

Amendments of

Const. of Mass. 1821

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THIS BOOK PRESENTED BY
Francis Newton Thorpe

AMENDMENTS

OF THE

CONSTITUTION OF MASSACHUSETTS,

PROPOSED BY THE

CONVENTION OF DELEGATES,

ASSEMBLED AT BOSTON, ON THE THIRD WEDNESDAY OF NOVEMBER, A. D.

EIGHTEEN HUNDRED AND TWENTY ;

WITH THEIR

ADDRESS

TO THE

People of this Commonwealth.



BOSTON :

PUBLISHED BY ORDER OF THE CONVENTION.

Russell and Gardner, Printers.

.....
1821.

Commonwealth of Massachusetts.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND TWENTY.

IN the Convention of the Delegates of the People, assembled at Boston, on the third Wednesday of November, in the year of our Lord one thousand eight hundred and twenty, for the purpose of Revising and Amending the Constitution of this Commonwealth, pursuant to an Act of the General Court, passed on the sixteenth day of June, in the year aforesaid :

Resolved, That the following Articles of Amendment of the Constitution of the Commonwealth, which have been made and proposed by this Convention, and which are numbered progressively from one to fourteen inclusive, shall be submitted to the people for their ratification and adoption ; and if the said Articles, or any one or more of them, shall be ratified by the people, in the manner hereinafter prescribed, the Articles so ratified, shall become a part of the Constitution of this Commonwealth.

Resolved, That the people shall be assembled for the purpose aforesaid, in their respective Towns and Districts, in meetings to be legally warned, and held on the Second Monday of April next ; at which meetings, all the inhabitants qualified to vote for Senators or Representatives in the General Court, may give in their votes by ballot, for or against each of the said Articles of Amendment : *Provided*, that in every Town containing not more than six thousand inhabitants, the votes may be given on each Article by hand vote, or otherwise, as the Selectmen of the respective Towns may order and direct, in the warrant for calling such meeting. And the Selectmen of the respective Towns and Districts shall preside at such meetings, and shall in open meeting, receive, sort, count and declare the votes of the inhabitants for and against each of the said Articles ; and the Clerks of the said Towns and Districts shall record the said votes, and true returns thereof shall be made out under

the hands of the Selectmen, or the major part of them, and of the Clerk; and the Selectmen shall inclose, seal and deliver the said returns to the Sheriff of the County, within fifteen days after the said meetings, to be by him transmitted to the office of the Secretary of the Commonwealth, on or before the fourth Wednesday of May next; or the Selectmen shall themselves transmit the same to the said office on or before the day last mentioned.

Resolved, That a Committee of this Convention, shall meet at the State House, in Boston, on the said fourth Wednesday of May, and shall open and examine the votes then returned as aforesaid, and shall, as soon as may be, certify to His Excellency the Governor, and also to the General Court, the number of votes so returned, for and against each of the said Articles of Amendment.

Resolved, That each of the said Articles shall be considered as a distinct Amendment, to be adopted in the whole, or rejected in the whole, as the people shall think proper. And in case the votes are given by ballot, every person qualified to vote as aforesaid, may express his opinion on each Article, as designated by its appropriate number, without specifying in his ballot the contents of the Article, and by annexing to each number the word YES, or NO, or any other words of the same import; but the whole shall be written or printed, on one ballot, in substance as follows, to wit:

AMENDMENTS

Article First,	-	-	-	-	-	[Yes or No.]
Article Second,	-	-	-	-	-	[Yes or No.]
Article Third,	-	-	-	-	-	[Yes or No.]
Article Fourth,	-	-	-	-	-	[Yes or No.]
Article Fifth,	-	-	-	-	-	[Yes or No.]
Article Sixth,	-	-	-	-	-	[Yes or No.]
Article Seventh,	-	-	-	-	-	[Yes or No.]
Article Eighth,	-	-	-	-	-	[Yes or No.]
Article Ninth,	-	-	-	-	-	[Yes or No.]
Article Tenth,	-	-	-	-	-	[Yes or No.]
Article Eleventh,	-	-	-	-	-	[Yes or No.]
Article Twelfth,	-	-	-	-	-	[Yes or No.]
Article Thirteenth,	-	-	-	-	-	[Yes or No.]
Article Fourteenth,	-	-	-	-	-	[Yes or No.]

And every Article that shall appear to be approved by a majority of the persons voting thereon, according to the votes returned and certified as aforesaid, shall be deemed and taken to be ratified and adopted by the people ; and all the Amendments, so ratified and adopted, shall be promulgated and made known to the people, in such manner as the General Court shall order.

Resolved, That a printed copy of these Resolutions, with the Articles of Amendment subjoined, shall be attested by the Secretary of this Convention, and transmitted by him, as soon as may be, to the Selectmen, Clerk and Delegate or Delegates of every Town and District in the Commonwealth.

AMENDMENTS.

ARTICLE THE FIRST.

The power and the duty of the Legislature, to require provision to be made for the institution of the public worship of God, and for the support and maintenance of public teachers, shall not be confined to Protestant teachers, but shall extend and be applied, equally, to all public christian teachers of piety, religion and morality; and shall also extend and be applied equally to all religious societies, whether incorporated or unincorporated.

All monies paid by the subject for the support of public worship and of the public teachers aforesaid, shall, if he require it, be applied to the support of the public teacher or teachers, if there be any, on whose instructions he attends, whether of the same, or of a different sect or denomination, from that of the parish or religious society, in which the said monies are raised.

Provided, That all taxes assessed for the support of public worship, and of the public teachers aforesaid, upon the real estate of any non-resident proprietor or proprietors, shall be applied towards the support of public worship in the town, precinct, or parish, by which such taxes are assessed; unless such proprietor or proprietors shall be resident within this Commonwealth, and shall be of a different sect or denomination of christians from that of the town, precinct, or parish by which such taxes are assessed.

The clause in the third article of the Declaration of Rights, which invests the Legislature with authority to enjoin, on all the subjects of Commonwealth, an attendance upon the instructions of public teachers, shall be, and hereby is annulled.

No person shall be subjected to trial for any crime or offence, for which, on conviction thereof, he may be exposed to imprisonment, or to any ignominious punishment, unless

upon presentment or indictment by a Grand Jury ; except in cases which are or may be, otherwise expressly provided for by the statutes of the Commonwealth. And every person charged with any crime or offence, shall have a right to be fully heard in his defence by himself and his counsel.

ARTICLE THE SECOND.

The Political Year shall begin on the First Wednesday of January, instead of the Last Wednesday of May ; and the General Court shall assemble every year on the said First Wednesday of January, and shall proceed, at that session, to make all the elections, and do all the other acts, which are by the Constitution required to be made and done at the session which has heretofore commenced on the Last Wednesday of May. And the General Court shall be dissolved on the day next preceding the First Wednesday of January, without any proclamation, or other act of the Governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary.

The Governor, Lieutenant Governor, and Counsellors, shall also hold their respective offices for one year next following the First Wednesday of January, and until others are chosen and qualified in their stead.

The meetings for the choice of Governor, Lieutenant Governor, and Senators, shall be held on the Second Monday of November, in every year, instead of the First Monday of April ; and the Members of the House of Representatives shall also be chosen at the same meetings ; but the meetings may be adjourned, if necessary, for the choice of Representatives to the next day, and again to the next succeeding day, but no further. Provided, however, that such town, or towns and districts, as are or may be united for the choice of a Representative, may hold their meetings for that purpose at such time, and in such manner, as the General Court shall hereafter direct.

All the other provisions of the Constitution, respecting the elections and proceedings of the Members of the General Court, or of any other officers or persons whatsoever, that have reference to the Last Wednesday of May, as the commencement of the political year, shall be so far altered as to have the like reference to the First Wednesday of January.

This Article shall go into operation on the fourth day of July, in the year of our Lord one thousand eight hundred and twenty one, and the Governor, Lieutenant Governor, Counsellors, Senators, and Representatives, and all other state officers who are chosen annually, and who shall be chosen for the year of our Lord one thousand eight hundred and twenty one, shall hold their respective offices, until the First Wednesday of January, in the year of our Lord one thousand eight hundred and twenty two, and until others are chosen and qualified in their stead ; and the first election of the Governor, Lieutenant Governor, Senators, and Representatives, to be had in virtue of this Article, shall be had on the Second Monday of November, in the year of our Lord one thousand eight hundred and twenty one.

ARTICLE THE THIRD.

If any Bill, or Resolve, shall be objected to, and not approved by the Governor ; and if the General Court shall adjourn within five days after the same shall have been laid before the Governor for his approbation, and thereby prevent his returning it with his objections, as provided by the Constitution ; such Bill, or Resolve, shall not become a law, nor have force as such.

ARTICLE THE FOURTH.

The General Court shall have full power and authority to erect and constitute municipal or city governments, in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof, such powers, privileges and immunities, not repugnant to the Constitution, as the General Court shall deem necessary or expedient, for the regulation and government thereof ; and to prescribe the manner of calling and holding public meetings of the inhabitants, in Wards, or otherwise, for the election of officers under the Constitution, and the manner of returning the votes given at such meetings. Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants ; nor unless it be with the consent, and on the application, of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose. And provided, also, that all by-laws, made by such municipal or city gov-

ernment, shall be subject, at all times, to be annulled by the General Court.

ARTICLE THE FIFTH.

There shall be annually elected, in the manner prescribed by the Constitution, thirty six persons to be Senators, instead of forty persons, as heretofore required; and not less than nineteen members of the Senate shall constitute a quorum for doing business.

The number of districts into which the Commonwealth shall be divided for the purpose of electing Senators, shall never be less than ten, and the Senators shall be so apportioned, among the said districts, as that no district shall elect more than six; and no county shall be divided for the purpose of forming such a district.

The several counties in the Commonwealth shall be districts for the choice of Senators; excepting that the counties of Hampshire, Franklin and Hampden, shall together form one district for the purpose; and also, that the counties of Barnstable, Nantucket and Dukes' County, shall together form one district for the purpose; and the said districts shall be respectively entitled to elect the following number of Senators, to wit:

Suffolk,	- - - - -	Six.
Essex,	- - - - -	Six.
Middlesex,	- - - - -	Four.
Worcester,	- - - - -	Five.
Hampshire, Franklin and Hampden,	-	Four.
Berkshire,	- - - - -	Two.
Plymouth,	- - - - -	Two.
Bristol,	- - - - -	Two.
Norfolk,	- - - - -	Three.
Barnstable, Nantucket and Dukes' County,	-	Two.

And the foregoing arrangement of the districts and apportionment of the Senators among them, shall remain in force until altered by the General Court according to the provisions of the Constitution.

The Members of the House of Representatives shall be elected in the following manner. Every corporate town containing twelve hundred inhabitants, may elect one Repre-

sentative ; and twenty four hundred inhabitants shall be the mean increasing number which shall entitle a town to an additional Representative.

In every case where any town is now united to any other town, or to a district, for the purpose of electing a Representative, such towns and districts, so united, are and shall be respectively considered as one town, in all things respecting the election of Representatives, as provided for in this article.

Every corporate town, containing less than twelve hundred inhabitants, shall be entitled to elect one Representative, every other year only, excepting the years in which the valuation of estates within the Commonwealth shall be settled, when each of said towns shall be entitled to send a Representative ; but the Legislature of that year shall never appoint the year in which the next valuation shall be taken or settled.

And the Legislature, at their first session, after the census which is now taking under the authority of the United States shall be completed, and after every subsequent census which shall be taken as aforesaid, or under the authority of this Commonwealth, shall divide the towns in each county, where there are more than one, which, according to the provisions of this article, shall not be entitled to send a Representative every year, into two equal classes ; the first of which shall comprise half the towns in number, and those which contain the greatest population, and each town in this class may elect a Representative the first year after they are so classed.

The second class shall consist of the other corporate towns in the county not entitled to send a Representative every year, each of which may elect a Representative the second year after they are classed, and if there be an uneven number of such towns in any county, the largest number shall be placed in the second class, and the towns so classed may each thereafter continue to elect one Representative every other year, excepting as aforesaid. *Provided*, that the Legislature may place in different classes any two adjoining towns which may happen to be in the same class, upon their application for that purpose. And each of said classed towns shall be entitled to elect a Representative every year, when such towns shall have the number of inhabitants

which shall entitle other towns to elect one Representative, according to the provisions of this article.

And if any two towns, herein directed to be classed, shall wish to be united, and elect a Representative together every year, instead of electing one separately every other year, the Legislature, upon their application for that purpose, shall so unite them, and prescribe the time and place of holding their meetings for the election of their Representatives, and the manner in which their choice shall be certified by the Selectmen of both or either of said towns; and such towns shall continue so united until the inhabitants of one of them shall have increased to such a number as shall entitle it separately to send a Representative; or until one of said towns, by a vote of a major part of the legal voters therein, shall apply to the Legislature to separate them, whereupon it shall be their duty so to do, and to class them in the same manner as they then would and ought to be classed, if they had never been united.

And to prevent the House of Representatives becoming too numerous, the number of inhabitants which shall entitle a town to elect one Representative, and the mean increasing number which shall entitle it to elect more than one, shall be proportionally increased in the year of our Lord one thousand eight hundred and thirty two, and every tenth year afterwards, so that the House of Representatives shall never consist of more than two hundred and seventy five members, excepting in those years in which the valuation is settled. And if any town which contains twelve hundred inhabitants and upwards, shall in the year of our Lord one thousand eight hundred and thirty two, or in any tenth year afterwards, be found not to contain the number of inhabitants, which according to the provision aforesaid, shall be requisite to entitle it to send a Representative every year, such town shall be classed by the Legislature, and shall thereafter be entitled to send a Representative every other year only, until it shall have a competent number to entitle it to send a Representative every year; and no town, which shall be entitled to send a Representative every other year, shall ever be deprived of that privilege.

Every town which shall hereafter be incorporated, shall be entitled to send one Representative, when it shall contain twenty four hundred inhabitants, and not before.

The members of the House of Representatives shall be paid out of the Treasury of the Commonwealth for their attendance in the General Court during the session thereof.

Not less than one hundred members of the House of Representatives, shall constitute a quorum for doing business.

No member of the Senate or House of Representatives shall be arrested on mesne process, warrant of distress, or execution, during his going unto, returning from, or attendance in the General Court.

The Council for advising the Governor in the executive part of Government, shall consist of seven persons, besides the Lieutenant Governor, instead of nine persons; and four of said Council shall constitute a quorum for doing business, instead of five of them as heretofore required.

The Counsellors shall be annually chosen from among the people at large, excluding members of the Senate and House of Representatives, on the first Wednesday in January, by the joint ballot of the Senators and Representatives assembled, in one room, who shall as soon as may be, in like manner, fill up any vacancies that may happen in the Council, by death, resignation or otherwise. The Counsellors shall have the same qualifications in point of property and residence within the Commonwealth as are required for Senators; and not more than one Counsellor shall be chosen out of any one Senatorial district in the Commonwealth.

In case any person who may be elected a Counsellor, shall not attend seasonably to take and subscribe the oaths prescribed by the Constitution, in the presence of the two Houses of the General Court, at the session thereof, at which he shall be elected, he may take and subscribe the same before the Governor alone, or before the Lieutenant Governor and any one of the Council, who shall have been previously qualified.

ARTICLE THE SIXTH.

Every male citizen, of twenty one years of age and upwards, (excepting paupers and persons under guardianship) who shall have resided within the Commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months, next preceding any election of Governor, Lieutenant Governor, Senators or Repre-

sentatives, and who shall have paid by himself or his parent, master or guardian, any state or county tax, which shall within two years next preceding such election, have been assessed upon him in any town or district of this Commonwealth; and, also, every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above mentioned, shall have a right to vote in such election of Governor, Lieutenant Governor, Senators and Representatives, and no other person shall be entitled to vote in such elections.

ARTICLE THE SEVENTH.

Notaries public shall be appointed by the Governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the Governor, with the consent of the Council, upon the address of both houses of the Legislature.

In case the office of Secretary or Treasurer of the Commonwealth shall become vacant from any cause during the recess of the General Court, the Governor, with the advice and consent of the Council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same, until a successor shall be appointed by the General Court.

Whenever the exigencies of the Commonwealth shall require the appointment of a Commissary General, he shall be nominated, appointed and commissioned in such manner as the Legislature may by law prescribe.

All officers commissioned to command in the militia, may be removed from office in such manner as the Legislature may by law prescribe.

ARTICLE THE EIGHTH.

In the elections of Captains and Subalterns of the Militia, all the members of their respective companies, as well those under, as those above the age of twenty one years, shall have a right to vote.

ARTICLE THE NINTH.

Justices of the Peace may be removed from office like other judicial officers, by the Governor with the consent of the Council, upon the address of a majority of the members present of each House of the Legislature ; but no address for the removal of any Judicial officer shall pass either House of the Legislature, until the causes of such removal are first stated and entered on the journal of the House in which it shall originate, and a copy thereof served on the person in office, so that he may be admitted to a hearing in his defence before each of said Houses.

The Governor and the two branches of the Legislature respectively, shall not hereafter be authorized to propose questions to justices of the Supreme Judicial Court, and require their opinions thereon.

ARTICLE THE TENTH.

The rights and privileges of the President and Fellows of Harvard College, and the Charter and Constitution thereof, and of the Board of Overseers as at present established by law, are hereby confirmed, with this further provision, to wit, that the Board of Overseers in the election of ministers of churches to be members of said board, shall not hereafter be confined to ministers of churches of any particular denomination of christians.

ARTICLE THE ELEVENTH.

Instead of the oath of allegiance prescribed by the Constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military under the Government of this Commonwealth, before he shall enter on the duties of his office, to wit :

“I A. B. do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof. *So help me God.*”

Provided, that when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word “swear” and inserting instead thereof, the word

“affirm,” and omitting the words “So help me God,” and subjoining instead thereof, the words “This I do, under the pains and penalties of perjury.”

ARTICLE THE TWELFTH.

No oath, declaration or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the Governor, Lieutenant Governor, Counsellors, Senators, or Representatives, to qualify them to perform the duties of their respective offices.

ARTICLE THE THIRTEENTH.

No Judge of any Court in this Commonwealth, (except the Court of Sessions) and no person holding any office under the authority of the United States (Postmasters excepted) shall at the same time hold the office of Governor, Lieutenant Governor, or Counsellor, or have a seat in the Senate or House of Representatives of this Commonwealth; and no Judge of any Court in this Commonwealth, (except the Court of Sessions) nor the Attorney General, Solicitor General, County Attorney, Clerk of any Court, Sheriff, Treasurer and Receiver General, Register of Probate, nor Register of Deeds, shall continue to hold his said office after being elected a Member of the Congress of the United States, and accepting that trust; but the acceptance of such trust, by any of the officers aforesaid shall be deemed and taken to be a resignation of his said office, and Judges of the Courts of Common Pleas shall hold no other office under the government of this Commonwealth, the office of Justice of the Peace and Militia Offices excepted.

ARTICLE THE FOURTEENTH.

If at any time hereafter any specific and particular amendment or amendments to the Constitution be proposed in the General Court, and agreed to by a majority of the Senators and two thirds of the members of the House of Representatives present and voting thereon; such proposed amendment or amendments shall be entered on the Journals of the two Houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if in the General Court next

chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the Senators and two thirds of the members of the House of Representatives present and voting thereon ; then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people, and if they shall be approved and ratified by a majority of the qualified voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the Constitution of this Commonwealth.

FORM OF THE RETURN.

Commonwealth of Massachusetts.

Town of

County of

At a legal meeting of the Freeholders and other inhabitants of the town of _____ *qualified to vote for Senators or Representatives, holden on the second Monday of April, A. D. 1821, pursuant to a Resolution of the Convention of Delegates, assembled at Boston, on the 15th November, A. D. 1820, for the purpose of revising the Constitution of the Commonwealth,*

“The votes on the several amendments submitted by the Convention, were as follows :

Article First, - - -	Yeas,	Nays.
Article Second, - - -	Yeas,	Nays.
Article Third, - - -	Yeas,	Nays.
Article Fourth, - - -	Yeas,	Nays.
Article Fifth, - - -	Yeas,	Nays.
Article Sixth, - - -	Yeas,	Nays.
Article Seventh, - - -	Yeas,	Nays.
Article Eighth, - - -	Yeas,	Nays.
Article Ninth, - - -	Yeas,	Nays.
Article Tenth, - - -	Yeas,	Nays.
Article Eleventh, - - -	Yeas,	Nays.
Article Twelfth, - - -	Yeas,	Nays.
Article Thirteenth, - - -	Yeas,	Nays.
Article Fourteenth, - - -	Yeas,	Nays.

B. C. }
 D. E. } *Selectmen.*
 F. G. }

ATTEST.....A. B. *Town Clerk.*



ADDRESS.

FELLOW CITIZENS:

IT was provided in the Constitution, established in the year one thousand seven hundred and eighty, that a revision might be had, after an experiment of fifteen years. When these years had elapsed, the people declared that they were satisfied; and that they desired no change. The same satisfaction was manifested during the next twenty five years, and would probably have still continued, if the separation of *Maine*, from *Massachusetts*, had not made it proper, to take the opinion of the people, on the expediency of calling a *Convention*.

It appeared that not one *fourth part* of the qualified voters in the State, saw fit to express any opinion; and that of the eighteen thousand three hundred and forty nine votes given in, six thousand five hundred and ninety three, were *against* a revision.

We have inferred from these facts, that you did not desire any *important*, and *fundamental changes*, in your frame of Government; and this consideration has had its just influence on our deliberations, in revising every part of the Constitution, which we were required to do, by the words of the law, under which we are assembled.

We have kept in view that the will of the majority can alone determine what the Powers of Government shall be, and also the manner in which these powers shall be exercised; and that it is, consequently, your *exclusive* right to decide, whether all, or any of the Amendments, which we think expedient, shall be adopted, or rejected.

In the performance of our duty, we have been mindful of the character of MASSACHUSETTS; and, that the profit of *experience* is justly valued, and that the precious right of *self government* is well understood, in this community. Perfect unanimity is not to be expected in a numerous assembly. Whatever difference of opinion may have occurred, as to expediency, there has been no difference as to the ul-

timate object, viz.: the public security and welfare. If we have not all agreed in every measure which we recommend, we are satisfied, that natural, and honest difference of opinion, must ever prevent, in a like numerous meeting, greater accordance than has prevailed among us.

Every proposed change or amendment has been patiently, and fairly examined, and has been decided upon, with the utmost care, and solicitude to do right.

We have the fullest confidence that you will take these things into view, when you perform the serious duty of deciding, for yourselves, and for successive generations, on the result of our efforts.

In framing a Constitution, or revising one, for an extensive Commonwealth, in which various interests are comprised, nothing more can be hoped for, than to establish *general rules*, adapted to *secure the greatest good for the whole society*. The revised Constitution, which we now respectfully submit to you, can only be considered as *one general Law*, composed of connected, and dependent parts. If any one part, considered by itself, seem not to be the best that could be, its merit, and the justice of its claim to approbation can be known only by its *connexion* in the system, to which it appertains.

With these remarks we beg leave to state the Amendments which we have agreed on, and our reasons for having done so.

THE DECLARATION OF RIGHTS.

It is known to us, that the EMINENT MEN who framed the Constitution under which we have lived, bestowed on the only article of the Declaration of Rights, which has occasioned much discussion among us, the greatest attention. They appear to have considered RELIGION in a twofold view; *first*, as directory to every rational being, in the duties which he owes to the CREATOR OF THE UNIVERSE; but leaving to every one, to decide for himself, on the manner in which he shall render his homage, avow his dependence, express his gratitude, and acknowledge his accountability; and, *secondly*, as a SOCIAL DUTY, prescribing rules to men, in their intercourse with each other, as members of the same family. They held social worship to be most intimately connected with social welfare. They believed moral excellence, to be no less the effect

of example, and of habit, than of precept. They seem to have been convinced, that in proportion as the members of civil society, are impressed with reverence for the social rules, contained in REVEALED RELIGION, will they be faithful in performing those obligations, on which political happiness depends. Upon such principles they rested those provisions which require an habitual observance of the SABBATH, and the support of *public teachers* in the sacred offices of that day. In all these sentiments we do most heartily concur.

But we have thought it necessary to propose some changes in the *third article*.

The public sentiment on that part of the article, which invests the Legislature with authority to enjoin attendance on public worship, has long been definitely expressed, and is well understood; and we, therefore, propose that so much of this article as relates to this subject, should be annulled.

We are also of opinion that members of all religious societies, ought to have the right and privilege, to join, and worship with, any other society of the same denomination; as they now have the right to join themselves to any society, of a different denomination from that with which they have worshipped; furthermore, that the power, and duty, of the Legislature to require provision to be made for the institution of *public worship*, and for the support, and maintenance, of *public teachers*, should extend, and be applied, as well to societies, which are unincorporated, as to those which are incorporated.

We recommend also, a provision, that all taxes assessed for the support of public worship, upon real estate, of any non resident proprietor, shall be applied towards the support of public worship, in the town, precinct, or parish, by which such taxes are assessed; unless, such proprietor shall be resident within the Commonwealth, and shall be of a different denomination of Christians from that of the town, precinct, or parish, by which such taxes are assessed.

We propose further to amend the Declaration of Rights so as to provide, that persons on trial for *crimes*, may be heard by themselves, *and* counsel; instead of themselves *or* counsel, as the article now stands.

We propose another amendment, that no person shall suffer imprisonment, or other ignominious punishment, on official information; nor unless on indictment by a Grand Jury; except in cases expressly provided for by law. This

amendment takes from public prosecutors, the common law right to arraign of their own authority, any citizen for misdemeanors, or crimes, without the intervention of a Grand Jury, representing the people of each county.

ALTERATION OF THE POLITICAL YEAR.

We recommend that there should be ordinarily but *one session* of the GENERAL COURT in a year. We believe that one is sufficient; that the expense of legislation will be thereby diminished, and that it will be convenient to bring the common, and the political year into conformity.

A necessary consequence of this change, is an alteration of the time of *holding elections*; the day, most convenient for this purpose, in the opinion of the Convention, is the *second Monday of November*. We propose that all the elections of State Officers, which are to be made by the people, shall be made on that day. This provision will lessen the number of days, which, by our present Constitution, must be devoted to elections. It will, we believe, induce a fuller attendance of the people, and a more certain expression of the public voice, in the important duty of choosing public officers.

ELECTORS.

We are satisfied that the qualifications as now required in *Electors*, produce some inconveniencies, and are liable to some abuses. After a patient investigation of this subject, we have concluded that a residence of *twelve months* within the State, and of *six months* in a town, or district, next preceding an election, and payment of a *State or County Tax* in the Commonwealth, constitute an uniform, and intelligible rule, as to the right of voting; and we propose the adoption of this rule, in all elections of State Officers, and the abolition of all other qualifications now required.

We believe that the change, which we recommend in this respect, will relieve *Selectmen* from much perplexity, and will enable them easily to distinguish between those who have a right to vote, and those who have not.

THE SENATE.

After the most careful, and faithful examination of the principles of government, we have not found it expedient to change the basis on which the *Senate* was placed, by the Constitution which we have revised. It is an admitted prin-

ciple, that the legislative power should be given to *two distinct assemblies*, each having an absolute negative on the other.

In considering this subject, we have distinguished between THE PEOPLE, of whom we are ourselves a part, and those who may be chosen *to legislate*. It is the *people* who are to be secured, in their rights and privileges, by a Constitution, and not their *public servants*. This object can only be effected by a clear, and permanent limitation, of the power which is to be exercised.

THE PEOPLE may impart whatsoever power they see fit. Their security consists in doing this in such manner, that the trust which they create may not be abused, nor the public welfare betrayed. It is therefore wise to provide for frequent elections; and to require certain qualifications in the elected; and the concurrence of different legislative branches on all public laws; and so to constitute those branches, as that no act shall obtain their joint approbation, which is not intended to promote the common welfare.

All free governments, of modern times, have found it indispensable, not only to have two distinct legislative branches, but to place them on such different foundations, as to preclude, as much as possible, all such dangerous sympathy, and union, as may govern, and direct, the will of a single assembly.

If the number of inhabitants be the rule by which the members of the two branches are to be apportioned, and ALL are to be chosen at the same time, and by the same electors, we think, that the safety which the Constitution is intended to effect, may not, always, be obtained. If an election should take place when very strong, and general excitements are felt, (and from *such*, no human society can be, always, exempt) there would be little to choose between placing Legislators so elected, in the same, or in two different assemblies.

We repeat, that the *people's agents* ought ever to be distinguished, in settling a frame of government, from THE PEOPLE themselves; and that no more should be hazarded, on the manner, in which power may be used, than necessarily must be, to give power enough to do that which should be done.

The mode in which the two branches should be constituted, to secure THE CHECK, which we consider to be so *highly important*, is the only point, as to the *Senate*, which has been much discussed among us.

In some of the States, in our national confederacy, elections for two, or more years, have been adopted, as a security for the independence, and fidelity of Senators. In others of them, a Senator must have a large landed estate; in others, such an estate is a required qualification in electors; and in some, a landed estate is required, both in the elector, and the Senator.

The basis adopted in the Constitution of this State is, that Senators shall be apportioned, throughout the State, according to the amount of public taxes paid in Districts of the State. That is, that the *liability* to be TAXED, shall be accompanied by the *right* to be REPRESENTED. We have not heard that this principle has been complained of by the people; nor do we believe it is justly exceptionable, in itself: on the contrary, the experience of FORTY YEARS entitles it to the most entire respect, and confidence. We have not thought it expedient, nor do we believe, that you expected of us, to make any *fundamental change* in this department. We have done no more than to make the necessary provision as to *Districts*, and to fix *the number* of Senators. We recommend that the number should be THIRTY SIX; this number can be more conveniently distributed than any other throughout the State. A smaller number is not sufficient to perform the duty required of the Senate; nor should the power of negating the will of the *House of Representatives*, be confided to a *smaller* number.

THE HOUSE OF REPRESENTATIVES.

We have found great difficulty in amending the *Representative system* in a satisfactory manner. We have all agreed that whether the Representatives are few, or many, Representation should be according to population in this branch. It was the general opinion, that the *number* should be *reduced*; that *town representation* should be preserved; that *payment* should be made from the *State Treasury*. Such mode of payment has been repeatedly voted in the *House*, and on one occasion it obtained the concurrence of the *Senate*. There is reason to believe that it *will become* the established mode of payment. But if it be so, and the present system of representation continues, the expense must soon become an *insupportable burthen*. A House composed of *one hundred*, or *one hundred and fifty members*, may be fully sufficient for all purposes of legislation; but so great

a reduction could not be made, without dividing the State into *Districts*, and consequently giving up *representation by towns*.

We endeavoured, in the system which we submit to you—1. *To reduce the number*—2. *To preserve the privileges of town representation*—3. *To provide for payment out of the State Treasury*—4. *To ensure a general, and constant attendance of the members throughout the session*.

To accomplish these objects, we recommend that *twelve hundred Inhabitants* should have *ONE Representative*, and that *twenty four hundred*, be the mean increasing number for every *additional Representative*.

But as nearly *one half* of the towns in the State contain on an average, about *eight hundred Inhabitants*, we propose that these towns should each choose a Representative, *every other year*, and that they should be divided, by the Legislature, into two classes for this purpose; one or the other of which classes will choose *every year*.

To show the application of this system; about *seventy four Representatives* will come, *every year*, from the *classed towns*, which will be one Representative for every *sixteen hundred and thirty two Inhabitants* in *all* the classed towns; from those towns containing between *twelve hundred and twenty four hundred*, will come *one Representative* for every *sixteen hundred and fifty Inhabitants*; from those towns containing more than *thirty six hundred Inhabitants* will come one Representative for every *twenty four hundred Inhabitants*. These calculations, (necessarily taken from the census of the year 1810) are not precisely accurate; but they are sufficiently so to show the effect of the system.

It is apparent that towns having between *twelve hundred*, and *thirty six hundred Inhabitants*, can send but *one Representative*; and that there will be large fractions in some of these towns. *Perfect equality* is not attainable under any system. There are fewer inequalities in the proposed system, than in any which we have been able to form, IF the four objects which we have mentioned, are to be provided for; and we believe that the progress of population, will constantly diminish those inequalities which may now exist.

We propose that in those years in which the *valuation* is settled, *every town* shall be represented.

By the proposed system the number of Representatives

will be about *two hundred and sixty*. We have thought it proper to offer to you further provisions, intended to prevent an increase, in the number of Representatives, over *two hundred and seventy five*, in any future time. This may easily be done, by empowering the Legislature to *augment the ratio*, after successive enumerations of the Inhabitants. There was very little difference of opinion among us on the expediency of providing, that no town shall be hereafter incorporated with the right of sending a Representative, unless it contain twenty four hundred Inhabitants.

If you are not willing to *District* the Commonwealth to elect members of the House; if you are not willing to continue the present mode of numerous representation, with the liability to the *enormous expense* which would accrue from paying out of the public Treasury, some such system as we propose must be resorted to. We will not say that this is *the best* that could be; but we may justly say, that we have spared no exertion to form, and to present to you, *the best which we could devise*.

LIEUTENANT GOVERNOR AND COUNCIL.

We recommend that the *Lieutenant Governor* should have the like qualifications as are required in the *Chief Magistrate*, for the obvious reason, that the duties of the Executive Department may devolve on him.

During the last fifteen years *the Counsellors* have been chosen by the Legislature, from the people at large, after an election, from among those citizens, who were returned as Senators and Counsellors, followed by resignation. Experience has shewn no inconvenience in this mode of election; and we have deemed it to be proper, so to amend the Constitution, as to *establish* this mode. This change, which, we propose, is, in effect, nothing more, than doing away the useless form of choosing from the Senate. We did not prefer to elect Counsellors by a *general ticket*, because we believe, that there would be some difficulty *in agreeing on candidates*; and that the electors, throughout the State, would not have such knowledge of candidates, as would enable them to exercise the right of suffrage in a manner satisfactory to themselves. We did not prefer to choose Counsellors in *Districts*, because we were of opinion, that it would not be agreeable to the citizens to be *associated* to exercise the right of suffrage, on this occasion, as they

would not be so united, on any other ;—and that it would be a useless labor and expense to form such districts, and an unnecessary burthen on the people to meet and vote in them.

We conceive, that a choice by the Legislature, is a choice by the people, through the agency of their public servants. That *Counsellors* so chosen, and who enter on the duties assigned to them, as soon as they are chosen, will be more independent of the *Chief Magistrate*, and more independent of those who desire executive favor, than if chosen in any other mode, though not less responsible to the people, because elected by the joint ballot of the two Houses. We have all concurred in opinion, that more than seven *Counsellors* are not necessary.

THE JUDICIARY.

In the JUDICIAL DEPARTMENT, we think TWO amendments are expedient. 9th

An *independent Judiciary* is a fundamental principle of a *free government*. We cannot so well express our sentiments, on this important subject, as by referring to the *twenty ninth* article of the Declaration of Rights.

It is there said, “*It is the right of every citizen to be tried by Judges as free, impartial, and independent, as the lot of humanity will admit :—*” and therefore, “*that Judges should hold their offices as long as they behave themselves well.*”

THE JUDGES have *not* such tenure of office, unless the Constitution be understood to mean, that they are not liable to *removal*, until they have had an opportunity to show that the alleged causes for removal, are unfounded, or insufficient. The *Legislature* in removing a *Judge*, exercises not only a discretionary, but a *Judicial* power. Judgment cannot justly be given, in any case, affecting any interest, even of the humblest citizen, unless the cause has been first stated, and it has been permitted to him to show, what he considers to be the truth of his case.

It cannot, then, be consistent with the plainest principles of justice, that the *public functions* of a citizen, and perhaps his *reputation*, may be taken from him, without any other notice from those who may exercise such power, than that they *have exercised it*, and that his relation to the public has ceased.

In whatever estimation we may hold the rights, and interests, of any individual who sustains a high Judicial

office, it is rather the *public right*, and *interest*, which move us to propose the subjoined amendment.

THE PEOPLE can have no *dearer interest* in any thing pertaining to Government, than in the *interpretation of the Laws*; and in the *administration of Justice, affecting life, liberty, property, and character*. The Constitution, with the *explanatory* amendment which we propose, secures to the people the unquestionable right of removing *the unfit, the unworthy, and the corrupt*; while it secures to them the no less valuable right of preserving to themselves, *the able, the upright, and the independent* MAGISTRATE.

We propose, therefore, so to amend the Constitution as to require, that no Judicial Officer shall be removed from office, until the alleged causes of removal are stated on the records of the Legislature; nor until the individual, thereby affected, shall have had an opportunity to be heard.

In the second article of the third chapter it is provided; that *each Branch of the Legislature*, as well as the GOVERNOR and COUNCIL, shall have authority to require the opinion of *the Judges*, on important questions of law, and upon solemn occasions. We think this provision ought not to be a part of the Constitution; because, *First*, Each department ought to act on its own responsibility. *Second*, Judges may be called on to give opinions on subjects, which may afterwards be drawn into Judicial examination before them, by *contending parties*. *Third*, No opinion ought to be formed, and expressed, by any Judicial Officer, affecting the interest of any citizen, but upon full hearing, according to law. *Fourth*, If the question proposed, should be of a public nature, it will be likely to partake of a *political character*; and it highly concerns the people that Judicial Officers should not be involved in political or party discussions.

We, therefore, recommend that this *second article*, should be annulled.

SECRETARY AND TREASURER.

We recommend that the Executive should be empowered to fill vacancies occurring in these departments, during the recess of the General Court; until a constitutional election is made.

MILITIA.

We propose that the office of *Commissary General* should not be filled by legislative election; nor in any other manner, excepting as the Legislature may by law provide; if such an officer should, hereafter, be necessary.

As MINORS are required by law to perform *military duty*, and have consequently a direct interest in the qualifications for office, in those whom they are holden to obey, *the want of discretion*, which is legally affirmed of minors in other cases, is not applicable to this; and we have, therefore, proposed an amendment, which authorizes those minors who are enrolled, in the militia, *to vote* in the choice of officers.

To diminish expense in the militia service, and to secure able and faithful performance of duty therein, we think it expedient to empower the Legislature to provide, by law, for the removal of officers, in certain cases.

OATHS OF OFFICE.

We recommend that the oath of *abjuration* be abolished. However proper this oath may have been, while this country was maintaining its conflict for INDEPENDENCE, with the *mother country*, the success of that conflict, and the lapse of time, have rendered that oath inapplicable to our condition.

We have agreed that the declaration of *belief in the christian religion*, ought not to be required, in future; because we do not think *the assuming of civil office*, a suitable occasion for so declaring; and because it is *implied*, that every man who is selected for office, in this community, must have such sentiments of religious duty, as relate to his fitness for the place, to which he is called.

DISQUALIFICATIONS FOR OFFICE.

Some amendments are recommended in this division of the Constitution, founded on one, or other of these principles, viz.: *First*, to prevent the exercise, by the same individual, of those powers of government, which the Constitution ordains to be kept separate. *Secondly*, to preserve that distinction between the *National*, and *State Governments*, which the principles, on which these governments, are *relatively* founded, require.

NOTARIES PUBLIC.

7th
1814

No difference of opinion occurred, on the expediency of transferring the appointment of these officers, from the *Legislative*, to the *Executive* department.

HARVARD UNIVERSITY.

13th

We have thought it proper to inquire into the present state of this *ancient*, and *respectable Institution*; and have done this by the agency of a fully competent Committee. We have made this inquiry, because *this seminary* has experienced the patronage of Government from its earliest foundation; and was justly held to be worthy of appropriate constitutional provisions, by our predecessors. It appears that the powers conferred on *Harvard University*, have always been exercised, and that the duties required of it, have always been performed, with a sincere, and ardent desire, to promote the diffusion of useful knowledge; and to establish and preserve an honorable reputation in literature, and morals, in this community.

We have, however, thought it proper, with the consent, and approbation of the Corporation, and Overseers of the University, to propose to you, that the Constitution should be so amended as to make *Ministers of the Gospel, of any denomination, eligible to the office of Overseers.*

For further illustration of this *interesting subject*, we beg leave to refer to the *REPORT of the Committee*, which was read in Convention, and ordered to be published.

INCORPORATION OF CITIES.

facult

It appeared to us, that it would be convenient, and proper, that towns containing more than *twelve thousand inhabitants*, should on application, of their qualified voters, by petition to the Legislature, be incorporated, *with municipal, or city, powers, and privileges.* Without such powers, and privileges, the inhabitants of such towns, must continue to vote, in one meeting, *however numerous* they may become. This is already found to be an inconvenience in *two towns*, for the removal of which provision ought to be made. Under the limitations, and restrictions, which we have provided, we can see no reason why the power to incorporate, should not be vested in the Legislature. And we, therefore, recommend an alteration of the Constitution, so as to effect this purpose.

PROVISION FOR FUTURE AMENDMENTS.

It may be necessary, that *specific amendments* of the Constitution should hereafter be made. The preparatory measures in assembling a Convention, and the *necessary expense* of such an assembly, are obstacles of some magnitude, to obtaining amendments through such means; we propose that whenever *two thirds of the House of Representatives*, and a *majority of the Senate*, in *two successive Legislatures*, shall determine, that any specific amendment of the Constitution, is expedient, such proposed amendment shall be *submitted to the PEOPLE*; and if accepted, by the people, the Constitution shall be amended accordingly. We believe that the Constitution will be sufficiently guarded from *inexpedient* alterations, while all those which are found to be necessary, will be duly considered, and may be obtained, *with comparatively small expense*.

MODE OF SUBMITTING AMENDMENTS.

We have determined, that it is not expedient to make a new draft of the Constitution; we believe it would be more acceptable to you, to see the proposed amendments, *separately*. We therefore, send them to you in this manner; and *numbered successively*; and accompanied by a *form*, in which *assent*, or *dissent*, may be easily expressed, and made known.

You will perceive, that if the amendments are adopted, the amended Constitution will go into operation on the *fourth day of July, in the present year*; and that the *FIRST elections* will take place on the *second Monday of November next*; and that the State Officers, then chosen, will commence their official duties, on the *first Wednesday of January, next following*.

After due deliberation, we have decided, that it is most expedient, and proper, that a *large Committee of the Convention* shall be in session on the fourth Wednesday of May next, to receive the returns from the several towns; and that this Committee shall examine the returns, and certify the result, to the *Governor*, and to the *Legislature*; which will be in session on, and after the last Wednesday of May next. The Legislature will then declare to the people, in such manner as the Legislature may see fit, THE

WILL of the people on the amendments, which we submit to them.

We think this, FELLOW CITIZENS, a proper occasion to allude to those grateful sentiments, which we feel, in common with yourselves, for the *blessings* which have been experienced in this *highly favored community*.

That pious, virtuous, well informed men should have been inspired to seek a home on these shores, and should have been supported in all the perils inseparable from their enterprize; that their intelligence, and manly virtues, should have been transmitted through successive generations to descendants, who dared *to will*, and *to effect*, a termination of all *political connexion*, with a *powerful kingdom*; that these descendants should have been able, in the midst of war, and of civil dissention, to establish a REPUBLIC, *so wisely balanced*, as to accomplish every rational, and beneficent purpose which they had in view, are subjects which come to our recollection, *at this time*, with peculiar interest. We do *feel*, and it becomes us to *acknowledge*, that we are a favored, and a happy people, in our *national and domestic relations*;—and especially that while so much of the civilized world is struggling with serious and fearful difficulties, it is permitted to this community, peaceably to assemble, and to deliberate, and decide on the best means of securing, and perpetuating, *social BENEFITS*, and *unquestioned RIGHTS*.

Among the *duties of gratitude*, is that of showing, that we are worthy of *these blessings*, by conscientiously preserving them; among the *obligations* which are inseparably connected with these blessings, is that of transmitting them, to those who are to come, as faithfully, as they have been guarded for us.

In Convention, Jan. 9, 1821....Read and Accepted.

ISAAC PARKER, *President.*

BENJ. POLLARD, *Secretary.*

A true copy of the Address and Amendments.

ATTEST,

Benj Pollard *Secretary.*

