

Construction of the Massachusetts Constitution

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THIS YEAR marks the 200th anniversary of the Massachusetts Constitution, the oldest written organic law still in operation anywhere in the world; and, despite its 113 amendments, its basic structure is largely intact. The constitution of the Commonwealth is, of course, more than just long-lived. It influenced the efforts at constitution-making of other states, usually on their second try, and it contributed to the shaping of the United States Constitution. The Massachusetts experience was important in two major respects. It was decided that an organic law should have the approval of two-thirds of the state's free male inhabitants twenty-one years old and older; and that it should be drafted by a convention specially called and chosen for that sole purpose. To use the words of a scholar as far back as 1914, Massachusetts gave us 'the fully developed convention.'¹ Some of the provisions of the resulting constitution were original, but the framers borrowed heavily as well. Although a number of historians have written at length about this constitution, notably Prof. Samuel Eliot Morison in several essays, none has discussed its construction in detail.²

This paper in a slightly different form was read at the annual meeting of the American Antiquarian Society on October 15, 1980.

¹ Andrew C. McLaughlin, 'American History and American Democracy,' *American Historical Review* 20 (January 1915):264-65.

² 'The Struggle over the Adoption of the Constitution of Massachusetts, 1780,' *Proceedings of the Massachusetts Historical Society* 50 (1916-17):353-411; *A History of the Constitution of Massachusetts* (Boston, 1917); 'The Formation of the Massachusetts Constitution,' *Massachusetts Law Quarterly* 40 (December 1955):1-17. Two recent studies are Ronald M. Peters, *The Massachusetts Constitution of 1780: A Social Compact*

Massachusetts came late to the making of an organic law, more because of circumstances than because the fledgling state was taking a cautious position. In 1776, eight states drew up constitutions, and two more followed in 1777.³ They were responding to a resolution of the Continental Congress of May 1776, for which John Adams had drafted a stirring preamble.⁴ The necessity for well-established government was obvious in those areas where royal governors had been forced to flee, leaving behind nothing but the crown's instructions to its governors as the underpinnings of government. In such situations colonies had functioned under the rule of extralegal conventions or congresses. Adams, however, as one of the leaders in the movement to erect independent governments, had something more in mind than rescuing colonies that were laboring under temporary expedients. In his view the establishment of independent governments would be a major step toward independence for the entire country, to which Adams and like-minded delegates in Philadelphia had been committed for some months. A majority in the Congress would probably have supported independence sooner than the summer of 1776, but the effort to throw off Great Britain's rule required as near unanimity as could be achieved. The creation of true state governments would be another weighty argument in the long list demonstrating that independence had been obtained in all but name.

In Massachusetts, where royal government had been repudiated earliest, citizens had turned in the fall of 1774 to extralegal provincial congresses, but after nine months they had

(Amherst, Mass., 1978), and Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (Chapel Hill, N.C., 1980).

³ Charters and constitutions are conveniently available in Francis N. Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States*, 7 vols. (Washington, D.C., 1909).

⁴ *Papers of John Adams*, ed. Robert J. Taylor et al. (Cambridge, Mass., 1977-), 4:11-12.

asked the Continental Congress for advice on civil government, not just for Massachusetts but for all the colonies. In 1775 the Congress was too cautious to suggest more than an expedient for the Bay State, which had been governed under a second royal charter since 1691. Why not consider the royal governor absent (actually he and his supporting redcoats were under siege in Boston) and elect a House of Representatives and a Council in the usual way, leaving essential executive power in the Council's hands?⁵ Many Massachusetts people were not satisfied with such a stopgap solution, but its elements had the advantage of familiarity. The step from hamstringing a royal governor, which had long been the Massachusetts game, to doing without him entirely was not a great one. When life was unsettled, the need to go further did not seem so compelling in Massachusetts as it did in those royal colonies that lacked charters.

Not until some weeks after the Declaration of Independence did the House of Representatives feel the need to ask its constituents whether they wanted a constitution. The result was the state's first constitutional convention, so called. A joint meeting of the two houses of the legislature met in June 1777 and drafted the Constitution of 1778, which the towns overwhelmingly rejected. One of the many reasons for that rejection was that the convention members had not been chosen specially for the purpose of drafting a constitution.⁶ It is not clear where the principle came from that constitutional law was different from and superior to statute law and that it had, therefore, to be made by a special body.⁷ The constitutions of the other states had with one exception been drafted in 1776 and

⁵ *Diary and Autobiography of John Adams*, ed. L. H. Butterfield, Leonard C. Faber, and Wendell D. Garrett, 4 vols. (Cambridge, Mass., 1961), 3:351-53.

⁶ Robert J. Taylor, ed., *Massachusetts, Colony to Commonwealth: Documents on the Formation of Its Constitution, 1775-1780* (Chapel Hill, N.C., 1961), pp. 36-37, 48-49.

⁷ Willi Paul Adams endeavors to account for this development, but his stress on the term *constituent power* ignores the earlier appearance of the idea. *First American Constitutions*, pp. 63-66.

1777 by conventions or congresses that also governed. Delaware's convention, the exception, was not quite the constitutional convention that we have come to know. It was not convened at the wish of the people but on orders of the legislature, and its work was not submitted to the people for their approval. Nor does there appear to have been any expressed belief that constitutional law was different from legislative law.⁸

Having turned down the first proposed constitution for Massachusetts, its citizens had to wait two years for a chance at a second. Meanwhile, people in the western part of the state complained that the government had no legal basis since it did not rest upon a compact freely entered into with its terms stated in writing. Americans now take for granted that constitutions must be carefully laid out for all to read, submit to, and uphold. This conception is part of our heritage from the colonial and Revolutionary periods. Certainly the British embraced no such concept, nor do they today, however often one may see or hear references to the British constitution. If pressed, an Englishman will cite Magna Charta, the Petition of Right of 1628, the Bill of Rights of 1689, and various statutes as making up his nation's constitution, but these are in no American sense binding on Parliament.

The belief of Americans in a carefully structured statement arose out of experience and necessity. Although at the time of the Revolution only five of the thirteen colonies possessed charters spelling out the functions of their legislatures and executives, others had memories of charters and in lieu of them had the royal instructions to governors, which told assemblies what they could and could not do. Over the years colonies had won concessions that gave some of the instructions a binding quality that shielded them from a sovereign's whims. The desire for written constitutions was further fueled by the dismaying discovery that the British constitution meant different things to Americans and Englishmen. Particularly was this

⁸ John A. Munroe, *Colonial Delaware: A History* (New York, 1978), p. 253.

true in the matter of rights, which were at the heart of the struggle with the mother country—taxation based on representation, for example. Massachusetts people, then, were determined to have the principles of government written down and equally determined that they would approve in detail what the delegates to the constitutional convention had chosen to include.

Massachusetts leaders decided that a constitution required the participation of more than just those who traditionally enjoyed the right to vote. Thus without regard for property qualifications, all free males aged twenty-one and over were allowed to vote for delegates to the convention. The broadened franchise probably made no great difference, for the resulting body was no gathering of simple farmers and artisans, nor do these seem to have had undue influence on the convention's debates. In Pennsylvania in 1776, on the other hand, a corrected imbalance in representation between the eastern and western parts of that state presumably allowed, according to charges made later, many incompetents to frame the most dangerously democratic constitution of the Revolutionary period, one providing for unicameralism and virtually universal male suffrage. Massachusetts easily escaped that fate.⁹

According to lists in the convention's *Journal*,¹⁰ the towns chose a total of 311 delegates, among whom were 43 members of the 1779–80 General Court, 6 of these being in the Council. Some legislators enjoyed the distinction of being listed as 'The Honorable so and so Esq.' because of their long or distinguished service in the General Court. Still others won the honorific because they had formerly served, or their other public service was widely acknowledged, as in the Continental Congress, or

⁹ By way of reminder, Benjamin Rush quoted Adams's words on the Pennsylvania Constitution of 1776: 'Good God! the people of Pennsylvania in two years will be glad to petition the crown of Britain for reconciliation in order to be delivered from the tyranny of their Constitution'. Rush to Adams, October 12, 1779, *Letters of Benjamin Rush*, ed. L. H. Butterfield, 2 vols. (Princeton, 1951), 1:240.

¹⁰ *Journal of the Convention for Framing a Constitution of Government for the State of Massachusetts Bay* (Boston, 1832).

they had judicial appointments. Among the latter were 5 justices of the Superior Court of Judicature, then the highest court in the state. For whatever reason, 18 men altogether were listed as 'The Honorable.' Besides these, there were some plain 'honorable,' many 'esquires,' and 95 members with military titles ranging from captain to brigadier general. The number of military men is not surprising given the times. None was a professional soldier, and some may have marched with their men at a rather remote time in the past, for the eighteenth century clung to titles as marks of respect without examining closely how meaningful the rank still was.

A baker's dozen of ministers won seats in the convention or had them thrust upon them. Their presence marked a break with tradition. The call for the convention allowed towns to elect as many delegates as they were entitled to elect representatives. One might have thought that the electorate would turn exclusively to the kind of men that they sent to the General Court, as many did. Although no law forbade it, the towns never sent clergymen to the House of Representatives, and had not done so from the beginning of the colony's history. Obviously something more was at stake than mere lawmaking. When the convention gathered in Cambridge, delegates appear to have seen the ministers' usefulness at first as chaplains and as experts in religion; but when the convention moved to Boston, it asked some nine area clergymen to visit and to open its meetings with prayer, although prayers were not always offered, if the secretary's minutes are accurate. Then minister-delegates were increasingly put on committees that were not concerned with religion.

For drafting purposes, the convention met in Cambridge for two brief sessions in the fall of 1779 and for a third and longer session in Boston in the early months of 1780. According to the list of members given in the *Journal*, the eastern counties were most strongly represented, only a total of three towns lacking representation in the three counties of Suffolk, Essex, and

Middlesex. Every town in Bristol County sent a delegate. Worcester County was also well represented, only three towns being absent. But in Hampshire eighteen towns failed to send a delegate, and in Berkshire, six. As one would expect, the three Maine counties together sent scarcely a handful; forty-four towns in that district went unrepresented. Barnstable County on Cape Cod showed a similar pattern. The island counties of Dukes and Nantucket were able to send no delegates at all.

Many of the towns that chose to be represented, however, sent more delegates to the convention than they sent representatives to the House, and many sent delegates even though they sent no representatives at all. Frugality probably had something to do with this pattern. Towns were charged for the travel and per diem pay of a member they sent to the House; surely, it may have been reasoned, the convention would not sit so long as a General Court. Yet that cannot have been the whole explanation. Suffolk County had eleven men in the House in 1779–80 but sent twenty delegates to the convention. For Essex County, the figures are twenty and forty-one. And this was not just an eastern peculiarity. The two westernmost counties, where agitation for a written constitution had been going on since 1775, did as well or better. Hampshire County sent more than twice its number of legislative representatives then in the House, and Berkshire nearly three times as many. Middlesex and Worcester counties outdid everyone, sending four times as many delegates from the one and more than four times as many from the other.

The convention's first recorded vote, taken on September 2, the day after it opened, showed 251 members present and voting. The first session lasted only a week. After electing a committee to report a draft constitution, the convention adjourned until October 28 to allow time for the drafting committee to do its work. The second session extended from October 28 to November 11, virtually all of its time being spent on consideration of the Declaration of Rights. In this second

session the highest number of votes recorded was 122 on November 8, a considerable decline from the opening days of the convention. By the third session, which was delayed by heavy snows and cold from beginning business until January 27, the greatest number of those present and voting was 80; and in the last days of February, the total recorded on split votes was likely to be 35 or 36—in one case, 30. As one might guess, these divided votes were not on inconsequential matters. By March 2, its work completed, the convention adjourned to await the response of the towns before proceeding to ratification in June 1780.

Writers have often complimented the town meetings on their dedication to sifting the constitution clause by clause, recording their assents, dissents, and suggested alterations. No one has ever complimented the delegates, so greatly reduced in numbers, who stuck to their task, listening to committee report after committee report, juggling language, and striving to find a meeting of minds. Indeed, one prominent critic, Joseph Hawley, complained that the convention had set itself no quorum and that it was scandalously content to continue business with so few present.¹¹ It is impossible now to know whether the relatively few in attendance constituted a good cross-section of the entire state. If one were to judge from the men elected to committees, one would have to conclude that in the third session men from eastern counties greatly outnumbered those from elsewhere, since a bare handful of men from the more remote counties served on these committees. Worcester County did reasonably well, however, with six. One may explain the overbalance of easterners by arguing that their counties offered a greater pool of talent to draw upon, but Hawley would never have accepted that.

The great majority of votes for acceptance or rejection of a clause or article were so one-sided that no record of yeas and

¹¹ 'Joseph Hawley's Criticism of the Constitution of Massachusetts,' ed. Mary Catherine Clune, *Smith College Studies in History* 3(October 1917):34-35.

nays was kept, but as the convention wore on and perhaps patience wore thin, split votes became more common. Not all members present were steadfast in the desire to continue. In early February three attempts were made to adjourn the convention 'to a distant day.' Nonetheless the members kept on, convening six days a week, usually starting at nine or ten in the morning, breaking for a midday meal, and meeting again at three. The afternoon session might go on till five or six o'clock. Occasionally the delegates convened once more at nine P.M. The hard-working members apparently judged that on Saturdays a single session was sufficient.

Full and free debate very often resolved issues, but when a solution seemed impossible on the floor or when the matter was complex, resort was had to elected committees, which reported their proposals in due course. Thirty-two alone, counting several one-man committees, were selected to cope with differences over various parts of the draft constitution. A few members were favorites for committee work. John Lowell of Boston, for example, served on fourteen committees, chairing five of them. Robert Treat Paine of Taunton, attorney general, chaired five of the ten committees to which he was elected. Other delegates burdened with such work were John Pickering of Salem, Samuel Adams, Theophilus Parsons and Jonathan Jackson of Newburyport, and James Sullivan of Groton. John Adams, sent once again to Europe as a diplomat, could not take part in the third, and longest, session of the convention. Procedures on the floor were well regulated and give no evidence of steamrolling. The order of business, determined by a committee and listed for all to see, guided the members from topic to topic. The convention had the good sense in January, when delegates straggled in, to take up only the least controversial subjects until more members could attend.

To turn now to the convention's work, the delegates, when they gathered in September 1779, sought to have a declaration of rights drawn up prior to framing a constitution. The motion

was reconsidered and set aside, but the maneuvering revealed that all but one out of 251 delegates voting wanted such a declaration included.¹² Five state constitutions already contained bills of rights;¹³ in fact, one of the chief objections to the Massachusetts Constitution of 1778 was its failure to provide one. A motion then carried to name a committee, twenty-seven of whose members would be chosen from the several counties and four at large, to frame not only a declaration of rights but also a scheme of government, which would be reported back to a reassembled convention on October 28.¹⁴

The drafting committee met first in Boston and delegated a three-man subcommittee of James Bowdoin, the convention's president, Samuel Adams, and John Adams to do the preliminary work. John Adams essentially prepared the committee's report, the full committee making very few changes. From his own later testimony, we know that another committee member drew up the highly controversial Article III of the Declaration of Rights, which sanctioned taxation to support churches. And most of the section in the Frame of Government designed to protect the interests of Harvard College was prepared at the school.¹⁵

¹² *Journal of the Convention*, pp. 22–23.

¹³ In order of composition, bills of rights were drafted by Virginia, Pennsylvania, Delaware, Maryland, and North Carolina. Some states included rights within their constitutions without grouping them in a separate part. All but Delaware's bill are found in Thorpe, ed., *Federal and State Constitutions*, passim. On Delaware's bill, see Max Farrand, 'The Delaware Bill of Rights of 1776,' *American Historical Review* 3 (July 1898):641–49.

¹⁴ *Journal of the Convention*, pp. 24–31. The absence of any representation from Nantucket and Dukes counties, which were to have had one person to represent both on the drafting committee, meant that it became a committee of thirty rather than thirty-one.

¹⁵ 'When We met, Mr. Bowdoin and Mr. S. Adams insisted that I Should prepare a Plan in Writing which I did. When I laid it before them, after deliberating upon it they agreed to it, excepting only to one Line of no consequence, which I Struck out. We reported it to the Committee of Thirty where it underwent a thorough Investigation. They Struck out two Things to my Sorrow: one was an unqualified Negative to the Governor; another was the Power to The Governor to appoint all Militia Officers.' Adams to William D. Williamson, February, 25, 1812, Maine Historical Society, Portland, photocopy in Adams Papers, Massachusetts Historical Society, Boston. Adams erred in stating that the drafting committee made the two changes. They were

A few words need to be said about Adams's qualifications for the task he undertook. His thorough grounding in the law and political thought, largely acquired through years of disciplined study, made possible a well-organized, practical, and reasonably coherent scheme. His political theory was influenced, he was proud to say, by Algernon Sidney, James Harrington, John Locke, John Milton, and some of the Commonwealthmen—early eighteenth-century reformers who favored better separation of governmental powers, a Parliament more responsive to the people, a broadened franchise, and religious toleration. Adams's first effort at sketching a form of government deemed suitable for the emerging states appears in a letter to Richard Henry Lee of November 15, 1775.¹⁶ Then Adams elaborated upon his ideas in four letters written in the spring of 1776, one of which was published as *Thoughts on Government*, a widely circulated and influential pamphlet. These four letters were addressed separately to William Hooper and John Penn, members of the convention that drafted a constitution for North Carolina, to George Wythe of Virginia, and to Jonathan Dickinson Sergeant of New Jersey, reputed author of that state's first constitution.¹⁷

None of these plans mentioned a bill of rights. What they did stress was separation and balance of powers, bicameralism, a strong executive, tenure for judges during good behavior, frequent elections, and submission to majority will. None of the letters defined franchise qualifications; yet we know from Adams's correspondence with friends that he strongly favored property requirements and widespread distribution of property to insure a large electorate—an idea Adams probably owed to the influence of James Harrington.¹⁸ None of these plans was

made by the convention, as the *Journal of the Convention* amply illustrates. On the role of Harvard College, see *The Works of John Adams*, ed. Charles Francis Adams, 10 vols. (Boston, 1850–56), 4:258, note 2.

¹⁶ *Papers of John Adams*, 3:307–8.

¹⁷ *Ibid.*, 4:65–93.

¹⁸ See, for example, Adams to James Sullivan, May 26, 1776, *ibid.*, 4:208–13.

meant to be definitive; indeed, Adams conceived them as sketches only, interim devices suitable to the time and subject to the wishes of the people who would live under them. Once, he dismissed *Thoughts on Government* as 'a poor scrap' meant mainly for southern governments, which he thought would reject his ideas as too 'popular.' New Englanders, he believed, would not find them popular enough. Particularly, Adams asserted that they would not accept a governor with a veto.¹⁹ In this he did not quite hit the mark. His stress on implementation of majority will was far more than lip service to a principle. When he heard later that the convention had submitted its work to the people for their approval, Adams delightedly wrote that his state was 'a Phænominon in the political World, that is new and Singular. It is the first People . . . that have allowed Such Universal Liberty to all the People to reflect upon the Subject, and propose their Objections and Amendments,' reserving the right to accept or reject the proposed constitution.²⁰

The printed report of the drafting committee²¹ consists of three parts: a Preamble setting forth the purpose and origin of government, a Declaration of Rights, and a Frame of Government. The body politic is declared to owe its origin to voluntary association by means of a social compact, 'by which the whole people covenants with each citizen and each citizen with the whole people' to be governed 'for the common good.' These ideas were familiar enough in Adams's time. What contributions that might be considered uniquely his, then, did Adams make to this instrument? For one thing, the deliberate choice of the term *commonwealth* in preference to *state*, which was the term used in the Constitution of 1778, was important

¹⁹ Adams to James Warren, May 12, 1776; to Francis Dana, August 16, 1776, *ibid.*, 4:182, 466.

²⁰ Adams to William Gordon, May 26, 1780, Letterbook, Adams Papers.

²¹ *The Report of a Constitution or Form of Government for the Commonwealth of Massachusetts* (Boston, 1779). No manuscript report has been found. To call the printed report Adams's draft seems not unwarranted given his testimony concerning it.

to Adams. In letters to friends, he observed that Virginia had chosen that name and added, 'let us take the Name, manfully.'²² No one in the convention questioned Adams's choice of term.

Adams changed the basis of representation in the House from the number of voters to the number of ratable polls, that is, by law, males sixteen years of age and older. One of Adams's cardinal beliefs was that a representative body should reflect as nearly as it could the people at large. It may be that he thought polls came closer than voters to being the people that a representative body must mirror. Women, incidentally, like children, were too dependent and too fit for 'domestic Cares'²³ to count in this consideration—ideas widely held in his day, of course.

Adams provided for the strongest chief executive of any of the early state constitutions. Not only was the governor to be chosen by the voters at large rather than by the legislature, as in most of the constitutions, but he also had broad appointive powers, an absolute veto, and a measure of independence through a fixed salary. Thus although most constitutions made specific provision for the separation of powers, only Adams designed a true checks-and-balances system.²⁴ Man's corruptible nature made checks absolutely essential for a free government, he believed.

Least noticed but of great utility was Adams's division of the Frame of Government into numbered chapters, sections, and articles. The other early constitutions merely listed all sections or articles in a simple, consecutive order like the lists of instructions for royal governors. Trying to find quickly what a governor's nonlegislative powers were, for example,

²² *Papers of John Adams*, 4:466.

²³ *Ibid.*, 4:210.

²⁴ According to Adams in a letter to Benjamin Rush of April 12, 1809, Samuel Adams and Lt. Gov. Thomas Cushing favored unicameralism like that in Pennsylvania. Adams claimed that the Essex Junto, which had been influenced by *Thoughts on Government*, supported him on checks and balances but that it would not support an absolute veto. *Works of John Adams*, 9:618.

requires scanning through article after article. In Adams's scheme, one turns at once to Chapter III (now Chapter II), Executive Power. Not only was the plan convenient, but it also made for orderly thought about the relations among the several branches of government.

Most pleasing to Adams perhaps was his section entitled 'The Encouragement of Literature, &c,' calling upon 'the legislators and magistrates . . . to cherish the interests of literature and the sciences,' schools, and colleges and 'to encourage private societies and public institutions . . . for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country.' He went on to summon leaders to the task of inculcating the virtues of 'public and private charity, industry and frugality' as well as 'good humor' and 'generous sentiments.'²⁵ Here Adams spelled out a conception of government's role that would guide other Adamses—the conviction that government had a responsibility for promoting the well-being of its citizens.

Careful examination of the constitution's first part, the Declaration of Rights, suggests several sources on which Adams drew. One finds close paraphrases or verbatim borrowing from one or another of the declarations of the states and some reproduction of the order in which rights were listed. Virginia's Bill of Rights, earliest of the five written during the first round of constitution-making, was influential but less directly so than Pennsylvania's, although that state owed much to Virginia. Adams's Article XVII, for example, which included freedom of speaking and writing as well as liberty of the press, was taken nearly verbatim from Pennsylvania's Article XII. That state's rights were adopted in August 1776, while Adams was still in Philadelphia. The subjects of Adams's first twenty articles²⁶ follow pretty much the order of Pennsylvania's first

²⁵ *Report of a Constitution*, chap. VI, sec. II (now chap. V, sec. II).

²⁶ Adams's Arts. VI and XI are exceptions. Charles Deane commented on this ordering many years ago. See *Proceedings of the Massachusetts Historical Society* 13 (1873-75):302n.

sixteen, and often whole phrases are borrowed. Adams's Articles XXII–XXVI most nearly parallel five of Maryland's articles in order and substance, but Maryland drew on Delaware.

All these American declarations owed a debt to great English state papers: 'judgment by peers and the law of the land' comes from Magna Charta by way of the Petition of Right of 1628; and the Bill of Rights of 1689 suggests the substance and occasionally some of the wording of more than a half dozen of Adams's articles.²⁷ Not part of the rights listed in the formal declaration but included in the Frame of Government is the right of habeas corpus, mentioned in only one other early state constitution. Georgia's constitution of 1777 contains no separate bill of rights, but, as did several other states, Georgia listed a few rights among its provisions for government. Georgia said simply, 'The principles of the *habeas-corporis* act shall be part of this constitution.'²⁸ If the reference is to the English statute of 1679, the Georgia provision does not deal with the issue that concerned Adams—a limit on the power of the legislature to suspend this right. The English law did not include provisions on suspension, although the statute was suspended in 1696 when King William was threatened and at the time of Prince Charlie's invasion of 1745. The language Adams chose—'shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a short and limited time'²⁹—was not specific enough for the members of the convention, as will appear later.

Yet the convention made relatively few changes in the listing of rights if we except Article III on tax support of religion, which Adams did not write. This article was perhaps the most controversial one in the whole constitution. The convention

²⁷ Emory Washburn called attention to the influence of English state papers in his 'The Origin and Sources of the Bill of Rights Declared in the Constitution of Massachusetts,' *ibid.*, 8(1864–65):294–313.

²⁸ Thorpe, ed., *Federal and State Constitutions*, 2:785.

²⁹ *Report of a Constitution*, chap. V, art. VI.

debated for two days and suspended its rules so that members could speak more than twice without first obtaining permission. Finally, a seven-man committee was elected to redraft the article. Chaired by the Reverend Noah Alden of Bellingham, a Baptist, and including the Congregational minister David Sanford of Medway, the committee also had several members who were to be among the most active men in the convention: Robert Treat Paine, Samuel Adams, and Timothy Danielson of Brimfield. The committee's report was vigorously debated for most of one day. It included three significant changes from the original language: the addition of the word 'Protestant' to 'teachers of piety,' who were to enjoy tax support; a new paragraph asserting the right of the towns and religious societies to contract for employment of ministers of their own choice; and a final paragraph guaranteeing that 'Christians of all denominations, demeaning themselves peaceably,' would enjoy the equal protection of the laws.

Apart from an unsuccessful effort to drop Article III entirely, most of the changes proposed by delegates dealt with this final paragraph. Several members sought to tinker with modifiers for 'Christians,' desiring Christians whose principles were not 'inconsistent with the peace and safety of Society' or 'repugnant to the Constitution,' or, more forthrightly, who were Protestants or not Papists. When the convention made a final review of the provisions, Article III underwent a last, merely stylistic change, but a motioner and his second took the opportunity to urge dropping the phrase 'demeaning themselves peaceably.'³⁰ Probably these two members were alert to the possibilities of interpretation that Baptists and other religious minorities might suffer from.

But the convention wanted no more alterations, and there the matter stood until the people had their say. Many years ago Professor Morison convincingly argued from his examination of tally sheets in the Massachusetts Archives that Article III

³⁰ *Journal of the Convention*, pp. 38-42, 45-46, 146-47.

did not receive the two-thirds support from the people necessary for its ratification by the convention. Nonetheless, the obligation to pay taxes for the support of religion, mainly the Congregational denomination, continued in Massachusetts for fifty-three years. The Reverend Isaac Backus, not a convention member but the most prominent spokesman for the Baptists in New England, claimed in the *Independent Chronicle* of December 2, 1779, that John Adams and Robert Treat Paine were guilty of repeating in the convention an old charge against him. Backus, in trying to free the Baptists from compulsory religious taxation, had gone to the First Continental Congress in 1774 to consult with the Massachusetts delegates. Paine soon after said that Backus had threatened the 'peace and welfare' of the nation at a critical period. Later Backus repeated his attack against the two men in his work on New England churches. He claimed that on the floor of the convention John Adams had recalled Backus's behavior in Philadelphia 'in order to get a vote' in favor of Article III. When Paine added his recollection, Backus wrote, 'Many in the Convention were greatly inflamed thereby, and a vote was obtained to adopt said article.'³¹

It is difficult to reconcile this account of Adams's behavior with his desire that government play no favorites among denominations, his willingness on occasion to attend services other than the Congregational, and his language in Article II: 'no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner most agreeable to the dictates of his own conscience.' The incongruity of the two articles was seen by many an ordinary voter as well.³²

³¹ *An Abridgement of the Church History of New England, from 1602 to 1804* (Boston, 1804), p. 214.

³² Certainly Adams was thinking of Art. II when he reported back on the reception in Europe of the constitution's treatment of religion: 'The Liberality on the Subject of Religion, does Us infinite Honor and is admired and applauded every where. It is considered not only as an honest and pious Attention to the unalienable Rights of

Adams covered the ground pretty well in his long enumeration of the rights needing protection. One right might give a modern electorate pause—the right of citizens to require of their elected leaders ‘piety, justice, moderation, temperance, industry, and frugality,’ all of which were ‘absolutely necessary to preserve the advantages of liberty, and to maintain a free government.’ Adams shared with his thoughtful contemporaries the conviction that republican government must be founded on the rock of virtue. More Massachusetts office-holders today should be familiar with Article XIX (now XVIII).

The only right the convention *added* was to Article X, compensation for property taken for public uses; but some changes in wording elsewhere hold interest. Although Adams declared that all men ‘are born equally free and independent,’ employing the terms of Virginia’s Article I, the convention preferred ‘born free and equal,’ not far off from ‘created equal’ in the Declaration of Independence. Using Adams’s choice of expression might have saved later Americans a good deal of exegesis, but our labors to explain our adopted principle have probably been good for us. Adams found ‘created equal’ a troublesome doctrine and labored over the years to narrow its meaning, best summed up, perhaps, in his letters to John Taylor of Caroline in 1814.³³

The convention made a tantalizing change in Article IX, which declared ‘all elections ought to be free; and all the *male* inhabitants . . . having sufficient qualifications, have an equal

Conscience, but as our best and most refined Policy, tending to conciliate the Good Will, of all the World, preparing an Asylum, which will be a sure Remedy against persecution in Europe, and drawing over to our Country Numbers of excellent Citizens.’ Adams to Isaac Smith, Sr., May 16, 1780, Letterbook, Adams Papers. About Art. III, Adams wrote some years later: ‘The Article respecting Religion . . . was the only Article which I omitted to draw. I could not Satisfy my own Judgment with any Article that I thought would be accepted: and farther that Some of the Clergy, or older and graver Persons than myself would be more likely to hit the Taste of The Public,’ Adams to William D. Williamson, February 25, 1812, cited in note 15, above.

³³ Adams agreed that men had equal rights but insisted that they were not equal in other ways. *Works of John Adams*, 6:453–54.

right to elect officers, and to be elected for public employments.' The convention dropped 'male,' and, judging from a purely stylistic change that followed, one might think, quite sensibly, that the sole reason for dropping the word was to remove from a lasting enumeration of basic rights any specific qualifications for the franchise, which were to be defined in the Frame of Government. When, however, the convention on separate days turned to debating qualifications to vote for representatives and senators, a motion was made and seconded in each instance to omit the word 'male' from the requirements.³⁴ There was more than one feminist loose in that convention—probably two: the maker of the motion and his second.

Finally, in the Declaration of Rights a significant change came in Article XVII (now XVI), which as Adams wrote it, or rather copied it, provided for free speech and writing, as well as for liberty of the press. Referred to a committee composed of Timothy Danielson, Walter Spooner of Dartmouth, and Caleb Strong of Northampton, it was rewritten to mention only that a free press was essential to liberty. A few days later it passed in that form without need for a count of the votes.³⁵ In considering the Constitution of 1780, Boston among its other reservations objected eloquently to the omission of free speech and inserted its objections in the newspapers.³⁶ Other towns added their support.

The years of thought that Adams had given to the elements that any constitution ought to include did not prevent him in drafting the Frame of Government from borrowing language even from the discredited Constitution of 1778. The enacting style, the language on commissions, on continuance of the laws, and on payment of monies, and much of the phrasing

³⁴ *Journal of the Convention*, pp. 92, 120–21, 136.

³⁵ *Ibid.*, pp. 39, 41.

³⁶ City of Boston, Record Commissioners, *Reports*, 39 vols. (Boston, 1876–1909), 26:132.

respecting impeachment—all come from the earlier constitution. Under Chapter II, where the powers of the General Court are set forth, great chunks of wording derive from the charter of 1691, as does the lengthy listing of the governor's powers in Chapter III. But most of the Frame of Government is Adams's own work. The convention made a number of alterations and some additions, many minor in nature but some of true importance. Moreover, attempted changes are often as revealing and significant as accepted ones.

Most striking were the moves to whittle down the powers given by Adams to the governor. Colonies moving from a condition of battling strong executives who were appointees of the crown to a condition of self-governing statehood were understandably reluctant to submit to powerful governors. Most preferred to keep their executives under the thumb of the legislature. Adams's theory of balance, however, required that the governor in his capacity as part of the legislature should have a negative on laws that was as effective as that of the Senate or the House. In effect, the governor would be a third branch of the legislature.³⁷ Nothing that the convention did changed his mind. In a letter of 1789 to Roger Sherman in which Adams wrote on the qualified veto of the president of the United States, he pointed to the danger of the Congress's passing an unconstitutional law by overriding a president's objections. Indeed, Adams insisted that this very thing was liable to happen, given 'the constitution of human nature.'³⁸ When he

³⁷ 'I am clear for Three Branches, in the Legislature, and the Committee have reported as much, tho awkwardly expressed. I have considered this Question in every Light in which my Understanding is capable of placing it, and my Opinion is decided in favour of Three Branches, and being very unexpectedly called upon to give my Advice to my Countrymen concerning a Frame of Government, I could not answer it to myself, to them, or Posterity, if I concealed or disguised my real Sentiments. They have been received with Candor, but perhaps will not be adopted. . . . The Executive, which ought to be the Reservoir of Wisdom, as the Legislature is of Liberty, without this Weapon of Defence will be run down like a Hare before the Hunters.' Adams to Elbridge Gerry, November 4, 1779, Letterbook, Adams Papers.

³⁸ *Works of John Adams*, 6:432.

wrote, the courts had yet to establish themselves as the arbiters of constitutionality.

After considerable debate the convention instituted the two-thirds vote for overriding that was copied in the United States Constitution. A five-man committee made up of Ellis Gray of Boston, the Reverend Jonas Clarke of Lexington, Levi Lincoln of Worcester, Timothy Danielson, and Walter Spooner reported the scheme. As with most such reports, it provoked efforts to modify it in various ways. Before the committee report was made, a motion to make the veto dependent upon the advice and consent of the Council, which had passed by six votes, had been dropped on reconsideration, and then Adams's original language had been voted down by eight votes. These maneuvers took a whole afternoon. Two days later, when the committee reported, a morning was devoted to a proposal to leave the veto intact but exempt all matters touching defense; by afternoon that had lost by thirty-three votes. Next an unsuccessful attempt was made to expunge the two-thirds provision in the committee report. Finally, the wording virtually as it appears in the constitution was adopted forty-four to twenty-four. Feelings had run deep.³⁹

On another issue affecting the governor's power, the convention knew its mind, and here again Adams was never reconciled to the convention's handiwork. It was unwilling to have the governor appoint all the militia officers. Several motions were offered when the matter first came under consideration, none being voted upon, but it was clear that the movers wanted some form of popular participation rather than executive appointment. A seven-man committee was put to work, and about a week later the scheme of militia members electing their officers was adopted without a vote count. According to James Sullivan, this method was assented to in the expectation that the governor would have a negative on the

³⁹ *Journal of the Convention*, pp. 126, 127-28, 132-33.

militia's choices, but that did not come to pass.⁴⁰ Election of the lower-ranking officers by the men had been the colonial practice; now the lower officers would be electing their immediate superiors. A try at having at least the brigadier generals appointed by the governor was turned back. Only the major general was appointed—and by the General Court. Attempts to take the appointment of some of the lesser judges and justices out of the executive's hands failed, but not before several split votes were recorded. By small majorities the governor was allowed to name justices of common pleas, judges of probate and the maritime courts, and justices of the peace. The method of naming sheriffs and coroners had to go to committee, but at length the convention added them to the list of officials appointed by the chief executive.⁴¹ Thus many in the convention were not so firmly convinced as John Adams that the Commonwealth needed a governor far stronger than any other at the time. Memories of the patronage power of the royal governors were still fresh. Yet the convention by a narrow margin rejected Adams's proposal to limit the annually elected governor to five terms out of seven years. A majority of other states had provided for rotation.

Another concern was the role of the Council as advisers to the governor. Present-day citizens of Massachusetts will be interested to know that some in the convention saw no need at all for a separate advisory council. Adams himself had been dubious about its utility.⁴² His *Thoughts on Government* had not provided for one; in that plan the term *council* was used for the

⁴⁰ *Ibid.*, pp. 113–14, 127, 134. Sullivan, who chaired the committee on the militia, wrote that the method of electing militia officers 'was come into in order to obtain a negative for the Governor but had not that Effect.' Sullivan to Elbridge Gerry, February 23, 1780, Gerry-Knight Collection, Massachusetts Historical Society.

⁴¹ *Journal of the Convention*, pp. 103, 105, 130.

⁴² In 1782 Adams asked, 'How does the privy Council play its Part? Are there no Inconveniences found in it! It is the Part which I have been most anxious about, least it should become unpopular and Gentlemen should be averse to serve in it.' Adams to Samuel Adams, June 15, 1782, Bancroft Collection, New York Public Library, New York City, photocopy in Adams Papers.

upper house of the legislature, which like the United States Senate had the power to advise and consent as well as legislate. When senators and councilors first came up for consideration in the Massachusetts convention, it was voted that the term *councilors* be expunged everywhere in the paragraph. On reconsideration the term was kept by a vote of twenty-eight to eighteen. The next day a successful motion brought the dropping of the term, only to have the convention change its mind a few days later. Once a council had won approval, efforts were made to have it popularly elected rather than chosen out of the senators by joint ballot of the two legislative houses. When election by the people failed, some tried to have vacancies filled by election from out of the people at large. Eventually this concession to those wanting to involve the people prevailed.⁴³ Similarly, when not enough senators received the required majority of votes cast, there were those ready with various formulas to ensure that representatives and already-elected senators would fill vacancies in the Senate from among men who had received substantial numbers of votes as senatorial candidates. In default of that, some delegates preferred that the problem should go back to the people in some way, but none of these alternatives for filling vacant Senate seats passed.⁴⁴

Representation was the only issue that forced the convention into a committee of the whole, and fragmentary notes on its debates are the only record of debates in the convention known to exist. Among populous towns, sentiment was strong that they did not have their due weight in the legislature; and among small towns the fear was great that if the existing system were changed, they would have no weight at all. From the debates in the committee of the whole it is clear that John Lowell and Samuel Adams firmly supported the *Report of a Constitution*, which allowed representation to every town with 150 ratable polls. James Sullivan was equally insistent that every town

⁴³ *Journal of the Convention*, pp. 69, 71, 85, 89, 98–100, 146, 167–68.

⁴⁴ *Ibid.*, pp. 73–74, 76, 79.

regardless of size was entitled to a representative. By his reckoning, forty-seven towns had too few polls to qualify.

A number of delegates from small towns spoke out on Sullivan's side, but two other proposals were put forward. Theophilus Parsons with some support from other speakers suggested limiting the House to 100 members apportioned among the counties or special districts in a way to promote equality of representation. Thomas Dawes of Boston proposed reducing the minimum number of polls for representation from 150 to 100.⁴⁵ The report that came out of the committee of the whole after two and one-half days of discussion offered a compromise: every existing incorporated town would have a representative even if it did not have 150 polls, but small towns incorporated in the future would have to meet the standard. Still, one last effort was made in behalf of small towns. Someone managed to get a three-man committee appointed to consider the feasibility of granting representation to unincorporated places, but its favorable report was rejected by the convention.⁴⁶ It also discarded John Adams's plan of allowing small towns to associate with larger ones for the purpose of electing a representative, a scheme he borrowed from the Constitution of 1778. In the committee of the whole, association had been mentioned as a sop to small towns, but their spokesmen had rejected it as no voice at all. Although the convention did retain Adams's provision for an additional representative for each additional 225 ratable polls, it summarily abandoned his provisions for raising the mean figure required for increased representation in order to keep down the size of the House of Representatives as the Commonwealth grew. As mentioned earlier, many eligible towns chose not to be represented as a way of saving expense.

⁴⁵ William Cushing, apparently chairman of the committee of the whole, made two and one-half pages of notes on what various speakers had to say. Volume entitled 'Commissions,' under assigned date October? 1779, Cushing Papers, Massachusetts Historical Society. The committee of the whole first went into session on February 16, 1780. *Journal of the Convention*, pp. 117-18.

⁴⁶ *Journal of the Convention*, pp. 122, 123-24, 133-34.

Because of this situation, a proposal to have representatives' salaries paid out of the public treasury was put forward, but it failed. The convention did, however, agree to pay travel costs with state funds.⁴⁷ A motion to replace 'ratable polls' in figuring representation with male inhabitants sixteen years old and over, paying taxes, amended to twenty-one and over, was rejected.⁴⁸ This last proposal would probably have reduced representation from the poorer and smaller towns, for young men living on their fathers' farms would go uncounted.

The convention spent a good deal of time considering the sort of men who should sit in the legislature. Adams wanted all legislators, as well as the governor and his lieutenant, to be Christians and owners of freeholds of some value—£1,000 for executives, £300 for senators, and £100 for representatives. The convention offered the alternative of personal property at double the value of the freeholds for legislators, but not for executives, and dropped mention of the Christian religion except for the governor and his lieutenant. The convention also thought it unnecessary to stipulate, as had Adams, that representatives be chosen 'from among the wisest, most prudent, and virtuous' of eligible men. Pennsylvania's constitution had a similar phrase.⁴⁹ Possibly Adams thought that a property qualification so low required voters to look beyond landholding in choosing representatives. The convention was closer to modern cynicism about impossible dreams with respect to the General Court.

Many delegates thought that the convention was too lax about religion; tirelessly they sought to add the word 'Protestant' to the qualifications for governor and legislators. To the oath of office, which required one to swear or affirm that one was persuaded of the truth of the Christian religion, they also

⁴⁷ *Ibid.*, p. 124.

⁴⁸ *Ibid.*, p. 135.

⁴⁹ Plan or Frame of Government, sec. 7. Thorpe, ed., *Federal and State Constitutions*, 5:3084.

tried to add the words 'as professed by Protestants.'⁵⁰ Even without this addition to the oath, the elimination of 'Christian' from requirements for legislators seems pointless.

A different kind of exclusion affecting members of the General Court caused much debate. To prevent the abuse called plural officeholding, which had been common in the royal period and which violated the separation of powers, the convention appointed a seven-man committee to list those officeholders and others who should be denied seats in the legislature; Adams's exclusion of just superior court justices left too much undone. When a list was produced, convention members weighed each proposed exclusion carefully; several split votes and reconsiderations occurred before the list obtained acceptance. Clergymen and justices of common pleas were at first excluded but later permitted to serve. The list of judges and their clerks was gone over more than once.⁵¹ Finally, a long list was introduced under Chapter VI, Article II, which also forbade the holding of two of certain offices by the same person. For us today, perhaps the only surprise is the exclusion of Harvard faculty members from seats in the General Court. In some sense they were a privileged class, for they were exempt from militia duty and poll taxes. Still, Prof. John Winthrop had served with distinction in the Council.

Although a number of towns were later to object to property qualifications for voting, especially for voting for representative, attempts in the convention to change the franchise caused little stir compared to other issues. The stake-in-society requirement for voting was widely held. One franchise alteration, however, would be overlooked by the casual reader of the constitution. In considering the qualifications to vote for senators,

⁵⁰ *Journal of the Convention*, pp. 75, 97, 119, 125-26, 132.

⁵¹ *Ibid.*, pp. 81-83, 93, 137-38. Allegedly John Lowell moved that the clergy be declared ineligible for seats in the General Court, for which he was criticized by the Rev. William Gordon, who was not a convention member. Gordon to John Adams and Francis Dana, March 8-11, 1780, *Proceedings of the Massachusetts Historical Society* 63(1929-30):431.

the convention changed the word 'person' to 'inhabitant' and omitted the one-year residence requirement for voting for a senator. Far more than style lay behind this substitution of word. Levi Lincoln was designated to look up the statute on inhabitancy passed in 1767, which dealt with poor persons moving into a town and claiming to be inhabitants. The act had been regularly renewed, most recently in November 1779, which extended its life until 1785.⁵² New England towns protected themselves from having to care for poor persons and misfits who might move in by warning them out. Traditionally, warning out was inapplicable if an undesirable had lived in the town a year and a day. The law of 1767 intended that failure to warn out such persons confer no right to remain no matter how much time had passed. Specific town approval was needed to attain the status of inhabitant. Reminded of the law, the convention for good measure added to the second article under the Senate a clause defining inhabitancy. For the purpose of voting or holding an office, a person was to be considered an inhabitant of the place 'where he dwelleth, or hath his home.' Adams in his draft used the terms 'resident' and 'inhabitant' indiscriminately, but in the law *inhabit* includes the idea of permanency: *reside* does not.

Earlier, mention was made of the convention's desire to spell out more specifically the conditions under which the legislature could suspend habeas corpus. The final language adopted imposed a twelve-month limit on suspension, but some in the convention wanted to go much further than that. Although the committee of John Lowell, Samuel Adams, and Levi Lincoln reported as early as February 9, the convention, after general debate, delayed decision on the full protections that the committee was recommending. Its report would have made suspension permissible only in wartime and applicable only to those 'charged with being in the interest of the enemy.' Against

⁵² *Journal of the Convention*, p. 71; *Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*, 21 vols. (Boston, 1869-1922), 4:911-12; 5:1124-25.

such persons the suspension could last only forty days. If one were liberated on such a writ, suspension could not be reapplied to that person until twenty days after liberation. Debate was not renewed on these proposals until February 28, when they were voted down by twenty-one to fourteen. The suspension limit of twelve months brought a tie vote, which was broken by President Bowdoin. When a motion was offered to confine suspension to 'time of war, rebellion, or invasion, declared or apprehended,' another tie vote resulted, with Bowdoin choosing to break the tie by opposing these further limits on suspension.⁵³ This was another issue on which the towns would be heard from, particularly Boston. The provision in the United States Constitution restricts suspension to times of rebellion and invasion.

Space does not permit even mention of all the changes or attempted changes in substance that the convention made in the *Report of a Constitution*. Enough has been covered, I believe, to indicate that although John Adams is properly called the author of the Massachusetts Constitution, the convention debated freely, patiently, and at length to bend his draft to its wishes. It caught Adams's oversights, but these were few. He made no provision for amendments, perhaps in the belief that the constitution would soon have to be rewritten. The Reverend William Gordon heard that Adams gave a speech early in the convention deliberations, saying that human wisdom could not 'form a Plan of Government that should suit all future emergencies, and that therefore periodical revisions were requisite.'⁵⁴ The convention stipulated that amendments could not be considered until 1795, fifteen years in the future, and only then if two-thirds of qualified voters desired amendments. An effort to reduce the number of years to ten was beaten back.⁵⁵

⁵³ *Journal of the Convention*, pp. 66-67, 92-93, 149-50, 168.

⁵⁴ 'To the Freemen of the Massachusetts-Bay,' *Independent Chronicle* (Boston), May 4, 1780.

⁵⁵ Chap. VI, art. X; *Journal of the Convention*, pp. 156-57, 159, 162, 165. According to the Rev. William Gordon, Timothy Danielson seconded the motion to have amend-

Many voters when they could have their say wished for a shorter period than the convention deemed wise. Adams also neglected to provide a quorum for the Senate and to include for the House, as had been done for the Senate, the right to be judge of its own elections. Still, the remedying of oversights is a relatively minor matter compared to the convention's other actions.

One way to summarize the convention's work in revising the *Report of a Constitution* is to examine the degree to which it expanded or narrowed the people's liberties and their direct participation in government. Certainly dropping from the Declaration of Rights freedom of speech and writing was a narrowing of liberty, which many voters protested. The denial of representation in the House to newly incorporated towns with fewer than 150 ratable polls and unincorporated small towns by not permitting their associating with larger towns for voting purposes must be considered a narrowing of participation. Today we draw our voting district lines, as several in the convention wanted to do, so that theoretically no one goes unrepresented in either branch of the legislature. Also the convention's making a point of adhering to the old definition of 'inhabitant,' however praiseworthy its desire to have important terms clarified, continued a restricted conception of town citizenship. On the other hand, the convention's willingness that travel costs for representatives, if not pay, be borne by the public treasury would perhaps give some encouragement to those towns claiming to be too poor to afford a representative to choose one. The election of militia officers by militiamen, much desired by many people, the extended strictures on plural

ments made possible in 1795 and added that a majority of all inhabitants be required to call a convention to consider amendments. James Sullivan supported him. Robert Treat Paine, Theophilus Parsons, and John Lowell succeeded in having the requirement changed to a majority of voters. Gordon was 'convinced that leading men in the convention were against having a convention in 1795' and would take steps in the towns to see that a majority opposed such a convention. Gordon to John Adams, October 19, 1780, *Proceedings of the Massachusetts Historical Society* 63(1929-30):442.

officeholding, and the filling of vacancies in the Council from among the people at large opened up the system to some degree. The invention of the qualified veto, the convention's most brilliant stroke whatever Adams might have thought, promised to keep some balance between executive and legislative departments and yet avoid total stalemate. Certainly the invention was a clear gain for the people. Some opportunities were missed, of course. One thinks of the failure to define further the conditions for suspension of habeas corpus or the inconsistencies in handling religious tests for officeholding. But one must not ask too much. Adams and the convention blocked out a constitution that has lasted longer than any other. The Commonwealth deserves our felicitations on this 200th anniversary of the construction of its fundamental document.

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