

**Report**

OF THE

**DEBATES AND PROCEEDINGS**

OF

**THE CONVENTION**

OF THE

**STATE OF NEW-YORK;**

**HELD AT**

**The Capitol, in the City of Albany,**

**ON THE 23th DAY OF AUGUST, 1821.**

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**BY L. H. CLARKE.**

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**L. H. C.**

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## ADVERTISEMENT.

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THE publisher begs leave to remark to his subscribers and patrons, that the present work was originally reported for, and is contained in, the columns of the **NEW-YORK AMERICAN**. It was found impossible, in the course of proceedings, for one reporter to take and transcribe *verbatim* the speeches of all those who, at different times, occupied the floor. The publisher, therefore, entered into an arrangement with Messrs. Gould, Stone, and Carter, by which he has been enabled to avail himself of the labours of all those who were engaged in reporting those proceedings.

The present volume contains all the important matter, and the same speeches, journals, divisions, references, old and new Constitutions, and other documents, which will be comprised in the volume of Messrs. Gould, Stone, and Carter; and the same matter is compressed within a smaller compass, in smaller type, on larger pages, and is offered at a much lower price.

It is not the object of the publisher to underrate the value of the volume which those gentlemen are about to offer for the public patronage. He feels himself authorized, however, to assert, that (with the exception of errors of the press, which are corrected in the errata) this volume is, at least, equally correct with theirs, and has some advantages in point of economy and accuracy, which the other cannot have fairly possessed.

In a work of this kind, however, it is to be expected that many errors have escaped his notice, which a keener eye would have discerned, and a more deliberate examination would have avoided.

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# PROCEEDINGS

## OF

# THE CONVENTION.



### STATE OF NEW-YORK.

CITY OF ALBANY, Aug. 28, 1821.

Pursuant to an Act of the Legislature, entitled "AN ACT recommending a Convention of the People of this State," passed the 13th day of March, 1821, the Delegates elect, who had been chosen agreeably to the provisions of that Act, convened in the Assembly Room of the Capitol this day, and at 1 o'clock, P. M. Gen. E. Root addressed the House, and having stated the general outlines of the law, proposed that the Clerk of the Senate (who was in attendance, pursuant to the provisions of the Act) should call the roll of the Delegates, which had been furnished him by the Secretary of State. No dissentient voices being heard, that course was adopted; and it appeared that the following Gentlemen had been elected to form the Convention, viz:

#### Names of the Members.

<i>Albany.</i>	<i>Essex.</i>	<i>Richmond.</i>
Stephen Van Rensselaer	Reuben Sanford	Daniel D. Tompkins
James Kent	<i>Genesee.</i>	Rockland.
Ambrose Spencer	David Burrows	Samuel G. Verbruyck
Abraham Van Vechten	John Z. Ross	<i>Saratoga.</i>
<i>Allegany and Steuben.</i>	Elizur Webster	Salmon Child
Timothy Hurd	<i>Greene.</i>	John Cramer
James M'Call	Jehiel Tuttle	Samuel Young
<i>Broome.</i>	Alpheus Webster	Jeremy Rockwell
Charles Pumpelly	<i>Herkimer.</i>	<i>Schenectady.</i>
<i>Cattaraugus, Erie, &amp;c.</i>	Richard Van Horne	John Sanders
Augustus Porter	Sanders Lansing	Henry Yates, jun.
Samuel Russell	Sherman Wooster	<i>Schoharie.</i>
<i>Cayuga.</i>	<i>Jefferson.</i>	Jacob Sutherland
David Brinckerhoff	Egbert Ten Eyck	Olney Briggs
Rowland Day	Hiram Steele	Asa Starkweather
Augustus F. Ferris	<i>Kings.</i>	<i>Seneca.</i>
<i>Chenango.</i>	John Leferts	Robert S. Rose
Thomas Humphrey	<i>Lewis.</i>	Jonas Seeley
Jarvis K. Pike	Ela Collins	<i>St. Lawrence.</i>
Nathan Taylor	<i>Livingston.</i>	Jason Fenton
<i>Clinton and Franklin.</i>	James Rosebrugh	<i>Suffolk.</i>
Nathan Carver	<i>Madison.</i>	Ebenezer Sage
<i>Columbia.</i>	Barak Beckwith	Usher H. Moore
William W. Van Ness	John Knowles	Joshua Smith
Elisha Williams*	Edward Rogers	<i>Tioga.</i>
Jac. R. Van Rensselaer	<i>Monroe.</i>	Matthew Carpenter
Francis Silvester.	John Bowman	<i>Tompkins.</i>
<i>Cortland.</i>	<i>Montgomery.</i>	Richard Smith*
Samuel Nelson	Philip Rhineclander, jun.	Richard Townley
<i>Delaware.</i>	Howland Fish	<i>Ulster and Sullivan.</i>
Erastus Root	Jacob Hees	Henry Jansen
Robert Clarke	William I. Dodge	James Hunter
<i>Dutchess.</i>	Alexander Sheldon	Jonathan Dubois
James Tallmadge, jun.	<i>New York.</i>	Daniel Clark
Peter R. Livingston	Nathan Sanford	<i>Washington &amp; Warren.</i>
Abraham H. Schenck	Peter Sharpe	Nathaniel Pitcher
Elisha Barlow	Peter Stagg	Melanchton Wheeler
Isaac Hunting	Peter H. Wendover	Alexander Livingston
		William Townsend
		John Richards
		<i>Westchester.</i>
		Peter A. Jay
		Jonathan Ward
		Peter Jay Munro.

William Paulding, jun.  
 Ogden Edwards  
 Jacobus Dyckman  
 Henry Wheaton  
 James Fairlie  
 John L. Lawrence  
 Jacob Radcliff  
*Oneida. †*  
 Jonas Platt  
 Henry Huntington  
 Ezekiel Bacon  
 Nathan Williams  
 Samuel S. Breese\*  
*Onondaga.*  
 Victory Birdseye  
 Parley E. Howe  
 Amari Case  
 Asa Eastwood  
*Ontario.*  
 Philetus Swift  
 John Price  
 Micah Brooks  
 Joshua Van Fleet  
 David Sutherland  
*Orange.*  
 John Duer  
 Benjamin Woodward  
 John Hallock, jun.  
 Peter Milliken  
*Otsego.*  
 Martin Van Buren  
 Joseph Clyde  
 David Tripp  
 Ransom Hunt  
 William Park  
*Putnam.*  
 Joel Frost  
*Queens.*  
 Rufus King  
 Elbert H. Jones  
 Nathaniel Seaman  
*Rensselaer.*  
 James L. Hogeboom  
 John W. Woods  
 David Buel, jun.  
 John Reeve

Jirah Baker  
*Richmond.*  
 Daniel D. Tompkins  
*Rockland.*  
 Samuel G. Verbruyck  
*Saratoga.*  
 Salmon Child  
 John Cramer  
 Samuel Young  
 Jeremy Rockwell  
*Schenectady.*  
 John Sanders  
 Henry Yates, jun.  
*Schoharie.*  
 Jacob Sutherland  
 Olney Briggs  
 Asa Starkweather  
*Seneca.*  
 Robert S. Rose  
 Jonas Seeley  
*St. Lawrence.*  
 Jason Fenton  
*Suffolk.*  
 Ebenezer Sage  
 Usher H. Moore  
 Joshua Smith  
*Tioga.*  
 Matthew Carpenter  
*Tompkins.*  
 Richard Smith\*  
 Richard Townley  
*Ulster and Sullivan.*  
 Henry Jansen  
 James Hunter  
 Jonathan Dubois  
 Daniel Clark  
*Washington & Warren.*  
 Nathaniel Pitcher  
 Melanchton Wheeler  
 Alexander Livingston  
 William Townsend  
 John Richards  
*Westchester.*  
 Peter A. Jay  
 Jonathan Ward  
 Peter Jay Munro.

Those Delegates, whose names are marked with an asterisk, did not appear, previous to Adjournment.

On motion of Gen. ROOT, the Convention proceeded to the appointment of Tellers to count the votes for President of the Convention;—whereupon, PETER SHARPE and VICTORY BIRDSEYE, Esqrs. were chosen.

A further motion was made to choose a Presi-

† Oswego County votes with Oneida and Onondaga.

dent of the Convention by ballot; when it appeared that the votes were,

For the Hon. Daniel D. Tompkins	- - -	94
Rufus King	- - -	8
Ambrose Spencer	- - -	1
Stephen Van Rensselaer	- - -	1
Blanks	- - -	6
		Total, 110

It being announced that the Hon. Daniel D. Tompkins was elected, a Committee, consisting of Gen. Root and Chancellor Kent, was appointed to conduct the President elect to his chair, who, on assuming that station, made the following brief, but appropriate Address :

"GENTLEMEN—Permit me to express to you my thanks for the testimony of your confidence at the present time, in selecting me to preside over your deliberations. Be assured, Gentlemen, that I fully appreciate the honour you have conferred. In accepting the trust you have reposed in me, I have only to remark that you may rely upon the exertion of my best ability to perform it with all that fidelity and impartiality of which the case is susceptible, and with all that delicacy to your respective feelings and opinions that is consistent with the proper regulation of this honourable body."

A resolution was then offered by Gen. Root, that two Secretaries of the Convention be elected by ballot. Agreed to;—whereupon, JOHN F. BACON and SAMUEL S. GARDINER, Esqrs. were declared to be duly chosen, and respectively entered upon the duties of their office.

Mr. Fairlie then offered the following resolution: Resolved that a Committee be appointed to draft and report a system of rules and regulations for conducting the business of this Convention. Agreed to, and Messrs. Fairlie, Spencer, Sharpe, Munro, and N. Williams were appointed.

The Convention then proceeded to the choice of a Serjeant at Arms by ballot; when it appeared that the votes were,

For Henry Fryer	- - - - -	39
Louis Le Coultreux	- - - - -	37
Caleb Benjamin	- - - - -	26

And many scattering votes;—whereupon, the President announced that Henry Fryer was elected.

On motion of Gen. S. Van Rensselaer, the Secretaries were directed to wait upon the Reverend Clergy of the City, to request them to attend seriatim, and open the Convention each morning with prayer. *Adjourned.*



### WEDNESDAY, AUGUST 29.

At 11 o'clock, A. M. the President took the Chair pursuant to adjournment.

Mr. Breese, a delegate to the Convention from the County of Oneida, appeared and took his seat.

Mr. Fairlie, from the Committee appointed yesterday to draft rules and regulations for conducting the business of the Convention, reported twenty-one articles, *in part*, which, after certain amendments, were severally adopted.

The first rule was amended by striking out that part thereof which had been introduced, requiring the roll of the Convention to be called each morn-

ing; and the twentieth rule was so varied as to correspond with the ordinary usages of parliamentary speaking, when in committee of the whole.

On motion of Mr. P. R. LIVINGSTON, *Ordered*, That the necessary printing for the use of the Convention, be performed by Messrs. Cantine & Leake, Printers to the State.

*Ordered*, That the Convention proceed to elect three doorkeepers by ballot; whereupon Henry Bates, John Bryan and Richard Ten Broeck, were chosen.

On motion of Mr. FAIRLIE, *Resolved*, That Lewis Le Coultreux, be appointed an additional Serjeant at Arms. *Passed.*

On motion of Mr. CRAMER, *Ordered*, That 150 copies of the Constitution of this State be printed for the use of the members.

On Motion of Mr. SHARPE, *Ordered*, That the house be adjourned, to convene at 11 o'clock, A. M. of each day, until otherwise ordered.

The House then *Adjourned.*

### RULES.

1. Upon the appearance of a quorum, the President shall take the chair, and the Convention shall be called to order.

2. The minutes of the preceding day shall then be read, at which time, mistakes, if any, shall be corrected.

3. The president shall preserve order and decorum, and shall decide questions of order, subject to an appeal to the Convention; he shall have the right to nominate any member to perform the duties of the chair; but such substitution shall not extend beyond an adjournment.

4. All motions and addresses shall be made to the President—the member rising from his seat.

5. No motion shall be debated or put unless the same shall be seconded; when a motion is seconded, it shall be stated by the President, before debate, and every motion shall be reduced to writing, on the request of the President or any member.

6. On any questions taken, the yeas and nays shall be entered, if requested by ten members.

7. If two or more members shall rise at once, the President shall name the member who is first to speak.

8. That no interruption shall be suffered while a member is speaking, but by a call to order, by the President, or by a member, through the President, when the member called to order shall immediately sit down, until permitted by the President to proceed.

9. While the President is putting the question, no member shall walk out of, or across the house; nor when a member is speaking, shall any member be engaged in conversation, or pass between him and the chair.

10. That no member be referred to by name in any debate.

11. That any member, making a motion, may withdraw it before the question is put thereon, and before amendment made—after which any other member may renew the same motion.

12. All committees shall be nominated by the President, and agreed to by the Convention, unless otherwise ordered by the Convention.

13. That none be admitted within the bar, without Permission of the President, except the members of the Convention, and its attendants, the Governor, Lieutenant-Governor, Judges of the Supreme Court, the late Chancellor, the Attor-

ney General, Comptroller, Treasurer, Secretary and Surveyor General.

14. The previous question shall be always in order, and, until decided, shall preclude all amendment and debate of the main question, and shall be in this form, "*shall the main question be now put?*"

15. All questions shall be put in the order they are moved, except in cases of amendment and filling up blanks, when the amendment last proposed, the highest number and longest time shall be first put.

16. A motion to adjourn shall be always in order, and shall be decided without debate.

17. In forming committees of the whole, the President, before he leaves the chair, shall appoint a chairman.

18. No member shall speak more than twice on the same question, without leave, nor more than once until every member choosing to speak shall have spoken.

19. No motion for reconsideration shall be in order, unless, on the same day, or day following that on which the decision proposed to be reconsidered took place, nor unless one of the majority shall move such reconsideration; a motion for reconsideration being put, and lost, shall not be renewed, nor shall any subject be a second time reconsidered without the consent of the Convention.

20. The preceding rules shall be observed in a committee of the whole, so far as they are applicable, except that part of the 18th rule, which restricts members from speaking more than twice upon the same question.

21. The President may admit such and as many Stenographers within the bar of the house as he may deem proper.



#### THURSDAY, AUGUST 30.

The Convention was called to order by the President, who took the chair at the appointed hour, and the journals of yesterday were read.

On motion of Mr. VAN VECHTEN,

*Resolved*, That the privilege of admission within the Bar of this Convention be extended to the former Governors, and Justices of the Supreme Court of Judicature, of this State.

Mr. KING rose, and remarked, that it was highly important to proceed correctly and judiciously in the outset of the business of this Convention. Various plans had been suggested for making such amendments as the existing Constitution was supposed to require.

In the formation of new Constitutions, it had been usual to refer the whole subject to a Special Committee. But in the revision of existing Constitutions, different methods had been adopted.

In some cases, as in the recent instance of Massachusetts, a catalogue of amendments was moved by one individual, and referred by the Convention to several Select Committees. In others, the whole subject had been referred to one Committee. In other instances, different individuals have offered distinct propositions relative to different branches of the subject, which have obtained a similar reference.

The magnitude of an entire proposition might be appalling to a single individual, and, perhaps, excite personal prejudices; and, on the other hand, distinct propositions from different individuals are liable to incongruities and collisions, in the opinions of those who are called to act upon

them. Moreover, premature discussions may, in this way, take place, that may commit men at too early a stage of the business.

In this view of the subject, it seems to be expedient to take such a course as will preserve the greatest possible harmony and good feeling: and for this purpose, the business should be brought up in such a manner as is best calculated to divest it of every thing like personal character, or particular and personal views.

It was, therefore, his intention to propose that a Committee be appointed for the purpose of devising the manner in which it was expedient to take up the business of the Convention. Not that the Committee should report amendments, but that they should point out such parts of the Constitution as, in their opinion, require amendment and alteration; in order that these subjects, thus brought before the Convention, for their consideration, might be classified and referred to different Select Committees, to examine and report in what manner, and to what extent, such alterations shall be made; such reports to be subject to the alterations and amendments which the Convention may make.

In this way, Mr. King believed that nothing of a personal character would intervene to disturb the harmony and good temper of the Convention; that no gentleman would feel compromised by preconceived or premature opinions, nor subject to prejudice, in favour or against, any of those important matters that would thus come before them. Emanating from a numerous Committee, they would not be likely to excite jealousies, nor to meet personal opposition: but would, in his opinion, lead the Convention to such a calm, temperate and wise deliberation upon the matter before them, as the nature of the subject required.

I would respectfully suggest, said Mr. King, although I fully concur in the fitness and expediency of calling this Convention; and although I am fully of opinion that the change of circumstances and political relations in our country have imperiously required the interposition of the people to revise the Constitution that governs them, my hope that the Convention may proceed with great caution and moderation.

It is due to ourselves, it is due to our constituents and to our country, that we deliberate with a moderation and firmness that shall be decisive, both in its character and in its purpose; that shall inspire our constituents with confidence in the prudence of this body, and prepare the public mind for the impartial examination of the amendments which they may propose. In this country, no man doubts, no one fears, that the great principles of liberty which lie at the foundation of our free Constitutions are insufficient for the preservation of our freedom.

These considerations forcibly urge the observance of moderation, of mutual confidence and the most exemplary prudence in our proceedings.

But these great principles of free government, which arise from, and can only be sustained by, the intelligence and virtue of the people, are not only denied by the great nations of the old world, but a contrary and most slavish doctrine is proclaimed and enforced by them—a doctrine which falsely assumes, that a select portion of mankind only are set apart by Providence, and made solely responsible for the government of mankind.

In contradiction to this theory, it is our bounden duty to make it manifest to all men, that a free people are capable of self-government; that

house when in committee of the whole, on Mr. King's report. The motion was then put, and carried.

Mr. DUER presented a memorial from sundry inhabitants of the county of Orange, praying that all legislatures might be hereafter prevented from fixing their own pay, and that the same should never exceed \$2 50 per diem—the memorial was read and referred to the house when in committee of the whole on Mr. King's report.

Mr. ROOT then moved that the convention go into committee of the whole on the report of the *Executive Committee*, which was carried, and

Mr. RADCLIFF resumed the chair.

Mr. ROOT moved to strike out five, so as to make the age *thirty*, instead of thirty-five. I believe a governor of *thirty* would do very well—as well as one of *fifty*—the motion was put and carried.

Mr. RUSSELL moved that the power of pardon or commutation of punishment in cases of treason (where alone it is granted) be taken away from the legislature—carried.

Mr. LIVINGSTON wished to insert the words "*by message*," so as to make it the duty of the governor to address the legislature by message instead of speech. This latter mode has been productive of great inconvenience and expense. I had the curiosity once to look over the journals, and I ascertained that it had cost \$70,000 to the state during 10 or 15 years, in debate about the reply to a governor's speech. This speech is a relic of monarchy, founded in the love of pomp, and splendour and show. Besides, when the two houses are of different political characters, one approves, the other condemns the speech; and in 1814, the assembly spent 11 days in discussing the propriety of an answer to the governor's speech, yet we all know that neither a speech nor an answer is legislation. In the general government, until Mr. Jefferson's accession, a speech was delivered by the president and an answer was read; but Mr. Jefferson cut up the practice by the roots by sending a message. Besides, for the sake of the harmony due to the proceedings of the two houses, when of different political characters, it is best to have a message. We have seen, and might see again, a governor on his own carpet, obliged to listen to sentiments which must be odious to him; obliged to submit in quiet to a flagellation, as bitter as political hostility could make it. To be sure, the governor has the last word, and he sends back a reply more bitter, if possible, than the answer; but all this is injudicious and improper, and will be done away by adopting the proposition I have the honour to make.

Mr. TOMPKINS tho't the motion unnecessary, as we shall now probably expunge from the constitution the provision which rendered it the duty of the governor, in compliance with ancient custom, to deliver a speech in person. When I entered upon this office, I consulted the venerable men who had preceded me in it, as to the propriety of dispensing with this practice, but they all concurred in the opinion, that according to the usage established since, and adopted from the colonial government, it could not be dispensed with; but as we shall, I hope, expunge these provisions from the constitution, I think the motion unnecessary.

Mr. LIVINGSTON thought there was nothing in the argument of the gentleman. We do not find that it is incumbent upon us to adopt the forms of the colonial government. The gentleman would

surely not require, because a governor under the colonial system might have worn a red night cap, that our governors also should wear a similar one, any more than that they should wear a black velvet suit.

Mr. TOMPKINS replied and maintained the opinion he had formerly expressed, and went into the consideration of the usages on which this custom was founded and of the motives which led to its adoption among us.

Mr. BRIGGS. When we do, sir, descend to such particulars, we should be sure, sir, that the object we have in view will be answered by them. I am yet to learn, sir, that a message, in high party times, may not be answered as well as a speech.

The question was then taken on Mr. Livingston's motion, and carried.

Mr. JAY. A day or two ago, the words "admiral of the navy" were struck out, for what reason I cannot conjecture; seeing that this state may, under certain circumstances, have a navy, and that, from our situation, it may become expedient to have such a navy. Perhaps the objection is to the term *admiral*, and I therefore move that the report be so amended as to read "commander in chief of the militia and navy."

Mr. SPENCER said he made the motion, because he thought the title of admiral, as an appendage to the governor, ridiculous; and because he thought it quite improbable we should ever have a navy. As, however, the gentleman from Westchester has, by his amendment, done away the ridicule of the title, I have no objection to the motion.

Mr. KING wished the gentlemen would amend his motion, so as to insert the word "army," in order that if the state should possess, as it is by no means improbable, a force of the nature of an army, the governor may be the commander thereof. It is, too, not at all improbable, nay, the reasonable presumption is, that this state will one day possess a considerable navy. In time of war, although the defence of the coast depends upon the general government, it may be necessary, on some sudden emergency, for the state of New-York to raise a force which will repel the enemy and defend our shores. Under such circumstances, it appears singular to expunge from the constitution a provision which would secure a head and chief for such an occasion.

Mr. TOMPKINS assented to the amendment of the gentleman from Queens, and thought without it the title of Commander in Chief of the Militia might be as ridiculous as that of Admiral, inasmuch as that would not give him command over an army, which it was nevertheless certain this state might have.

Mr. JAY then amended his motion so as to read "Commander in Chief of the Land and Naval forces," which, after some further remarks from Mr. Spencer, was put and carried.

Mr. KING moved to strike out "by virtue of his office," which was carried.

Mr. CHILDS. Though unaccustomed to business of this kind, I would submit the propriety of striking out the words "who shall