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The Convention of 1819

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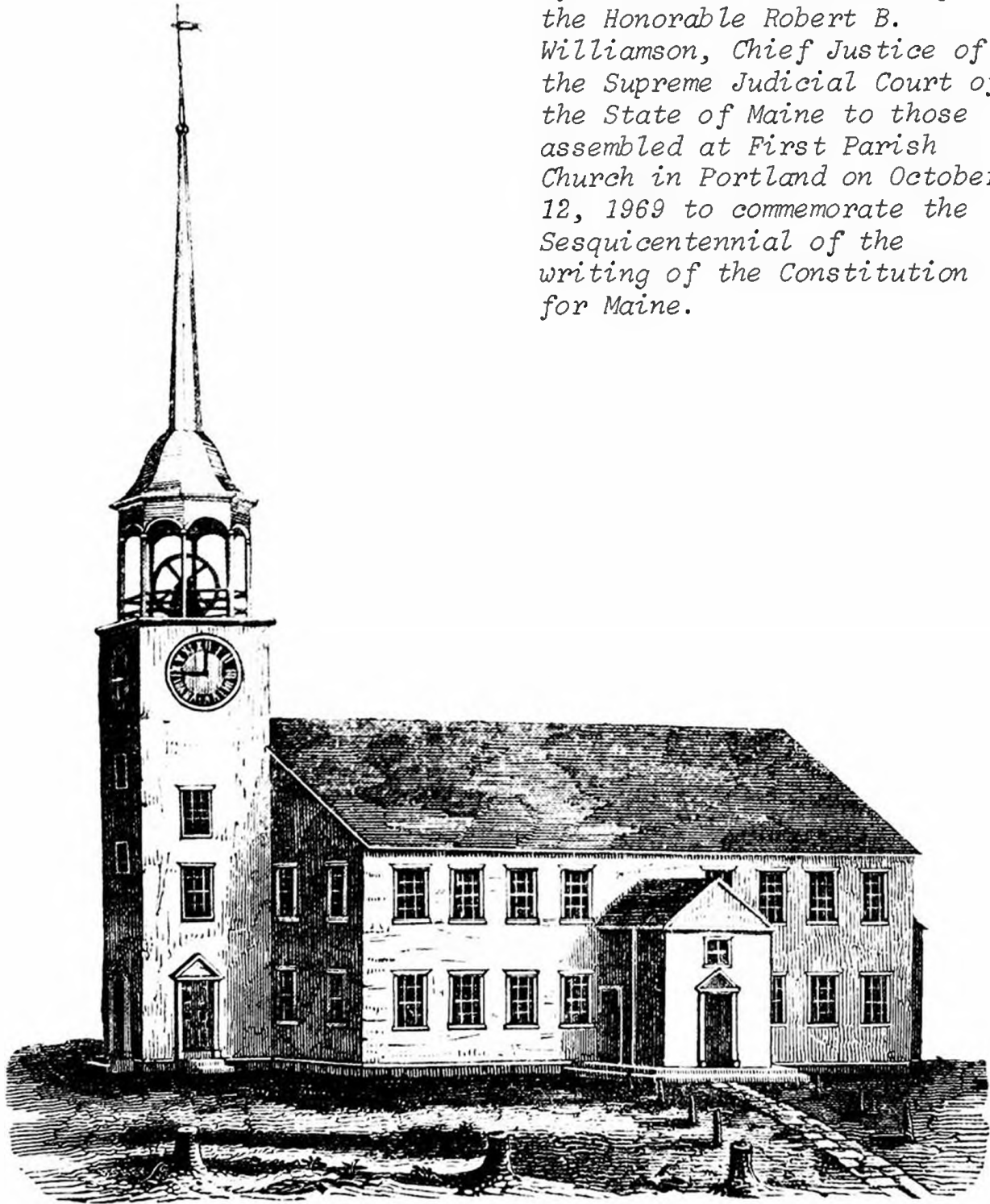
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The following is a transcript of an address delivered by the Honorable Robert B. Williamson, Chief Justice of the Supreme Judicial Court of the State of Maine to those assembled at First Parish Church in Portland on October 12, 1969 to commemorate the Sesquicentennial of the writing of the Constitution for Maine.



FIRST PARISH MEETING-HOUSE,

1740 - - 1825.

THE CONVENTION OF 1819

by the Honorable Robert B. Williamson

"History is the story of mankind", are the opening words of Samuel Eliot Morison's *History of the American People*. He tells of the day: "On 12 October 1492 at 2 a.m. a lookout in *Pinta* sighted in the moonlight a limestone cliff on what turned out to be an island in the Bahamas. Columbus named it San Salvador and it is so called today." After dawn Columbus and his captains went ashore.

This evening we consider the action of our forefathers within a period of days, one hundred and fifty years in the past, and no less than three and one quarter centuries after the discovery -- days of great and lasting importance in their time and no less in ours.

Here in the meeting house on the site of the present church, the Convention chosen to draft a constitution for the new State, met from October 12th to 29th, 1819, following an opening session at the Court House on October 11th. The meeting house, "Old Jerusalem," erected in 1740 and replaced by the stone church in 1826, served both church and community. Here indeed, in 1785 a Conference met to discuss separation from the Commonwealth.

What were the reasons that the people of Maine, of the District of Maine, should seek separation from the Commonwealth? The Convention did not simply happen. It came after years of effort to create a new State. Distance from the seat of government with long delays and increased expenses was an important factor. Of more consequence, was the rapid development of the frontier in Maine following the Revolution. We were the frontier, bounded by wilderness. The settlements were largely on the coast. It has been established as well that by 1819 our political viewpoint differed markedly from Massachusetts proper. We were a frontier people with the needs, desires, and characteristics often not found in the older communities.

The drama of those years and the reasons for an inevitable separation are found in the census. From 1790 to 1820, a period of 30 years, our population increased from 100,000 to 300,000, or by 200,000. In Massachusetts proper the increase was only 150,000. Our rate of growth by decades ranged from 58 per cent to 30 per cent; in Massachusetts proper, 13 per cent to 10 per cent. The nation as a whole increased from 4 million in 1790 to under 10 million in 1820,

or at the rate of one third or more each decade.

In 1820 our population was larger than that of Connecticut or New Jersey. Between 1810 and 1820 "Ohio fever" brought Ohio from a population equal to that of Maine to nearly twice our number. In passing, 1792 Register records "no slaves" only in Maine and Massachusetts.

We were growing in Maine on the northeast frontier, both relatively and absolutely, more rapidly than Massachusetts proper. The creation of new institutions and of new governments was to be repeated again and again as America advanced westward. Our numbers trebled from 1790 to 1820, from 100,000 to 300,000; and again in the 130 years to 1950, to over 900,000.

It is understandable, therefore why the District with its rapid growth, already larger than some States in the Union, should consider separation. The movement away from Massachusetts proper, the term used in the Separation Act, began in 1785. The Revolution had barely ended. It was ten years from the burning of Falmouth [Portland] by the British, from the march of Arnold's men to Quebec, from O'Brien and the Margarettas at Machias.

The Conference or Convention met at "the Rev. Messrs Smith's and Deane's meeting-house" on October 5, 1785. They called a convention for January 1786 to consider "Is it expedient that these eastern counties should be formed into a separate State?" That Convention considered the issues, reported grievances to the people and then called another Convention for September 1786. It was there voted to reassemble in January 1787 after a vote of the people, which was 645 "for" and 349 "against". The Convention died for lack of interest in September 1788.

Note that the action I have recounted took place before the adoption of the Constitution of the United States, and only short years following the adoption of the Massachusetts Constitution of 1780. In February 1788 the Massachusetts Convention adopted the Constitution of the United States by a vote of 187 to 168, or a majority of 19. Of the members from the District 25 voted for, and 21 against. It was a near thing for the Constitution of our land in Massachusetts.

In 1792 the people voted against separation, 2,500 "against", and 2,000 "for". Again in 1793-94 the movement was renewed. Meetings were held (not in the meeting house) at which Prentiss Mellen, a young lawyer, took an active part. Mellen later, as you know, resigned as a Senator from Massachusetts to become the first Chief Justice of Maine.

Sullivan in the *History of the District of Maine* in 1795

wrote: "This extensive country is so large and populous, and its situation so peculiar, that it cannot remain long a part of the Commonwealth of Massachusetts." Discussion did not end; but I must pass the details of the story.

In May 1816 a vote in which less than a majority of the legal votes were cast was considered inconclusive. In September of the same year a vote was again held on the issue of separation and for a meeting of delegates to prepare a constitution for the new State. The Constitution was to be submitted to the people for approval, in the event the vote was 5 to 4 for separation. The vote for separation was about 12,000 "for" and 10,000 "against", or less than the required five-ninths.

It appeared that the majority of yeas over nays in towns in favor was to the majority of nays over yeas in towns opposed greater than 5 to 4. The Convention by "Brunswick arithmetic" (for that is where it was held) construed the Act to permit preparation of a constitution. The General Court or Legislature did not approve, and I think most of us would have so voted.

At long last came success to the proponents. Under a new Act, a majority of 1500, not 5 to 4, was required. The vote in July 1819 was 17,000 "for", and 7,000 "against".

The Portland Gazette in 1819 is interesting reading. On August third the Editor wrote: "The District of Maine is no longer to remain a part of Massachusetts. This portion of the Commonwealth is about to assume its rank as an independent State. A new constitution is to be formed. A new frame of government is to be established. Fresh securities for freedom are to be devised and institutions adopted for the maintenance of our civil rights and preservation of our political privileges - a vista is now opening upon our situation, which will close only with our existence as a state." On October 11, the Gazette reported that the bells were rung, and the Convention assembled at the Court House.

Our story of the Convention is drawn almost in entirety from Perley's *Debates*. I recommended the *Debates*, first published in 1820, and again with additional material by Nash in 1894.

Daniel Cony of Augusta, a soldier at Burgoyne's surrender, a State Senator and member of the Executive Council, an elector for Washington and Adams, took the chair by a unanimous vote. Two grandsons of Daniel Cony were to be governors of Maine, Joseph Williams and Samuel Cony, and a great grandson, Melville Weston Fuller, Chief Justice of the United States. William King, of Bath, was chosen President of the



John Holmes
1773-1843

Convention, and later the first Governor of our State.

"The personnel of the Convention was notable", says Nash. "A majority of the members had originally come to the wilderness to establish their homes, and now they had assembled in Convention to erect a new State dedicated to Almighty God and political liberty". I mention only a few: John Holmes of Alfred, chairman of the Committee of thirty-three to prepare and report a constitution, soon to be United States Senator; Ether Shepley of Saco, United States Senator, and Chief Justice; George Thacher of Biddeford, Justice of the Massachusetts Supreme Judicial Court; Albion K. Parris, Judge of the United States District Court at 26, Governor, United States Senator and Justice of our Court; Ezekiel Whitman, Chief Justice of Portland; John Chandler of Monmouth, United States Senator; Nathan Cutler, of Farmington, Governor. They were strong, able, and earnest men.

The convention had a model in the Constitutions of Massachusetts. "Commonwealth" was soon replaced by "State". After considerable discussion "Maine" was adopted. Consideration, only briefly, I report with pleasure, was given to "Columbus" and Ligonía" as names for the State. As one would expect, there was little difference between the Massachusetts Constitution and that adopted by the Convention. Our forefathers in the Meeting House were not writing on a blank

paper. This was not Philadelphia in 1787 or Boston in 1780.

I mention only a few issues. First, in the matter of religion, we struck out all connections between State and Church. In this we preceded the Commonwealth by a few years. Second, the imperative need of education for a free people, and the duty of the public to provide therefore were plainly recognized. The importance of such an article in the constitution had been stressed by Thomas Jefferson to William King. King wrote him: "The last winter (1819) you may recollect naming an article of the kind to me as of the first importance, as calculated to perpetuate our Republican system. I was convinced of the correctness of your opinions on that, as on every other occasion." Indeed King, in a later year, gave credit to Jefferson for the language or substance of the article. Third, the constitution called for "apportionment and assessment of taxes, on real property, equally according to the just value thereof". This removed a distinction in taxation between improved and unimproved land in Massachusetts at the time.

Lastly, there was a long, and at times passionate debate over apportionment of the Legislature. The difficulties of 1819 are not unknown today; the conflicting interests of the cities (in 1820, large towns) and of the rural areas. Judge Bridge of Augusta reminded the delegates of their duty: "I should hope, Sir, that we were making a constitution to last, at least, for one generation. Indeed, Sir, we ought to look further ahead and calculate that we are making a constitution to last for many generations. It is not enough for us to consult merely our present convenience. A temporary policy is not the policy for constitution making....Let me caution, gentlemen, against an unreasonable jealousy of the large towns -- in proportion as they are deprived of an equal representation they are slaves." Strong stuff. It carries the idea of "One man One vote," somewhat delayed until our day.

On October 28th the constitution was accepted by the Convention by a vote of 230 to 30. On the following day, the Convention provided for a vote of the people "expressing their approbation or disapprobation of said constitution" in December, and adjourned to January 5th to meet at the Court House. Their appreciation to First Parish was expressed: "Resolved, that the thanks of this Convention be presented to the members of the First Parish in Portland, for the use of the meeting house of said parish, gratuitously and generously furnished by them for the accommodation of this Convention."

The constitution was overwhelmingly adopted by a vote of 9,040 for and 796 against. The Convention met on January 5th

and adjourned without delay on the 7th.

"The time of Separation," said Governor Brooks to the General Court, "is at hand - the 15th of March next, will terminate forever the political unity of Massachusetts proper and the District of Maine; and that District, which is bone of our bone, and flesh of our flesh, will assume her rank as an Independent State, in the American Confederacy."

On March 3rd Congress Admitted Maine as a State from March 15, 1820. The State government was soon organized with William King, our first Governor. In July the first commission of a judge was issued to Prentiss Mellen, Chief Justice. Maine was at long last a State in the Union and a going concern.

The States in 1820, measured against the Federal Government, were of relatively far greater importance in the lives of the people than today. The growth of the national government had not then occurred. The emphasis was on federalism, not nationalism. Now we are a great nation, with a strong central government, not dependent on the States as such, but reaching by its own energy to new and increasing relationships with the millions of its citizens. It was in 1803, only 16 years before the Convention, that Chief Justice Marshall for the Supreme Court declared the principle that a law not meeting the constitution was void and that the Court's determination governed the result.

We have watched developments in constitutional law in the past fifteen years. In 1954 the Court held that schools must not be segregated, and we have mentioned "One man, one vote." These are sufficient examples of the process I have in mind.

We have seen since 1820 the development of interstate commerce guarded and guided by the Supreme Court from the early days of the steamboat. Issues of slavery and of our national existence were solved in the bitter clash of civil war. Always the trend has been toward a stronger national government and so toward relatively weaker state governments. I exclude of course consideration of defense and foreign affairs which are the sole province of Washington.

Today so many of our governmental services rest on a national, and not a state foundation. Social Security, Medicare, and the programs to aid the poor and underprivileged, to build great highways, to renew the cities, are examples. The Federal Treasury supplies funds to States and municipalities by grants and otherwise, in ways undreamed of in the past. Direct election of the President receives support in the Congress, from the President, and across the land. The need for reform of the Electoral College is everywhere re-

cognized.

Plainly state lines do not bound the lives of our people as in the past. The State, I suggest, has different functions than in 1820. From the needs of today may come greater interest in the possibility of regional units of government. A few days ago in an editorial "A New England State?" the *Boston Globe* said: "The realities of politics and state chauvinism will, of course, militate against the combining of government. Still, the increasing complexity of our Society may eventually make some form of regional administration necessary." There will be, in my opinion, an ever-increasing interest in regional agencies. I believe, however, that neither our State nor any of the 50 States is in danger of extinction.

We are Maine people, bound by ties throughout our land. Efficiency, cold efficiency, is not the goal of government. It must satisfy the spirit of free men. Ingrained in us, as in the men of New Hampshire or Vermont or Massachusetts proper, is a love of State that will prevent the destruction of our federalism; that is, of a national government of United States.

Here, then, is part of the story of the birth of our great State. In good conscience we must not attempt to live idly upon our inheritance. In our time we have full responsibility for the welfare of our beloved State. In performing our simple duty, it is required that we study the past. We will find that the work of our founders was well done, and has lasted throughout 150 years.

The Constitution of 1969 is in great part the Constitution of 1819. The preamble is unchanged. The Bill of Rights has been amended in one respect only. The articles creating the Executive and the Courts are substantially as then adopted. Article VIII on education is unchanged.

There are changes to be sure. Women sharing in government, the initiative and referendum, were unheard of in 1819. Legislation is now "Enacted by the People of the State of Maine" and not "By the Senate and the House of Representatives in Legislature Assembled." The insurance of industrial loans is likewise something new. In general, however, the pattern is unaltered and the language has been sufficient. We have the same three great branches of government, designed with the checks and balances of our American system. The house was built on a firm foundation.

Two verses from a poem in the *Farmer's Foundation* in 1833 by Thomas Randall express the thoughts of our people:

"Convention of Maine"

Sages of Maine, who framed their statute laws
Save right the reign, while wisdom plead the cause;
As minor gods, they sought the good of all,
True to their trust, let acts of freedom fall.

Their sons we hope will walk their fathers' road,
Give Liberal laws to men, and worship to their God,
Not bring on them, the smallest sull or strain,
But ever well preserve the freest rights of Maine.

"I think," said Justice Holmes, "that, as life is action and passion, it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived." Surely our forefathers in the meeting house of the First Parish shared the passion and action of their time, a time more troubled perhaps than our own. We must be worthy of our heritage.

Sources for Remarks at First Parish October 12, 1969

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3. Sullivan, James. *The History of the District of Maine 1795*, p. 396.
4. Williamson, William D. *History of Maine 1832*. Vol. 2, pp. 531-677.
5. McKusick, Vincent L. *Paper on organizing the New State given before the Portland Club*.
6. Material from the First Parish, Pamphlet: *History of the First Parish in Portland*.
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8. Poem and Jefferson material, State Library.
9. *Portland Gazette*, State Library.