

Portius, *American Herald*, 12 November 1787

To the PEOPLE of MASSACHUSETTS.

The time is fast approaching, when you are to decide on the most important question that ever fell to the lot of humanity to determine upon.—Time, which is on the wing, will speedily introduce the second Wednesday of January next, a day which will never be forgotten—a day big with the fate of, perhaps the rights, properties and privileges of the citizens of this Commonwealth—a day, on the events of which, depends the interest, not only of each individual in this Commonwealth, but of their posterity to the latest generation.—And no doubt you will receive either the blessings or the curses of all your unborn posterity, according as you decide, either in favour or against the all important question then to be determined on.

Of what importance then is it, that you previously examine the matter fully; that you duly consider the propriety of the part you then propose to take? You will undoubtedly take the advantages which will accrue to you as a people, by the adoption of the proposed Constitution, and put them in one scale, and the disadvantages you will put in the other, and as the preponderation of either scale appears, your conduct will be according.

A subject of such vast magnitude should be taken up with all the cool, dispassionate deliberation the mind of man is capable of: Every thing therefore which has a tendency to raise the passions, or inflame the mind should studiously be avoided, both in our mental deliberations, and in our discourses with, and communications to, others; and wherever this is wanting, we run the greatest danger of forming a wrong determination within ourselves, as well as injuring those we have communication with, and we should do well to remember that it is ten to one if we make use of such means with others, but we shall injure that cause which we wish to support.

As a free member of a free community, I have offered the foregoing observations to my fellow-citizens, and I pray the candid attention of the public to the following observations on the proposed Constitution, and only wish they may be considered with the same candour with which they are offered.

I shall begin my observations with that which I conceive every Constitution should begin with, viz. a Bill of Rights; this we search for in vain in the proposed Fœderal System. When the proposed System came first to my hands, I made diligent search for that article, but searched to no purpose; why it was omitted was a question of too delicate a nature for me to determine. Since which I have been informed that it was omitted for two reasons, the first of which was, “The Congress could exercise no powers, but what were expressly delegated to them, in the fœderal Constitution, which made a Bill of Rights wholly unnecessary.”

However true this objection is, it will apply with equal force to any Constitution whatever; we will take for example the Constitution of this Commonwealth, where we shall find the powers by it vested in the General Court as particularly defined, as those with which Congress is proposed to be vested with, are in the fœderal Constitution,—yet it was deemed absolutely necessary, that our State Constitution should be prefaced

with an unalterable Bill of Rights; and I could wish that my fellow-citizens would consider, before they give their decisive determination, whether they have any kind of reason to view a Bill of Rights less necessary now than seven years ago.—The other reason which has been alledged why a Bill of Rights was needless in the fœderal Constitution, is because “each State has a Bill of Rights of its own,” which would be a sufficient safe-guard and protection to its liberties.

This at first blush appears to have a considerable degree of plausibility in it: But that plausibility, I think, will vanish if we attend seriously to the matter as precipitately as darkness from before the rays of the sun:—The Bill of Rights of this Commonwealth ‘tis true is a mound insurmountable by their own legislature, but it is no barricade against the operations of a Fœderal Government.

Our Bill of Rights is a rule of conduct to no body but our own rulers and our own citizens, any more than the other parts of our Constitution, or the Acts of our Legislature are: How insignificant then is the last excuse for omitting a Bill of Rights in the Fœderal System of Government!

The good people are therefore only desired to consider this simple question, Is a Bill of Rights necessary in a System of Government?

Before we attempt to consider the articles of the proposed Constitution, it is needful that we consider one previous matter, which lies with peculiar weight on my mind, and which, if it is not obviated, can not fail of over-throwing the whole structure, and reduce it to the situation of a baseless fabrick of nocturnal reverees. It is this—Congress on the ninth day of July, A. D. 1778, entered into a Federal System of Government, contained in 13 articles of confederation; which articles were sent out to each State for their approbation or disallowance, after near three years deliberation, was approved and confirmed by every State, whereby it became a compleat System of Federal Government, and as sacredly inviolable as any System of Government can be, and as binding on each State as any human Institution, Contract, Agreement, or Ordinance which can be invented. In the last and concluding article it is mutually agreed upon that said articles shall be inviolably observed by every State, and the union shall be perpetual, nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislature of every State.

Here the whole System of the United States are sacredly bound to adhere to the said articles of Confederation, until such time as they are altered in the manner aforesaid.— Here too each State individually are holden, sacredly holden to stand to, abide by, and defend said Continental System of Government until the same is altered by the joint consent and act of each State—Here we find too the Commonwealth of Massachusetts, by every tye of good faith, by every principle of compact, and by every idea of national honour, bound inviolably thereby, until Congress shall make alterations therein, and such alterations are ipso facto ratified by each and every State’s Legislature.

Here is a System of Government as sacred as the nature of the thing will admit of, a National Compact, where each State stipulates with all the rest, and all the rest with each State, in the most solemn and unequivocal manner; and is it within the compass of human ideas to imagine that a System of Government so formed can be torn up by the

roots, without the consent of the parties?—Will any say, that if the majority are in favour of such a measure, they may do it?—I answer no, by no means:—Where a Government is instituted upon the idea of a majority, there a majority have undoubtedly a right to make such an alteration as they think proper: But the case is widely different where a System of Government is formed on ideas of unanimity, and where it is expressly stipulated, that it shall receive no alterations but such as are unanimously agreed to. It is a maxim in law, founded on the eternal principles of reason and the fitness of things,—“That no act shall be revoked but with the same solemnity with which it was first enacted.” If that is the case, how can Nine States dissolve a System of Government, which Thirteen had instituted, and which the whole Thirteen pledged their faith to each other should not receive any alterations without the consent and approbation of the whole Thirteen?—This I must imagine will be found a question by no means of easy solution. The Commonwealth of Massachusetts have pledged their sacred honour to stand by and adhere to said Articles of Confederation until they are mutually altered by the joint consent of the Legislature of each State. Keeping the last idea in view, let me propose the following interrogatory,—How can this Commonwealth give their approbation to a System of Government which impowers Nine States to erase the whole of that article from the Confederation?—Or, in another point of view, what right has this State either at their own instance, or at the recommendation of any body of men whatever, to break through the established Constitution of the United States, and openly set at defiance that System of Federal Government, for the support of which, they had pledged their most solemn engagements and sacred honour? Supposing Nine States should ratify and confirm the proposed Federal Government, and Four States should reject the same, Would not those Four States, still adhering to the Articles of Confederation, have an undoubted right, both in the sight of God and man, to accuse the Nine approbating States with the most unequivocal breach of public faith, point-blank national infidelity, and I will add, of open REBELLION against the National Constitution!—And what confidence could they, or any foreign power ever place in those Nine States, thus confederated into a Government, the very basis of which is laid in the violation of public faith, and whose existence, as a State, sprang out of a revolt from their own established Government.

These are considerations which I offer to the publick, for their serious, calm, deliberate and dispassionate consideration, previous to considering the Articles of the Constitution, now proposed for their approbation; and that they may be assisted in every stage of their deliberations by Him whose knowledge is infinite, and led to adopt such measures as he shall own and be pleased to bless, is the earnest and unfeigned prayer of PORTIUS.

Boston, Nov. 3d.

Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009.

Canonic URL: <http://rotunda.upress.virginia.edu/founders/RNCN-02-04-02-0003-0048> [accessed 06 Jan 2011]

Original source: Ratification by the States, Volume IV: Massachusetts, No. 1

