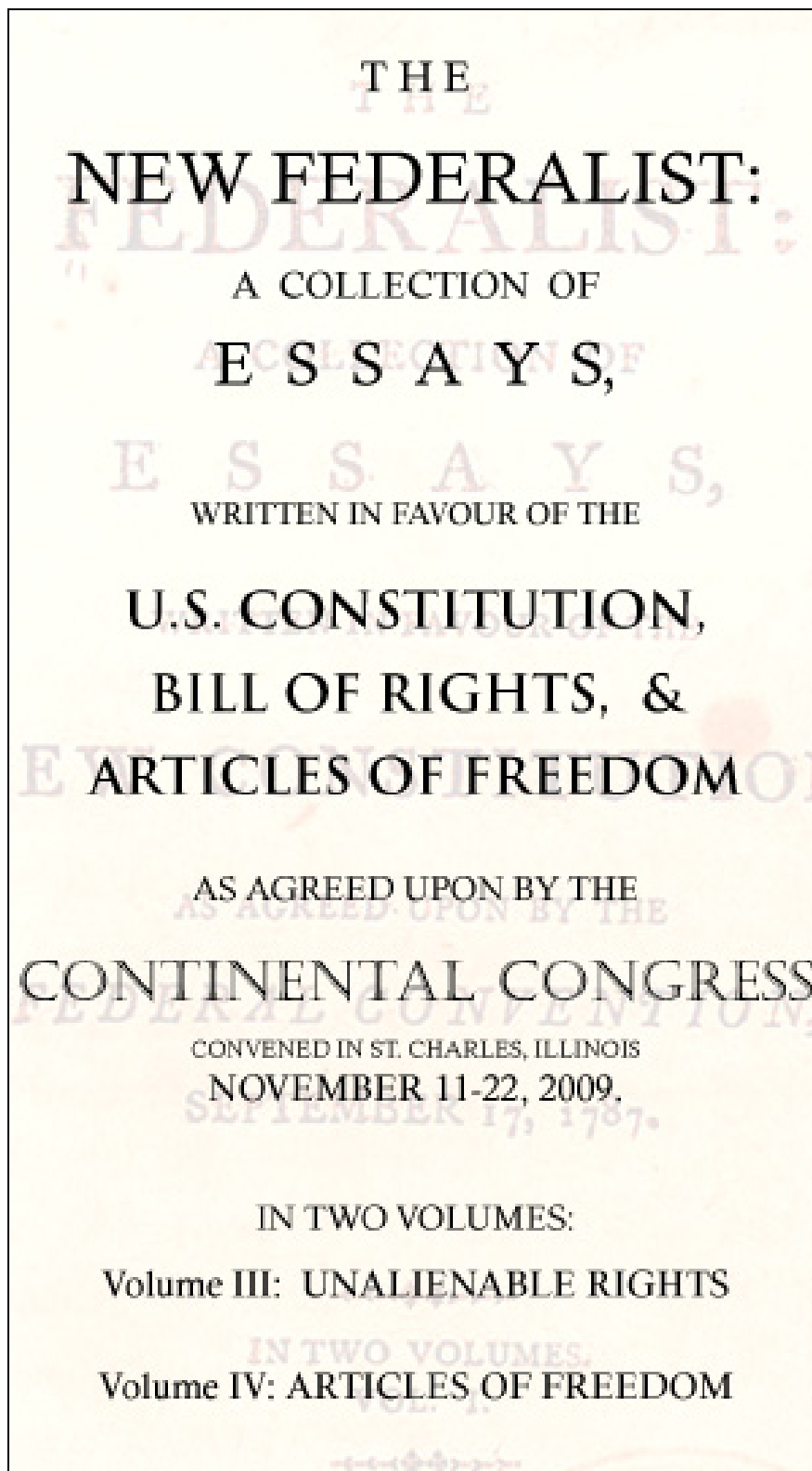


The New Federalist Papers, “Unalienable Rights”

- Publius, Essay 88, December 25, 2009



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Massachusetts

UNALIENABLE RIGHTS

“By the sword we seek peace, but peace only under liberty.”

On December 7, 1787, Delaware became the first state to ratify the Constitution. Over the next several weeks, four more states voted to adopt the New Constitution. While Pennsylvania, New Jersey, Georgia, and Connecticut did not make any recommendations for changes or amendments, Massachusetts’ delegates, sensing a rising concern that individual rights were not well-protected by the New Constitution, offered nine amendments they saw as crucial to the preservation of liberty. Massachusetts ratified the Constitution with the understanding that amendments would be made.

Two months later, on February 7, 1788, Massachusetts became the sixth state to ratify the Constitution, and the first to cite the need for amendments.

“And as it is the opinion of this Convention, that certain amendments and alterations in the said Constitution would remove fears, and quiet the apprehensions, of many of the good people of this commonwealth, and more effectually guard against an undue administration of the federal government, -the Convention do therefore recommend that the following alterations and provisions be introduced into the said Constitution:-

- I. That it be explicitly declared that all powers not expressly delegated by the aforesaid Constitution are reserved to the several states, to be by them exercised.*
- II. That there shall be one representative to every thirty thousand persons, according to the census mentioned in the Constitution, until the whole number of the representatives amounts to two hundred.*
- III. That Congress do not exercise the powers vested in them by the 4th section of the 1st article, but in cases where a state shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress, agreeably to the Constitution.*
- IV. That Congress do not lay direct taxes but when the moneys arising from the impost and excise are insufficient for the public exigencies, nor then until Congress shall have first made a requisition upon the states to assess, levy, and pay, their respective proportions of such requisition, agreeably to the census fixed in the said Constitution, in such way and manner*

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as the legislatures of the states shall think best; and in such case, if any state shall neglect or refuse to pay its proportion, pursuant to such requisition, then Congress may assess and levy such state's proportion, together with interest thereon at the rate of six percent per annum, from the time of payment prescribed in such requisition.

- V. *That Congress erect no company of merchants with exclusive advantages of commerce.*
- VI. *That no person shall be tried for any crime by which he may incur an infamous punishment, or loss of life, until he be first indicted by a grand jury, except in such cases as may arise in the government and regulation of the land and naval forces.*
- VII. *The Supreme Judicial Federal Court shall have no jurisdiction of causes between citizens of different states, unless the matter in dispute, whether it concerns the realty or personalty, be of the value of three thousand dollars at the least; nor shall the federal judicial powers extend to any actions between citizens of different states, where the matter in dispute, whether it concerns the realty or personalty, is not of the value of fifteen hundred dollars at least.*
- VIII. *In civil actions between citizens of different states, every issue of fact, arising in actions at common law, shall be tried by a jury, if the parties, or either of them, request it.*
- IX. *Congress shall at no time consent that any person, holding an office of trust or profit under the United States, shall accept of a title of nobility, or any other title or office, from any king, prince, or foreign state.”*

[-\(Elliot's Debates, Vol. 2, Page 176-178 Library of Congress](#)

Mr. Ames, another delegate, with an almost prophetic concern, alliterated the following:

“A right principle, carried to an extreme, becomes useless. It is apparent that a declaration for a very short term, as for a single day, would defeat the design of representation.” Mr. Ames went on to say, “The other extreme is equally to be avoided. An election for a very long term of years, or for life, would remove the member too far from the control of the people, would be dangerous to liberty, and in fact repugnant to the purposes of the delegation.”

[-\(Elliot's Debates, Vol. 2, Page 24 Library of Congress](#)

While Mr. Ames was discussing the term-limits of the legislative body, the same could be said of the executive or judicial bodies. Currently, an appointment to the Supreme Court of the United States is a lifetime appointment.

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Wherein lies the control of the People in such a circumstance? What recourse do the people have when lifetime judges usurp their duty to apply the Constitution, and instead choose to re-interpret or subvert the Constitution?

Should not this practice be revisited sooner rather than later, lest a rogue court marginalize all of our God-given rights? This week Senate Majority Leader Reid declared that it was about time that we made healthcare “a right.”

Since when could our government, our legislative bodies make anything “a right?” Were that possible, could they not also make illegal that which had been a right, such as the right to free speech, or the right to bear arms? Are they rights, or privileges? That is the question.

The Honorable Mr. Strong stated,

“Gentlemen have said, the proposed Constitution was in some places ambiguous. I wish they would point out the particular instances of ambiguity; for my part, I think the whole of it is expressed in the plain, common language of mankind. If any parts are not so explicit as they could be, it cannot be attributed to any design; for I believe a great majority of the men who formed it were sincere and honest men.”

Mr. Turner followed with,

“In order that the power given to Congress may be more palatable, some gentlemen are pleased to hold up the idea, that we may be blessed with sober, solid, upright men in Congress. I wish that we may be favored with such rulers; but I fear they will not all, if most, be the best moral or political characters. It gives me pain, and I believe it gives pain to others, thus to characterize the country in which I was born. I will endeavor to guard against any injurious reflections against my fellow-citizens. But they must have their true characters; and if I represent them wrong, I am willing to make concessions. I think that the operation of paper money, and the practice of privateering, have produced a gradual decay of morals; introduced pride, ambition, envy, lust of power; produced a decay of patriotism, and the love of commutative justice; and I am apprehensive these are the invariable concomitants of the luxury in which we are unblestly involved, almost to our destruction.” ...As people become more luxurious, they become more incapacitated for governing themselves.”

[-Massachusetts Ratification Debates, Elliot's Debates, Volume 2, Page 31](#)

Captain Snow, another Massachusetts delegate, came down firmly on how traitors in Congress should be dealt with, during the debates on the wisdom of relegating power to Congress that by Divine right was the people's,

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“I will venture to conjecture we shall have some honest men in our Congress. We read that there were two who brought a good report – Caleb and Joshua. Now, if there are but two in Congress who are honest men, and Congress should attempt to do what the gentlemen say they will (which will be high treason,) they will bring a report of it; and I stand ready to leave my wife and family, sling my knapsack, travel westward, to cut their heads off.”

[-Massachusetts Ratification Debates, Elliot’s Debates, Volume 2, Page 34](#)

The decision to entrust protection of the unalienable rights of the people to a few elected officials in a federal government was not a decision our nation’s founders took lightly. Their freedoms were hard fought, and freshly realized, not the gift of their ancestors.

Over half a century before Abraham Lincoln was credited with coining this phrase, Massachusetts’ own General Thompson, speaking at the Constitution ratification debates said,

“Take care we don’t disunite the states. By uniting we stand, by dividing we fall.”

[-Massachusetts Ratification Debates, Elliot’s Debates, Volume 2, Page 61](#)

The submission of nine proposed amendments to the Constitution by Massachusetts was just the beginning. The remaining states added a flurry of amendments to protect our individual rights. The push for a Bill of Rights was on.

-Publius

Essay 88

December 25, 2009

Christmas Day