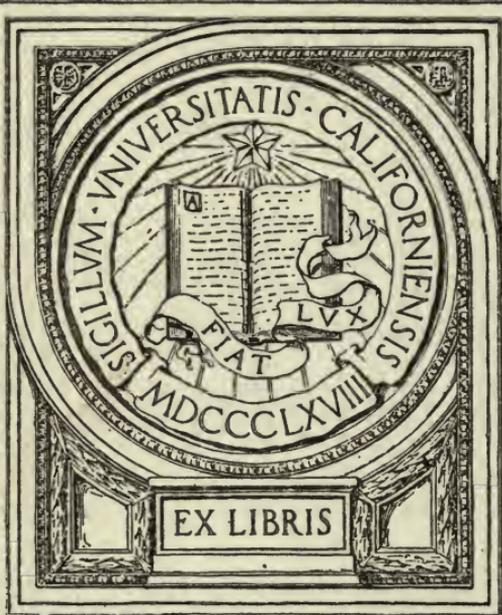


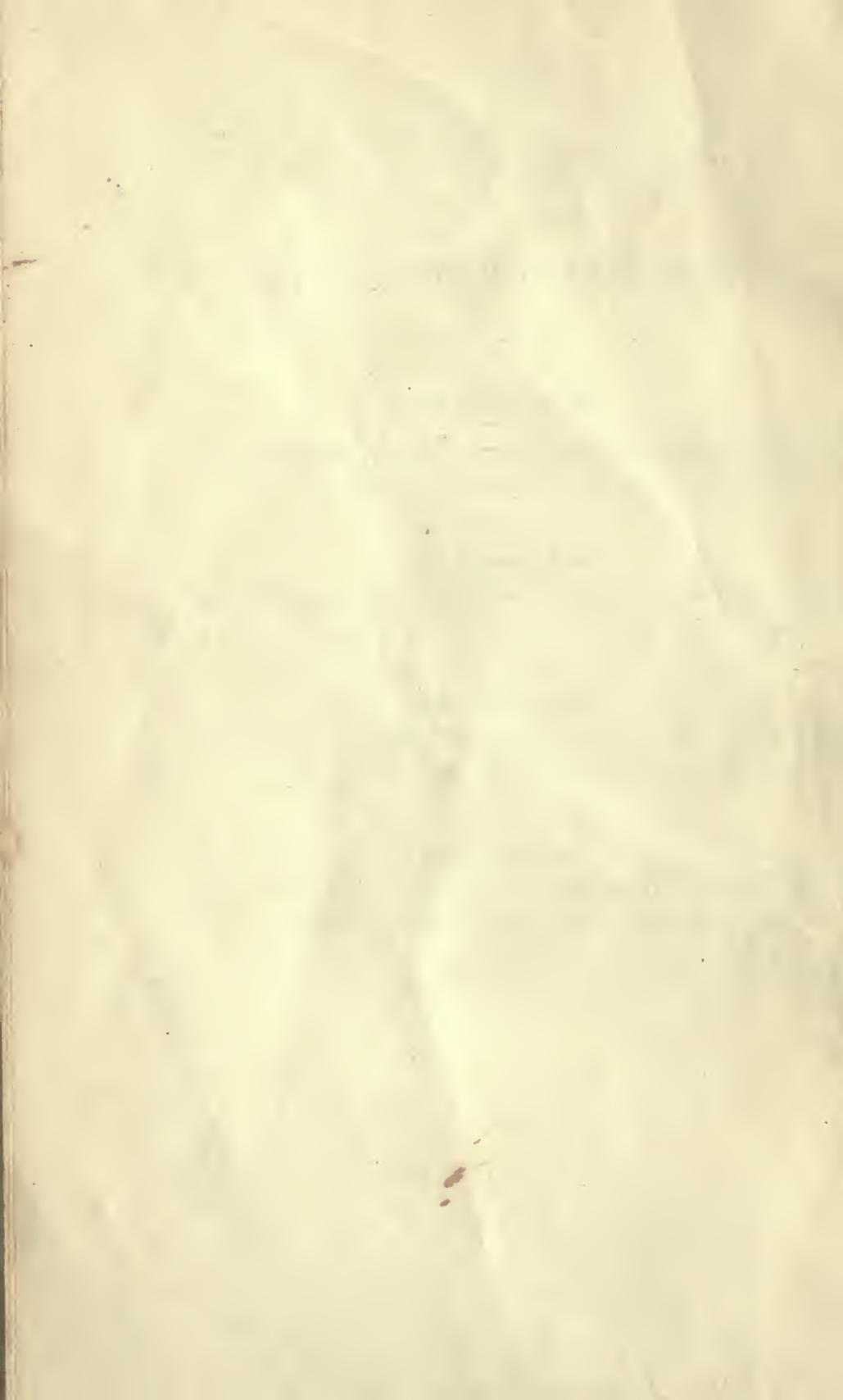
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Smith College Studies in History

JOHN SPENCER BASSETT
SIDNEY BRADSHAW FAY

Editors

JOSEPH HAWLEY'S CRITICISM OF THE
CONSTITUTION OF MASSACHUSETTS

Edited by MARY CATHERINE CLUNE

NORTHAMPTON, MASS.

Published Quarterly by the
Department of History of Smith College

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THE SMITH COLLEGE STUDIES IN HISTORY aims primarily to afford a medium for the publication of studies in History and Government by investigators who have some relation to the College, either as faculty, alumnae, students or friends. It aims also to publish from time to time brief notes in the field of History and Government which may be of special interest to alumnae of Smith College and to others interested in the higher education of women. Contributions of studies or notes which promise to further either of these aims will be welcomed, and should be addressed to Professor JOHN S. BASSETT, Northampton, Mass.

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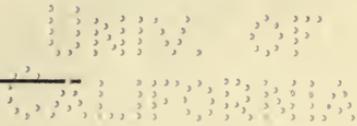
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Joseph Hawley's Criticism of the Constitution of Massachusetts

Now that the Commonwealth of Massachusetts is endeavoring to acquire a new constitution in the place of the one which has served so long and well, it may not be amiss to review the criticism of this time-honored document, made by one of the ablest men of this state, one hundred and thirty-seven years ago, when the constitution was offered to the people for adoption or rejection. A friend of Samuel and John Adams, prevented by the infirmities of illness and approaching age from taking an active part in the constitutional convention, nevertheless from his home in the western part of the state, Major Hawley watched with great interest the progress of the convention. When the critical hour came, he regained for a time the mental vigor of his pre-revolutionary days and was as active as anyone in attempting to secure for his native state an instrument to be pointed at with pride throughout the succeeding century. As one of the leading lawyers of the colonies, he added to a familiarity with the views of Locke and the other political theorists of the eighteenth century, which he possessed in common with many of his fellow citizens, a knowledge of English political institutions and the laws of government, unsurpassed in America. In the events leading to the American Revolution, this stalwart champion of the peoples' rights, was the pillar of the Revolutionary party in western Massachusetts. His influence was paramount even in Boston, where for nearly twenty years his voice was heard in the General Court and the Provincial Congress. His proved disinterestedness and unquestioned integrity continued to make him a leader even after he had retired to private life in his native town.

Graduating from Yale in 1742, Hawley devoted himself to the study of law. Almost as soon as he opened his own office he began to take an active part in the affairs of his native town, Northampton. The well known fact that he never advocated any cause unless convinced of its justice, gained for him the respect

and admiration of the whole county. His reputation was so well established, that juries listened to him readily and gave great weight to his assertions. The vigor with which he conducted the defense of some Hampshire County rioters indicted for resisting the Stamp Act, and the severity of his strictures upon the opinions advanced by the Court led to his dismissal from the bar for the remainder of that court session, but they did not lessen the esteem of Chief-Justice Hutchinson for his critic. The high opinion of Hawley expressed throughout Hutchinson's "History" is remarkable, in view of the fact that the Hampshire patriot more than once by his superior knowledge of the law was able to turn the judge's own statements against him and to place him, when governor of the colony, in an awkward position.

The statement made by Hawley in the General Court, in 1766, that he knew not how the Parliament of Great Britain had acquired the right to legislate for us, attracted wide attention. James Otis immediately arose and complimented the speaker; Governor Bernard reported it in his next letter to Lord Shelburne,¹ and Hutchinson referred to it when he addressed the two Houses² (Jan. 6, 1773), as well as in his "History of Massachusetts Bay."³ It was by Hawley's motion, that the pardon and indemnity clause was included in the Compensation Act, so that the same act of the legislature which provided for the compensation of the sufferers in the Stamp Act riots, brought pardon and oblivion to the offenders, which of course, included those Hampshire rioters, the defense of whom had brought about Hawley's disbarment. Hawley and Hutchinson had a further discussion of riots when the Lieutenant-Governor laid before the House a report which he had received concerning a very disorderly and riotous transaction at Gloucester; and a committee, of which Hawley was a member, replied that when riots "arise from oppression, as is frequently the case, a thorough redress of griev-

¹ Dec. 24, 1766.

² Mass. State Papers, 337.

³ III, 264.

ances will remove the cause, and probably, put an end to the complaint."

In 1773 Hawley was elected a member of the committee of correspondence. About the same time he was appointed chairman of the committee to make the House fully possessed of the Franklin letters. It was he who reported to the House, that the gentleman from whom the letters were received, gave his consent to their publication. He was known to Franklin as a staunch supporter of his conduct throughout the whole affair. He was vice-president of the third Provincial Congress as well as chairman of the committee which sat in the recess of the Congress.

Hawley was one of the first to realize that the colonies must fight to gain their independence, but he was extremely desirous that hostilities should not be begun until a successful issue was presented. After Concord and Lexington he could not restrain his impatience with the tardiness of Congress to declare the independence of the colonies. He wrote to Samuel Adams, at Philadelphia, "that the continent will never act compactly and with vigor," that the Tories would never lose hope, or the trade and commerce of the colonies ever have a secure footing until that step was taken.

There appeared in *The Hampshire Gazette*, October 2, 1833, shortly before the amendment of the third article of the Constitution of Massachusetts was submitted to the people, a letter calling attention to the work of Joseph Hawley, from which the following paragraph is taken: "The extraordinary and unequalled influence of Hawley in forming public opinion for the struggle with Great Britain has been generally acknowledged: it is not so well known, that on every topic of discussion, his voice was invariably raised, as in defence of the bereaved and oppressed, so also in favor of everything that could advance civil or religious freedom. He had the true instinct of liberty and while he rejected public honors, was the inflexible and eloquent advocate of the rights of the people."

Shortly before independence was declared Congress recommended the several states to form governments for themselves.

Massachusetts was the first to avail itself of this suggestion and adopted a form of government closely adhering to the letter of its charter, with the council as the legal successor to the executive power of the governor. The next consideration was the legislature's preparation of a constitution. The matter had been voted upon in the town meetings of the autumn of 1776, but the following year it was disavowed by the people. In February, 1779, the legislature asked for the sense of the qualified voters regarding a new constitution and whether they would empower their representatives to call a convention for the sole purpose of framing one. A large majority of the inhabitants of the towns voted in the affirmative on both questions and elected delegates to the convention. It was expressly provided that every freeman twenty-one years of age, should have the right to vote for the delegates, hence as Morison points out, the Constitutional Convention rested on a wider electorate than the existing state government; for a property qualification was at this time required for voting for representatives. At the same time, the resolve of the General Court recommended the inhabitants to instruct their delegates to submit whatever form of government the convention should agree upon, to that same electorate assembled in town meetings, in order that the several towns and plantations might consider and approve or disapprove it. The General Court also recommended the adoption of the Constitution, if upon a fair examination it should appear to be approved by at least two-thirds of the qualified voters present in the town meetings.

In September of the same year the convention met and proceeded to a consideration of a declaration of rights which a committee of thirty was appointed to prepare. On this committee were Bowdoin, president of the convention, John Adams, Samuel Adams, John Lowell, Jonathan Jackson and Caleb Strong, the last named from Northampton, where he had received his legal training in the office of Joseph Hawley. A sub-committee was chosen, who turned the entire task over to John Adams. With the exception of Article III, the bill of rights was the work of one man. Toward the end of October the first committee reported a draft of

the Constitution and on the next day the convention adopted the first article of a declaration of rights. Adjourning on November 2 until January 5, the attendance at the resumed meeting was small owing to the severity of the season. In fact, the real opening was postponed to January 27, when sixty members were present. Finally on March 2, it was resolved first to submit the work of the convention to the voters, with an address which explained the grounds on which their decisions rested. After consideration by the people the returns were asked for the last Wednesday in May, with the number of voters in the several meetings on each side of every question, in order that if the constitution should not appear favorably to two-thirds of their constituents, the convention might alter it to conform to their sentiments. Secondly, it was recommended to the several towns and plantations, to empower their delegates at the next session of the convention, to agree upon a time when this form of government should take effect, without returning the same again to the people, provided that two-thirds of the male inhabitants of the age of twenty-one years and upwards should agree to it, or the convention should make it conform to the sentiments of the said two-thirds. Thirdly, that the towns and plantations had a right to choose other delegates, instead of the present members to meet in convention on the first Wednesday in June. Re-assembling in June, with twenty-seven new members, it was decided that the majority of voters in the town meetings had ratified the constitution and it was therefore adopted. The difficulty of tabulating the returns was made less, says Morison (p. 397) by the adoption of the principle that a two-thirds majority for every article was assured in advance. This same writer suggests that the Constitution of Massachusetts was never legally ratified. His very interesting paper on the Constitution includes a careful study of the returns of the towns and their revision and arrangement.

Hawley's ill-health would not permit him to attend the constitutional convention, but he made many suggestions to the delegates from Northampton, concerning the Constitution, especially the bill of rights. He wrote to Samuel Adams to beg that the conven-

tion take time to do their work well. None but the members, he said, or the people at large, from whom their power was derived, had the power to limit them in time. In view of the fact that at the date of writing this, three months after the opening of the constitutional convention of 1917, only three questions have been considered, that is, the Sectarian Amendment, the Initiative and Referendum and the matter of allowing absentee citizens to vote at elections, and of these only the first has been resolved upon, although it seems likely that all three will be submitted to the people, Hawley's suggestion to the convention of 1779-1780 that they take a year for their work was very sensible. Another proposal of his was that as soon as the constitution was devised, the public should have copies of it and be invited to criticise it. He suggested that the convention adjourn for the time being; in the meantime the members would have time for mature reflection in which errors and defects would present themselves. Conversation with constituents would be profitable. Perhaps valuable newspaper discussions would arise. This was exactly the method of procedure adopted by the convention; so far they followed Hawley's advice, whether consciously or otherwise. It was not because the rest of the letter was less valuable that its suggestions were less fruitful. "There ought not to be any uncertainty in the Diction of the Constitution, every part ought to be clear, precise, certain and not of doubtful construction or interpretation."⁴

When the Constitution and Frame of Government was submitted to the towns of Massachusetts in 1780, for their consideration, no one of them accepted more seriously than Northampton the duty of examining it, clause by clause, and of stating their objections to every article that did not obtain a majority vote in the town meetings, with the reason therefor. Four town meetings were held between April twenty-fourth and May twenty-second, and the last began at nine in the morning and had scarcely ended at sunset. At the first meeting the warrant included two other articles for deliberation, so after the plan was distinctly read in

⁴ Joseph Hawley to Samuel Adams, Nov. 18, 1779.

meeting, Joseph Hawley, Moderator and Selectman, was chosen with six others, carefully and maturely to consider it and to report at the adjourned meeting what they judged proper for the town to act thereon.

Upon consideration of the several alterations which the committee reported, the town voted in favor of the several amendments therein proposed. Apparently the voters acted upon the amendments as a whole and not paragraph by paragraph. The vote was seventy-nine in favor to six in opposition. Major Hawley, Mr. Caleb Strong, and Dr. Shepard were then chosen a committee to incorporate the several amendments into a new draft and report again to the town.⁵

The draft was entrusted to a sub-committee of one, Joseph Hawley, and was so unsatisfactory to his colleagues, that they reported themselves unwilling to lay it before the town. Upon the motion of Hawley that the draft be read and considered, the question was put and passed in the affirmative. The Major seldom failed to carry a motion. It was only necessary for the voters to know that he was sponsor for the draft, in order to give it their hearty support. After the reading, the draft was largely debated until the dinner hour. In the afternoon, further debate resulted in the question being put, whether the town would have the reasons contained in the aforesaid draft, respecting the qualifications of voters for members of the Constitutional Convention, and it also passed in the affirmative. It was the most eloquent appeal, as well as the most lengthy argument on that subject, received by the convention. Next, it was voted that Hawley's reasons offered in favor of the alterations respecting the qualifications of voters for a governor be annexed to the town returns.

The question was then put in the words of the second resolve of the convention and it passed in the affirmative and upon a division it appeared that fifty-seven were for it and twenty-nine against it; a liberal surrender of power to the convention, by one

⁵ Northampton Town Records, Book 3, 125.

of the towns which had come to look upon its own authority as supreme. Among the Hawley papers in the Bancroft Collection, is the draft of the Northampton returns to the Convention, most of it in Hawley's handwriting.⁶ The copy sent to Boston, embodied in twenty-three closely written quarto pages, is in the Massachusetts Archives.⁷

A letter bearing closely upon this subject in that it contains a critical analysis of the second resolve of March second, with a forecast of what was likely to happen if the said resolve was interpreted literally, and pointing out various defects in the bill of rights, is also among the Hawley Papers and is printed herewith. It was addressed to Messrs. Draper and Folsom, at that time the publishers of the *Independent Ledger* at Boston; but it was evidently not printed. Strange to say, the newspapers of the state devoted very little space to the discussion of the constitution, and Hawley's arguments were denied the larger audience he sought for them. It would be hard to say what weight they had with the convention. Nor can we say whether or not the advice of this practical politician was influential in securing the very broad interpretation of the famous second resolve, finally adopted by the convention; or in abolishing slavery by applying the first article of the bill of rights to *all* men. But his considerations on the constitution in the process of making afford an important view of one phase of public opinion of the day and have an interest for all who would study the growth of political ideas in Massachusetts since the beginning of statehood.

Finally, a letter written by Joseph Hawley, October 28, 1780, declining to serve as senator in the state legislature, is here published as a related expression of the author's intensely democratic views. It has recently appeared in the "Proceedings" of the Massachusetts Historical Society, volume 49, 1915-1916, pages 79-81. The original is in the Massachusetts Archives.

⁶ New York Public Library.

⁷ Vol. 276.

THE AMENDMENTS TO THE CONSTITUTION OF MASSACHUSETTS,
SUGGESTED BY THE TOWN OF NORTHAMPTON, JUNE 5, 1780

1. To the Hon^{ble} the Convention for framing a new Constitution of Government for the State of the Massachusetts Bay, to meet at Boston, on the first Wednesday of June next.

In compliance with the proposal of the said Convention which were sitting at Boston on the second day of March last, the inhabitants of the Town of Northampton, Liegemen of the State aboves^d of the age of twenty one years and Upwards in Town Meeting assembled on Monday the 22d day of May A. D., 1780 do humbly object to the several Articles of that frame of Government agreed upon at Boston on the said Second day of March by the s^d convention which was there and then assembled hereinafter specified, and for the reasons hereinafter set down, That is to say, To that part of the Twelfth Article of the Declaration of Rights wherein it is declared that "the Defend^t shall have right to be fully heard in his defence by himself or his council at his election", Because We Conceive that the Defendant ought not only to have his election whether he will make his defence in person or by Council but ought to have his election and be at full liberty in the choice of his Council Provided he shall chuse for his Council No other than some Liegeman of this or or any other of the United States—The time may come when the Supreme Court for the time being may like a former Supreme Court of the Massachusetts Bay take upon them to confine not only ye Def^t but the pl^t to their Bar of admitted and habited Barristers in their choice of Council, We therefore propose that the part of the Article referred to, Should in conformity to the wholesome law or Act of this State, run thus, 'in his defence by himself, or Such other person as he shall procure for his Council, provided Such person be a liegeman of this or any other of the United States.' We also beg leave to Object to the last paragraph of the same Twelfth Article, because we conceive that the s^d paragraph and the last part of the twenty eighth article of the s^d Declaration do militate if they are not directly repugnant. We there-

fore propose that the s^d last paragraph of the s^d Twelfth Article Should be wholly expunged.

We also disapprove of the first exception in the fifteenth Article of the Declaration &c as too loose and uncertain to have a place in a Declaration of Rights which we judge ought in all its parts to be conceived in as precise Clear and certain Terms as language will admit. Besides, if by "Cases in which it has heretofore been otherwise used and practiced," it was intended to exempt from the trial of a Jury all such Matters and causes, as are exempted from such trial by any Statute or Statutes of this State, we exceedingly disapprove of the Substance and intent of the said exception and Specially the whole power and Authority given by our Statutes to Commissioners of Seven [?] and the Council on appeal to them; all which by such an Interpretation of the exception is preferred whole to Such Commissioners, and exempts all such Matters from Jury trial, in great derogation of Common right and the law of the land. And if no more was intended than Issues in law made, by joinders in Demurrer or them and also the Ordinarys or Probate &c Jurisdiction, we conceive that [in] all that should be declared fully and expressly in precise and determinate words and by no Means in such Terms as the s^d exception contains which admit of vast litigation and various pretentions, and will leave it in the power of the Ordinary Legislature, to take away the sacred right of the Subject to Trial by jury in more instances than they would venture to do, if the whole fifteenth article should be dropt, and wholly expunged from the Constitution. As it is therefore subject to great and various exceptions, we shall not presume to propose any correction to that article, but submit it to the Wisdom of the full Convention to provide a Much better Security to the Subjects of this State, of their invaluable right and Privilege of a Trial by a Jury of the vicinage, in all their controversies and Suits concerning property, real and personal, than can be secured to them by that Article in its present dress.

We also judge that the People's right to keep and bear arms, declared in the Seventeenth Article of ye same declaration is not

express^d with that ample and manly openness and latitude which the importance of the right merits—and therefore propose that it should run in this or some such like manner, To wit,

“The People have a right to keep and bear arms, as well, for their Own as the Common defence;” which mode of expression We are of opinion would harmonize much better with the first article than the form of expression used in the s^d 17th article.

We except to the first article of the Chapter intituled the Senate, as Setting the number of that branch too low—We conceive that *forty* Men after Nine or Seven Shall be detached from them to Constitute a Counsell for the Governor will not be a sufficient ballance for the house of Representatives, a Small number of Men altho in no wise dependant are exposed to be born down or worried out by a Great Body of Men Such as the house of Representatives will and ought to be. We therefore propose that the Senate Consist of the Number of Sixty at the least, before ye draught of Counsellors. No one need be apprehensive of any Great charges being caused by an Augmentation of the Number, for they will rarely perhaps never Sit, but when the whole Gen^l Assembly will be sitting—and We See No reason why the Pay of a Senator ought to be more than that of a Representative, they are not to come in the place of the Hebdomadal Counsel of Quondam Governors, It was their Sittings which created an enormous expense to the Government—We have fresh in our mind, that the Commons in ye Long Parliament bore down the house of Lords chiefly by reason of the Lords being much inferior in Number to the Commons, much might be said in favour of even a greater number than Sixty in case the Counsell are to be drafted from that number, but We forbear lest we should be tedious.⁸

As to the qualifications of the Voters for Senators, We are fully of opinion that a freehold in the State of the annual income of three pounds, will attach a man to the State as much at least

⁸ In 1840, provision was made for the separate election of councillors and senators. Forty senators were to be chosen from the former districts and nine councillors by joint ballot from the people at large.

as 200. value in all estate: the case may be that a man may have 200 value of estate and no real estate and personal estate, especially of some sorts is very easily transferred from place to place.

If our opinion of the number of the Senate should meet with Success, It will be thought proper no doubt that the quorum of the Senate contained in the Ninth Article should be augmented to 31 or 27.

We Propose that the Paragraph of the Second Article of the Chapter entitled, House of Representatives, and which respects the power of the house to fine delinquent towns should Stand in the words following, to wit, And the house of Representatives Shall have power from time to time to impose a fine upon any Town in the State, qualified by the Constitution to send a Representative or Representatives to the General Court which shall be guilty of making default of chusing and returning one member at the least to the House of Representatives.

We are clearly of opinion that the fore part of the fifth Article of the Chapter intituled, "Executive Power", ought to be in Substance as follows To wit, The Governor *Shall* during any Session of the General Court adjourn or prorogue the Same to any time and *place* the two houses shall desire; and *Shall* dissolve the s^d General Court on the day Next preceding the last Wednesday in May annually, if the S^d Court shall then be in being; and in the recess of the said court may with the advice of the Council prorogue the same from time to time not exceeding ninety days in the whole in any one recess; and may with the advice of Council call it together sooner than the time to which it may stand adjourned or prorogued if the welfare of the Commonwealth shall require the same.

And as the last paragraph of the s^d fifth article will be surplusage in case ye above amendment should take place, We beg leave to suggest what follows to be provided in its stead, To wit, The Governor shall have power upon the request of *both* houses of Assembly to dissolve the s^d General Court sooner in the year than the day next preceding the last Wednesday in May.

We propose that the Sixth Article of the same chapter should be varied so as to stand thus, In cases of disagreement between the two houses with regard to the necessity, expediency, time or place of adjournment, or prorogation, the Governor with advice of the council shall have a right to adjourn or prorogue the General Court not exceeding ninety days, as he with such advice shall determine the publick good shall require.

We except to the eighth article as defective in not providing and giving express authority to the whole Legislative to enact Pardons and Indemnities before Convictions, We conceive that such Power ought to be expressly saved to them at ye least and therefore propose that this eighth article be alter^d—so as to read as follows To Wit, But pardon before Conviction, except by the Legislature, Shall avail the party &c. Such statute pardons possibly may be salutary in a short time.

We propose that at the end of the second paragraph of the Tenth article of the same chapter these words should be added, to wit, who shall continue in office for a term not exceeding seven years from ye date of their respective commissions. And at the end of the third paragraph of ye same Article the words following should be added, to wit, whose respective commissions shall expire an l become void at the end of seven years at furthest from their dates.—The like reasons and several more may be assigned for ye expiration of Military Commissions at the end of seven years as are given in page 39th for ye expiration of ye Commissⁿ of Justices—In the section entitled Council & the Manner of Settling Elections &c.—we would propose the following alterations viz—That the Council should consist of but seven Persons, exclusive of the Lt. Governour, and that the Governour with the said Counsellors, or four of them at least shall and may hold and keep a council, &c.—by this alteration expense may be saved and yet the business of the publick well performed—

In the Section entitled Secretary, Treasurer, Commissary &c.—we could wish that the latter part of the first Article (which regards the Treasurer's continuance in office) should be expressed in such manner that the People may understand the reason why

the Treasurer cannot with safety to the Commonwealth hold his office more than five years—

In Chapt. 4th—We would propose the following amendment viz—That the election of delegates to Congress be by the Senate and House of Representatives, each having a negative on the other—The office of the s^d Delegates being of the highest importance, we humbly conceive the greatest deliberation ought to be used in their Choice whereas in the method proposed by the Convention we apprehend the influence of the Senate may be overborne by that of the house. We also beg Leave to propose that in the Place of the 10th Article of Chapt. 6th the following be substituted viz—In Order the more effectually to adhere to the Principles of the Constitution and to correct those violations which by any means may be made therein as well as to form such Alterations as from Experience shall be found necessary, the General Court shall in 1787 issue Precepts or direct them to be issued from the Secretary's office to the several Towns and Plantations to elect Delegates to meet in Convention for the Purpose afores^d—The said Delegates to be chosen in the same manner &c.

As the Constitution will be the Work of uninspired Men we have much Reason to expect there will be defects in it which the Experience of seven years will discover & we therefore humbly conceive there can be no advantage in postponing a Revision of it longer than that time.

We would also propose that the letter s in the Word Laws in the last article of the Constitution be expunged—

Also, We greatly disapprove of the fourth article of the third section of the first Chapter, intituled house of representatives, as materially defective, and as rescinding the natural essential and inalienable right of many persons, inhabitants of this Commonwealth to vote in the choice of a representative, or representatives, for the town in which they are or may be inhabitants; and we beg leave to—propose, that the following addition should be made to the said fourth article, to wit, and also every rateable poll being twenty one years of age, and who shall have been resident in this

Commonwealth, for the space of three years next preceding, and who shall be willing to take such oath of allegiance to the Commonwealth, as the Laws for the time being shall prescribe.

In order to make the *first* article of this chapter, expressly conformable to your elegant address, to your countrymen, and also to make it consistent with the principle of personal equality (which we conceive ought to be attended to, as well as the principle of corporation equality) it ought to run thus, to wit, there shall be in the Legislature of this Commonwealth, a representative of the persons of the people annually elected; and in order to provide for a representation of the Citizens of this Commonwealth founded upon the said principle of personal equality, the said fourth Article ought to contain the above proposed addition, or something tantamount. We are obliged, Gentlemen, to believe that all along in settling the bill of rights, and constructing the frame of Government, the convention had it full in their intention, that the house of representatives should be chosen, and appointed, in such manner as that they should be as properly and truly, a representative of the persons as the Senate of the property of the Commonwealth: We say that we are constrained to such a belief, because the convention themselves have plainly declared the same to have been their intention. And it is impossible for us to admit so black a thought, as to imagine that the convention had an intention, by their address to beguile their constituents into a Supposition, that provision was made in the frame of Government, for a representative of the persons, as well as for the property, of the Commonwealth, when really at the same time they were conscious that it was not so in fact; and that in truth there was not in all the frame of Government, any ground for such a distinction, as is supposed in the address, for however justly and exactly the number of Senators in the frame of Government may be apportioned according to the property of each district, and provision made that they should continue forever hereafter to be so apportioned, yet that can never afford any foundation for the distinction of a representative of the persons, and a representative of the property of the Commonwealth, for altho such a provision will

truly determine the share, or particular part, of any given whole number, which every district into which the whole State may be divided, shall elect and depute, yet nothing can be more clear than that the ground of the distinction between a personal, and a property representation must wholly depend on the qualifications of the electors, and that if there shall be no difference made between the qualifications of the voters for the members of the house of representatives, and for the members of the Senate; but each member of both houses shall be chosen by the same identical persons,—as they must necessarily be, if the voters for the members of both houses are all to have precisely the like qualifications, and no part of the number of ye persons, having the like qualifications are to be excluded, then the distinction aboves^d is wholly out of doors and becomes an absolute nullity. Who would ever imagine, that if all the male persons in the State of the age of twenty one years and of no property should by the Constitution, have as good a right to give their votes for the senators, as the men in ye State, of the best property, and the votes of all the voters should have an equal estimation in determining the election, we say, into whose head would it ever enter to denominate a body so elected, a representative of the property of the Commonwealth, however exactly and minutely the number or share of the whole Senate, which each district should be intitled to elect, might be adjusted to the property of each district, in relation to the property of the whole Commonwealth? but the case is so evident that it would be affrontive to dwell any longer upon it. We must therefor judge that this default of providing for a personal representative in the Legislature, proceeded from inadvertency and forgetfulness, an infirmity which human nature is universally liable to, and we are further obliged to account for this omission, in the Constitution, in the way abovesaid, by an attention to several matters in the declaration of rights, which when carefully reviewed, and considered by the Convention, we persuade ourselves will appear, not to harmonize with the omission, which we are observing upon.

But that we may come home to the enquiry, concerning the justice of excluding such individuals, inhabitants of this State, from voting, not to say from a right to vote in the choice of a representative (for that is impossible), as come within the description, of the proposed addition, to the said fourth article: we beg that a recurrence may be had, to the second paragraph of the preamble to the Declaration of Rights. There we find it declared, "that the body politick (perhaps it might have been more properly said the constitution of the body politick), is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain Laws, for the Common good: it is the duty of the people therefore, in framing a constitution of government, to provide for an equitable mode of making Laws, as well," &c. now can anyone say that the citizens of this State, who are included in the description of the proposed addition, and who do not answer the description of the said fourth article, as it now stands, have ever covenanted, consented and agreed, or will ever covenant, consent and agree with the rest of the people, to be governed by Laws founded on an Article of a constitution, which totally excludes them from any share or voice in appointing the Legislature for the State, or will such persons ever consent and agree, to be governed by Laws which shall be enacted by a Legislature appointed wholly without their participation; or can a Constitution so framed be said to provide for an equitable mode of making Laws, or will anyone stand forth and say, that persons who have been born within the State, and have always lived in it, till they have arrived to the age of twenty one years, perhaps much above that age, and who have always paid their poll tax, ever since they were sixteen years old, and are still rateable, and are rated and pay for their polls, the sum set on each poll, in every rate that is made for defraying either the continental, State or town charges, be the same higher or lower, we say, will anyone affirm, that such persons are not citizens of the Commonwealth: Is not the consequence then (that if the said

paragraph is true) that an association of many individuals, of the State, which without consent totally excludes many such adult male persons, from any participation in the appointment of the legislature is in fact no constitution, and does not make a body polytick—yea is it not absolutely a void business? As to what may be replied, by way of answer, in behalf of infants, that is, persons under the age of twenty one years,—we ask leave to refer to what Mr. Locke has most judiciously said, on that head in the sixth chapter of the second book, of his treatise of Government, intituled, paternal power;—which is much too lengthy to be recited on this occasion, but well deserving to be resorted to—And as to the case of women, of whatever age, or condition, they may be, we ask leave to refer, to what is very sensibly, as well as genteely, said on the subject, in the twenty ninth page of the Essex result.⁹

We also humbly conceive that the exclusion which we complain of, directly militates and is absolutely repugnant to the genuine sense, of the first article of the declaration of Rights, unless it be true that a majority of any State have a right, without any forfeiture of the minority to deprive them of what the said first article declares, are the natural, essential, and unalienable rights, of all men. By that article all men are declared “to be born free and equal”; this is true only with respect to the right of dominion, and jurisdiction. over one another. The right of enjoying that equality, freedom and liberty, is in the same article, declared unalienable: Very strange it would be, if others should have a right by their superior strength, to take away from any individual,

⁹“The Essex Result,” a pamphlet published in 1778 in the county of Essex giving the views of the leading minds on the proper form that should be substituted for the rejected constitution of 1778 and containing eighteen distinct articles setting forth the leading objections to the Constitution proposed. It is reprinted in the appendix to the Memoirs of Chief Justice Parsons by his son. Hawley had in mind the following: “Women, what age soever they are of, are also considered as not having a sufficient acquired discretion; not from a deficiency in their mental powers, but from the natural tenderness and delicacy of their minds, their retired mode of life, and various domestic duties. These concurring, prevent that promiscuous intercourse with the world, which is necessary to qualify them for electors.”

which he himself could not alienate, by his own consent and agreement, but this will truly be the case, or the exclusion, which we except to, is directly repugnant to the first article.

If it is true, that all men are naturally equal with respect to a right of dominion, government, and jurisdiction, over each other, that is to say, no one has any degree or spark of such right over another, then it will follow that any given number of such equals will, if they should all live on the earth, for thirty years and no one of them, within that time should be guilty of any crime or fault whereby he should forfeit his native equality, and freedom; and no one of them should consent to come under the power and dominion of one or more of the rest, or alienate his native equality and freedom (and by the way the article¹⁰ declares that he has no right to alienate it), we suppose that at the end of the thirty years, they will all be as equal & free, as they were at the first moment of their existence.

We further suppose that if one hundred of such equal freemen should be at once on the earth together, of what age soever they were, and some one of the hundred, should happen to have an hundred times as much brutal strength, as all the other individuals when singly, or perhaps what is an equivalent thereto, an hundred times as much natural cunning, as any individual of the rest, he would not have any right against the will of any one of his brethren, to assume the exercise of dominion and jurisdiction, over him, however easy it might be for him to do it; and if no one of the hundred would have a right to do so, we suppose that no ten together would have any right to it, and if not ten, then ninety nine of the hundred would not have any right to domination over the remaining hundredth man, for nought to nought gives but nought; the inevitable consequence then is, that if the ninety nine should endeavor to subjugate, and exercise government, over the hundredth man, without his consent, he would have a good right to resist and in case the ninety nine should overcome

¹⁰ It is strange that this article secured more than a two-thirds majority, in spite of the fact that the very men whom it sought to exclude had the right to vote on the constitution. Thus they formally consented to their own disfranchisement.

and subdue him, the hundredth man would have a good right at any time, when any lucky moment presented, to do anything that should be necessary, to regain his natural liberty and freedom whereof he had been wrongfully deprived; full as good a right against the ninety nine, as he would have had against any single one of the hundred, who by his superior brutal strength, had usurped upon him.

Now, Gentlemen, in case the form of government which you have sent out to the people shall be affirmed and established, is it not intended that every rateable poll of this State, of the age of twenty one years, shall be obliged to submit, and be subject to such a legislative body as is therein projected and described? Is it not intended that all such persons shall be the subjects of their legislation? and that their persons shall be controllable by the laws of that legislature whether they ever were or shall be the owners of a freehold estate within this State of the annual income of three pounds, or of any estate of the value of sixty pounds or not? Is it not intended that they shall be obliged to contribute to the subsidies, taxes, imposts, or duties which shall be established, fixed, and laid by such a legislative, and be liable to be restrained of their liberty by the acts of such a legislative, for such causes as they shall judge they ought to be, whether they ever were or shall be qualified, as is expressed in the fourth article of the third section of chapter first, intituled "House of representatives," or not? Then will not such persons be in a state of absolute slavery, to such a legislature, while they shall continue without the quantum of property prescribed in the said article? If they are to be subject to the jurisdiction, and legislation, of your legislature with regard to life, liberty, and their day wages or whatever small property they may acquire, and yet have no voice in the appointment of that legislature, what is the difference of their condition from that of the hundredth man who without his consent had jurisdiction usurped over him, by the other ninety nine or any single one of the above mentioned hundred of superior animal Strength or natural cunning?

But perhaps it will be said that this subjugation of these persons unqualified to vote, and consequently excluded by the said fourth article, is done by their own consent, as it is done by the Convention in whose choice they have, or might have had, a vote, and that Mr. Locke tells us, "that the liberty of a man in society is to be under no other legislative power, but such as is established by his consent;" and that the s^d legislative body to be from time to time established, without their participation, will be by their consent, as it has been done by the convention, in the appointment of which body they had a voice, and consequently they were their agents; and, as their agents, have consented to it, it is become the act of the constituents:

We answer that the objection supposes what is not true in fact, to wit, that the Convention have been empowered and authorized to agree upon and establish a model of government for this State; it is certain that the convention have never had such a power given to them, as is evident, if we consider the proposals upon which they were elected, which were, that delegates should be chosen by the several towns in this State, for the sole purpose of devising and agreeing upon a constitution or frame of government to be communicated, and laid before the people, which, if two thirds of the people, capable of voting, to wit, the freemen of the State, of the age of twenty one years, should accept and affirm, it should then, and not till then, be the Constitution of this State, and binding on the whole. And the same is further evident, to wit, that the Convention have no power to establish a constitution for the State, if they themselves understand their own powers: for they by clear implication acknowledge that they have no such power, in their second resolve of the second of March last, whereby they ask the people that such a power be given them not expressly and directly indeed but implicitly and indirectly; and wherefore do they ask it, if they had it given them by their original appointment?

So that if the people should now affirm the frame of Government which the Convention have communicated to them, containing the said fourth article whereby many adult rateable per-

sons who are inhabitants and citizens of this State, and have never done any thing to forfeit their natural and most important rights, are excluded from voting for a representative or representatives, for the towns where they dwell; it will be precisely a like case, with that above put, to wit, where the ninety nine of one hundred free and equal men conclude to usurp dominion, and jurisdiction, over the hundredth man, against his will, that is to deprive him of his natural liberty, which is no other than to enslave him when he had been guilty of nothing, whereby he had forfeited that natural liberty and equality. It is certain that the said section intitled house of representatives, supposes that the polls in the State whether they shall be owners of property, or not, will always be taxed, witness the second article of the said section, and we know that they always have been the subjects of legislation in this State and have had many heavy burdens, and services set on them, by the legislature, especially in time of war, and that, will, no doubt, continue to be the case, (tho probably not in so great a degree) even if they should have a voice in the appointment of representatives.

Dont we know that whenever any mention is made of a tax Act, or proposal in the legislature of taxation, it is always spoken of as as a tax on polls, and Estates, that whenever a list is ordered for the purpose of a new valuation, an exact account is directed to be taken, of the number of polls above the age of sixteen years—in the several towns in this state, and that when the house or their committee are settling a valuation, the first business always is to fix the proportion of a single poll, to a thousand pounds, and dont we know, that the owners of large property, generally, upon such occasions strive to get the polls share, as high as they can;¹¹ for they are fully sensible that it is their interest, that the polls share should not be low, for the higher that is, the less will remain on the estates, and they conduct in ye case accordingly.

¹¹ Hawley was only too true a prophet. The proportion of the state tax raised by poll taxes rose from 30 per cent in 1778 to 40 per cent, in 1786, and was one of the many forms of injustice that helped bring on Shay's Rebellion.

Now do we hear from these poor polls, a single objection, against the persons who are owners of large property, their voting for the members of the house of representatives? they consider that such property holders have personal interests and concerns, as well as the poor day labourers; further do they object a word against the owners of the property chusing, one entire branch of the legislative, exclusive of themselves, to be guardians of such property? they feel and own the force of the argument for property's having great weight in the legislature, because property ever was and ever will be the subject of legislation and taxation.

But pray Gentlemen shall not the polls, the persons of the State, have some weight also, who will also always be the subjects of legislation and taxation? are life, members and liberty of no value or consideration? Indeed Gentlemen we are shocked at the thought, that the persons of adult men, should like live stock and dead chattels be brought to account to augment the capital whereon to draw representatives for particular towns, in ye same manner as such chattels are to be brought into the property capital to augment ye number of ye senators and when they have been improved and made the most of that maybe for that purpose, they should be wholly sunk & discarded, not to say like villains but absolutely like brute beasts. Shall these poor adult persons who are always to be taxed as high as our men of property, shall prevail to have them set [*sic*], and their low pittances of day wages, be taken to lighten the burden on property? Shall these poor polls who have gone for us into the greatest perils, and undergone infinite fatigues in the present war to rescue us from slavery, and had a great hand, under God, in working the great salvation in our Land, which is, in a great degree wrought out, some of them leaving at home their poor families, to endure the sufferings of hunger & nakedness, shall they now be treated, by us like villains or African slaves? God forbid!

What have they done to forfeit this right of participating in the choice of one branch of the two branches which are to constitute our legislative, when they are willing that you men of property should enjoy the exclusive right of chusing the first

branch—have they forfeited it in the exercise which they have made of this right of participating in the choice of you gentlemen to your important, very important trust? we hope not and we hope that you will on further consideration verify it that they have not by giving them a voice in the choice, & appointment of that very branch of the Legislative, which you yourselves tell us is by you intended, to be the representative of the persons of the Commonwealth, and thereby remove all cause for them to regret their choice of you.

Gentlemen, we cant yet dismiss this very affecting subject. Shall we treat these polls precisely as Britain intended and resolved to treat all the sons of America, that is to say, to bind us in all cases whatsoever, without a single vote for the legislature who were to bind and legislate for us, at which all Americans who deserved freedom, had the highest indignation and that most justly? We say, who deserved freedom; for he who is willing to enslave his brother, is if possible less deserving of liberty than he who is content to be enslaved. Shall we who hold property, when God shall have fully secured it to us, be content to see our brethren, who have done their full share in procuring that security, shall we be content and satisfied, we say, to see these, our deserving brethren on election days, standing aloof and sneaking into corners and ashamed to show their heads, in the meetings of freemen; because by the constitution of the land they are doomed intruders, if they should appear at such meetings? The thought is abhorrent to justice and too afflictive to good minds to be endured.¹²

We beg leave also freely to declare to you, that we disapprove of the third article of the first section, intituled "Governor," of the second chapter intituled executive power, and apprehend in case our last proposal shall be adopted that it stand thus, "Those per-

¹² The Constitutional Convention of 1853 submitted a new Constitution which was rejected by the people. It provided for the abolition of property qualifications for voting. The third amendment of the Constitution, adopted in 1820, had done away with all the property qualification for voting except payment of a state and county tax. Since the thirty second article of amendment in 1891, not even the poll tax payment has been required as a condition for voting.

sons who shall be qualified to Vote for representatives, within the several towns of this Commonwealth, shall at a meeting to be called for that purpose &c." That adult male persons inhabitants of the State ought, and have a right to have a vote in the choice and appointment of the first executive magistrate we think may be fairly argued from the powers, which by the frame of Government are given to that magistrate. In the first place the most important of his powers, of nominating and with the advice of his council appointing almost all judicial and executive officers.

You are pleased in your preamble to your declaration of rights—to aver that it is the duty of the *people* in framing a Constitution of Government to provide, not only for an equitable mode of making laws, but also for an impartial interpretation and a faithful execution of them, that every man may at all times find his security in them. Now we humbly ask whether the polls or male persons, of the age of twenty one years are or are not a part of the people of the State, altho they shall not own a freehold of £3 per annum or any estate to the value of sixty pounds? Most certainly they are—. Will not an impartial interpretation, and a faithful execution of the laws affect and concern them? Most certainly it will. And without such an interpretation and execution of the laws, that part of the people will find no more security in them, than the men of property.

Besides, the fifth article of the declaration declares that all power residing originally in the people and being derived from them, the several magistrates, and officers of Government, vested with authority whether legislative, executive or judicial, are their substitutes and agents, and are &c. Now if the male adult persons of the State who have not so much property as is prescribed and required in the said third article, to entitle a man to vote in the choice of the Governor, are a part of the people of the State, but shall not be admitted to vote in the choice of their first magistrate the said fifth article of the declaration will be absolutely falsified and ought to be expunged.

Also the Governor by the frame of Government is to be Commander-in-chief, of all the military forces of the State, by sea and

land: these poor people always have been and we believe always will be, considered as part of the military force of the State, both by sea, and land. They most certainly will therefore be interested in this first magistrate—considered in his military character, and consequently can't justly be excluded from voting in his choice. As to the Governor's exercise of his civil powers the property men will be wholly safe for the Governor will not be able to act scarce anything in his civil character, without the advice and consent of his council, which council, are always to be of the men who shall be chosen solely by the property men in case they will accept their choice.

Pray, Gentlemen, therefore make the experiment for one seven years, of admitting these poor persons qualified as is specified in the proposed addition, to the said fourth article to the exercise of their natural, not to say unalienable right of participating in the choice of the representative of the persons of the Commonwealth and also of the first magistrate of the same, and if by the experience of seven years it shall be found so unsalutary, as to become absolutely necessary to deny that exercise to them, as it is in the case of infants, at the time of the first revision of the constitution they may be denied that Exercise.¹³—

This paper was dated June 5, 1780. It was submitted to the Town Meeting in Northampton and adopted. By a vote of 79 to 6 the following section was also adopted and made a part of "the reasons offered in favour of the proposed amendments in the Constitution."—EDITOR.

Thus, Gentlemen, We have taken the liberty to object to Several of the Articles in that frame of Government which has been sent out to the people & have proposed such alterations and amendments as appeared to us to be reasonable. We have also humbly offered the reasons which induced us to propose the

¹³ Hawley's suggestion of a revision of the Constitution after seven years' trial was not adopted. Amendment was provided by the Constitution of 1780, in 1895, if the people so decreed by a two-thirds vote. They did not so decree.

afores^d alterations, which we cheerfully submit to your revision and full consideration not doubting that you will give every argument we have used in favour of the proposed alterations its full weight, and we should be happy to find that they have the same influence on your mind, as they have had upon ours. But if it should be otherwise, after you have fully considered them, we shall submit to it as it now stands, for as the convention shall confirm it to the sentiments of two thirds, we do not mean to be so tenacious of our own opinions as not to approve of any thing that is not done exactly to our taste.

JOSEPH HAWLEY'S PROTEST TO THE CONSTITUTIONAL CONVENTION OF 1780

The following letter, dated June 5, 1780, the same day that Northampton adopted her letter to the constitutional convention, represents Major Hawley's personal views. He was a most devoted champion of popular rights, as the Protest well shows; and we here encounter, with him as spokesman, the ideas of the popular party on constitutional law. It throws an important light on the attitude of mind in the interior of the state, out of which Shay's Rebellion was to grow.

The Protest is preserved in the Hawley Papers, in the New York Public Library, and is written partly on the back of a commission issued by Lieutenant-Governor Phips, September 20, 1755, to Williams, Hawley, and Partridge authorizing them to administer the oaths appointed by act of parliament to the officers serving in the forces raised for reinforcing the expedition against Crown Point.—EDITOR.

Tho the Hon^{ble} the Convention for framing a New Constitution of Government for the State of The Massachusetts Bay—

When by the Second resolve of the second of March last, It was recommended to the inhabitants of the Several Towns and Plantations in this State, to empower their delegates at the next session of the Convention, to agree upon a time when the form

of government, which was then about to be communicated to them should take place, without returning ye same again to the People, provided that two thirds of the male inhabitants of the age of twenty one years and upwards, voting in the several town and plantations meetings should agree to the same, or the Convention should conform it to the sentiments of two thirds of the People.

I cannot imagine that if it should appear at your meeting on ye first Wednesday in June next, by the returns y^t Two Thirds &c, should have agreed to the s^d form of government exactly in the dress in which it has been sent forth to them, or in case you should find it practicable to conform it to the sentiments of two thirds, &c and if a majority of your constituents had given you the power and high trust which you had recommended to them to give you, it was intended in fixing ye form of Government which you would then be empowered to establish for this State without returning ye same again to the people that you should hold yourselves absolutely restrained and confined to establish either that numerical form of Government which has been already communicated to the people, without adding or taking from the words of that Book the least jot and title. Or if that precise form should not be accepted by two thirds &c. that in conforming it to their sentiments you must take and insert into ye frame of Government, the very articles which they had adopted and expunge and leave out all the articles, which two thirds, &c., shall either expressly or constitutionally appear to have disapproved and not to be in favour of, in what parts of the Bill of Rights, or frame of government soever they should be found to lay.

I say, I cannot imagine that you would hold yourselves so restrain^d—For if so, in the first case you will at your approaching Meeting instead of deliberating, discussing, consulting, advising with one another, and concluding for yourselves, and improving and giving the publick the benefit of your own studies and meditation, not to mention what you may have had suggested to you by others in the Conversation and Conferences with which you have honored them, you will have nothing to do but to ratifie and put your Fiat to that precise form of words and doctrine which

was agreed upon at Boston last winter in the most unclement and distressing season perhaps ever known in New England,¹⁴ and when more than two thirds of your Body not by any laches¹⁵ or default of their own but merely by the Act of God were prevented attending ye Convention and however dissatisfied you yourselves may be with it have only to fix the day when the new Constitution shall begin to operate and take effect in ye State, give your solemn Imprimatur to it, without the Peoples' ever seeing or hearing any more of it without resorting to the Parchment enrollment thereof, in the Secretary's office untill they shall in some future edition of the Commonwealth Law Book find it prefixed thereto in the place of William and Mary's Charter. Or in the second case you will have the laborious ministerial task to go through of investigating what and how many articles are not disapproved nor excepted to by a greater number than one third of the Inhabitants qualified to vote and who did actually vote in ye premises to enter them down as affirmative quantities and carefully to discern such articles as shall have been disapproved by two thirds of the s^d voters, and either wholly blot them out and dismiss them, retaining only the aboves^d affirmative quantities to compose the Constitution or finding out if possible what the two thirds would have in the room of the reprobated articles, enter them down in their place. Put all together and then whether there shall be, in the code containing both the declaration of rights and frame of Government, Consistency or Repugnancy, Connection or Mutilation, or (as a very Worthy and Acute Gentleman express^d himself in his remarks on the two first resolves of March last) whether it shall have any likeness of anything, that is in heaven above or &c. or not, in some very Solemn Manner declare and Publish ye s^d Code for the Constitution of this State however Chagrin^d the Members of the Convention themselves may be at the production, or however absurd and ridiculous they may

¹⁴ Said to be the worst winter since that of 1717, described by Cotton Mather. Deep snow made travel impossible save by snow shoes. Boston Harbor was frozen solid for a month.

¹⁵ Laches, negligence.

know it will appear to their Constituents and to all the world, who shall ever see it.

Gentlemen there are many who suppose that you will by y^e genuine force and constraint of the s^d two resolves and the returns which probably (will) be made in consequence of them, be holden to such a mode of procedure; But I have no imagination that such a literal interpretation will be on y^e s^d resolves by the Convention as to infer such ridiculous destructive Conclusions.

Gentlemen, there seems to me to be a sense strongly implied in the s^d Second resolve of March last and also in the last part of the 1st resolves of the same day, which implied Sense in case two thirds of your principals shall vote in the affirmative on the s^d Second Resolve, will give the Convention such a power which I hope they will never accept or consent to exercise. In case it shall by the votes appear, that Two thirds, of your Constituents in ye impatience or zeal, I had almost said rage, to fix an immediate establishment of a Constitution, by their votes shall have agreed to the form of governm^t which *totidem verbis*, that part of ye Convention that met at Boston last winter have sent out to them, you will then indeed be impower^d to ratifie and establish that precise frame of governm^t as it stands in the Book sent out to y^e Country for the Constitution of this State.

But will you be held and obliged so to do if that shall be the case; that case I venture to say will be a very unhappy one—The least misfortune which will be y^e consequence of it is that 260 or perhaps 300 Men will have assembled from y^e several parts of y^e State, probably some from y^e remotest parts thereof with great expense to themselves or constituents, fraught with useful, important materials for constructing a happy, free and Salutary frame of Government the fruit both of their own patriotick lucubrations and the matured study of their constituents. And when they shall be met in solemn convention prepared for sage debates and discussions they shall find that matters have been so steered and directed, by part, a small part of their number who assembled at Boston in the dead of last winter that nothing remains for them to do but what might better much better be done by a small

Com^{tee} like unto that frequently appointed in the Gen^l Assembly to count and sort votes for a notary publick or some such petty officer than by y^e whole Convention, namely the arranging and numbering the votes of y^e several Towns upon the question contained and stated in the y^e s^d second resolve.

This I say in consequence of a devise of a part of a convention for I do not see with what propriety a less part than a third of the whole number of the delegates who had been returned and had actually appeared in Convention when it had never been agreed in convention what number should constitute a quorum, I say I do not see with what justice such a part could be denominated *the Convention*, the only natural quorum of any body of individuals is a Majority and 2-5 or even 2-7 of a body, when the Number to constitute a Quorum has not been agreed in Convention cannot undertake without injustice to consider themselves a Quorum of the Body and pass acts and resolves to bind ye whole assembly when the rest of the body are absent not through their own LATCHES but by ye Act of God and cannot be viewed in ye light of defaulters¹⁶—

Can anyone be so wild as to suppose that the Convention altho' empower^d to establish a particular draft for the Constitution of this State and who *decide when the same shall take place without returning it to the people*, shall be strictly holden and obliged so to do, when perhaps that very draft shall appear to two thirds or perhaps three quarters, of the Convention themselves to contain many grievous errors, to be in diverse respects deficient and some articles irregularly, and in others absolutely Contradictory and repugn^t, and on the whole really so imperfect so that if establish^d and published to the world It would Not only be disparaging to the State, but bring reproach or ridicule on y^e Convention?

I conceive that the full Convention will if the s^d Second resolve should be pass^d in the affirmative by even 7-8 instead of 2-3

¹⁶ There are two hundred and ninety three names in the list prefixed to the Journal of the Convention, but the number of members present and voting even at the third session, never exceeded eighty two.

of their Constituents, consider themselves at full liberty to correct any errors which they shall judge are contain^d in the s^d form of Government agreed upon last winter at Boston and communicated this Spring to y^e Country and to cure its deficiencies by any additions and new matters which may occur to and be proposed by members of their own body or suggested by the returns of any town or towns in the State—for it is natural to observe that as to new matter or any addition thought on or proposed by any particular town there could not be the least chance of a Concurrence therein by 2-3 or one hundredth part of ye Towns in y^e State even if the addition or new matter as soon as heard by the towns should appear to be so salutary and so much of an improvem^t on the Model or form of Governm^t, that not only Two thirds but nine tenths of the towns and voters in the State would most eagerly and cheerfully adopt it. and who can without the most unworthy thoughts of the Members assembled at Boston last January &c suppose that so an illiberal an interpretation ought to be put on their call to the inhabitants of ye several Towns to state their objections, as y^t they intended to preclude all proposals of new matter, either for the declaration of rights, or frame of Government.

Besides, if so narrow, and rigid a construction should be put on the said second resolve, as not to admit of the above latitude, in the future proceedings of the Convention, the State will in fact be in a great degree defeated, of the benefit and advantages, of a convention; for I am well informed that nothing more than the articles contained in the declaration of rights, has ever been passed on, in full convention: I say the establishing a constitution upon the abovesaid narrow interpretation, of the said second resolves, will in fact defeat the people of this state, of the principal end and intent of chusing a convention, which was that a plan or form of government should be projected, and prepared by their Delegates in Convention assembled, upon great advisement, deliberation, free discussion and debate; whereas if the present form of Government should be fixed and established for the Constitution of this State, because it shall have been

found, upon the examination of the expected returns, that two thirds of the male inhabitants, of the age of twenty-one years, and upwards, *voting* in the several town and plantation meetings, had from their great anxiety, and concern, for an immediate establishment of something, to be denominated the Constitution of the Massachusetts, agreed to the same;¹⁷ The case in truth will be, That the state of the Massachusetts Bay, will have an unadvised, unconsulted, undiscussed, indigested, tautological, ragged, inconsistent, and in some parts unmeaning, not say futile plan, established in it, for its constitution of Government.

That upon the supposition last made the case with the Massachusetts Bay will be really as I have affirmed I shall endeavour to make appear in the following way, To wit, The full Convention when they adjourned last fall from Cambridge to Boston had never discussed or passed upon any more of the report of their Com^{tee} than the articles contained in the declaration of rights, if they had on the whole of them, whether the after frame stood upon or varied from or was inconsistent with y^e s^d Declaration, as a Convention they had not examined, as to the number of Gentlemen, members of the Convention who were together at Boston last winter at and after the day to which the Convention stood adjourned, as to certain number ever had been agreed on to constitute a Quorum they cannot by any reasonable Construction be denominated or taken to have been the Convention unless by great liberality; and of necessity, they should be considered such merely for the purpose of adjourning, to prevent a dissolution, or the necessity of a new Summons of the Members as far the greater number of the members were prevented giving their attendance by the Act of God.

And as to the said plan's sent out by the gentlemen met at Boston as aforesaid, having been advised, or considered, and consulted by the People in the way that they have been called on to act on it, No one will affirm that it has who considers that each Town which has or may act upon the same, either in the

¹⁷ Hawley probably referred to Pittsfield, where "No Constitution, No Law," was the popular cry.

gross or article by article, undoubtedly has or will act upon it severally, and without any privity, or conference with any other town; so that whatever objection, for instance, the town of Hatfield might find to make to any one or more articles, the Town of Northampton was not apprized of it, or whatever amendment the Town of Northampton would wish to suggest, the town of Hatfield had no notice thereof—had those two towns consulted and advised together, perhaps in the first case Northampton would have wholly obviated the objections of Hatfield, and in the second case the Town of Hatfield might have fully convinced Northampton that their additions were unsalutary.

And to support the other epithets that I have ventured to give the said plan, I propose to have resort to the Several Articles of the Plan itself. But before I enter on a particular examination of the Plan, I will observe a few words, on the alternative of the Proviso of the said Second resolve: The alternative stands in the words following viz, "Or the Convention shall conform it to the Sentiments of Two Thirds of the People"—I think it reasonable to understand these words, "The sentiments of two thirds of ye People" to mean the sentiments, which shall be declared in the returns, which the Selectmen are called upon to make, to the Secretary of the convention to be laid before the *examining* and *arranging* committee in order that they may be revised, and considered, by the convention, &c.

Now can any man in his senses, expect, that if the first part of the proviso, shall be found not to have taken place, that is to say if it shall be found either by the said *arranging* committee, or by the convention at large, that there are not two thirds of the male inhabitants, of the age of twenty one years and upwards, voting in the several town and plantation Meetings, which have agreed to the communicated plan, the sentiments of two thirds of such voters, when laid together, and truly and faithfully, reduced to articles, will constitute such a form of government, as that either that part of the Convention who were the authors of this proposal, or the majority of the whole convention, or the

said voters themselves, when they should come to see the articles, so put together, would be satisfied with; or ever Consent to it, as a constitution of Government?

In the first place, I believe it will require the industry and distinguishing faculties, of beings superior to the human kind, satisfactory to determine, from such returns, what the sentiments are, in which the said two thirds, of the people, are agreed.¹⁸ Nextly if it be considered that every meeting or body of the voters, who shall have passed on the articles of the said plan, either severally or in the bulk will all have acted without any privity, or intercourse with each other, the sentiments in which two thirds shall be found to have agreed, must be expected to be very few in number and very probable that when such sentiments, and such only, shall be fairly arranged and reduced to articles, they will be found to be very incoherent, and independent of each other; for nothing is more likely than that, each set of voters, when they voted for one sentiment, considered it as connected with a set of sentiments, very diverse from the set of sentiments, with which another body of voters, who shall have luckily adopted the same sentiments, expected it would be connected with in the constitution. Therefore I believe that no success will be met with, in attempting to get a constitution, by the way of conforming (for I suppose we are to understand a strict conforming) to returned sentiments. If this conforming to the returned sentiments, of two thirds, intends no more than this, viz, that the convention shall not make a constitution that impugns the plain sentiments, of two thirds of the people, they will then have the latitude which I above declared, that I wished them to take, and then all the noise about the convention's being bound, by returned sentiments, will be at an end, for who ever imagined that the convention would insert articles in a constitution directly repugnant to the known sentiments of two thirds of their constituents.

¹⁸The reader is referred to the article by Samuel Eliot Morison in the "Proceedings" of the Massachusetts Historical Society, May, 1917, page 396, for the method of tabulating returns employed by the Convention.

But it is time to give some close attention to that form of government, which has been sent forth to the country, in 1800 copies, for the constitution of the commonwealth &c. And after the preamble we find in the first part of the first article, of the declaration of rights, a great and glorious truth asserted in the following words, viz, "all men are born free and equal, and have certain natural, essential, and unalienable rights." Whether all the rights enumerated in that first article, as unalienable, as well as natural, are truly so, I shall not stand to inquire or whether they are the best chosen, as instances of the unalienable rights of mankind may admit of some dispute, however, the said first article contains so much clear and important truth that it no doubt gave great encouragement to the lovers of right, and truth, that all the following articles of the declaration, would consist of clear, indisputable and important truths; and of none but such, and I conceive that it was natural to expect, that the declaration of rights would wholly consist of clear truths, of the most important and unalienable rights of human nature, and laid down in the most intelligible, determinate and unequivocal words, which our language furnishes that so the declaration of rights instead of ministring occasions and matters of dispute, hereafter in the state, would have served as a solid and immoveable foundation, a fixed pole-star, and an unerring standard, for every article in the subsequent frame of government, calculated to give peace and security to the inhabitants of the Massachusetts Bay, and a perpetual directory, to all future legislatures in devising, and enacting, laws and statutes, for the good and equitable government of the said inhabitants.

But instead of a set off articles of the kind above defined, we find the first part of the very next article to contain, a proposition which if true, is far from being indisputable, and positively denied by many, viz, That it is the duty of all men in society, publicly and at stated seasons, to worship, &c." Whatever the apostle Paul has said, in favour of public worship, he has certainly said much to make us doubt whether the Supreme Being does, since the Resurrection of Christ, require of men in

or out of society to worship him, at any stated seasons: this is certain, if our common Bibles are a true and genuine translation. As to the third article, I am humbly of opinion that the first paragraph of the said article contains two propositions, which are not true in fact, viz, That the *happiness*, (I conclude temporal happiness is intended) of a people, and the preservation of civil Government, essentially depend upon piety and religion. And the second is, That the people of this Commonwealth, have a right to invest their legislature, with a power to require, their several towns, parishes &c. to make a suitable provision *at their own expense*, (a caution scarcely to be expected in an article of the kind), for the institution of the publick worship of God, and for the support and maintenance of publick, protestant teachers, &c. This second proposition is false, because it is inconsistent with the unalienable rights of conscience, which rights are certainly unalienable, if mankind have, (as the first article avers they have) any such rights.

Besides, the said third article is justly exceptionable, on account of the several loose and indefinite terms and phrases contained in it; as Public Worship; Public Teachers; if there be any on whose instructions they can conscientiously and conveniently attend; be uniformly applied, otherwise it may be paid &c &c. Now this looseness and uncertainty of language is by no means to be attributed to want of knowledge, and acquaintance with language in the authors of said third article, but to the absolute impossibility, of making or enacting a religious establishment in clear language, and in terms, and phrases, of a fixed; definite and certain meaning which shall be consistent with the rights of conscience,¹⁹ and therefore to preserve the appearance of such consistency, the managers in this business always hunt up loose, and equivocal words, and phrases, whereby they only seem to

¹⁹ Long afterwards John Adams writing to William D. Williamson, the historian of Maine, gave as his reason for not drawing this article personally, "that he could not satisfy his own judgment with any article that he thought would be accepted; and further, that some of the clergy and graver persons than himself would be more likely to hit the taste of the public." "Works" of John Adams, IV, 222.

mean; but as the Poet says in another case, really "mean not, but blunder round about a meaning".

And it must be plain to everyone who shall carefully attend, to the four first paragraphs of this third article, that instead of its being a clear directory and guide to future Legislatures in legislation: their acts and laws touching religion, which they are hereby authorized, and required, to make, if made conformable to the article itself, will afford plenty of that glorious uncertainty, which is the source of the emoluments of the men of my profession.²⁰ As to the last paragraph of the said third article, I have only to observe that it would stand with a much better grace, in the after frame of Government, or in some statute of the future ordinary legislature, than in the bill of rights.²¹

The first averment in the ninth article is true enough to deserve a place in the declaration of rights; But the residue of the said ninth article will bring to the mind of every one who has heard it, Mr. Ward's doggerel description of the Salem Fair, viz—

"There's a Fair at Salem, a little behind the Hill,
Where something may be bought, if anything is to sell."

Besides, it is exceptionable for that it does not contain a compleat and entire aphorism in itself; but instead of being a foundation Stone, for the future Structure or frame of Govern-

²⁰ "This article underwent long debates, and took Time in proportion to its importance; and we feel ourselves peculiarly happy in being able to inform you, that though the debates were managed by persons of various denominations, it was finally agreed upon with much more unanimity than usually takes place in disquisitions of this nature. We wish you to consider the Subject with Candor, and Attention. Surely it would be an affront to the People of Massachusetts Bay to labour to convince them, that the Honor and Happiness of a People depend upon Morality; and that the Public Worship of God has a tendency to inculcate the Principles thereof, as well as to preserve a People from forsaking Civilization, and falling into a state of savage barbarity." "An Address of the Convention to their Constituents," p. 10.

²¹ "Joseph Hawley, the only political leader of Revolutionary Massachusetts whose religious views were broad and tolerant, made every effort to get a bill through the General Court to disestablish the Congregational churches but could not get it to a vote." Morison, Mass. Hist'l Society, *Proceedings*, Vol. 50, p. 376.

ment must wait on the after frame of Government for its sense, and its meaning is to be ascertained by a contingency, which when it falls, may give the article such a sense, as shall be very little declaratory of native and original equality of rights in the electors and elected. . . . And I pray any Gentleman concerned in constructing the Tenth article, to inform me what certainty or security he or I shall have by virtue of the said article that his or my property will not be very unreasonably and unjustly taken from us, by the consent of some future representative body, of the people, possibly to be applied to private uses, instead of publick, perhaps in direct repugnance to our natural right of protecting our property, declared in the first article; for we have no assurance from this tenth article that we shall ever have any hand, voice, or influence in the appointment of the body which may be denominated the representative body, of the people. And what assurance does this same article afford us, that we shall not be controlled by the most unreasonable and iniquitous laws, so long as it remains uncertain what body of men will be our constitutional representative body?

Notwithstanding anything contained in this article, or any other article of the declaration of Rights the constitutional representative body, who will have power to controul our liberty and dispose of our lives, may be such an one in whose appointment neither he nor I shall have had any vote, and what just expectation can such a representative body, of the people, or constitutional representative body, give us that whenever the public exigencies shall in their opinion require that our property shall be appropriated to what they will please to call publick uses, we shall receive a reasonable compensation therefor. It is also exceptionable for that instead of its being a part of the basis of what should be a proper structure, upon a bill of rights we must whenever that building shall be erected, resort to it in order to understand the sense, and meaning of this article. It therefore evidently appears to be only a well sounding declamation, rather than a certain firm and solid foundation of our property, rights and liberties.

The last paragraph of the twelfth article, and the necessary implication of the twenty-eighth article, are plainly repugnant to each other.

The fifteenth article is conceived in so uncertain terms and sentences as that not so much as the intention and design of the constructors of it, can be known, without their further explanation and comments: And therefore cannot be the foundation of any security to the subject, that his controversies with his fellow citizens concerning his private property, shall be tried by a jury. Besides, I think the declaration of rights ought to contain some certain and explicit security to every individual that all his disputes, and controversies concerning property, between himself and the publick or what will probably be hereafter called the Commonwealth, should be tried by a jury, which security I do not find explicitly provided for, in the bill of rights; for I do not take that provision in the twelfth article, to be sufficiently explicit, for that intent: the similar expressions in Magna Charta have not been understood to have such a meaning as to be a security for that purpose, they having been understood to relate to fines and amerciaments.

The twenty third article is no other than a repetition in different words of the sense of a part of the aforesaid tenth article and I think a plain tautology, if subsidies, taxes, imposts, &c are devices for the purpose of drawing property from individuals, for real or pretended publick uses.

In the frame of Government there are some things which to me appear extraordinary. And the first thing I shall mention is what relates to the dissolution of the legislative body, or General Court. In the second paragraph of the first article of the section intituled General Court, it is provided that the said body shall dissolve and be dissolved on ye day next preceding the last Wednesday in May, every year, (which in my ears is not very dissonant from that verse in the ballad: "Now is the Crisis and the Crisis is now," &c). In the fifth article of the section intituled Governor, it is also provided, that the Govern^r with advice of council, *shall have power*, to dissolve the General Court on

the day next preceding the last Wednesday in May. And in the last paragraph of the same article, It is provided absolutely that the Governor shall dissolve the General Court on the day next preceding the last Wednesday in May. This provision seems to be as unconditional and peremptory as the first, namely that *the said Court shall dissolve and be dissolved*,—whether the Council shall advise to the measure or not. How far these three several provisions for the dissolution of the General Court, on the day next preceding the last Wednesday in May annually, when put together will verify the epithet of Tautological I submit to people of Common Sense.

But I shall nextly take notice of some particulars, which seem to me exceptionable on more serious accounts. And I observe that in the second article of the section intitled house of Representatives the number of rateable polls contained in the several towns are made the rule whereby to make certain, the number of Representatives which the several towns shall be intitled to elect and I take notice by the tax act last passed, by the General Court (and I am told the case has been the same in several preceding tax acts) negroe and mulatto slaves are made rateable polls, they are made rateable polls if all persons who by law are to be assessed as Polls are rateable polls, and they are truly denominated slaves if negroes and mulattoes under the government of masters or mistresses are slaves. Now Gentlemen, if this is the real intent of the said article that negro and mulattoe slaves are to be brought into the account to constitute the number of rateable polls, which are to intitle towns to elect Representatives, and if this was generally known and understood to be the meaning of that article; I really doubt whether one third of the voters in the state, would empower you to agree upon a time when a form of government containing that article, in its present form and tenor should take place.

I observe also that the fourth article of the same section which virtually excludes many freemen, natives of the State, and of the age of twenty one years and upwards from voting in the choice of the representative for the town where they are resi-

dent, and also the third article of the section intituled Governor which excludes the like persons from voting in the choice of a person for a Governor are demonstrably repugnant to the first, and fifth articles of the declaration of rights; I say demonstrably repugnant, because that repugnancy is as easily demonstrated as any proposition in Euclid or any other Geometrician or mathematician.

You may perhaps reply that such persons as are in effect excluded from voting in the said elections have been wont to be excluded from voting in elections in this and the neighboring governments: Pray Gentlemen consider did this, or any of the neighboring Governments enjoy Constitutions that were built on a bill of rights containing the same or articles really similar to the first and fifth articles afores^d, upon which articles it is certainly proposed that the Convention intend to erect their frame or form of government. Gentlemen, when in the reading your frame of government I had arrived to the first declaration in the first article of the sixth chapter intituled "Oaths and Subscriptions" &c. which when it shall be exemplified and (put) in use, I suppose will stand thus, to-wit,

I, James Bowdoin, or John Hancock, or I James Warren, do declare, that I believe the Christian religion; and that I am seized and possessed in my own right of a freehold within the Commonwealth, of the value of One thousand pounds. . . . I say when I first attended to the said declaration I could not for my life help thinking that it sounded very like the constant charge of a quondam, first Justice of the Bristol Sessions, to the standing grand jury of that county, who, after some Common place dilations, on the wisdom and usefulness of the institution and the importance of their trust to the Country never failed of concluding his charge with the words following, To wit, Gentlemen, the chief heads of your enquiry ought to be whether the several towns in the county, are provided according to law, with Pounds, and Schoolmasters, Whipping-posts and ministers.

Gentlemen, when I seriously reflect upon the various blunders, errors, and important inconsistencies of the performance of that

part of your number assembled at Boston, the last Winter, intituled "A Constitution or form of Government for the Commonwealth of Massachusetts," and compare that declaration contained in their address to their countrymen, namely, That they intended the house Representatives as the representative of the persons, and the Senate of the property of the Commonwealth, with the articles wherein the qualifications of the electors both of representatives and senators are expressed; and also consider that their aforesaid second Resolve of the second of March last, taken in connection with their address to the country, amounts to a recommendation to the people that they should give their sanction to that work; and establish it, as the Civil and I may also say as the military Constitution of the Massachusetts Bay, that is in effect the main issue and fruit to be reapt and enjoyed from the vast expense, infinite sufferings and torrents of precious blood, of the more than five years war, undertaken and patiently sustained, that we might be happy in the secure fruition of rights and liberty, in this land. It appears to me that the only charitable account that can be given of such a result, is, that those *Gentlemen* of the Convention assembled at Boston as aforesaid were heavily oppressed with an honest dulness brought on by the long endurance of the uncommon severe cold of the season, in the want of the cordials and refreshment necessary to maintain that free motion of the animal spirits, necessary to clear ideas, liberal, generous and comprehensive thinking.

But be my conjecture mistaken or just, the plan recommended by them is most evidently greatly defective, and erroneous, and such an one will never do honor to the State nor be productive of the quietness and happiness of the Commonwealth. Pray Gentlemen, through the whole of this business remember that *Finis coronat opus*.

Through the shortness of my memory, I have omitted to make any remarks on the surprizing number of incompatibilities enumerated in the aforesaid sixth chapter: I am humbly of opinion that however necessary and judiciously selected some of them may be, others of them do no better merit a place in the frame

of Government than express provision that the offices of a Justice of the peace and of a church deacon should never be bestowed on one and the same man at the same time or that an innholder during his being in that employment should not in any case be a justice of the peace or selectman, would deserve to be inserted in such a work.

I am well informed, Gentlemen, that a majority of the voters in divers towns have been induced to give their sanction to the said form of Government with all its imperfections from an earnest desire that some form of Government may be more firmly established in the State, than that which at present is exercised, and that, unless we should immediately unite in (some) plan we shall fall into absolute anarchy and never unite in any form whatever. I am, Sir, fully satisfied that the danger of such an event, has been unreasonably and extravagantly magnified by divers individuals, and I think you may very safely rely upon it, that if you find that two thirds of the Voters voting in the several town and plantation meetings shall have passed in the affirmative on the said second resolve, If you should instead of ratifying the said form of Government agreed on at Boston last winter now proceed with the aids which you will probably have from the amendments proposed in the returns which you will receive, to fabricate a bill of rights, and a frame of Government, in execution of the powers and trusts with which you was invested by your original election, and when you shall have compleated the work should send it forth to the People for them to consider and pass upon, I dare venture to be responsible, that it will meet the approbation and affirmance of two thirds of your Constituents if that is necessary for its validity: Though I confess I have yet to learn, by what rule and principle of erecting Governments and establishing Constitutions any more than a Majority can become necessary: and I am not without fears that this departure from the first and fundamental principle of all societies and governments, viz, that the minority must submit in all cases to the will and judgment of the majority will soon be followed by disagreeable consequences, however desirable it may be that two thirds or

a much greater proportion of the people should concur in the same sentiments respecting a Constitution of Government.²²

Pray Gentlemen suffer me very strongly to recommend to you a conformity to the original proposal of sending the model of Government, when compleated, to the People to be affirmed by them in the gross. The hands of the People without doors laid the foundation of this revolution: their hands ought also to finish it. But Gentlemen, the Strength, force and ()²³ effects of Government do not depend upon the vote of two thirds of the people obtained by importunity and chimerical (fears) of the danger of immediate anarchy with all its horrors, in () of an indigested loose and imperfect model of government; the clearness, truth and importance of the principles upon which it is founded and the wisdom and equity of the fundamental regulations for the choice and appointment of your legislative where the whole people who are to bear any part of the charge of the support of government and are the subjects of their leigslation feel that they are free, and can clearly discern that they all have their just share and influence in such appointments; from whence a general content, satisfaction and acquiescence in the Constitution will obtain in the State. Otherwise upon short experience your State, commonwealth, country, or whatever you are pleased to call it, will be filled with murmurs and discontent and the aid which the pepole will give your Government will be feeble and with reluctance, and every wheel will labour and some wholly stop. And whatever tone your furious importunate and impetuous sticklers for a precipitate establishment of a new constitution may keep up, in case they should be lucky in obtaining offices and what they figure to themselves as honors upon new appointments,

²² "It is not far from the truth to state that the constitution was referred to the people for their consideration and detailed vote, the consent of two-thirds being a prerequisite, but ratified by an adjourned session of the Convention, with a fresh popular mandate. An examination of the Convention's methods of tabulating the popular vote raises the suspicion that the two-thirds majority was manufactured." S. E. Moriso, *Mass. Hist'l Society, Proceedings*, Vol. 50, p. 354.

²³ The manuscript has been slightly damaged so that a few words are missing and some others are doubtful.—Editor.

the people in general will be discouraged, judge that they find a pitiful compensation for all their drudgeries, hazards and taxes, will apply to their own case the story of the Welchman's () and will talk high of returning back into Egypt, to the encouragement, exultation, and triumph, of Tories; to the great disturbance, if not to the entire downfall, of your Government; and it ought always to be remembered, that Egypt will be ever ready to embrace them.

Therefore I beg of you Gentlemen to correct your bill of rights, make it clear, sensible and consistent throughout with the first all-important proposition of the afores^d first article, to-wit, That all men are born free and equal; and to the second proposition, which is equal to the first, That all men have certain natural, essential and unalienable rights; Upon those two principles or propositions let all the following aphorisms of your declaration and all the articles of your frame of government, stand, as a simple well compacted building, upon a deep, broad, and immovable base. Pray give over the impossible (task) of endeavoring to make a religious establishment, (consistent) with the unalienable Rights of Conscience which you can no more effect, with precision and in clear determinate language that you can make a curve line parallel to a straight one.

Give to the People a personal Representative in the Legislative Body in the choice and appointment whereof, every freeman, an inhabitant of the State, of the age of twenty one years, that is to say, every person of competent judgment and capable of voting freely shall have a voice, hereby doing proper honour and paying due regard to the rights of human nature; and let us never more be puzzled and plagued and vexed with the jargon of a virtual Representation. Make a more ample provision if necessary that property should have a full representation and just weight, in the legislative, certainly it merits a great share: Let every adult freeman have his right given him, to vote for the Governour: Let the militia be gratified with a septennial choice of all their field and company Officers in the manner provided in the last plan: Be pleased to delete and wholly expunge your unprecedented un-

necessary and uncouth declaration, or confession of Faith, provided for your Governor, Lieutenant-Governor, &c: Make an absolute and unconditional provision in the frame of Government for a revision of the whole Constitution, at the end of seven years from the time of its Commencement and affirmance; provided always that such a revision shall never enure, be construed, or taken, to suspend or in any degree invalidate the whole or any part of the Constitution, until, and in such parts thereof only, wherein upon such revision it may be expressly altered.

When the last plan shall be corrected in the manner I have above proposed, I have no doubt but the Convention may with great safety to the State, and honor to themselves, dissolve and be dissolved, and send out their Constitution or plan of Government to be ratified by the People, agreeable to the original proposal of ye General Court; ordering the return of the doings of their Constituents to be made by a convenient day into the house of Representatives for the time being.

In this way of proceeding the Constituents will consider themselves as fairly treated, and under no appearance of a cunning departure from the original proposal and no more expense incurred. The consideration and remembrance that the validity of the plan, and its being ratified and sanctified as the Constitution of the State, is to depend upon the view and act of the people, will influence you, in spite of all your care and watchfulness, to construct a constitution in some respects different from what you would otherwise do.

Before, I conclude, Gentlemen, I beg to be indulged in one more observation, although it may appear to be somewhat out of place, to-wit, There seems to me to be an unreasonable and ungrounded antipathy to any use of the word freeman, as if it implied that there were slaves in the State: Would to God that it was not the case in truth, but we all know, that to our shame there are many such; and I fear it will take a Century, wholly to abolish and take away the inhuman, unjust and cruel practice, of enslaving our fellowmen. Why therefore shall we effect to conceal and cover what we are too unwilling to annihilate and put

an end to? Such disguises will not remove the shame and just reproach—while the iniquitous practice is notorious.

I have the honor to be, Gentlemen, with great esteem and veneration for the Convention your most obedient humble servant,

JOSEPH HAWLEY.

NORTHAMPTON, June 5, 1780.

Mess^{rs} Draper and Folsom,

If upon perusal of the foregoing sheets you shall judge that the Contents (if published) will be for the good of your Country or minister edification or amusement to your customers—I give you full liberty to print the same, in your useful newspaper.

I am, Gentlemen, Your humble Ser^t,

JOSEPH HAWLEY.

P. S. If you shall determine to Publish the Contents sheets, Pray let them come out as soon as your () publication will admit—if you shall decide (not to) them or publish them speedily, please to give them back entire to Mr. Wright the bearer.

J. H.

HAWLEY'S REASONS FOR DECLINING TO SERVE AS SENATOR²⁴

To the Honorable the Senate of Massachusetts:

May it Please Your Honours,—The intelligence given me by the writ of summons under the hand of the President of Council; that I am chosen a Senator by a majority of the Voters of the County of Hampshire affords me a singular pleasure on two accounts. The one is that an election to that high trust by a majority of the unsolicited suffrages of the voters of the County is a genuine proof of the good opinion of the people of my dear County. The other is, that fair occasion that it gives me to bear a free and public testimony against one part of our glorious constitution. I style it glorious, altho', I humbly conceive it has

²⁴ See above, p. 12.

several great blemishes, on account wherof it will, until corrected, be liable in my poor opinion to very weighty exceptions; but still it remains glorious on account of the great quantity of excellent matter contained in it.

That part of the Constitution this event enables me not impertinently to except is the *Condition* or *term* which (the) Constitution holds every one to, who has the honor to be elected a Member of the General Court of Massachusetts before he may (as is expressed in the Constitution) *proceed to execute the duties of his place*. Be the person ever so immaculate and exemplary a Christian; altho' he has in his proper place, that is, in the Christian Church, made a most solemn, explicit, and public profession of the Christian Faith, tho' he has an hundred times, and continues perhaps every month in the year, by participating in the Church of the body and blood of Christ practically recognized and affirmed the sincerity of that Profession, yet by the Constitution he is held, before he may be admitted to execute the duties of his office to make and subscribe a profession of the Christian Faith on declaration that he is Christian. Did our Father Confessors imagine, that a man who had not so much fear of God in his heart, as to restrain him from acting dishonestly and knavishly in the trust of a Senator or Representative would hesitate a moment to subscribe that declaration? *Cui bono* then is the Declaration?

The extraordinary not to say absurd condition, brings fresh to my mind a passage in the life of the pious learned and prudent Mr. John Howe one of the strongest pillars of the dissenting interest in the reign of Charles the 2nd and James the 2nd. The history is as follows, that Mr. Howe waiting upon a certain Bishop, his Lordship presently fell to expostulating with him about his nonconformity. Mr. Howe told him he could not have time without greatly trespassing on his patience to go through the objections he had to make to the terms of Conformity. The Bishop pressed him to name any one that he reckoned to be of weight. He thereupon instanced in the point, reordination. Why pray, Sir, said the Bishop, what hurt is there in being twice ordained?

Hurt, my Lord, said Mr. Howe to him; the thought is shocking; it *hurts* my understanding. It is an absurdity for nothing has two beginnings. I am sure said he I am a minister (of) Christ and I am ready to debate that matter with your Lordship if you please; and I cannot begin again to be a minister.

Besides this term of executing the duties of the Place is against common right and (as I may say) the natural Franchise of every member of the Commonwealth, who has not by some crime or deliction forfeited his natural Rights and Franchises. It moreover reduces the ninth article of the Declaration of Rights to a mere futility and in such a connection it would be for the reputation of the declaration of rights if that same ninth article was wholly expunged. More than that the said condition is plainly repugnant to the first great article of the said Declaration. I am ready to debate that matter with any Doctor who assisted in framing the Constitution either in convention or without doors. The said Declaration of Faith to be subscribed which constitutes the said impolitick and unrighteous condition will I believe ever sound in every good ear almost as unearthly as the Sessional Justice's famous charge to the standing Grand Jury. Let us hear them successively. I do declare that I believe the Christian Religion and have a firm persuasion of its truth; and that I am seized and possessed in my own right of the property required by the Constitution. Gentlemen of the Grand Jury, you are required by your oath to see to it, that the several towns in the County be provided according to law with Pounds and Schoolmasters, Whipping posts and Ministers. Each containing an odd jumble of sacred and profane; but to me the charge gingles best.

By the Constitution of the Commonwealth of Massachusetts I am, may it please your Honors one of the Senators and I am strongly disposed according to my poor abilities, to execute the duties of my office but (by) the unconscionable not to say dishonorable terms established by the same constitution, I am barred from endeavouring to perform these duties. I have been a professed Christian nearly 40 years, and altho' I have been guilty of many things unworthy of that character whereof I am ashamed.

ed; yet I am not conscious that I have been guilty of anything wholly inconsistent with the truth of that profession. The laws under the first charter required of the subjects of that State in order to their enjoying some privileges that they should be members in full communion of some Christian Church. But it never was before required in the Massachusetts Bay that a subject in order to his enjoying or exercising any Franchise or office should make profession of the Christian Religion before a temporal court.

May it please your honors, We have all heard of a Lieut. Govr. of the Massachusetts Bay and some of us have known him very well who contended long and earnestly that he had a right to a seat in council without a voice.

I imagine that I can maintain a better argument than he did, that I have a right to a seat in the Senate of Massachusetts without a voice, but at present I shall not attempt to take it.

I am, may it please your Honors, with the greatest respect to the Senate, Your most obedient humble servant,

JOSEPH HAWLEY.

Octr. 28th, 1780.

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