

demurred from this proposition. But is it not obviously true that *the intent of the Constitution is a historical question*? That is to say, questions of "original intent" are most properly answered, not by legal reasoning and legal tradition, nor by abstract speculation on democratic philosophy or individual "rights," but by reference to the historical record.

In emphasizing the historical record there are two things I am not saying. I am not suggesting, in the manner of Charles Beard, that there is some secret dirty story to be ferreted out by historians. Nor am I saying that only professional historians can be allowed to put the Constitution in context, for any intelligent person may make a valid historical observation.

If we do not rely on legal interpretation to discern the intent of the Constitution nor on the specialist knowledge of historians nor on philosophical speculation (however relevant any of these may be in a subordinate sense), what do we rely on? We rely on history, and history, if it is not a specialist's but a people's history, is exactly what we mean by tradition—a widely shared understanding handed down from generation to generation.

A people's history may well embody some mythological elements (like the Founders' abolitionism) and some evolutionary developments (like reinterpretation of some basic points in the Civil War) because popular traditions are never precisely accurate in the specialist's sense. But after all, the Constitution rests upon the consent of the people. And it is therefore, in the final analysis, the people who have a right to determine its intent. If we argue that this is a perilous or unworkable doctrine, then we are merely declaring that democracy and federalism are unacceptable.

Of course, if we accept this proposition, our problems are only beginning (I can hear the cries of "simplistic!"), for we

are still faced with the task of translating the people's understanding, which is a tacit thing, into the established mechanisms of government. This would seem to require the services of a statesman who, in Andrew Lytle's definition, has the mission of clarifying for a given people their alternatives. Since we have no statesmen, then perhaps the best we can do is get the best judges we can find and trust them. This, indeed, has been the position of most of those who have thought of themselves as conservatives through this century, though it cannot be considered a resoundingly successful strategy.

The defenders of "original intent" argue with ability and earnestness and morality and sense. But the Constitution they defend is not the federal republican instrument ratified in 1787-1788. It is the one invented and refounded in the middle of the 19th century by democratic nationalists to accompany and foster the development of a commercial republic, a Constitution under which lawyers formed an aristocracy, an impulse which Tocqueville observed at work in its early stages. As the world goes, that Constitution, compared to the one invented by the Supreme Court in the middle of the 20th century, will serve us just fine if (a big "if") we can get it back. Unlike our current model, it did not violate the essential principles of republicanism and federalism.

I am inclined to think that the Framers, men of another age, would be profoundly uncomfortable with the state of our society today. But, being creative realists, and observing the ill fit between the Constitution and our society and the misuses to which the Constitution has been put, they might well conclude that we ought to follow their example and make a new Constitution, more in keeping with our aspirations, even though they would doubt that we had the wisdom and virtue to build as well as they.

A DIKE TO FENCE OUT THE FLOOD

by M.E. Bradford

The Ratification of the Constitution in Massachusetts

When in September of 1787 the new instrument of government proposed by the Great Convention went out from Philadelphia to be received and considered by the several commonwealths connected through the old Articles of Confederation, those fraternally affiliated societies saw the document delivered to them through the Continental Congress according to their own needs and purposes—out of their distinctive histories and established political dispositions. In other words, working from their respective myths of themselves as Americans of a special kind, as Federalists or Anti-Federalists, the spokesmen of these societies saw in the prospect of a more perfect Union implications

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very dissimilar from those discovered by like-minded individuals—persons agreed with them in supporting or opposing the Constitution in other states. Amid the variety of these responses, that of Massachusetts, in *both its Federalism and Anti-Federalism*, is distinctive in several respects. Moreover, what was observed concerning the Constitution in the state ratification convention which began in Boston on January 9, 1788, was as detailed, as representative of the essentially local politics which produced it, and as thought-provoking as any record of deliberations at this level generated by the great process of lawgiving—of Constitution-making—which has survived to us from those momentous times: a copious and inclusive proceeding, the outcome of which was in doubt almost to the moment of its decision in favor of a revision of the national bond.

It is possible to take the text of the Massachusetts ratification and read it as a completed action, a formal structure with complication, peripeteia, and dramatic resolution—in other words, as a literary whole. And by text I mean here the 1856 edition of *Debates and Proceedings in*

the *Convention of the Commonwealth of Massachusetts. Held in the Year of 1788, and Which Finally Ratified the Constitution of the United States*, which was printed in Boston according to the will of the state legislature and by William White, Printer to the Commonwealth. I have, thanks to friends in New England, the pleasure of owning a copy of this unusual and uniquely valuable book. From a distant and Southern perspective, I have found the versions of the ratification story contained in it to be of special interest to the close student of the regional origins of American politics: a window on the sources of our persistent and ultimately admirable national variety. But to understand the action preserved in its pages, the distinctive New England coloring of the event recorded there, it is a necessary predicate for other exegeses that we first reconstruct the milieu in which it occurred, reassemble the context of circumstance within which it was played out, and the universe of discourse in the language of which it is preserved for our examination.

There is available a substantial body of commentary accounting for the details and the dynamic of the Massachusetts convention itself and of the history antecedent to its gathering in the close quarters of Mr. Moorehead's Meeting House on Milk Street—especially the growing discontent which spread across Massachusetts during the summer and fall of 1786 and then exploded in December of that year in the insurrection which we now call Shays' Rebellion.

What we discover, first of all, from a familiarity with the scholarship, is that the community of the Saints had its own ideas concerning what the new Constitution would mean to the children of the Covenant, what might be said against it or in its behalf. And this version, I shall explain, is in important ways unlike the Constitution spoken of in the states to the south and west of New England—even though the words approved are the same. Part of the reason for this uniqueness is, to be sure, that Shays' Rebellion went on in Massachusetts, ending only in February of 1787 at Peterham and Sheffield. Another essentially local influence on the politics of ratification was Massachusetts' exceptional approach to the retirement of state debt—and to the failure of its citizens to pay their taxes levied for that purpose: *a moral and political attitude*, rooted in its Calvinist origins. But in the end even the disturbance of the courts and taxpayers' revolt acquires much of its resonance because it occurred in the Citadel of the Elect, the Protestant Zion—among a people called out to the special and collective service of God and to the building of His Kingdom in the West, that righteous New Jerusalem which the prophets had foretold. To be in debt was to be under God's judgment, with no sign of special favor—to be divested of a sacred patrimony—which was a situation the Saints could not endure.

The best way to reconstruct and recover the Massachusetts view of the purpose and value of the Constitution is by following seriatim its operations—its unfolding—in that state's ratifying convention: by such sequential analysis, and by a close attention to the special Massachusetts objections to what the 55 members of the Great Convention produced. Leaving aside for the moment the direct influence of Puritan origins, the story begins almost a year before the



Framers gathered in Philadelphia and exhibits as its central core, its principle of action, the influence of a characteristic New England virtue carried so far into the extreme that it became a vice—a pattern which I understand has had some influence over the history of the region. The virtue of which I speak is frugality. After independence had been achieved and the inhabitants of the old Bay Colony had become accustomed to life under their 1780 Constitution, they began (as was appropriate for the children of the Puritan Fathers) to regard the massive proportions of their state debt with embarrassment or even guilt and to look about for ways of lifting this badge of perfidy from their collective backs. Other commonwealths suspended payment on foreign obligations or prepared to satisfy creditors with land or a relaxed and protracted schedule of repayments. But not Massachusetts. The General Court laid on a heavy tax (as opposed to impost or excise charged against trade) which fell in particular on the rural and Western portions of the state, on farmers and other holders of real property. All of this occurred in the midst of an agricultural depression. In consequence, the courts of common pleas were filled with suits against landholders whose property would be sold because they made so little profit from it. Compounding these delinquencies was a shortage of specie in circulation, which drove down the price of the farmer's produce and the value of his acres. And that is to say nothing of the expense of litigation if brought to the bar of justice, or of the danger of being imprisoned for debt. The upshot of all of this distress was a cry of outrage which poured in toward Boston from every corner of the state, except for a few commercial communities, fishing towns, or seaports—a cry which began in the summer of 1786 with the calling of local protest conventions gathered to petition the General Court for relief and which had as its final response the outbreak of open revolution against the legal authority of the state of Massachusetts.

The traditional view of Shays' Rebellion in relation to the

approval of the Constitution in Massachusetts is that it amounted to the proximate cause of that decision. In the last 50 years alternative explanations of these events and their connection have been advanced; but once refined with observations on the link between social unrest and both Anti-Federalism and Federalism, the traditional explanation now seems thoroughly vindicated. New Englanders had belonged to a culture turned inward on itself, from the failure of the "Good Old Cause" to the beginnings of the "errand into the wilderness." The Revolution broke some of this down. They had been forced to send to Virginia for help when General Gage occupied their metropolis. Shays' Rebellion finished their turning toward the business of the new republic, where as inheritors of something valuable they might once again have a role to play and an example to set. It took 50 years for Massachusetts Federalists to get over their fear of marching feet—if indeed they ever have. Yet there had been anxieties and complaints about democratic excesses in the backcountry and the Berkshires even before the infant republics had, together, declared their independence in 1776. And a reaction to these excesses gathered into something like a political party before the end of the Revolutionary War in 1783. A leader of this party, James Bowdoin, was governor of Massachusetts when Shays' Rebellion broke out. He and his friends were responsible for restoring government in those Massachusetts communities where anarchy had usurped its place.

By 1786 Federalist sentiment was openly antidemocratic in its Massachusetts variety. The redoubtable Theodore Sedgwick, United States Senator and Speaker of the House of the United States House of Representatives, wrote to Rufus King, as they contemplated the spectacle of popular uprising against the people's government: "Every man of observation is convinced that the end of government security cannot be attained by the exercise of principles founded on democratic equality. A war is now levied on the virtue, property and distinctions in the community, and however there may be an appearance of a temporary cessation of hostilities, yet the flame will again and again break out." Fisher Ames, while on the floor of the Massachusetts ratification convention itself, spoke to the same effect as his friend Sedgwick (but more colorfully) when he declared, "A democracy is a volcano, which conceals the fiery materials of its own destruction. These will produce an eruption, and carry desolation in their way."

Ames was quietly but ably supported by the Reverend Thomas Thacher, who warned the spokesmen for popular resentment to remember the connection between "licentiousness" and tyranny; who spoke of disturbances similar to Shays' Rebellion in other American states; and who insisted that "demagogues, in all free governments, have at first held out an idea of extreme liberty and have seized on the rights of the people under the mask of patriotism." Federalists rang the changes on one important theme: that "faction and enthusiasm are the instruments by which popular governments are destroyed." Unreasonable expectations had brought on "an anarchy, and that leads to tyranny." On the other hand, common enemies and a concern for the "common interest" foster liberty. The Constitution was a way of preserving a known felicity, not a means of achieving a new one. If everyone at the convention recognized that

the objections of the Anti-Federalists to the document would probably be raised against any replacement for it that would be approved by a convention of the states, how could they continue to resist the imperative to ratify?: "Do they expect one which will not annul the Confederation, or that the persons and properties of the people shall not be included in the compact, and that we shall hear no more about armies and taxes?" Anti-Federalists might complain that Ames and his friends were fostering a "backlash" reaction to popular unrest, that they encouraged the people to "run mad with loyalty." But the Massachusetts tradition of ordered liberty was ever stronger than anger with lawyers and speculators in public debt. The dead voted yes on the Constitution—and were powerful enough to carry the day.

Shaysites, who were usually less radical than their opponents made them out to be and who wanted chiefly, for all their troublesome noise, no more than tax relief, lower legal fees, and a better circulation of money, appear in Federalist literature as serious "levelers" and outright egalitarians. There is a little evidence to support such a reading of Rhode Island Anti-Federalism, of the mob which interrupted a session of the New Hampshire legislature in September in 1786, and of the extreme radicals who wished to move the state capital from Boston and marched to Springfield to prevent the opening of the state courts in January of 1787: a law which proposed that "at the end of thirteen years . . . there be a general abolition of debts, and an equal distribution of property"; talk at Exeter of "holding all things in common"; a report of the opinion of a Shaysite that, as all the property of the nation had been defended by all the people, it ought therefore "to be the common property of all"—with anyone who objected to this creed "to be swept from the face of the earth." Several members of the Massachusetts ratification convention expressed a concern that the rights of the people might not be properly protected by the new Constitution. Others seemed to fear that the new fundamental law might cancel securities provided for in Massachusetts' own Bill of Rights. Federalists responded with clear distinctions concerning the roles of state and general government. Governor Bowdoin is most explicit:

With regard to rights, the whole Constitution is a declaration of rights, which primarily and principally respect the general government intended to be formed by it. The rights of particular States and private citizens not being the object or subject of the Constitution, they are only incidentally mentioned.

Colonel Joseph Varnum agreed that Congress had "no right to alter the internal regulations of a State." He was supported by the learned Theophilus Parsons, who "demonstrated the impracticability of forming a bill, in a national constitution, for securing individual right," and by the durable Sedgwick, who wrote to a friend, "Had the national government undertaken to guaranty the several rights of citizenship contained in their [the states'] declaratory bills, it would have given a right of interference which would naturally tend to check, circumscribe, and finally annihilate all state power." Joining in this chorus is, unexpectedly, Samuel Adams, first of the Sons of Liberty

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and prospective spokesman for the Anti-Federalist cause—until his son dies, his supporters in Boston turn Federalist, and John Hancock decides to be a hero *one time more*. Speaking of proposed amendments, he affirms the one which provides “that it be explicitly declared that all powers not expressly delegated to Congress are reserved to the several states, to be by them exercised.” Says Adams, “This appears to my mind to be a summary of the bill of rights.” There were, of course, stubborn radicals who remained unsatisfied with the promise of federalism, part of a population filled with an “inordinate self-confidence” in “their ability to pass upon the most abstruse questions of government.” The Constitution would have been refused in Virginia, New York, and elsewhere if the Massachusetts Anti-Federalists had, out of their resentment of Federalist leaders (of wealth, education, lawyers) and the rigorous punitive aftermath of Shays’ Rebellion, prevented its approval in their state. Probably they could have been successful if their natural leadership had been elected to serve in the convention. But Gerry and Warren and Winthrop lived in townships where the Constitution was admired and were thus denied a seat. And other Anti-Federalists kept quiet, or did not even bother to stand for election. From the first, what worked most against the Federalist cause (apart from “the apparently vindictive way in which the [Bowdoin] government in Boston had disfranchised and prosecuted the Shaysites after their surrender”) had been Massachusetts’ fierce insularity; a powerful spirit of localism; the advantage belonging to well-tested “manners,” modes, and orders; the general American fear of remote and hostile authorities compounded to the third power by an attendant pride in being part of a “chosen” people—who even lived longer than citizens of other American regions, so wholesome was their place of habitation. And, with that group pride, presuming a common patrimony and blood, a corporate hostility to contamination working inward from the parameters of Zion, to a dilution or “thinning out” of the Puritan substance by reason of being “unequally yoked together” with assorted godless heathen. Consolidation, in the opinion of Benjamin Randall, “would introduce manners among us which would set us at continual variance.” Worse than “the pirates of Algiers” or “the haughty Spaniard” were the wicked Southerners: “We shall suffer from joining with them.” Or, what is worse, “We shall be slaves to the Southern states.” General William Heath, in reaction to this evidence of an exclusive spirit, asks his neighbors, “Shall we refuse to eat and drink with those who do not think and act as we do?” To the proposition that “the interests of the States are too dissimilar for a Union,” Federalists say little more than that “the members of the Southern States, like ourselves, have *their* prejudices.” At times the complaint is aimed at the luxury of life in the South, where two days’ work stands in the place of six in Essex County. In other circumstances there are objections of Negro slavery, both as a violation of essential human liberty and as a flight from the life of industry. General Samuel Thompson thunders, “If the Southern states will not give up slavery, we should not unite with them.” To which line of thought Caleb Strong replies, “The southern States have their inconveniences; none but negroes can work there.” Strong reminds the Massachusetts delegates of

the superiority of the New England “way.” And if slavery will not do for a danger, how about Popery and the Inquisition? That complaining of one violation of essential human liberties while recommending another kind of repression is, of course, contradictory. Yet it is also in keeping with an essential paradox of Massachusetts history and reduces natural grumbling against two-thirds of the slaves being counted in the political census of states and districts to the level of a mere irritant, brought on by the unwholesome situation of those folk “down there.” Yet even with sectionalism under control, Massachusetts Federalists were not ready for a vote; they therefore kept the conversation going, even though by continuing they ran a risk of sharpening the most serious of Anti-Federalist fears—that they will collect money “by the point of the sword”—“heavy direct taxes” of the kind which had spawned Shays’ Rebellion in the first place.

Because they had such a numerical advantage when the convention first assembled (as many as 48 votes), Anti-Federalists set the tone of the meeting. The business of that assembly was, to be sure, not so much disinterested deliberation as it was to hear what everyone knew would be a vigorous case put against the Constitution and then see what kind of circumstantial argument might issue from its friends and champions. The convention worked through the Constitution and stopped for discussion only as objections were voiced. Its delays bought time for the Federalists, who would have been defeated in any division of the house in early January, but did not guarantee their success at a later date. Despite delays, the Anti-Federalists had a great strategic advantage in that they spoke not for the Articles of Confederation but for the integrity of Massachusetts, the state’s sense of itself, “since our fathers dug clams at Plymouth,” embodied in much of the dialogue between critics and supporters of the Constitution. The task of the Federalists was to persuade those less-than-certain delegates that the best way to save the Commonwealth they all professed to love was by accepting, on balance, a Constitution all knew to be imperfect. Federalists sometimes made a normative argument for Union *per se*, but not forcefully for this particular version of Union. It was only “as good a Constitution of government as the people would bear.”

Finally it became obvious to James Bowdoin, Rufus King, Nathaniel Gorham, and Theophilus Parsons, who had more or less organized the Federalist forces, that some concession to Anti-Federalist objections would have to be made—a concession in the form of recommended amendments. And Governor Hancock (elected president of the convention but waiting at home—with the excuse of poor health—to see which way the wind blew) brought in to support that concession as a sufficient protection for self-government in Massachusetts. It appears that a delegation of Federalists went to see the governor with this rhetorical package, offering him the opportunity to lead them forward toward what inevitably was their future while continuing to honor the history, the identity of his people: a chance to be the central player in a melodrama.

The Federalists would provide what Gouverneur Morris spoke of as “loaves and fishes”—a miracle of persuasion to bring around popular politicians—as part of the arrangement; they were (reported Rufus King) obliged to promise

Hancock no opposition to his reelection and, in addition, the possibility that he might (if George Washington were unavailable) become President of the United States. Hancock appears to have become a good Federalist in no time at all. His true motives and perceptions in these rapid developments remain a mystery at the heart of the Massachusetts convention. Clearly he knew that the tradesmen and mechanics agreed with the merchants and gentry of the populous areas of the state; and he must have realized that the Articles would be revised or replaced, one way or another. Therefore, taking nine amendments authored by Parsons and King (a distillate of the most valid Anti-Federalist objections to the Constitution), Hancock, on January 31, came to the floor of the convention and moved the 20-plus votes needed to ensure ratification: moved them by reserving powers not expressly delegated; by providing one representative to every 30,000 persons; by restraining the authority of Congress to supervise elections; by outlawing direct taxes unless the impost and excise are insufficient; by forbidding favorable treatment to a particular company of merchants; by withdrawing federal judicial authority over disputes of a certain size between citizens of two different states; by providing for trial by jury in civil cases, when desired; by guaranteeing grand jury indictments as a precondition for a certain order of trials; and by strengthening the prohibition against titles of nobility.

After this surprise, Samuel Adams (with only a moment's deviation) decided to support the Constitution himself. Thereafter the convention concluded swiftly—by a vote of 187 to 168—to the great satisfaction of those Federalist managers who had done such a good job in counting the house. Writing to his old friend Washington, General Benjamin Lincoln, one of his state's most substantial citizens, observed, "Considering the great disorders which took place in the State the last winter, and considering the great influence that the spirit which then reigned has had since, and considering, also, that when we came together a very decided majority of the Convention were against adopting the Constitution, we have got through the business pretty well."

After having followed it all the way back to its colonial sources in Massachusetts politics and then forward from its opening salvos through the drama of resolution by crafty stage managers in a flamboyant *deus ex machina*, it remains for me to say something about the ethos, the special flavor of ratification in Massachusetts, of the human ingredients which brought the Commonwealth out of its jealously guarded particularity by an appeal to its own intellectual inheritance: by persuading grandsons of the Puritans that the best way to preserve their little world was by subsuming for it a place in the Union. After ratification, many of the Massachusetts Anti-Federalists promised before they left for home to urge their neighbors to give the new Constitution a fair trial. Though accustomed to having their say and to being consulted in the public business, the ordinary citizens of Zion represented by so many plain men who had in most cases come there to prevent deception through hasty ratifying were justified in feeling, once the convention was concluded, that a thorough ventilation of the issues had occurred. And with that ventilation, as the Federalists would have insisted, an even more thorough examination

of many nonissues which were injected into the debates by the spirit of excessive political distrust—a danger of which the Reverend Mr. Thacher had warned pointedly in his memorable address.

Because of Shays' Rebellion and because of the notorious sensitivity of the Massachusetts electorate, the educated and powerful men of the seacoast, the professions and commercial towns were patient in answering their Anti-Federalist adversaries when these little-known but emphatic speakers conjured up dreadful possibilities and "worst-possible-case" scenarios based upon a strange reading of the most innocuous components of the Constitution. What was the new government going to do with the 10 square miles of the federal district? What engines of war and hosts of mercenaries might be assembled there in a plot against the liberties of the people? And if General Benjamin Lincoln and Governor James Bowdoin had been hard on poor fellows who neglected to pay their tax, what would the gathered power, the standing army of a national government, do in the same cause—especially if their taxes were going to redeem at 100 cents on the dollar government notes which its friends (inside traders) had acquired at a fraction of that price? To the uninitiated, it would seem that the Massachusetts convention spent an inordinate amount of time talking about annual elections, far too much energy in worrying about how Congress might use its power to cancel the ability of Massachusetts to govern itself. And there was some excited talk about slavery and the absence of a religious test for office, issues discussed below. But seen as a whole, the proceedings of this convention, held under these trying circumstances, seem to me quite amiable, with only here and there the edges of acrimony in sight. *All* of the members of the convention are aware that they have been given a part in a momentous occasion, and they do not waste many of the theatrical opportunities provided for them on this stage of history. It is difficult to imagine a more rhetorically self-conscious assembly. Even the plainest member does his best to argue from authority, *ad vericundum*. Sometimes they even mention with surprise how well they speak. And the danger of being subjected to an apostrophe is apparent from every quarter of the house. We hear of how Mr. Thomas Dawes makes only a "short exordium" to his remarks; of how Mr. Barrell of York is "sensible" of how "little" he must appear "in the eyes of those giants in rhetoric, who have exhibited such a pompous display of declamation"; and of how the Honorable Amos Singletary is suspicious of the arts of "these lawyers, the men of learning, and moneyed men, that talk so finely, and gloss over matters so smoothly to make us poor illiterate people swallow down the pill." This sort of complaint against rhetoric is proof positive that the Anti-Federalists had a lively rhetoric of their own, a populist idiom which they used to considerable effect when not attempting to imitate and better the Federalists at their own game.

But what may surprise us most about this ratifying convention is not the rhetoric of its members but the language itself, the shifting levels of discourse, the apt allusion, the mixture of homely materials with elevated concerns and definitions, and the unmistakable personal dynamic of a society with a very well-developed sense of itself. As we would expect, adversions to the Holy Scripture

are a staple of these exchanges. But they are set alongside fresh imagery, fragments of irritation, candor, hyperbole, understatement, sarcasm, drollery, and a suggestion of assorted parables working at the back of the minds of most of the delegates who gathered that winter in Boston to decide the fate of the document made in Philadelphia during the previous summer. We have the compass to take note of only a few illustrations of this lively and indigenous speech—an idiom shared by all of those who sat within the closed and comforting circle, inside the walls of John Winthrop's "City on a Hill."

General Samuel Thompson, one of the most stubborn of the Anti-Federalists, speaks of being ready to give a good "thump" to the provision for regulating elections by Congress—a test of the kind given by country men to melons to see if they are ripe. Elsewhere the good General warns of the danger of building on a "sandy foundation" and of "swallowing a large bone for the sake of a little meat." His counterpart, the Honorable Amos Singletary, complains that the Federalists "play round the subject with their fine stories, like a fox round the trap." Mr. Benjamin Randall of Sharon, in response to the theory that the institution of slavery would end in 1808, said that the Southerners "would call us pumpkins" if they heard reports of such speculation. Captain Isaac Snow argued in behalf of ratification that the imbecility of government under the Articles had caused this country to be "held in the same light by foreign nations as a well-behaved negro in a gentleman's family." In other situations, delegates drew upon images of "clouds" rising upon the horizon, of facing the "musket of death." They referred to themselves as "plough joggers" and compared government to farming—with the proposed Constitution being like a barrier erected to keep the wild beasts out of the new ground. They traveled over the text from the first word to the last, and gave it the "thump" General Thompson promised.

Yet assuredly more important than this folk speech is the way in which the members of the Massachusetts convention drew upon the idiom of the English Bible. As did no other state ratification convention, the proceedings in Massachusetts presumed the theological doctrine that God deals collectively with the tribes and nations of men as they exist in the world—according to the operations of His covenant with them, if they have a rightful fear of the Lord. On this assumption, the Honorable Charles Turner of Scituate shortly before the final vote was taken invokes "that God, who has always in a remarkable manner, watched over us and our fathers for good, in all difficulties, dangers and distresses." His authority in this instance is what James M. Banner Jr. calls "the myth of New England exclusiveness": a set of "ideals at whose core was the conviction that the people of New England, and none more than those of Massachusetts, were somehow set apart from the nation" in their particular intimacy with the Deity. On these grounds the members of the Massachusetts convention sometimes referred to their Commonwealth as if it were another Israel—and the sayings and stories in Holy Writ material drawn from the lives of their neighbors or the neighbors of their forefathers. When Nathaniel Barrell of York compares a rush toward final judgment of the Constitution to the "driving of Jehu, very furiously," he invokes for frame of

reference an entire narrative (II Kings 9:20) of two kings of Israel and two of Judah who rule after the fall of that wicked prince, Ahab. Elsewhere, General Washington is compared to Joshua and the people of Massachusetts to Jonah swallowed up by the great Leviathan of government. One suspicious Anti-Federalist, speaking somewhat out of character, declares that he would not follow a "flock of Moseses" to the detriment of his liberty. To a contrary effect, the Reverend Isaac Backhus discoursed learnedly of I Corinthians: "Ye are bought with a price."

The new covenant is for free men. Free men might argue yea or nay about the omission of a religious test for holders of federal office. They might defend either liberty or authority with a view to the common good. And in this "Protestant" fashion they worked their way through the proposed Constitution, comparing ancient and modern times, passage with passage, after the practice of "elucidating scripture with scripture." When Mr. Jones of Bristol suggested there was not enough of the old Puritan spirit in their proceedings and proposed that the convention adjourn for a period of fasting and adoration, his colleagues did not agree with him, even though they knew that the politicians of their time "were not better now than when men after God's own heart did wickedly." But when they pulled together their final apology for the revision of government under the United States Constitution, the Federalists of Massachusetts, even more than those of Connecticut and New Hampshire, spoke of an enterprise in the language of covenant theory, postulating a regime which would preserve the Saints, with their liberties, together—or not at all.

The classic text for the corporate theory of Massachusetts Federalism is the one from which I draw the title for these remarks. It is of course the work of the brilliant Fisher Ames, much of it offered just at the close of the Massachusetts convention, on February 5, 1788. In content it is as rich in metaphor and as vibrantly colorful as any of the overheated warnings of the opponents of the Constitution:

Who is there that really loves liberty, that will not tremble for its safety, if the Federal government should be dissolved? Can liberty be safe without government?

The period of our political dissolution is approaching. Anarchy and uncertainty attend our future state; but this we know, that liberty, which is the soul of our existence, once fled, can return no more.

Ames then continues with his tropes. The Union is the "sap that nourishes the trees." Once girdled, it will moulder and "be torn down by the tempest." Massachusetts cannot secure its fisheries or its trade by itself, or defend itself alone from external enemies almost as dangerous as the anarchy within. Then the great peroration: "We talk as if there were no danger in deciding wrong. But when the inundation comes, shall we stand on dry land? The state government is a beautiful structure. It is situated, however, upon the naked beach. The Union is the dike to fence out the flood. That dike is broken and decayed, and if we do not repair it, when the next spring-tide comes, we shall be buried in one common destruction."

The images here are of powerful forces of nature which

can be restrained only by well-planned cooperation, and their application is unmistakable. The natural state is not one to be desired. Nor even the tribal state. The liberty to be found there is forever in question—if the sword-arm fail. Yet human society is so frail a shelter as to be constantly threatened by the encroachments of depravity. Earlier in the convention Ames observes that people who talk about the “liberty of nature” make a “declamation” against matter of fact. We are thus reminded not of John Locke but of Thomas Hobbes and of the repetitious misconduct of the seed of Abraham in the narrative sections of the Old Testament.

But perhaps just as eloquent as Ames’s summary of the case for ratification is the one made by Colonel Jonathan Smith of Lanesborough, who, though pointedly rustic in his delivery and self-description, is as subtle in reasoning for adoption as any of the lawyers or clergy who are active in that cause. Smith urges the anxious Anti-Federalists to consider a case where two or three of their number “had been at pains to break up a piece of rough land, and sow it with wheat.” Then he asks them to suppose further that they could not agree on how to protect the crop. Only then does he ask, “Would it not be better to put up a fence that did not please everyone’s fancy, rather than no fence at all, or keep disputing about it, until the wild beasts came in and devoured it.”

General William Heath makes a speech to that same effect, using the old parable of the rebellion of the members of the body against the whole. He does not speak of commerce or profit but of Union. What he and Smith and Ames and Parsons say is clearly the Federalist teaching on the value of Union—and a measure of how different from the Constitution adopted in Virginia and New York, North and South Carolina was the theory of government affirmed by Massachusetts when by 19 votes it ratified what the Framers had made.

What we find in the record of the ratification conventions of the South and the Middle States is an emphasis on the external objectives of government, the limits on what it attempts to achieve, and economic and military advantages of a more perfect Union. According to these constructions,

government is more a necessary evil than a positive good—or at least the government of the United States, as opposed to state and local governments. In these conventions, the regnant myths of the American self, of the national future, are very different from that of New England. The Agrarian vision of the South and the commercial dream of Philadelphia and New York did not presume that “the state and society were ‘indivisible’ or ‘co-extensive.’” From the time of the Mayflower Compact, Massachusetts could not separate the two. Southern Federalists did not fear insurrection or imagine that democracy and deference toward the natural leaders of the community were incompatible. Rights for them were an inheritance proved up in the Revolution. Neither did they emphasize the liberties which only government could guarantee—though many of them agreed with Fisher Ames that man was a social being and that his rights could not be usefully imagined in an aboriginal state. Southern Federalists promised to defend liberty by confining Federal authority to those functions explicitly assigned to its sphere. So speak James Iredell and Charles Pinckney, his cousin, General Charles Cotesworth Pinckney, and James Madison. Madison in June of 1788 defined a Constitution which prefigured his subsequent struggles about the nature of government with the sons of New England, arguing that “the powers of the general government will be exercised mostly in time of war” and “relate to external objects”; that “by enumerating [certain rights] of government it [the Constitution] implied that there were no more.” For a national government designed to transform the society which it protects he made no brief. It is an irony that the Constitution Madison did so much to create has, through the alchemy of our national history, become more like the one approved in Massachusetts than the one he hoped to establish. To understand such developments, it is necessary to see both of these alternatives in the context where they first appeared, to realize that there were other possible understandings, and to acknowledge the forces which make it likely that one view prevailed while the others sank beneath the waves, caught outside the breakwater when the inundation came.

REVOLUTION *by Otto Scott*

Times of crisis are not distinguished by respect for rights—although, paradoxically, all revolutions claim to be mounted in the name of rights. During our War of Independence, criticism of the patriot cause was an invitation to a lynching, and Jefferson defined the Tory as “a traitor in thought, if not in deed.”

In 1773 George Rome, a Rhode Island Tory, wrote a private letter criticizing the Assembly and judiciary. The letter was discovered by the patriot party and appeared in a newspaper. Rome was arrested by the Assembly for “vile abuse” of the government. Summoned before the bar of the

house, he refused to declare whether the opinions in the letter were his own. “I do not think,” he said, “on the privilege of an Englishman, that the question is fairly stated, because I do not consider that I am called here to accuse myself.” The Assembly, indifferent to rights long admitted in England (and even in Rhode Island), found him guilty of contempt for refusing to answer and imprisoned him for the remainder of the Session. In Virginia men were put in jail on the suspicion that they might some day assist the enemy.

Years later, after the American government was secure, matters were considerably improved. Although the men of Philadelphia did not include specific “rights” in their work,

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