, X, 49.

⁴⁰Samuel A'Court Ashe, History of North Carolina, 2 vols. (Raleigh, 1925), I, 436; Saunders, Colonial Records, X, Prefatory notes, xxxvi.

⁴¹Saunders, Colonial Records, X, 140.

⁴²Ibid., IX, Prefatory notes, xxxvi.

jurisdiction only by the resolutions of the Provincial Congress, they not only determined what acts and opinions made a man an enemy of the country, but passed upon his guilt or innocence and fixed his punishment. Just as the Continental Congress was about to convene in Philadelphia in an attempt to bind together the loosely united colonies, word reached Wilmington concerning the battles at Lexington and Concord. War appeared imminent. Whether North Carolina would be prepared to meet that crisis remained to be determined.

CHAPTER III

THE HILLSBORO CONGRESS

The situation which existed in North Carolina in the summer of 1775 was critical, and it was unique in the history of the province. The forced exodus of Governor Martin had deprived the colony not only of its legal government, but also of any constitutional method for convening the legislative assembly. The armed confrontation in Massachusetts and the firing of Fort Johnston had created a state of war. The emergency situation required emergency measures if North Carolina was to prepare itself for the impending conflict. A new government had to be fashioned to replace the county committees; an army had to be organized and trained; arms, ammunition and the other sinews of war had to be collected; plans for colonial defense had to be drawn; and a workable system of currency had to be devised. Realizing that these preparations had to be made in the interest of both provincial and continental affairs, the North Carolinians turned to the Provincial Congress as the only means of providing a united leadership, independent of royal authority.

From the adjournment of the second Provincial Congress, on April 7, 1775, the revolutionary sentiment of the North Carolinians began to reach an unprecedented pitch. One of the most significant and controversial examples was seen in

the action of the Mecklenburg County safety committee. At a meeting in Charlotte, May 31, 1775, led by the radical Patriots, the committee declared that all laws and commissions derived from royal authority were annulled and that the civil constitution of the colony was "wholly suspended."¹ They further resolved that the general conventions within the various provinces, under the direction of the Continental Convention, should be invested with all governmental powers within their respective provinces and that "no other legislative or executive power does, or can exist, at this time, in any of these colonies." They denounced as an "enemy of his country" any man who would accept a royal commission, and urged the citizens of Mecklenburg to appoint military officers "independent of Great Britain."² Governor Josiah Martin, in transmitting the newspaper accounts of the Resolves to England, wrote to the Earl of Dartmouth that they "surpass all

¹Force, American Archives, 4th series, II, 855-856. Coinciding with the reality of the Mecklenburg Resolves is the local tradition concerning a Mecklenburg Declaration of Independence supposedly passed eleven days prior to the Charlotte meeting. No copy of the declaration has ever been found and scholars tend to reject it as mythical, agreeing with Van Tyne that the "authentic resolutions of May 31 are surely radical enough to suit the most fastidious patriot." See Claude H. Van Tyne, The War of Independence, American Phase (Boston, 1929), p. 191; Ashe, History of North Carolina, I, 437; Fiske, The American Revolution, I, 133-135; A. S. Salley, Jr. and Worthington Chauncey Ford, "S. Millington Miller and the Mecklenburg Declaration," The American Historical Review, XI (April, 1906), pp. 548-558; A. S. Salley, Jr., "The Mecklenburg Declaration: The Present Status of the Question," The American Historical Review, XIII (October, 1907), pp. 16-43.

²Force, American Archives, 4th series, II, 855-856.

the horrid and treasonable publications that the inflammatory spirits of this Continent have yet produced."³

Another incident in the spring of 1775, though calculated as a measure of appeasement toward North Carolina, had the effect of widening, even further, the breach between the province and the mother country. In April, Parliament passed an act to prohibit trade between some of the American colonies and England, declaring that it was "highly unfit that they should enjoy the same privileges and advantages of trade that his Majesty's faithful and obedient subjects enjoyed."⁴ The application of the law was not universal, however, as North Carolina was excluded. The reaction of the colony, undoubtedly quite different to what the Ministry wished, was best expressed by the Wilmington Committee of Safety. On July 20, the day the law was to become effective, the citizens of Wilmington denounced it as "a base and mean artifice, to seduce them into a desertion of the common cause of America," and firmly resolved that North Carolina would reject the "advantages insidiously thrown out" by the law, and would, instead, "continue to adhere strictly to the resolutions of the Continental Congress."⁵

As the pageant of events brought the colonies, at an ever increasing speed, toward the ultimate break with Great

³Saunders, Colonial Records, X, 48.

⁴Ibid., pp. 109-110.

⁵Ibid., p. 113.

Britain, the ties of culture and tradition remained. Although the British ministry was almost universally condemned, the desire for total independence was, as yet, not a concept cherished by the average citizen. These thoughts were best expressed in the following letter, of July 31, from "a gentleman in North Carolina and one of the delegates of the Congress" to an Edinburgh merchant:

Every American, to a man, is determined to die or be free. We are convinced that nothing can restore peace to this unhappy country, and render the liberties of yours secure, but a total change of the present ministry, who are considered in this country as enemies to the freedom of the human race, like so many Master devils in the infernal regions, sending out their servant furies, to torment whenever they choose their infernal vengeance should fall

We do not want to be independent; we want no revolution, unless a change of Ministry and measures would be deemed such. We are loyal subjects to our present most gracious Sovereign in support of whose crown and dignity we would sacrifice our property, he only defending our liberties. This country, without some step is taken, and that soon, will be inevitably lost to the Mother Country. We say again, for the love of Heaven, for the love of liberty, the interest of posterity, we conjure you to exert yourselves.⁶

The claim that the colonies were at the mercy of an evil-minded Parliament and a designing ministry was also being used by many of the local committees as a means of securing the support of the citizens for the rapidly expanding county governments. As loyalty to the Crown was still a factor much in evidence, unorthodox methods were sometimes used in the attempt to overcome it. Citizens who were

⁶Ibid., pp. 122-123.

reluctant to submit to the committee controls or to arm themselves against the British were often threatened with tar and feathers as a form of inducement.⁷

On June 19, the North Carolina delegates to the Continental Congress sent an address to the various local committees of the province urging them to support the revolutionary movement and again declaring that the "fate of Boston was the common fate of all." They were critical of the colony, as a whole, for being "an inactive Spectator" of the general armament procedures, saying that North Carolina "seems to forget even the Duty she owes to her own local Circumstances and Situation"⁸ By way of explaining the exemption of North Carolina from the act restraining trade, the address stated:

The Reason is obvious--Britain cannot keep its Naval Force without you; you supply the very sinews of her strength. Restrain your Naval Stores and all the powers of Europe can scarce supply her; restrain them and you strengthen the hands of America in one glorious contention for her liberty⁹

The delegates in Philadelphia implored the committee to follow the examples of their sister colonies and form themselves into a militia, to carefully preserve their gunpowder and ammunition as a "sacred Deposit," and to "Study the Art of

⁷Saunders, Colonial Records, X, 8.

⁸Ibid., pp. 20-23, passim.

⁹Ibid., pp. 21-22.

Military with the utmost attention," for on that depended their future security.¹⁰

One of the final acts of the second Provincial Congress had been to authorize John Harvey, or in the event of his death, Samuel Johnston, to call another congress at Hillsboro whenever he felt it expedient. As the necessity for immediate action daily became more obvious, frequent letters urging a convening of the congress found their way to Samuel Johnston, Harvey having died in May. Taking the lead, as had become their custom, the Wilmington committee, under the leadership of Howe, Harnett and Ashe, wrote to Johnston, on May 31, suggesting that he summon the congress "as soon as possible."¹¹ Within a week, Joseph Hewes wrote from Philadelphia his feeling that an immediate session of the Provincial Congress was "absolutely necessary." He also suggested that "great care should be taken to have as full a representation as possible," warning that some matters would be placed before them that would "require the utmost exertions of every friend to American Liberty" ¹²

Johnston, at his home on Albemarle Sound, some distance from the feverish activity of the Cape Fear region, was, for a variety of reasons, slow to act. From a purely legal standpoint, he was authorized to call the congress to meet only at Hillsboro. The royal Assembly, on the other hand, was

¹⁰Ibid., p. 23.

¹¹Ibid., IX, 1285.

¹²Edmund C. Burnett, editor, Letters of Members of the Continental Congress, 8 vols. (Washington, 1921-1936), I, 112.

scheduled to meet in Newbern on July 12, although the strong probability existed that Governor Martin would again prorogue it. The fact remained that as the delegates to both meetings would be, for the most part, the same men, Johnston felt compelled to wait until the exiled Governor acted.¹³ Furthermore, Johnston was inclined to consider the requests for the congress as premature, and not desiring further to damage relations with the royal government without due deliberations, he hesitated. Connor quotes a letter in which Johnston wrote:

'I expect my conduct in not immediately calling a provincial congress will be much censured by many, but being conscious of having discharged my duty according to my best judgement I shall be the better able to bear it.'¹⁴

Unrelenting in their efforts to dissuade Johnston from his position, the Wilmington committee, on June 29, implied that Johnston was applying the wrong standards to the determination of his decision and suggested that the "Circumstances of the times, and expectations of the people . . ." were more appropriate yardsticks for determining his conduct.¹⁵ On July 13, having still received no word from Johnston, the Wilmington committee again wrote that their situation was "truly alarming." Amid both evidence and rumor that the Governor was rapidly collecting "men, provisions, warlike

¹³Sikes, The Transition of North Carolina From Colony to Commonwealth, p. 42.

¹⁴Connor, Cornelius Harnett, p. 103.

¹⁵Saunders, Colonial Records, IX, 255.

stores of every kind," and attempting to foment unrest among the slaves and the inhabitants of the back counties, the people clamored for a congress, hoping "everything from its Immediate Session," and fearing "everything from its delay."¹⁶

Conscious of the discontent and revolutionary atmosphere that pervaded the colony, Governor Martin saw the futility of attempting to gather the Assembly and again prorogued the body until September 12. Johnston, then free from any legal reservation, issued a call for the third Provincial Congress to meet at Hillsboro on August 20, 1775, and recommended that not less than five delegates be elected from each county.¹⁷

The selection of Hillsboro as the site of the meeting was not a random choice but one which demonstrated both wisdom and prudence. The first two sessions of the Congress had been held at Newbern, in the east. Hillsboro, on the other hand, was located in what was then considered the west, the area heavily occupied by the Regulators. Since the preponderance of political power was centered in the east, there was the ever present danger of sectional jealousies. The choice of Hillsboro, therefore, was a determined effort on the part of the Congress to minimize disputes and to unify the various factions within the colony.¹⁸ The task of

¹⁶Ibid., X, 91.

¹⁷Ibid., p. 88.

¹⁸Sikes, The Transition of North Carolina From Colony to Commonwealth, p. 43; Journal of the Proceedings of the Provincial Congress of North Carolina, Held at Hillsborough

uniting the diverse elements that constituted the populace of North Carolina, however, was not one that could be disposed of so simply. There was not only a variety of ethnic backgrounds within the colony, but also a substantial variance in political ideology. There were three basic political groups in North Carolina. The largest and most vocal was the group known as Whigs. To this group, probably embracing half the inhabitants, belonged those who were willing to fight Great Britain in order to preserve their rights, and, if necessary, to win their independence. The second largest division, known as Loyalists or Tories, supported the concept of peaceful opposition to England and opposed war at all costs. Among this group were to be found many wealthy merchants and planters, most of the "old official class," and those individuals who "dreaded despotism, on the one hand, and feared anarchy on the other."¹⁹ Also included among the Loyalists were a large number of Scottish Highlanders who had immigrated to North Carolina in recent years and who manifested little or no sympathy with the current revolutionary movement. The Regulators were also a subdivision of the Loyalist group. Although bearing little allegiance to England, neither did they feel bound to the Whigs, among whom were many of the same men who had, only recently, crushed the

on the 20th Day of August, 1775 (Newbern, 1775), p. 28, on microfilm, N.T.S.U. Library. (Hereafter cited as Journal of the Provincial Congress of August, 1775.)

¹⁹Lefler and Newsome, North Carolina, p. 197.

Regulators' own protest against oppression. The third basic group, by far the smallest, was composed of what might be classified as "neutrals," and included a large number of German Quakers and settlers. Under considerable pressure from the county committees, many of this group relented and took an oath of loyalty.²⁰

The third Provincial Congress convened on Monday, August 21, one day later than scheduled due to late arriving delegates. The gathering was by far the largest elective assembly that had ever met in North Carolina. Every county and town for which delegates were authorized was represented. When the roll of delegates was called, 184, of the 207 elected, responded. Samuel Johnston was unanimously chosen President and Andrew Knox, of Perquimons County, was selected as Secretary.²¹

The first action of the delegates was the appointment of a committee to prepare an oath which would be required of all members of the Congress as a test of their loyalty. When the oath was submitted to the Congress on Wednesday, it was unanimously approved.²² In taking the oath, the delegates professed their allegiance to George III and acknowledged

²⁰Ibid., p. 198; Saunders, Colonial Records, X, 182.

²¹Journal of the Provincial Congress of August, 1775, pp. 1-2.

²²Ibid., p. 6.

the constitutional executive power of government, but rejected the idea that either Parliament or any individual member had a right to impose taxes or regulate the internal policies of the colonies. In support of this concept, they pledged to uphold all acts of their Congresses, Provincial and Continental.²³

The three most important matters before the Congress were the formation of a provisional government, the organization of a military force and the unification of the North Carolina inhabitants. Looking first to the latter task, the Congress appointed two committees to confer with the various inhabitants of the colony, with instructions to remove any false impressions that might have been made upon the people by the "Artful Devises of the Enemies of America" and to use all possible inducements to form a successful union for the protection of their constitutional rights and privileges. The first of these committees was delegated to confer with the recently arrived Scottish Highlanders and "explain to them the nature of the controversy."²⁴ The second committee, among whose members were Maurice Moore and Richard Caswell, was instructed to prepare an address to the Regulators in an effort to gain their support for the Whig cause.²⁵ The efforts of both

²³Ibid., pp. 6-7.

²⁴Ibid., p. 10.

²⁵Ibid.,

committees, however, proved to be in vain. The Scots determined, for the present, to remain neutral,²⁶ and the Regulators refused to change their position, largely out of fear and distrust of the members of the committee.²⁷ In its choice of emissaries, the Congress showed poor judgment, as Richard Caswell had been the commanding officer of the force which defeated the Regulators in 1771, and Judge Maurice Moore had subsequently adjudged a number of their prominent leaders guilty of treason and ordered their executions.²⁸

During the early days of the Congress, several other important standing committees were formed to deal with the other major problems confronting the colony. A Committee of Secrecy was formed for the purpose of procuring arms and ammunition and to determine the sums of money necessary for that purpose.²⁹ Another committee was formed to report on the state of the public treasury.³⁰ On August 24, one of the most significant committees was appointed with instructions to prepare a plan for the regulation of the "internal peace, order, and safety" of the province and to "make arrangements for a civil policy to replace the executive powers arising from the absence of Governor Martin."³¹

²⁶Jones, A Defense of North Carolina Revolutionary History, pp. 230-231.

²⁷Sikes, The Transition of North Carolina From Colony to Commonwealth, p. 46.

²⁸Ibid.

²⁹Journal of the Provincial Congress of August, 1775, p. 10.

³⁰Ibid., p. 12.

³¹Ibid., p. 11.

On Friday, August 25, a proclamation written by the Governor aboard the Cruiser two weeks previously, was read to the delegates. The Governor, witnessing the rise of revolutionary fervor in the colony and feeling that the primary source of irritation was the local committee, issued his "Fiery Proclamation" denouncing all the committees, but reserving special criticism for the one at Wilmington. He accused them of circulating "the basest and most scandalous Seditious and inflammatory falsehoods," designed to "mislead the people" and turn them against the royal government. He spoke of the "malice and falsehood of these unprincipled censors" and their "evil, pernicious and traitorous Councils and influence," but added that his vengeance was "restrained by pity for the innocent, misguided and deluded people" whom he considered the "blind instruments of their atrocious leaders." Referring to the Mecklenburg Resolves, Martin termed them an "infamous publication" and the committee responsible for them as traitors.³²

After the proclamation had been read and discussed, the Congress passed a resolution declaring the paper "a false, scandalous, scurrilous, malicious and seditious libel, tending to disunite the good people" of the province and tending to provoke "Tumults and Insurrections dangerous to the Peace of his Majesty's Government and the safety of the inhabitants." Declaring further that it was "injurious to the

³²Saunders, Colonial Records, X, 141-150, passim.

Characters of several gentlemen of acknowledged Virtue and Loyalty," the paper was ordered to be burned by the "common Hangman."³³

Early in the session, several preliminary attempts were made to bring North Carolina into a position of responsibility on a continental level and to insure a more just and equitable treatment of the citizens with the colony. A resolution was passed on August 24, in answer to a request from the Continental Congress, in which North Carolina pledged to pay its full proportionate share of expenses incurred by the Continental army.³⁴ The following day, the Congress, anticipating their own need for both a colonial army and the money with which to support it, instructed the various counties and towns to prepare a thorough census, to distinguish between men, women, children, and slaves. The census would be invaluable in the future for both revenue and military purposes.³⁵

On the final day of August, the Congress issued a declaration which, while it cannot be called either declaration of independence or of war, was, without doubt, the strongest indication, thus far, that North Carolina fully intended to be prepared in the event such a move became necessary. In a lengthy defense of their position, the Congress declared that

³³Journal of the Provincial Congress of August, 1775,
p. 12.

³⁴Ibid., p. 11.

³⁵Ibid., p. 12.

they had been reduced to a "dangerous and critical situation" by the many attempts of Parliament to enforce "unconstitutional and oppressive" acts for altering the "constitution and internal policies of the United Colonies" in violation of their natural rights.³⁶ They further declared that the hostilities already begun in Massachusetts by British troops, "as if in an enemy's country," were acts which could hardly ". . . be justified toward declared Enemies." They blamed Governor Martin for having assumed an active part in opposing all means adopted by the colonies to insure their safety and protect their liberty and property. For the sole purpose, therefore, of preserving their province "against all attempts to carry the said acts into execution by force of arms" the Congress declared its intention to put itself into an immediate state of defense.³⁷ Accordingly, the delegates resolved that, being absolutely necessary for the support of the American Association, the colony would immediately raise a military force consisting of 1,000 men.³⁸

On September 1, two regiments of 500 men each were ordered to be raised at once. Congress further ordered that 400 men be stationed in the Wilmington District, 200 in the Salisbury District, 200 in Newbern, and 200 in Edenton, and

³⁶Ibid., p. 16.

³⁷Ibid.

³⁸Ibid.

that all future troop movements would be directed by either the Congress or the Committee of Safety. As commanding officers of the two regiments, the delegates assigned James Moore and Robert Howe, both with the rank of colonel.³⁹

On September 5, a committee, composed of Willie Jones, Abner Nash, and John Ashe, was appointed to formulate plans for an organization of Minute Men and militia for the further protection of the province.⁴⁰ Within three days the plans had been devised and presented for the approval of Congress. In accordance with the committee's recommendations, the province was divided into six districts, Edenton, Halifax, Wilmington, Hillsboro, Newbern, and Salisbury. Each district was directed to raise one battalion, consisting of ten companies of fifty men. Each battalion was to have a colonel, a lieutenant colonel, a major, ten captains, ten lieutenants, ten ensigns, twenty sergeants, ten drummers, and ten fifers. The field officers would be recommended by the districts and appointed by the Provincial Congress, and the number of men to be enlisted from the various sections would also be recommended by the district officials. Enlistments were ordered restricted to the county of one's residence, and priorities were suggested for those men who owned their own guns.⁴¹

³⁹Ibid., p. 17.

⁴⁰Ibid., p. 21.

⁴¹Ibid., p. 24.

When the battalions were formed and approved by the county committees, they were to undergo training for fourteen successive days, Sundays included, after which each county group would muster at least every two weeks. Bounties of twenty-five shillings were allowed for every private and non-commissioned officer for the purpose of buying his own uniform, to consist of "a hunting shirt, leggins, and black garters." Each Minute Man was to be enlisted for a period of six months and whenever called into actual service thereafter, at all such times being subject to the rules and regulations of the Continental army.⁴² To supplement the Minute Men, the Congress also authorized the Committee of Safety in each district to order the militia into service upon any emergency. This authority would last, however, only until either the Congress or the Provincial Council should convene and assume command of the troops.⁴³ In addition to those forces authorized by the Provincial Congress, various volunteer companies also existed throughout the colony, under the direction of the county committees, and every citizen was advised to get a "bayonet for his gun and be ready to turn out at a moments notice,"⁴⁴ By the end of September, 1775, North Carolina's military force was thoroughly organized and ready to be

⁴²Ibid., p. 25.

⁴³Ibid., p. 26.

⁴⁴Saunders, Colonial Records, X, 215.

implemented. The major problem yet confronting the Congress was that of financing the preparations.

On September 5, Richard Caswell, representing the Committee of Ways and Means, recommended that 60,000 pounds in paper bills of credit be emitted for the purpose of defraying the expenses of the military, the purchase of arms and ammunition, and the paying of bounties. By the committee's plan, the sum would be sunk by a tax of two shillings on each taxable person in the province, over a seven-year period.⁴⁵

Two days later Congress resolved that the sum should not exceed \$125,000 in bills of credit. The number and denominations of the desired bills were determined and a committee, consisting of Samuel Johnston, Richard Caswell, Richard Cogdell, and Andrew Knox, was appointed to see that the bills were printed and subsequently delivered to the treasurer.⁴⁶ That the acceptance of the new bills by the population was considered vital is evidenced by the severity of the penalties prescribed by the Congress for their illegal use. Any person found guilty of refusing to accept the bills in payment of a debt, of "speaking disrespectfully of the bills," or of offering a greater sum in exchange than the legally prescribed rate, was to be considered "an enemy to his country" and it would be recommended to the citizens of the province that

⁴⁵Journal of the Provincial Congress of August, 1775,
p. 21.

⁴⁶Ibid., pp. 22-23.

they "have no further dealing with him."⁴⁷ For any person convicted of counterfeiting, the prescribed penalty was "death . . . as a felon without benefit of clergy."⁴⁸ Having thus temporarily satisfied the demands of their financial crisis, Congress appointed Samuel Johnston and Richard Caswell as the Treasurers of the Northern and Southern Districts, respectively. Caswell, as both a signer of the Public Bills of Credit and a treasurer, thereupon asked to be relieved as a delegate to the Continental convention. Responding to his request, Congress accepted Caswell's resignation and appointed John Penn, of Orange County, as his successor.⁴⁹

The formulation of a new plan of civil government was to prove a more difficult and demanding task than any of the projects thus far undertaken. Having few precedents on which to rely, the delegates, nevertheless, found ideas and suggestions in bountiful abundance. On September 9, after two weeks of deliberation, the Committee on Internal Peace, Order, and Safety, under its chairman, Archibald Maclaine, submitted its report to the Congress.⁵⁰ The plan proposed, and ultimately adopted, continued the Congress as the supreme legislative branch of government but reorganized the subordinate

⁴⁷Ibid., p. 23.

⁴⁸Ibid.

⁴⁹Ibid., pp. 19, 28.

⁵⁰Ibid., p. 30.

branches in an attempt to curb the excesses of power recently witnessed in the county committees. The executive and judicial powers were to be vested in a Provincial Council, six district Committees of Safety, and the various county and town committees.⁵¹

The plan established in each of the six districts of the province, a Committee of Safety, to consist of a presiding officer and twelve members who would meet every three months in the principal towns of the various districts, and at any other time when circumstances made it desirable. Operating under the control and supervision of the Provincial Council, the District Committees would oversee the operations of the militia and Minute Men organizations within their particular jurisdictions. In a judicial capacity they would also be responsible for censuring and punishing all persons found to be either in violation of the law or operating counter to the interests of the colony. In this capacity, they would also serve as a "superintending Power" over the local committees. The members of the six District Committees would be chosen by ballot, in Congress, by the delegates from the various districts.⁵²

The Provincial Council was to consist of thirteen members, two from each of the six districts and one representing

⁵¹Ibid.

⁵²Ibid., pp. 31-32.

the colony at large, and would embody the full executive and administrative power of the government, subject only to the resolutions of the Congress.⁵³ The Council was given complete control over the "direction, Regulation and Maintenance" of the military when Congress was not in session. They were authorized to certify the appointment of army officers, fill all vacancies, and when deemed necessary "for the public service," to suspend any officer and order his court martial. They were, in addition, authorized full power to call for the militia in all cases of alarm and carry into execution all orders of Congress concerning the militia.⁵⁴ In general, the Council was empowered to "transact all such matters and things as they may judge expedient to strengthen, secure, and defend the colony" so long as they did not alter or suspend any act or resolution of Congress. With such extensive authority over the regulation of the colony, it was necessary, therefore, that the Council also be given control over the public funds. Accordingly, they were authorized to draw from the treasury "all necessary sums of money," being careful to keep a strict accounting of all expenditures that they might be presented for approval at the next session of Congress.⁵⁵ The Council was instructed to hold its first meeting

⁵³ Ibid., p. 32.

⁵⁴ Ibid., pp. 32-33.

⁵⁵ Ibid., p. 33.

at the Johnston County Court House on October 3, and subsequently, to meet every three months, unless necessity dictated otherwise. Members were allowed expenses amounting to ten shillings per day and ferriage. The only expressed prohibition on membership in the Council referred to those persons holding a military position or a "lucrative office under any military commander" Officers of the militia alone were excepted.⁵⁶

The lowest echelon in the new governmental structure was to be the county or town committee. Congress ordered that the committee in each county would be composed of twenty-one members, a majority of which would constitute a quorum.⁵⁷ Three North Carolina towns were considered of sufficient importance and size to merit special attention. Therefore, the committees of Edenton, Newbern, and Wilmington were each allocated fifteen members, while all other towns in the province having the right to representation were allocated seven-member committees. All persons having the right to vote for delegates in Congress were permitted to vote for committeemen in the annual elections.⁵⁸ Although the principal duty of local committees was to execute the orders of the Congress and the Provincial Council, they were directed to

⁵⁶ Ibid.

⁵⁷ Ibid., p. 35.

⁵⁸ Ibid.

work together closely and, in some cases, the town and county groups were permitted to work in complete conjunction.⁵⁹

As their final instruction, the local committees were ordered to elect, from their own members, seven men to act as a Committee of Secrecy, Intelligence, and Observation, with the task of corresponding with the Provincial Council, the various district committees and the other local committees of both North Carolina and the neighboring colonies. In addition, they were authorized to take into custody and examine "all suspected persons" and, if deemed necessary, send them either to the district Safety Committee or the Provincial Council for trial.⁶⁰

In order to provide a uniform election procedure, Congress directed that on the third Tuesday of October, the "freeholders" of every county should meet at the various county court houses, and in the presence of three inspectors, appointed by the local county committee, should choose as many as five persons to represent them in Congress.⁶¹ The use of the word "freeholder" had much more significance than might at first appear. Under the royal government, suffrage had been extended to the inhabitants of the province. The original Whig party of North Carolina had been composed of "the wealth, the virtues, and the intelligence of the

⁵⁹Ibid.

⁶⁰Ibid., p. 36.

⁶¹Ibid., p. 34.

province," and it was from this source that the revolution gained its strength and momentum. Through universal suffrage, the threat of dissident voices was an ever present danger. By the substitution of the word "freeholders," however, the Congress was able to disfranchise a large class of potentially unmanageable Scottish Highlanders who were often "guided" by wealthy Tories.⁶² By so doing, the Whigs were able to retain control of government in the counties with a Scottish majority. Even though it is remembered that universal suffrage was not a popularly accepted concept of democracy, as then understood, it becomes equally obvious that the Provincial Government was far less favorable to universal suffrage than the royal government had been.⁶³

The Hillsboro Congress, having made diligent attempts to prepare the colony for the hostilities ahead, feared that in the event of war foreign commerce would be severely interrupted. To prepare for such an emergency, and in an attempt to forestall the attendant suffering to civilian and soldier alike, the Congress resolved to encourage the development of local manufacturing. To this end, they offered bounties to those individuals who would undertake to produce marketable quantities of such items as saltpetre, gunpowder, iron, nails,

⁶²Jones, A Defense of North Carolina Revolutionary History, p. 202.

⁶³Sikes, The Transition of North Carolina From Colony to Commonwealth, p. 50.

salt, sulphur, and cloth.⁶⁴ In addition to the bounties, premiums were also offered to those persons who could accomplish these tasks in the shortest amount of time.⁶⁵ By such efforts, the delegates sought to make North Carolina not only a self-supporting colony, but also to free it from a binding, and possibly crippling reliance on foreign products.

Having successfully, if only temporarily, completed the major tasks confronting them, the Congress turned its attentions to matters of a more continental concern. One such matter was the debate involving a proposed plan of confederation which had been presented to the Continental Congress by Benjamin Franklin on July 21. As the Philadelphia Congress anticipated that the proposed plan would become the subject of serious debate at the next session in Philadelphia, and desired the opinions of the various colonies, William Hooper, returning home for the Hillsboro Congress, presented the plan to the delegates.⁶⁶ After deliberating the issue, the Provincial Congress passed a resolution declaring that the plan was "not at present eligible," and that the delegates from North Carolina should be instructed to withhold their consent

⁶⁴ Journal of the Provincial Congress of August, 1775, pp. 37-38.

⁶⁵ Ibid.

⁶⁶ Burnett, Letters of Members of the Continental Congress, II, 90-91.

to any such plan until it could receive the approval of the provincial government.⁶⁷ They further declared the belief that the present Association should be relied on as the safest means of bringing about a reconciliation between the colonies and the "parent State," and that any idea of a confederacy should be considered only as a "last necessity."⁶⁸

As clearly demonstrated by the reaction of the Congress to the Franklin plan of confederation, the idea of a total break with Great Britain was still not cherished by the average citizen. In still another attempt to convey their feelings to all Englishmen, the Congress appointed William Hooper to prepare an address directed to all inhabitants of Great Britain.⁶⁹ In answering the charge that independence was their object, the Congress termed it a "Cruel Suggestion," emphasizing that all their actions "uniformly contradict this." They declared that all they desired was "To enjoy the fruits of our own honest Industry; to call that our own which we earn . . . ; and to regulate that internal policy by which we . . . are affected." They further maintained that any departure from the constitution was dictated entirely by self-preservation; "as soon as the Cause of our Fears and Apprehensions are removed, with Joy will we return

⁶⁷Journal of the Provincial Congress of August, 1775,
pp. 20-21.

⁶⁸Ibid.

⁶⁹Ibid., p. 27.

these Powers to their regular channels." Declaring themselves possessed of an affection "bordering upon Devotion to the Succession of the House of Hanover," the Congress stated its own view of its actions as a "Monument that does Honour to human nature." Stating their desire to remove any false impressions created by the "Representations of weak and wicked Men . . . ," they again defended their actions as a discharge of duty owed to the world, to themselves, and to posterity.⁷⁰

On September 10, 1775, the Provincial Congress of Hillsboro was adjourned by Samuel Johnston. In a session lasting only twenty-one days, the Congress had created the genesis of both a military force which would, much sooner than expected be called upon to defend the province from its enemies, and a civil government which Allan Nevins has described as "the most elaborate provisional government on the continent."⁷¹ Through the efforts of the largest representative assembly ever to have met in North Carolina, the will of the people had been fulfilled. As Saunders said, "The Die was now cast . . ." and North Carolina was at last a self-governing commonwealth.⁷²

⁷⁰Ibid.

⁷¹Allan Nevins, The American States During and After the Revolution, 1775-1789 (New York, 1924), p. 74.

⁷²Saunders, Colonial Records, X, Prefatory notes, viii.

CHAPTER IV

THE PROVISIONAL GOVERNMENT

The incentive which guided the Provincial Congress at Hillsboro had been the urgent need for an effective civil government and military organization capable of leading North Carolina through the perilous and uncertain days ahead. Through the conscientious efforts of its members, the Congress had, by early September, 1775, achieved a measurable degree of success with the adoption of an elaborate plan of administration. This could only be regarded, however, as a preliminary action--a first step. The degree to which success would be realized was dependent upon factors which were, for the moment, beyond either the knowledge or the control of the Congress. The inescapable fact that the new structure was untried and unproven, together with the diversity of public opinion and the unpredictability of the British Ministry combined to force upon the Whig leaders a pragmatic attitude as they awaited the coming test of the Provisional Government.

On October 18, a little more than a month after the adjournment of the Congress at Hillsboro, the first meeting of the Provincial Council was convened at the Johnston County Court House. In the six months of its existence, the Council

would meet for less than three weeks. The members of the body, having been appointed by the last Congress,¹ unanimously chose Cornelius Harnett as their president, thereby making him in effect if not in name, the chief executive of the province.² This position has been described as "the most arduous and dangerous post to which a citizen could be called," one which was "exposed to all the abuse and insolence of the proclamations of the British authorities."³

Few governmental bodies have faced more difficulties than did the Council in its short history. Having no definite meeting place, it became, of necessity, a "migratory body," convening its first two sessions in Johnston County and its third and final session in Newbern.⁴ As the supreme governmental branch currently in session, the Council was called upon to deal with economic, political, and military problems encompassing an immense geographic area, but without the aid of either past experience, sufficient funds, or

¹The Journal of the Proceedings of the Provincial Congress of North Carolina Held at Halifax the 4th Day of April, 1776 (Newbern, 1776), p. 36, on microfilm, N.T.S.U. Library. (Hereafter cited as Journal of the Provincial Congress of April, 1776). The members of the Provincial Council were Samuel Johnston, Abner Nash, Cornelius Harnett, Samuel Ashe, Thomas Jones, Whitmell Hill, James Coor, Thomas Person, James Kinchen, Willie Jones, Thomas Eaton, Samuel Spencer, and Waightstill Avery.

²Saunders, Colonial Records, X, 283.

³Jones, A Defense of North Carolina Revolutionary History, pp. 206-207.

⁴Connor, Cornelius Harnett, p. 112.

satisfactory communication with the other governmental bodies. Unlike the systems adopted by the other colonies, the North Carolina Council of Safety was not charged with authority to enforce the acts of the Congress locally. Such power was entrusted to the local committees. The central Council was thus forced to rely for success chiefly on public sentiment, which they themselves were largely responsible for creating.⁵ In addition, the Council also faced the task of dealing with a province divided between the wealthy merchants and planters of the east, the small, isolated farmers of the west, and, between the two, the Scottish Highlanders and the Regulators, one loyal to England, and the other loyal to none but themselves.⁶ In this atmosphere and under these conditions the Provincial Council was called upon to organize an army of people divided in loyalty, supply it without the aid of factories, maintain it with insufficient funds, and direct it against an enemy which was, in all ways, superior.⁷

The primary task of the Council was in the handling of military affairs, with the first priority being given to the securing of supplies. Attempts were made to obtain from all "friends to America," from whatever source, powder, saltpetre,

⁵Connor, Cornelius Harnett, p. 112; Agnes Hunt, The Provincial Committees of Safety of the American Revolution (Cleveland, 1904), p. 122.

⁶Connor, Cornelius Harnett, pp. 112-113.

⁷Ibid., p. 114.

and sulphur, which was then apportioned between the various local committees.⁸ Urgent dispatches were sent to Hooper, Hewes, and Penn, in Philadelphia, ordering them to purchase "Gunpowder, Drums, Colours, and Fifes" and ship them to North Carolina as soon as possible.⁹ Additional quantities of gunpowder were also sought from the Committees of Safety in the neighboring colonies.¹⁰ Local citizens were commissioned to construct gun carriages to mobilize the small number of cannon possessed by the colony, and thus make them more readily available wherever needed.¹¹ In order to carry on the urgently needed trade, the Council resolved to charter several vessels at the ports of Newbern, Wilmington, and Edenton to carry the procured arms and ammunition. They further ordered three armed vessels to be made ready "with all dispatch" for the protection of the coastal trade.¹² Certain restrictions were also placed on the trade. As an added incentive to the shippers, the Council ordered that the export of pork, bacon, rice, and peas was to be prohibited, unless arms, ammunition, and salt were bought in exchange. To insure the enforcement of the order, they appointed port commissioners with the authority to issue permits and oversee the limited commerce.¹³

⁸Force, American Archives, 4th series, IV, 306-307.

⁹Ibid., p. 304.

¹⁰Ibid., p. 301.

¹¹Ibid.

¹²Ibid., p. 302.

¹³Saunders, Colonial Records, X, 471, 473, 473.

In mid-December, the Council became increasingly alarmed at attempts by Governor Martin to communicate with the Loyalists. Fearing that Martin might arouse the Loyalists to resistance, the Council recommended that the Wilmington and Brunswick committees, with the support of the Cape Fear military units, "use their utmost endeavors" to cut off all personal communications between Martin and both the British navy and the inhabitants of the province, and that all of Martin's written correspondence be censored by the local committees.¹⁴ The Wilmington committee was also empowered to cut off all supplies to the British warships anchored in the Cape Fear River whenever they felt it necessary.¹⁵ In a further attempt to "counteract and frustrate the wicked and diabolical stratagems of Governor Martin . . ." the Council resolved that the colony's delegates in Philadelphia should be immediately requested to procure a large supply of "the best Pamphlets that can be had," that they might inform the inhabitants, particularly those in the western counties, of the "true" situation.¹⁶ The Council, however, made little attempt to deal more directly with the Loyalists. Except for officially recommending that suspected Tories should be disarmed and required to take an

¹⁴Force, American Archives, 4th series, IV, 301.

¹⁵Ibid.

¹⁶Ibid., p. 306.

oath of loyalty to the Provincial and Continental Congresses, all other policing functions were left to the local committees.¹⁷

In spite of the diligent efforts of the Congress to the contrary, the town and county committees continued to exercise the most active role in both preparing and policing the colony. The citizens of Wilmington continued to exhibit the energy and determined resourcefulness which had, in the past, characterized them as the most outstanding of the local groups. Being situated, as they were, in constant view of the British warships in the Cape Fear River and continually exposed to the threat posed by Josiah Martin, they probably were more aware of the realities of their situation and more cognizant of the possible consequences of failure than some of the more remote counties. Even before the Council's order, the local group had prohibited supplies from reaching the British navy and had ordered the channel obstructed to prevent the ships from reaching Wilmington.¹⁸ In addition to the raising and training of a local militia, the committee purchased all available supplies of lead, saltpetre and sulphur and commissioned workmen to produce balls and cartridges.¹⁹ Also, as in the past, Wilmington best exemplified the extent to

¹⁷ Saunders, Colonial Records, X, 472, 476.

¹⁸ Ibid., pp. 335-336.

¹⁹ Ibid., pp. 328, 337, 348, 426,

which the local committees went in dealing with persons it deemed unfriendly or suspect.²⁰ While the activities of most town and county groups tended to assume a similar pattern, some counties sought to extend their power even further. One such example was Surry County, which undertook to suppress "immorality and vice" by prohibiting any form of gambling.²¹

With the local organizations assuming full responsibility for law enforcement and the Provincial Council of Safety responsible for the direction of the military, the various district Safety Committees found themselves in a position of being, to a large extent, both unneeded and unwanted. Not only were the local committees reluctant to surrender their authority, but from the standpoint of efficiency the six unrelated district committees were not able to offer a unified leadership. Thus, having no real basis in necessity, they were not active bodies.²²

The first real military threat to North Carolina came in the early days of the new year. Governor Martin, having an inflated and unrealistic concept of loyalist strength within the colony, yearned to take advantage of that supposed asset and regain control of the government from the revolutionaries.²³ As early as June, 1775, the Governor devised an

²⁰Ibid., pp. 410, 411, 418, 427.

²¹Ibid., p. 251.

²²Ibid., pp. 294, 362; Hunt, The Provincial Committees of Safety, p. 124.

²³Saunders, Colonial Records, X, 325.

elaborate plan of conquest. To Lord Dartmouth, Martin outlined a strategy which he was confident would not only restore North Carolina to British control but would also enable them to subjugate every colony south of Pennsylvania.²⁴ The Governor was convinced that he could recruit and arm at least 3,000 men from among the loyal Scotch Highlanders. With this group thus affording protection, he foresaw at least 20,000 of the colony's estimated 30,000 fighting men deserting the Whigs to support the King. He further estimated potential strength within the slave elements at approximately 10,000. Martin assured Dartmouth that the mere existence of such a force would be enough to hold the neighboring colonies "in such awe" that no reinforcements would attempt to aid North Carolina. In the event the King should approve his plan, Martin requested 10,000 stand of arms, six light cannon, adequate ammunition and funds, and the restoration of his commission as lieutenant-colonel, which he had sold in 1769 because of ill health.²⁵

The confident assurances of Martin, similar claims from the governors of Virginia and South Carolina, and the general feeling in England that North Carolina was, with the exception of Georgia, the weakest colony in America, all combined

²⁴Hugh Rankin, "The Moore's Creek Bridge Campaign, 1776," The North Carolina Historical Review, XXX (January-October, 1953), p. 26; Lee, The Lower Cape Fear, p. 262.

²⁵Saunders, Colonial Records, X, 45-47.

to convince Dartmouth that the plan had merit.²⁶ By the time British consent reached Martin, on January 3, the plan had been even further expanded by Lord Dartmouth. Under the revised scheme, a British expedition of seven regiments would proceed to the Cape Fear River where as many troops as deemed necessary would be landed, provided no opposition was encountered, and provided they were joined by a sufficient number of Loyalists to regain and maintain control of the royal government. If such a union failed, the troops were ordered to proceed to South Carolina and attempt to restore that colony's government. The expedition, as viewed by the British, was not a full scale invasion, but rather an effort to "wrest the sword out of the hands of the Rebels" and return the government to the control of the Loyalists.²⁷

Martin moved quickly to implement his plan. On January 10, he issued a proclamation calling upon all those loyal to the Crown to assemble for the purpose of "subduing . . . the impious and unnatural Rebellion, and to restore the just rights of His Majesty's Crown and Government, and the liberties of his people."²⁸ He also issued orders to the Loyalists of Anson, Cumberland, Chatham, Guilford, Orange, Mecklenburg, Rowan, Surry, and Bute Counties to organize

²⁶The Annual Register, or a View of The History, Politics, and Literature For the Year 1776, 4th edition (London, 1788), p. 156.

²⁷Saunders, Colonial Records, X, 299-300, 306-308, 313-314.

²⁸Ibid., pp. 396-397, 406-409, passim.

troops, gather together, and march for Brunswick, arriving no later than February 15.²⁹

Martin's action did not take the Whig leaders by surprise. Through the efforts of the various local committees, both the Governor and his correspondence had been carefully watched for months. Even the letter in which Martin outlined his plan to Dartmouth, upon its arrival in England, bore the notation, "Opened by the Committee of Inspection at Charles Town" ³⁰ On January 2, the Continental Congress had issued warnings to all the southern colonies concerning the possibility of impending attacks against the Carolinas and Virginia. The Congress recommended to each provincial government that all possible measures be immediately taken "to make a vigorous defense and opposition." They further recommended that representatives from the governments of the four southernmost colonies be sent to Charlestown to confer upon all matters concerning their mutual interests and defense.³¹ Two weeks later, the Philadelphia Congress recommended that North Carolina raise another battalion of troops in order to insure sufficient strength with which to meet the expected invasion.³²

²⁹ Ibid., pp. 441-442.

³⁰ Ibid., pp. 69-70.

³¹ Force, American Archives, 4th series, IV, 1643.

³² Ibid.

On February 9, word reached the Lower Cape Fear that General Donald McDonald, commander of the Loyalist troops, had gathered at Cross Creek, above Wilmington, for the purpose of marching down the river to unite with Governor Martin.³³ In an attempt to stop McDonald before he could reach Wilmington, Colonel James Moore, commander of the first North Carolina Regiment, took possession of the bridge at Rockfish Creek, seven miles below Cross Creek. Anticipating that the Loyalists' route would bring them to that point, Moore entrenched his troops and, by February 19, was joined by Colonel Alexander Lillington with 150 Wilmington Minute Men, Colonel John Ashe with about 100 New Hanover volunteers, and Colonel James Kenan with 200 Duplin County militia. Moore's army then numbered about 1,100 men. At the same time, Colonel Richard Caswell was on his way from Newbern with an additional 800 men. McDonald's force, according to Moore's estimate, numbered about 1,500.³⁴

On February 19, McDonald, having moved to within four miles of the Whig position, informed Moore that if, by noon of the following day, Moore had not declared his intention to join "the royal standard," he would be considered an enemy of the Crown.³⁵ Hoping to give his reinforcements additional time, Moore deliberately delayed his answer until the

³³Saunders, Colonial Records, X, 443-444, 465.

³⁴Ibid., XI, 283-284.

³⁵Ibid., pp. 276-277.

following day, at which time he declared that if the Loyalists would consent to take the oath recommended by the Continental Congress, they would be received as "friends and countrymen." Should they refuse, however, Moore declared that he would consider them as "enemies to the constitutional liberties of America, and treat them accordingly."³⁶

On February 21, Moore unexpectedly learned that McDonald had withdrawn to Campbelltown, where his entire army had crossed the river and afterwards sunk or destroyed all available boats. From that point he marched southward, toward Wilmington. In a determined effort to stop McDonald's march to the south, Moore divided his army, sending Caswell to occupy Colbert's Ferry over the Black River and prevent Moore's forward movement, while Colonels James Martin and James Thackston were directed to secure Cross Creek, thereby blocking McDonald's retreat. Simultaneously, Colonels Lillington and Ashe were sent to reinforce Caswell, with instructions that should they be unable to do so, they would take possession of Moore's Creek Bridge. Meanwhile, Moore proceeded with the remainder of his command to Elizabeth Town in the hope of surrounding the Loyalists near Colbert's Ferry.³⁷

Two days later Moore received word from Caswell that he had been unable to stop the Tory march. Following that news,

³⁶Ibid., pp. 277-278.

³⁷Ibid., p. 284.

Moore's Creek Bridge became the focal point in the strategy as Moore directed all his troops in that direction. On February 25, Lillington's force arrived at the bridge, followed the next day by Caswell. While engaged in the construction of breast works and a partial dismantling of the bridge, they learned that Moore had been delayed at Dollison's Landing while awaiting fresh horses.³⁸

At daybreak the following day, finding no signs of the Whig forces and mistakenly concluding that the bridge position had been abandoned, the Loyalist army attacked. The ensuing encounter lasted only three minutes and resulted in a complete routing of the Loyalist forces. In his official report, Moore, who arrived at the scene a few hours after the battle,³⁹ estimated the enemy losses at between thirty and seventy, including those killed and wounded, and an undetermined number who fell into the creek or were carried off the battlefield. Of his own losses, Moore reported only two wounded, one of which later died. With the Tory army completely scattered, the triumphant Whigs were able to capture 850 soldiers, including General McDonald, 350 guns, 150 swords and dirks, 1,500 excellent rifles, over a dozen wagons, two fresh medicine chests, and a box containing £15,000 sterling.⁴⁰ Moore

³⁸Ibid., p. 284.

³⁹Ibid., X, 482.

⁴⁰Ibid., pp. 485-486.

made no attempt to disguise his pleasure when he wrote that the campaign had "terminated a dangerous insurrection, and will, I trust, put an effectual check to toryism in this country."⁴¹

Even though the Loyalist campaign had been ended, the threat posed by the British still remained. The seven regiments under General Charles Cornwallis, ordered to North Carolina by Lord Dartmouth, had not arrived in time to aid Governor Martin, but their arrival, on May 3, combined with the arrival of several more British warships under the command of General Sir Henry Clinton, caused a state of great unrest to pervade the Cape Fear region.⁴² In mid-May, Clinton issued a proclamation exhorting the citizens of North Carolina to return to their "former duty." To all who would lay down their arms, he offered a "free pardon," with the exception of Cornelius Harnett and Robert Howe; those who refused were declared to be "enemies of the State."⁴³ Receiving no reply to his proclamation and realizing that the mission was a failure, Clinton, with most of his force of thirty-six vessels, left North Carolina on the last day of May. Their actions still dictated by Lord Dartmouth's December orders, the British sailed for Charlestown.⁴⁴

⁴¹Ibid., XI, 284-285, 289-290.

⁴²Ibid., X, 495.

⁴³The Virginia Gazette, June 8, 1776.

⁴⁴Ibid.

Reaction to the battle was mixed. In London, the Gentleman's Magazine saw it as being of little consequence as "they only reduced a body of their own people, supported by no one company or regular troops."⁴⁵ Only the Annual Register foresaw a possible danger when it pointed out that the Whigs "had encountered Europeans (who were supposed to hold them in the most sovereign contempt, both as men and as soldiers) and had defeated them with an inferior force."⁴⁶ In North Carolina the victory proved to be "as contagious as that of Lexington had been in New England"⁴⁷ The defeat of the Loyalists had immeasurable importance in relation to North Carolina. If McDonald's forces had been successful in their attempt to unite with Governor Martin, many more of the eastern Tories would likely have joined their ranks, resulting in a considerably increased threat to the colony. But for the overconfidence of Governor Martin in beginning his campaign too soon, and the remarkable success of the provincial committees in building their army, the revolutionary history of North Carolina might have been seriously altered.

On April 4, 1776, amid both the exhilaration of the victory at Moore's Creek Bridge and the consternation over

⁴⁵"An Account of the Proceedings of the American Since the Passing of the Boston Port Bill," Gentleman's Magazine and Historical Chronicle, XLVI (June, 1776), 281-282.

⁴⁶The Annual Register For The Year 1776, pp. 157-158.

⁴⁷Fiske, The American Revolution, I, 189-190.

the impending arrival of General Clinton, the fourth session of the Provincial Congress convened at Halifax. For the first time, the idea of independence was now being freely and frequently expressed among both the delegates and the inhabitants of the colony. William Hooper had written from Philadelphia declaring that "'it would be Toryism to hint the possibility of future reconciliation.'"⁴⁸ John Penn declared that "' . . . all regard or fondness for the king and nation of Britain is gone. A total separation is what they want. Independence is the word most used.'"⁴⁹ Samuel Johnston, writing from Halifax on April 5, stated that "All our people here are up for independence."⁵⁰ Thus, in an atmosphere filled with an unprecedented revolutionary spirit, the Congress began its deliberations. As their first act, the delegations again unanimously chose Samuel Johnston as their president.⁵¹

Amid the realities and rumors of war, the primary concern of the Congress was the military. Early in the session the delegates resolved that two battalions of 750 privates each, over and above the one directed by the Continental Congress,

⁴⁸Quoted in Lefler and Newsome, North Carolina, p. 203.

⁴⁹Ibid.

⁵⁰Griffith McRee, Life and Correspondence of James Iredell, One of the Associate Justices of the Supreme Court of the United States, 2 vols. (New York, 1949), I, 275.

⁵¹Journal of the Provincial Congress of April, 1776, p. 4.

should be immediately raised. In addition, they ordered that three companies of "light horse" be formed by the province, and placed at the disposal of the Continental establishment.⁵² In a further attempt to encourage the production of war materials, the Provincial Congress resolved to issue commissions for the establishment of manufacturing concerns for the production of gunpowder, common salt, muskets and bayonets, and to arrange for either renting or leasing the furnaces and iron works necessary for such production.⁵³ In addition to the methods already determined, the Congress appointed a large committee to receive, procure, and purchase arms. The committee was instructed to take possession of all arms taken from the Tories, to purchase all firearms in suitable condition for immediate use, and to repair all arms not immediately usable. Having been collected, the materials were to be delivered to the various commanders of the continental troops.⁵⁴ To insure that the men appointed as officers were possessed of the best possible qualifications, the delegates, themselves, appointed all general officers, and drew up an extensive list of qualifications to be observed in the recruitment of all lower grade officers.⁵⁵ The various county militia units

⁵² Ibid., p. 6.

⁵³ Ibid.:; pp: 11: 20-21:

⁵⁴ Ibid., pp. 15-16.

⁵⁵ Ibid., pp. 16, 17, 33.

were also brought under more effective regulation. The Congress ordered that the militia of every county was to consist of all "effective men" between the ages of sixteen and sixty. Each county regiment was to be divided into companies of not less than fifty men each. Each company would then be divided into five groups, one of which would be composed of all the more aged and infirm men. Each militia soldier was to be furnished with a good "Gun, Bayonet, Cartouch Box, Shot Bag and Powder Horn, a Cutlass or a Tomahawk" and pay, while on duty, amounting to two shillings per day.⁵⁶

During the early days of May, when the news of Clinton's arrival reached Halifax, the Congress took immediate action to lessen the danger posed to the Wilmington area. They ordered that all available provisions and ammunition be immediately sent to Moore, who had hurried back to help secure the town. In addition, they ordered all recruiting officers to march their recruits to Moore's aid as quickly as the men could be enlisted and properly armed.⁵⁷ Four days later, additional reinforcements were sent, consisting of district brigades from Halifax, Edenton, Newbern, and Wilmington.⁵⁸ In a final move to prevent the British from receiving any assistance from within the province, the Congress ordered all slave owners on the south side of the Cape Fear River to

⁵⁶Ibid., pp. 31-32.

⁵⁷Ibid., p. 28.

⁵⁸Ibid., p. 33.

remove to the interior all male slaves capable of bearing arms or otherwise aiding the enemy.⁵⁹

Amid the ever present task of providing for the military, the Congress turned also to other vital areas of concern. Early in the session, an eight-man committee, headed by Cornelius Harnett, was appointed to consider the "Usurpations and Violations" committed by Great Britain against America, and to recommend appropriate measures for frustrating all such attempts.⁶⁰ On April 12, the committee reported the results of its deliberation. Reciting their grievances, they declared that the King and Parliament had attempted to usurp an "unlimited and uncontrolled" power over its people in America; that all petitions for peace and liberty had gone unanswered; and that the British fleet was daily employed in the destruction of the colonies, their people, and their ships.⁶¹ The committee further emphasized that all their previous declarations of loyalty and their "sincere desire to be reconciled to the Mother Country on Constitutional Principles," had produced no mitigation of the stated grievances. Therefore, seeing no hope of obtaining redress by any of the previously attempted methods, the committee was forced to consider more drastic means. Thereupon, a resolution was introduced and unanimously passed, by which the

⁵⁹Ibid., p. 36.

⁶⁰Ibid., p. 4.

⁶¹Ibid., p. 9.

Congress empowered its delegates to the Continental Congress to concur with the other colonies "in declaring Independency, and forming foreign alliances," reserving for North Carolina the "sole and exclusive Right" to form its own laws and constitution, and to meet periodically with delegates of the other colonies on matters of mutual concern.⁶² The following day, the delegates again demonstrated their determination in the stand they had taken by resolving that should any commissioner from Great Britain arrive in North Carolina without the expressed authority to treat with the Continental Congress, he would be refused admittance and returned to his ship, adding that in the case of his refusal, he would be seized and sent immediately to Philadelphia.⁶³ In its bold and determined action, the Halifax Congress had made North Carolina the first American colony to vote for independence.⁶⁴ Not only was the resolution an expression of North Carolina's sentiments, but it also served as a recommendation that all other colonies should follow their example. While some colonies still maintained a firm attachment to the British and looked upon their own present system as a safeguard to a stable, if not totally satisfactory, colonial government, North Carolina had passed beyond such feelings. The internal strife of the past decade, the inability of the royal government to deal with it effectively, and the recent attempts at

⁶²Ibid.

⁶³Ibid.

⁶⁴McRee, Life and Correspondence of James Iredell, I, 276.

invasion had left North Carolina with few feelings either of attachment to the British or regret at parting with the system.⁶⁵

The following day, April 13, the delegates appointed a large committee to prepare a temporary civil constitution.⁶⁶ The ensuing attempts at forming a new independent government soon developed wide differences between the members of the committee. While the majority of the group was inclined toward a pure democracy, the minority faction favored "representative republicanism" with constitutional guarantees against arbitrary legislation.⁶⁷ On April 25, the committee reported the first "outlines" of the constitution.⁶⁸ The plan, as described by Thomas Jones, called for a "House of Representatives of the people" and a "Legislative Council," each being elected by all the freeholders of the province. The two houses were to act as a check on each other, as the consent of both bodies would be required to enact a law. In addition to the legislative branch, an "Executive Council,"

⁶⁵Lefler and Newsome, North Carolina, p. 204; Sikes, The Transition of North Carolina From Colony to Commonwealth, p. 59.

⁶⁶Journal of the Provincial Congress of April, 1776, p. 10. The committee was composed of delegates Harnett, Nash, Hill, Thomas Jones, Burke, Allan Jones, Locke, Blount, Rand, John Johnston, Ashe, Kinchen, Spencer, Haywood, Richardson, Bradford, Ramsay, and Person.

⁶⁷McRee, Life and Correspondence of James Iredell, I, p. 276.

⁶⁸Ibid., p. 277.

always sitting, would transact "all official business of the government."⁶⁹

In the deliberations of the committee as well as the open debates in Congress, which followed on April 27, the first significant signs of a political division appeared. The radicals, in the majority in both the Congress and the committee, wished to break completely with the past and form a new government which would be both simple and immediately responsive to the popular will. The conservative group, on the other hand, refused to sanction such a plan and sought, rather, to retain those things in the British system thought to be worth while, such as an independent judiciary and restricted suffrage.⁷⁰ The Conservatives numbered among their leaders many of the best known and most influential men in the province, including James Iredell, Samuel Johnston, Joseph Hewes, Thomas Jones, Archibald Maclaine, William Hooper and John Steele. All of the Conservative leaders, except Steele, were inhabitants of the eastern section of the colony. The Radical leaders, though fewer in number, exercised a greater influence over their followers in the interior. Among the Radical leaders were Thomas Person, John Penn, Timothy Bloodworth, Matthew Locke, Samuel Spencer, and Willie

⁶⁹Ibid., p. 278.

⁷⁰Delbert Harold Gilpatrick, Jeffersonian Democracy in North Carolina, 1789-1816, Studies in History, Economics, and Public Law (New York, 1931), pp. 22-23.

Jones, unquestionably the dominant figure in his party. Richard Caswell and Alexander Martin, being found at times on both sides, were best classified as "moderates."⁷¹ So great was the division between the two groups that Samuel Johnston, presiding officer of both the convention and the committee, wrote to James Iredell that there were few in attendance capable of "forwarding business--many of retarding it," and that it would be virtually impossible for him to take any part in the execution of a document passed under such circumstances.⁷² The major points of conflict between the two groups were: the voting qualifications; a bicameral versus a unicameral legislature; the method of choosing judges; the term of office of elected officials; and the powers of the executive.⁷³

On the last day of April, after a week of fruitless discussions, Congress voted not to adopt a state constitution. The original committee was discharged and a new nine-man committee was appointed with instructions to form a temporary government to last until the end of the next session of Congress.⁷⁴ Eleven days later the new committee reported

⁷¹Ibid., p. 21.

⁷²McRee, Life and Correspondence of James Iredell, I, 275.

⁷³Fletcher Green, Constitutional Development in the South Atlantic States, 1776-1780: A Study in the Evolution of Democracy (Chapel Hill, 1930), p. 72.

⁷⁴Journal of the Provincial Congress of April, 1776, p. 27. The new committee was composed of Thomas Burke, Robert Howe, John Ashe, Richard Caswell, William Hooper, Thomas Person, Abner Nash, John Kinchen, Thomas Jones, and James Coor.

the results of their efforts to the Congress and received their approval.⁷⁵

The Provincial Council and the six District Committees of Safety, which had proven to be less effective than desired, were abandoned and were replaced by a Council of Safety for the entire colony. The new Council was composed of two persons from each district and one delegate at large. Unlike its predecessor, it would meet continuously from the end of the current session until the next session of the Provincial Congress. As in the case of the preceding Provincial Council, the only restriction on membership referred to those persons holding military offices or any "lucrative" office under any military commander, officers of the militia alone being excepted.⁷⁶ The Council of Safety was invested with full authority "to do and execute all Acts and things necessary for the Defense and Protection of the Colony" so long as their actions in no way altered, suspended, or abrogated any resolution of the Provincial Congress. The Council was further prohibited from issuing any Bills of Credit, establishing any taxes or import duties, or erecting any courts, except those expressly designated by Congress.⁷⁷ Additional resolutions were passed authorizing the Council to draw upon the Continental Treasury, in cases of emergency, and to

⁷⁵Ibid., pp. 40-41.

⁷⁶Ibid., p. 40.

⁷⁷Ibid.

establish Admiralty Courts at the ports of Edenton, Bath, Newbern, and Wilmington for the purpose of hearing and determining all maritime matters. Beyond the establishment of courts, the Council was also empowered to appoint port commissioners at Currituck, Roanoke, Bath, Beaufort, and Brunswick for the purpose of granting certificates to masters of vessels which utilized those ports, with the view of enforcing the previously prescribed rules of both the Continental and Provincial Congresses.⁷⁸

The changes made in the Provisional Government were not of a basic nature, but rather, only changes in administration. Having witnessed the ineffectiveness of the district committees, the Congress disposed of them and consolidated their functions with those of the new and expanded Council of Safety. The county and town committees remained unchanged, but with the increased activity and efficiency of the new Council, the local groups began to decline in importance. By their determined, pragmatic approach, the Congress had finally achieved their goal of an effective temporary government with the passage of the new plan which would ultimately prove far superior to the old.⁷⁹

Having thus disposed of the major problems confronting them, the Congress authorized the emission of an additional

⁷⁸ Ibid.

⁷⁹ Sikes, The Transition of North Carolina From Colony to Commonwealth, pp. 61-62.

\$750,000 in paper Bills of Credit for the purpose of defraying all expenses of armaments, bounties, and "other contingencies" that might arise during the recess of Congress.⁸⁰ To redeem the bills, a poll tax was created to begin in the year 1780 and continue for twenty years. In addition to the creation of the new Bills of Credit, the President of the Congress was empowered both to borrow money and to purchase provisions for the public use on the credit of the province.⁸¹

As a means of insuring obedience to their resolutions, the Halifax delegates commissioned a Committee of Secrecy, Intelligence, and Observation, with the power "to send for and enforce attendance" of all persons suspected of acting contrary to the general interest. As an added measure of inducing compliance, they resolved that any inhabitant of the colony found guilty of bearing arms against America, or in any way aiding the enemy, would "forfeit all his goods and chattels, lands and tenements to the people of the colony" and be confined as a prisoner of war.⁸²

With the adjournment of the Halifax Congress, the executive power of the Provisional Government was taken over by the Committee of Safety. Although the Council had been

⁸⁰Journal of the Provincial Congress of April, 1776, pp. 18, 37.

⁸¹Ibid., p. 23.

⁸²Ibid., pp. 12, 43.

envisioned as sitting in continuous session, it did not meet without interruption. Having no definite meeting place, it moved periodically to different locations throughout the province.⁸³ The work of the Council was much like that of its predecessor in that its major function was that of supplying the military and encouraging local manufacturing and trade.⁸⁴ They encouraged privateering by issuing letters of marque and reprisal and employed armed ships to attack British merchantmen.⁸⁵

Unlike the old Provincial Council, the new body successfully fulfilled its role as the central governmental authority. By freely exercising its control over the military and its right to try suspected Tories, the central Council was able to usurp much of the power previously possessed by the county committees.⁸⁶

With the defeat of the Loyalists and the thwarting of Martin's planned invasion, the North Carolina military saw action only in the assistance of other colonies during this period. Virginia, threatened by the Indians on her western frontier, asked the North Carolina Council for aid, which

⁸³Saunders, Colonial Records, X, 618d, 682, 826, 873. The Council was in session from June 5-July 16 in Wilmington; July 21-August 28 in Halifax; September 6-September 13 in Salisbury; and September 27-October 25 in Halifax.

⁸⁴Ibid., pp. 620, 630, 645.

⁸⁵Ibid., pp. 637-638, 877.

⁸⁶Saunders, Colonial Records, X, 670, 682, 693, 706.

was promptly supplied.⁸⁷ South Carolina and Georgia were both given permission, but they also received "every facility and assistance" in their work.⁸⁸ Although the Council, on various occasions, was forced to take unpopular measures, the people of the colony appear to have approved their ultimate success, for in the entire period of its existence, there is no record of any appeal against either the Council or its actions.⁸⁹

On July 22, news reached North Carolina that the Philadelphia Congress had passed the Continental Declaration of Independence. The Council of Safety, in session at Halifax, ordered it proclaimed "in the most public manner" throughout the state.⁹⁰ Although the news was received with "Clapping of hands," "joyous Acclamations" and spontaneous oaths of allegiance, the actual effect on North Carolina was an emotional reaction rather than an overt action. As a result of the Halifax Congress, the existing North Carolina government was already independent of Great Britain. The Philadelphia Declaration of Independence merely ended any further hope of reconciliation.⁹¹

⁸⁷Ibid., pp. 671, 680.

⁸⁸Ibid., XI, 350.

⁸⁹Hunt, The Provincial Committees of Safety, pp. 128-129.

⁹⁰McRee, Life and Correspondence of James Iredell, I, 329.

⁹¹Ibid., p. 330; Sikes, Transition of North Carolina From Colony to Commonwealth, p. 66.

On August 9, the Council issued a call for the next Provincial Congress to meet at Halifax on October 15, and recommended that special attention be paid to the election of delegates since the business of the Congress would include the forming of a new constitution.⁹² The ensuing campaign proved to be the most bitter in the colony's history, as most previous elections had been conducted without opposition. The Radicals openly maintained that the Conservatives intended to form a government "adverse to the liberties of the people" and that they were "advocates of a monarchy." Although their campaign was directed against all Conservative candidates, the Radicals chose Samuel Johnston as their principal target.⁹³ When the election was over, the Conservatives and Radicals had won about an equal number of delegates, while the moderates held the balance of power. Johnston, who had been burned in effigy, was defeated,⁹⁴ In addition to Johnston, Thomas Burke, of Orange, and Samuel Spencer, of Anson, both prominent Conservatives, also met defeat at the polls. William Johnston was returned for Hillsboro only after a vigorous contest followed by a petition against his return. Heated campaigns were also staged against Abner Nash, Thomas Jones, Archibald Maclaine and William Hooper. In a majority

⁹²McRee, Life and Correspondence of James Iredell, I, 334.

⁹³Ibid.

⁹⁴Ibid., p. 334; Lefler and Newsome, North Carolina, p. 206.

of the central and western counties, the Radical element was predominant and their success at the polls was assured.⁹⁵

With the call for the fifth session of the Provincial Congress, the Provisional Government neared an end. Under the most adverse conditions, the government had performed its duties successfully and admirably, and with a minimum of dissension. One of the most important tasks, however, and possibly the most difficult, still remained ahead of them. With the advent of widely divided political ideologies, the battle lines were drawn. Both the character and stability of the constitution and the new state of North Carolina would be determined by the impending confrontation of these factions.

⁹⁵ Frank Nash, The North Carolina Constitution of 1776 and Its Makers, Vol. II of The James Sprunt Historical Publications (Chapel Hill, 1912), p. 16.

CHAPTER V

THE LAST PROVINCIAL CONGRESS AND THE FIRST STATE CONSTITUTION

As the winter of 1776 approached, North Carolina found itself in an unusual and unenviable position. During the short history of their struggle for freedom the inhabitants of the province faced a wide variety of social, economic, political and military problems, but throughout the period the provincial leaders and most of the citizens remained united both in their goals and their determination to succeed. When danger was imminent and the future course of the province in question, the public voice remained harmonious; but, with the success of the provisional government, the triumph of its arms and policies, and the restoration of comparative order, the harmony turned to discord. The political division which surfaced during the autumn elections came at one of the most crucial periods in North Carolina's history and had a profound and lasting influence on the permanent state government they were preparing to formulate.

The fifth session of the Provincial Congress convened at Halifax on November 12, although only 79 of the 169 elected delegates were present. The following day an additional 33 members appeared, and before the session ended 37 others were

seated. Richard Caswell was the unanimous choice for president while James Green was again selected as secretary.¹

The first question to be brought before the assembly was the method of voting. The Congress decided that all votes should be by "voice" rather than by "Counties and Towns"-- a reversal of previous policy.² On the second day of the meeting the Congress, in keeping with the stated purpose of the convention, appointed a committee of eighteen members to formulate a Bill of Rights and a Constitution.³

Viewed in its entirety, the fifth Provincial Congress was, in most ways, unlike its predecessors. The first four Congresses had confronted an entirely different set of problems and crises. Facing an impending confrontation with Great Britain without either a functional government or any

¹The Journal of the Proceedings of the Provincial Congress of North Carolina Held at Halifax the 12th Day of November, 1776, Together With the Declaration of Rights, Constitution, and Ordinances of Congress (Newbern, 1776), p. 11, on microfilm, N.T.S.U. Library. (Hereafter cited as Journal of the Provincial Congress of November, 1776.)

²Ibid., p. 12; Sikes, The Transition of North Carolina From Colony to Commonwealth, p. 68. The earlier method had been utilized as a means of keeping down Tory influence and, at the same time, it allowed individual counties to determine the size of their own delegations.

³Journal of the Provincial Congress of November, 1776, p. 13. The committee was composed of Richard Caswell, Thomas Person, Allen Jones, John Ashe, Simon Bright, Christopher Neal, Samuel Ashe, William Haywood, Griffith Rutherford, Henry Abbot, Luke Sumner, Thomas Respis, Archibald Maclaine, Isaiah Hogan, Hezekiah Alexander, Abner Nash, Willie Jones, and Thomas Jones. Joseph Hewes, Cornelius Harnett, William Sharpe, John Spicer, Waightstill Avery, Thomas Eaton, Thomas Birdsong, and Robert Irwin were later added to the committee.

form of organized military force, the earlier Congresses dealt first, by necessity, with those problems. By the autumn of 1776, and the convening of the fifth session of the Congress, however, the success of both their military preparedness and their temporary civil government was an accepted fact. Thus, aside from the war itself, the one remaining item of major concern left to the Halifax Congress was the formulation of a permanent and stable state government. Although devoting much of their time and attention to that end, the delegates were nevertheless confronted with a variety of comparatively minor and seemingly unrelated problems.

One such problem concerned the recent county elections. Early in the session the Congress received a number of petitions from various counties declaring that, due to irregularities in the August elections, new ones should be ordered. The petition from Orange County claimed that when the citizens appeared on election day they crowded into the Court House in such large numbers that the clerks "could not write down their names," and because of the continued "tumultuous and disorderly manner" the clerks were finally obliged to abandon their stations long before the polls were scheduled to close. The petitioners claimed that as less than one fourth of the inhabitants were able to vote for their delegates, they were, therefore, entitled to ask Congress to order a new election.⁴ As they did in similar cases, the committee

⁴Ibid., p. 23.

appointed to consider the request rejected the Orange County petition, reasoning that as no violence or bodily injury occurred, the tumult and disorder was occasioned merely by citizens "over anxious" to vote.⁵

During the first week of the meeting at Halifax, the Congress received a second communique from South Carolina seeking permission to recruit troops in North Carolina. On November 21, Cornelius Harnett, representing the committee to consider such aid, recommended that as the well-being of South Carolina was important both to North Carolina and the entire United States permission be granted for South Carolina to raise such numbers of men as would "be willing to enlist with them"⁶ Foreseeing the probability that Charlestown would be attacked during the coming winter, when enemy operations would be curtailed in the north, the committee further recommended that an additional brigade of militia, consisting of two battalions, be immediately raised as volunteers and placed under the command of South Carolina. The House, concurring with the recommendation, appointed Allen Jones, of North Hampton, as commanding general of the new force.⁷ Eight days later the Congress received letters from the President of the Continental Congress and William Hooper informing them that a large number of British troops and ships

⁵Ibid.

⁶Ibid., p. 20.

⁷Ibid.

had sailed from New York and were thought to be moving against Charlestown. The letters further recommended that an additional 5,000 men be added to the North Carolina militia.⁸ Taking immediate action, the Provincial Congress cancelled all military leaves and furloughs and ordered General Moore to march immediately to the aid of Charlestown.⁹

On December 6, Thomas Jones, speaking for his committee, submitted the first draft of the permanent constitution.¹⁰ The journal of the proceedings of the Halifax Congress contain no information concerning either the debates or the sources of the constitution. They only show that the document was discussed, paragraph by paragraph, in open meeting, on six separate occasions and that it was adopted on December 18.¹¹ In a similar manner, the Bill of Rights was introduced on December 12, again by Thomas Jones, debated on three occasions, amended only once, and adopted on December 17.¹² The journals reveal that even on the days during which the two documents were discussed, the agendas were crowded with other matters, particularly those pertaining to the war. When considering the amount of time actually devoted to the debates,

⁸Ibid., p. 32.

⁹Ibid.

¹⁰Ibid., p. 37.

¹¹Saunders, Colonial Records, X, 962, 963, 967, 969, 973, 974.

¹²Ibid., pp. 969, 971, 973.

it would seem safe to assume that few alterations were deemed necessary.¹³

Samuel Johnston, though not a member of the Congress, was, nevertheless, present in Halifax in his capacity as a Treasurer of the State. Although his correspondence reveals his dissatisfaction with the "trifling" actions of the Congress, he wrote to James Iredell that "from a cursory view" of the Constitution, he thought it would "do as well as that adopted by any other colony." Only the provision allowing the county justices to be elected by the people of each county met with his total disapproval. From "so absurd an institution," he foresaw "numberless inconveniences" arising.¹⁴ Two days later Johnston again wrote to Iredell expressing his fears at the speed with which the Constitution was being deliberated. After congratulating himself on the troubles he had avoided by not being a member, he described the situation in Congress: "Every one who has the least pretensions to be a gentleman is suspected, and borne down per ignobile vulgas--a set of men without reading, experience, or principle to govern them."¹⁵

Probably the only major amendment to the Constitution concerned the provision objected to by Johnston. Although

¹³Earle Ketcham, "The Sources of the North Carolina Constitution of 1776," The North Carolina Historical Review, VI (July, 1929), 218.

¹⁴McRee, Life and Correspondence of James Iredell, I, 337.

¹⁵Ibid., p. 338.

not an elected delegate, Johnston, nevertheless, continued to exert a strong influence among the Conservative faction. Together, these forces were able to strike the provision allowing the popular election of county justices and substitute one requiring judges to be appointed by the governor, upon the recommendation of the representatives of the county, and allowing them to retain their offices "during good behavior."¹⁶

When the positive actions of the November Congress are compared to the stalemates encountered by the April Congress, the fact that a considerable change in sentiment had occurred becomes evident. The key to the change most probably lay in the fact that in November, unlike the earlier session, the Congress was provided with a number of valuable precedents to guide them. With the availability of such materials as the several state constitutions adopted prior to the Halifax Congress, it was much easier for North Carolina to formulate a document acceptable to a majority of the delegates, radicals and conservatives alike, than it would have been had they attempted to work unaided, as they had done in April.¹⁷

In late September, William Hooper, North Carolina's delegate to the Continental Congress, had sent copies of the constitutions of several of the states to the Halifax delegates along with his personal descriptions and evaluations

¹⁶ Nash, The North Carolina Constitution of 1776 and Its Makers, pp. 16-17.

¹⁷ Ibid., p. 17.

of them. In a letter to Samuel Johnston, Hooper warned against the constitution of Pennsylvania, calling it "the motley mixture of limited monarchy, and an execrable democracy--A Beast Without a head. The Mob made a second branch of the Legislature--Laws subjected to their revisal in order to refine them, a Washing in ordure by way of purification."¹⁸

Hooper also sent to the Provincial Congress his comments on the various strengths and weaknesses of the constitutions of Pennsylvania, Rhode Island, New Jersey, Delaware and South Carolina. He argued that particular attention be given to the evils of the unicameral legislature of Pennsylvania and the system of electing judges in Rhode Island. Commenting briefly on the "purity" of the British Constitution, he viewed it as a system "that approached as near to perfection as any could within the compass of human abilities."¹⁹ Elaborating on the basic importance of constitution making, Hooper stated that the aim of all government was the happiness of the society. Therefore, as much attention and deference should be given to the "pursuits, customs, inclinations and prevalence of habit of the people" as possible. By so doing, the government might remedy the defects of the previous system under which they had lived, without painfully extreme and unnecessary alterations. He viewed the people as the source from

¹⁸ Saunders, Colonial Records, X, 819.

¹⁹ Ibid., p. 866.

which all power was derived, and all restraints imposed upon them which did not have their happiness as its primary aim were "fetters of tyranny and badges of slavery." He described all rulers as mere "Creatures of the people," accountable to them, and subject to removal whenever they acted in any manner inconsistent with the purposes for which they were chosen. Hooper's conservative attitude was evident in his admiration for the British system, which he saw as being based on the "three grand qualities of virtue, wisdom, and power . . . , the characteristics of perfect government." He described virtue as coming from the people at large; wisdom was provided by the selected few whose talents, opportunities and training had raised them to a second class; and power stemmed from those chosen by the people to exercise it. Such a system, with the middle class holding the balance of power between the "one and the many," Hooper envisioned as the perfect model for North Carolina.²⁰

Continuing his comments on the constitutions of other states, Hooper urged the formation of a bicameral legislature for North Carolina, as opposed to the single "branch of legislature" established by Pennsylvania. Such a system he described as a "many headed Monster which, without any check, must soon defeat the very purposes for which it was created," with its members becoming "a Tyranny dreadful in proportion

²⁰Ibid., pp. 866-867.

to the numbers which compose it." He foresaw that with unlimited power, the unicameral body would soon free itself from the people and perpetuate its own political existence. He advised, therefore, a second body, based on "Wisdom and Integrity" to serve as "a refinement of the first choice of the people at large."²¹

Regarding the other governmental branches, Hooper advised that a single executive, aided by a Privy Council, be given such powers as would give energy to the government and that the judiciary ought to be made independent of the electorate through executive appointment. Dependence on the suffrage of the people, Hooper felt, could lead only to corruption.²²

Aside from the various state constitutions and the comments of Hooper, other sources of influence were also felt by the North Carolina constitution makers. As early as January the Continental delegates of North Carolina were authorized by the Provincial Congress to seek the views of John Adams, of Massachusetts, concerning the nature of a proper state government. Adams replied to the request with letters to John Penn and Thomas Burke.²³ The letters contained, for the most part, the very words used by Adams in his Thoughts

²¹Ibid., p. 868.

²²Ibid.

²³Charles Francis Adams, The Works of John Adams, Second President of the United States, With a Life of the Author, Notes and Illustrations, 10 vols. (Boston, 1850-1856), IV, 203.

on Government, which had already been widely circulated among the various states.²⁴ The thoughts of Adams and those of Hooper, written several months later, bore a marked similarity. Like Hooper, Adams saw the great function of government as providing for the happiness of the people, thereby rejecting the ideas of some earlier philosophies which envisioned fear and honor as the foundation of governments.²⁵ In his concept of the ideal legislative branch, Adams' views again paralleled those of Hooper. Envisioning a single assembly as one liable to "all the vices, follies, and frailties of an individual," as being "avaricious," ambitious and ultimately perpetual, Adams recommended a legislature of two houses chosen annually. The upper house, called a council and presided over by the governor, would act as a check on the lower house.²⁶

For the executive branch Adams recommended the annual selection, by both houses of the legislature, of a governor, lieutenant governor, secretary-treasurer and attorney general. He further suggested that the governor be given the power of veto over the acts of the legislature and the authority to appoint all judges, justices and all other officers, both civil and military. Sheriffs should be chosen by the

²⁴Ibid., p. 191.

²⁵Ibid., p. 204.

²⁶Ibid.

freeholders of the different counties.²⁷ Reasoning that the "stability of government," the "morals of the people, and every other blessing of society and social institution" depended upon an impartial administration of justice, Adams felt strongly that the judicial power should be independent and separated from both the legislative and executive branches. He, therefore, recommended judicial appointment by the governor with commissions lasting "during good behavior" and subject to impeachment.²⁸

The journals of the Halifax Congress make no mention either of Adams' name or his plan of government. It is a reasonable assumption, however, that the delegates were familiar with his ideas, based on the availability of the letters to Burke and Penn and the fact that the finished North Carolina constitution and the Adams work bore a remarkable resemblance.

At least two North Carolina counties, Mecklenburg and Orange, provided lengthy acts of instructions to their delegates and to Provincial Congress.²⁹ As was the case with the other available models and guides, many of the provisions of those instructions ultimately were found in the finished constitution. The Mecklenburg resolutions, in the handwriting

²⁷Ibid., pp. 206-207.

²⁸Ibid., p. 207.

²⁹Saunders, Colonial Records, X, 870a-870h.

of Waightstill Avery, and the Orange County resolutions, written by Thomas Burke,³⁰ were similar in form and content and both resembled the plan suggested by Adams. The two documents demanded a free government under the authority of the people, as near as possible to a simple democracy. They demanded total opposition to any plan which tended toward aristocracy or the favoring of the powerful rich over the oppressed poor. Both sets of resolutions distinguished between "principal and superior" powers possessed by the people and the "derived and inferior powers" exercised by their elected representatives. Both stated that no law could be altered, suspended or abrogated except by the popular will of the people. Both called for the inferior power to be of three separate branches, the legislative, executive and judicial, with a legislative body of two houses elected annually by the freeholders and lease holders, and the election by the assembly of the governor, judges, and other officials. Freedom of religion and trial by jury must be guaranteed, and the completed constitution should be submitted to the popular approval of the people.³¹

The completed form of the North Carolina Declaration of Rights, adopted only one day prior to the Constitution,

³⁰Orange County was the home of both Burke and Penn.

³¹Saunders, Colonial Records, X, 870a-870h, passim; Green, Constitutional Development, pp. 69-70.

consisted of twenty-five sections enumerating the fundamental principles considered essential to the formation of a new government in which the people were the supreme power. Essentially an adaptation of the basic principles of British liberty, the Declaration reaffirmed many concepts previously enunciated in the Magna Charta of 1215 and the English Bill of Rights of 1689.³² Also evident in the Declaration were many of the principles previously set forth in the Mecklenburg and Orange County resolutions, as well as many of the concepts, and in some cases the identical wording, of the Declarations of Virginia and Maryland.³³

The first two sections of the Declaration of Rights established fully the doctrine of popular sovereignty by stating that all political power was "vested in and derived from" the people who had the sole and exclusive right of regulating the internal government and its policies.³⁴ As the purpose of government was the welfare and happiness of the people, the right to inquire into the lawfulness of any act and to alter or change the government was declared.³⁵ The delegates

³²Lefler and Newsome, North Carolina, p. 207.

³³Benjamin Perley Poore, The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States, 2 vols. (Washington, 1878), II, 817, 1918.

³⁴See Clark, State Records, XXIII, 977-984, for a complete copy of the Declaration of Rights and the Constitution.

³⁵Section XIII, ibid., p. 977.

upheld the doctrine of "due process of law" by stating that no freeman could be deprived of his property, liberties or privileges but by "the law of the land."³⁶ They declared that the people of the state ought not to be taxed without their own consent and proclaimed their right to assemble together for the common good, to instruct their representatives, and to apply for redress of grievances.³⁷ The framers of the Declaration of Rights were careful to insure the rights of all accused persons. Trial by jury was safeguarded. All citizens facing prosecution were guaranteed the right to be presented with an indictment, to face their accusers and witnesses, freedom against being compelled to give evidence against themselves, and to be convicted only by the unanimous verdict of a jury of "good and lawful men," in open court.³⁸ Excessive bail and fines, cruel and unusual punishment, general warrants and ex post facto laws were condemned as "oppressive, unjust, and incompatible with liberty."³⁹ Hereditary emoluments or honors, perpetuities and monopolies were termed as "contrary to the Genius of a free state" and were forbidden.⁴⁰ The Declaration further proclaimed the doctrine of

³⁶Section XII, ibid.

³⁷Sections XVI, XVIII, ibid., p. 978.

³⁸Sections VII, VIII, IX, ibid., pp. 977-978.

³⁹Sections X, XI, XXIV, ibid., p. 977.

⁴⁰Sections XXIII, XXIV, ibid., p. 978.

separation of powers and guaranteed free elections, free exercise of religion, and freedom of press. The right of freemen to bear arms in defense of the state was upheld, although standing armies in times of peace were forbidden.⁴¹ Expressing the fear that standing armies were "dangerous to liberty," the framers of the Declaration were careful to insure that the military would be, at all times, strictly subordinate to the civil authority.⁴² The final section of the Declaration was an assertion by North Carolina regarding their southern boundary.⁴³ Rejecting the compromise line of 1772,⁴⁴ they declared that the permanent boundary should be the former temporary line of 1764 which had been agreed upon by commissioners of both Carolinas in compliance with an order by the late King George II.⁴⁵

Viewed in retrospect, the North Carolina Declaration of Rights, along with those of Virginia and Maryland from which the Carolinians took a number of ideas and phrases, probably represented one of the clearest and most concise statements

⁴¹Sections IV, VI, XV, XVII, XIX, ibid., pp. 977-978.

⁴²Section XVII, ibid., p. 978.

⁴³Section XXV, ibid.

⁴⁴Supra, p. 16.

⁴⁵Lefler and Newsome, North Carolina, p. 152. As South Carolina accepted the 1772 survey as final, the boundary dispute became one of the first problems to confront the two independent states. Final settlement, though little different from the 1772 line, was postponed until a quieter time.

of individual rights and governmental principles that had been made up to that time. Although the North Carolina Declaration was not altogether an original document, that fact did not detract from its value. As evidenced by the various sources used by North Carolina, the concepts were common to many minds. The Halifax delegates, drawing upon their own experiences and needs, made use of those ideas which suited their purposes and rejected all others. As historian Earle Ketcham stated: "It was only the diction of the other constitutions which was adopted."⁴⁶

The authors of the North Carolina Constitution and frame of government were less prone to borrow their ideas from outside sources, even though several sections bore a marked resemblance to the constitutions of Pennsylvania, New Jersey, and Delaware. Two other sources from which some guidance was received were Adams' Thoughts on Government and the outline of the proposed form of government described by Thomas Jones during the fourth session of the Provincial Congress.⁴⁷ The framers of the constitution were, on the whole, much more inclined to rely on the past experiences of their own colony and its people.

The preamble to the North Carolina Constitution, much like that of New Jersey,⁴⁸ declared that "Allegiance and

⁴⁶Ketcham, The Sources of the North Carolina Constitution of 1776, pp. 224-225; Green, Constitutional Development, p. 80.

⁴⁷Supra, p. 103.

⁴⁸Poore, Constitutions, II, 1310.

Protection" were, by their nature, reciprocal, and that it was the right of citizens to refuse the former when the latter was withdrawn. Further declaring that as George III had not only withdrawn his protection but had sent his armies to "prosecute a cruel War" against them for the purpose of reducing the colonies to a "State of abject Slavery," the colonies were justified in the complete dissolution of all political ties.⁴⁹

The completed form of the constitution vested the legislative authority of the state in a General Assembly of two houses--the Senate and the House of Commons. The Senate, or upper house, was to be composed of representatives annually elected by each county in the state. Each member of the Senate was required to be a one-year resident of the county in which he was chosen and to be the holder of not less than 300 acres of land.⁵⁰ The House of Commons, the larger of the two houses, was to be composed of two representatives from each county and one representative from each of the towns of Edenton, Newbern, Wilmington, Salisbury, Hillsboro, and Halifax. As was the case in the Senate, all House members would be elected annually. Each member of the lower house was required to be a one-year resident of the county in which he was elected and was required to possess, in his

⁴⁹Clark, State Records, XXIII, 980.

⁵⁰Articles I, II, IV, V, ibid.

home county, not less than 100 acres of land.⁵¹ Seats in either house were prohibited to persons currently serving as treasurers, members of the Council of State, judges, military officers or agents, officers within the executive branch, or clergymen.⁵²

The legislature, in addition to determining its own rules of procedure, was vested with the power to appoint judges of the Supreme Court, all Admiralty Courts, all military officers, the governor, the governor's advisory council, the attorney general, the state treasurers and the state secretary.⁵³ The constitution also provided for the annual appointment by the General Assembly of delegates to the Continental Congress. The latter appointments were to continue only "while necessary," and delegates were limited to terms of not more than three years.⁵⁴

The constitution, rather than formulating one general set of voting qualifications, established two electorates. Those persons voting for members of the Senate were required to be freemen, over the age of twenty-one years, one-year residents of their home counties, and possessors, for the previous six months, of a freehold of not less than fifty

⁵¹Articles III, VI, ibid., pp. 980-981.

⁵²Articles XXVI, XXVII, XXVIII, ibid., p. 983.

⁵³Articles X, XIII, XIV, XVI, XXII, XXIV, ibid., pp. 981-982.

⁵⁴Article XXXVI, ibid., pp. 983-984.

acres. The requirements affecting those persons voting for members of the House of Commons differed only in that in lieu of the landholding clause they were required to have paid public taxes. Those citizens living in towns which elected House delegates were bound by the same requirements as those in the rest of the country. No one, however, was allowed to vote in both county and town.⁵⁵

Under the provisions of the new constitution the executive power of the state was vested in the governor, who was to be elected annually by both houses of the legislature. In order to be eligible for the office, a man was required to be over the age of thirty years, a resident of the state for over five years, and the holder of lands and tenements above the value of \$1,000. No governor was permitted to hold office longer than three years in six successive years. In the event of the governor's death, disability, or absence from the state, the Speaker of the House of Commons and the Speaker of the Senate, respectively, were designated to assume the executive powers until a new nomination was made by the General Assembly.⁵⁶

That the framers of the constitution bore little faith or confidence in a strong executive was evidenced by the variety of restrictions and checks placed on the power of

⁵⁵Articles VII, VIII, IX, ibid., p. 981.

⁵⁶Articles XV, XIX, ibid., pp. 981-982.

the governor. One such check was in the form of a committee to be known as the Council of State. Composed of seven members chosen by the General Assembly, it was to "advise the Governor in the Execution of his Office." The constitution further provided that the Council would maintain a complete journal of all proceedings to be laid before the Assembly at any time.⁵⁷ As in the case of the colonial government, the state governor was required to act with the advice and consent of the Council. Unlike the colonial system, however, the Council of State was not the legislative upper house, and it did not depend on the good will of the governor or king for its existence.

The greatest changes evident in the completed constitution pertained to the executive branch. The governor was made commander-in-chief of the militia with the power to embody it for the public safety, but only during recesses of the General Assembly and only with the advice of the Council of State. He was given the authority to draw appropriate sums of money as voted by the Assembly for the contingencies of government. He could grant pardons and reprieves, except in cases prosecuted by the Assembly, and he was authorized to lay embargoes and prevent specific exportations, but only during recesses of the legislature and only with the advice of the Council of State.⁵⁸

⁵⁷Article XVI, ibid., pp. 981-982.

⁵⁸Articles XXIII, XXIV, ibid., p. 982.

The most conspicuous changes in the constitution were found not in the powers delegated to the governor, but in the powers of which he was deprived. His tenure of office was made reasonably definite and he was made responsible to the legislature for his actions. The power of appointment, either judicial, civil, or military, was no longer given to him. He could neither establish courts nor act as a judicial officer. The vivid recollections of the manner in which the colonial governors had used their power of veto, as well as their power to dissolve the legislature, no doubt caused some of the changes incorporated into the new constitution. Contrary to John Adams' plan of government, the governor was denied the power of veto over acts of the General Assembly and was prohibited from calling special sessions and from either proroguing or dissolving the legislature.⁵⁹ In his history of North Carolina, Wheeler states that when William Hooper returned to his home in Perquimans County and was asked what powers had been granted to the governor, the reply was: "'Power, sir, to sign a receipt for his salary.'"⁶⁰

⁵⁹Ketcham, The Sources of the North Carolina Constitution of 1776, pp. 230, 234.

⁶⁰Quoted in John Wheeler, Historical Sketches of North Carolina From 1584 to 1851, 2 vols. (Philadelphia, 1851), I, 288; Clark, State Records, XXIII, 986, 989. On December 23, the Congress, acting in compliance with the constitution, passed an ordinance naming Richard Caswell as Governor. The term of office for North Carolina's first Governor was to begin immediately after the dissolution of the Congress and continue until the end of the next General Assembly. At the same time the Congress appointed Cornelius Harnett, Thomas Person, William Dry, William Haywood, Edward Starkey, Joseph Leach and Thomas Easton as members of the new Council of State.

In comparison to the more specific stipulations regarding the legislative and executive branches, the judicial branch received little attention from the constitution. The new frame of government declared only that Justices of the Peace, within the various counties, would, in the future, be recommended by the General Assembly and commissioned by the governor. The Justices would be permitted to hold their offices during good behavior, subject to removal only by reason of "Misbehavior, Absence, or Inability."⁶¹ Despite the fact that North Carolina had been virtually without courts since 1773, except for those judicial functions performed by the provisional government, the framers of the constitution postponed any further action on the judiciary. The prime concerns of the delegates, dating from the conflicts of the colonial period, were disposed of when the constitution freed the judiciary from executive control and limited their tenure to periods of good behavior.⁶² Prior to the adjournment of the Provincial Congress, however, ordinances were passed authorizing the newly appointed Governor, Richard Caswell, to issue commissions to two persons from each district to act as Justices of the Peace to hold "Courts of Sessions of the Peace, Oyer and Terminer and General Gaol Delivery" and to "hear,

⁶¹ Clark, State Records, XXIII, 983.

⁶² Ketcham, The Sources of the North Carolina Constitution of 1776, p. 235.

try and determine" all offenses against "the peace and good government" of the state.⁶³

In addition to establishing the form of government, the North Carolina constitution also set forth a number of policies regarding both religion and education. Although the language of the article respecting education was not specific, the document called for the legislature to establish "a school or schools" for the instruction of youth, adding that "all useful Learning shall be encouraged and promoted in one or more Universities."⁶⁴ In addition to the guarantee of religious freedom in the Declaration of Rights, three articles of the Constitution also pertained to religious policy. While the Constitution declared that there would be no established religion and that all persons were free to exercise their own mode of worship, it added that no practising clergyman could be a member of the General Assembly and that no person who denied "the being of God, or the Truth of the Protestant Religion" would be eligible to hold any public office of trust or profit in North Carolina.⁶⁵

The Constitution of 1776 was neither lengthy nor complex. It was the basic outline of a new government in which the emphasis was placed on the rights and happiness of the

⁶³Clark, State Records, XXIII, 990-992, passim.

⁶⁴Article XLI, ibid., p. 983.

⁶⁵Article XXXIII, ibid.

people rather than on governmental machinery, and where power was placed with the people's representatives rather than with a strong and arbitrary executive. The Constitution did not establish a purely democratic form of government, at least so far as the term was understood by later generations. The conditions of the time did not lend themselves either to political innovations or undue experimentation. The end product of the constitution makers was a representative republic based on the principle of landownership, freemanhood and taxpaying suffrage. The only provisions which tended to favor an aristocracy were those requiring both the governor and members of the legislature to be relatively large landowners.⁶⁶ Although the Constitution was created in the midst of revolution, it was primarily a product of evolution. Being founded on the past experiences of North Carolina and its people, it incorporated the ideas of their sister colonies, the English tradition and the writings of political philosophers, and it evolved into a document capable of serving the current needs of a specific people. "The new was but a continuation of the old, with modifications."⁶⁷

With the adoption of the North Carolina Declaration of Rights and Constitution and the formation of the first state

⁶⁶Nash, The North Carolina Constitution of 1776 and Its Makers, p. 19.

⁶⁷Ketcham, The Sources of the North Carolina Constitution of 1776, p. 236.

government, the fifth session of the Provincial Congress had completed its task. On December 20, 1776, the final session of the Congress was adjourned and the provisional government of North Carolina came to an end. The significance of that temporary government in relation to the history of the state can hardly be overstated for in the short duration of its existence it provided the bridge by which a colony, deprived of its legal government, all civil authority and its sources of protection, and faced with the threat of a disastrous war, was able to marshal its talents and resources and establish itself as a sovereign state. The processes through which the inhabitants of North Carolina passed in their search for a new basis of government, founded on the ideas of democracy and popular sovereignty, were pragmatic in their approach and practical in their outcome.

With the downfall of the royal government in 1774, the leading citizens of North Carolina had been left in the unenviable position of being neither learned in the specifics of revolutionary government nor possessed of the tools necessary to their implementation. The Provincial Congresses provided the platform from which both needs were realized. Acting as the sole provincial authority and staffed by elected representatives of the citizens, the Congresses successfully united the majority of the people, raised and equipped an army capable of thwarting the enemy's plans for invasion, established a representative form of government throughout

the colony, adopted a progressive constitution and state government, and maintained a deep interest and active participation in the affairs of the continent. That North Carolina was a leading force in the move through the revolutionary period is seen in the fact that through her efforts the first representative assembly, independent of royal authority, was held in Newbern in August, 1774; furthermore, as early as the previous July, North Carolinians had urged the convening of a general convention for the continent. While the ties to England remained strong in many sectors of America, and hopes for reconciliation continued to exist, North Carolina again demonstrated the progressive attitudes of its provisional leaders by being the first state to grant its consent to a continental declaration of independence.

The accomplishments of the provisional government were the results of the efforts and talents of many men laboring under the most extreme and trying conditions. Theirs was the work not of constructive statesmen but of men of sound common sense and good judgment, exemplified not only in their choice of materials from which to build their state, but even more significantly in their rejection of those things unsuited for their purpose. To the credit of those men is the fact that, in an atmosphere of current revolution and future uncertainty, a government was formed of such moderation and suitable application to the people for which it was designed that it served the citizens of North Carolina for fifty-nine years without an amendment.

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