

Massachusetts Constitution

1780

INTRODUCTION

No Founding-era political document better captures the unique American understanding of rights and their place in politics than the Massachusetts Constitution of 1780, whose principal author was John Adams. The first part, the Declaration of Rights, makes clear that rights are both protections against arbitrary government and the source of legitimate republican government. The Preamble identifies the body-politic as “a voluntary association of individuals” originating in a “social compact” that protects both individual rights and the common good. The American Constitution and state constitutions from Iowa to California even now echo the language of the Massachusetts Constitution.

The first article of the Declaration, known as a bill of rights, identifies the origin and purpose of all legitimate government:

All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties;

that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

The right of “acquiring, possessing, and protecting” property makes more explicit the rights protected by the Declaration of Independence. Property rights undermine a static class system and emphasize the dynamic nature of the commercial republic. This version of a bill of rights adds not only rights of worship (Art. II), property (Art. I), bearing arms (Art. XVII), jury trial (Art. XV) but also essential elements of American republican government, including frequent elections (Art. VIII), freedom of the press (Art. XVI), broad suffrage (Art. IX), an independent judiciary (Art. XXIX), and, in particular, the separation of powers (Art. XXX). A strict separation of powers aims to secure “a government of laws and not of men”—that is, government by a publicly promulgated rational principle versus the passion of one man or a crowd.

The Declaration of Rights reminds citizens of their civic duties as well, including “the right as well as the

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duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING." Such worship must follow the dictates of one's own conscience or religious beliefs and not disturb the "public peace" or the worship of others. Since public order and happiness "essentially depend upon piety, religion and morality," the local governments are obliged to support religion. By protecting the individual conscience, this Constitution forbids a Puritan or any other theocracy: "And every denomination of christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another shall ever be established by law."

While an established church prefers one denomination over others, this privilege does not threaten the general principle of religious liberty. And, while the Massachusetts Constitution protects Christian sects

equally, it does not condone persecutions of other faiths. Following the lead of other states in 1776, Massachusetts would further expand religious liberty and disestablish its church in 1833, the last state to do so.

The remaining three-fourths of the Constitution (not included below) describes the powers of the bicameral legislature, the governor, his advisory council, and the judiciary. Other provisions honor Harvard College, detail oaths of office, and encourage the study of the liberal and useful arts, to inculcate civic and private virtues. At the state level the advancement of intellectual and moral character and the articulation of governmental powers belong together.

The Massachusetts Constitution stands out as a striking example of the founding generation's belief that republican government requires a certain character in its citizens (Art. XVIII), as well as prudently designed institutions.

A Constitution or Form of Government

*Agreed upon by the Delegates of the People of the STATE OF MASSACHUSETTS-BAY,—In Convention,—
Begun and held at Cambridge, on the First of September, 1779, and
continued by Adjournments to the Second of March, 1780*

Preamble.

The end of the institution, maintenance and administration of government, is to secure the existence of the body-politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquillity, their natural rights, and the blessings of life: And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body-politic 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 as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new Constitution of Civil Government, for ourselves and posterity; and

devoutly imploring His direction in so interesting a design, DO agree upon, ordain and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION of the COMMONWEALTH of MASSACHUSETTS.

Part the First.

A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.

Art. I.—All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

II.—It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great creator and preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

III.—As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and

as these cannot be generally diffused through a community, but by the institution of the public worship of GOD, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies-politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of GOD, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

And the people of this Commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided notwithstanding, that the several towns, parishes, precincts, and other bodies-politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

And all monies paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends: otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised.

And every denomination of christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another shall ever be established by law.

IV.—The people of this Commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in Congress assembled.

V.—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 at all times accountable to them.

VI.—No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

VII.—Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men; Therefore the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

VIII.—In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

IX.—All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of gov-

ernment, have an equal right to elect officers, and to be elected, for public employments.

X.—Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: But no part of the property of any individual, can, with justice, be taken from him, or applied to public uses without his own consent, or that of the representative body of the people: In fine, the people of this Commonwealth are not controlable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

XI.—Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

XII.—No subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his council, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate; but by the judgment of his peers, or the law of the land.

And the legislature shall not make any law, that shall subject any person to a capital or infamous pun-

ishment, excepting for the government of the army and navy, without trial by jury.

XIII.—In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

XIV.—Every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

XV.—In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high-seas, and such as relate to mariners wages, the legislature shall hereafter find it necessary to alter it.

XVI.—The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.

XVII.—The people have a right to keep and to bear arms for the common defence. And as in time of peace armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

XVIII.—A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to

preserve the advantages of liberty, and to maintain a free government: The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: And they have a right to require of their law-givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

XIX.—The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

XX.—The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

XXI.—The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

XXII.—The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

XXIII.—No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature.

XXIV.—Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXV.—No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

XXVI.—No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

XXVII.—In time of peace no soldier ought to be quartered in any house without the consent of the owner; and in time of war such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

XXVIII.—No person can in any case be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

XXIX.—It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

XXX.—In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

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