One of the Middling-Interest
Boston *Massachusetts Centinel*, 28 November 1787 (excerpt)

Some Objections to the New Constitution considered.

The first objection that is generally made to the proposed form of government is the want of a "BILL OF RIGHTS." To answer this objection we shall do well to consider where we learned the idea of a bill of rights, what it is, and what purpose it would serve in the new government, and whether there is in fact a bill of rights connected with that government or not.

We acquire the idea of a bill of rights from the English history, and the instrument emphatically called by that name, was executed at the revolution, and was absolutely necessary to ascertain and guard the privileges of a people who had no *written* constitution, as we have. I say they had no *written* constitution, unless we call by that name the Magna Charta, the petition of rights, or their several acts of parliament. A very great part of even the *laws* of England, namely, that called the common law, is wholly *unwritten*, and what has been handed down as custom and common usage through many centuries: And we are even at this day to look for the English *constitution* among the opinions of contradictory authors; and it is altogether a matter of argument, though indeed it happens that in the course of so many years, almost all possible questions of constitutionality have arisen in their courts of law, and have been decided—So that by looking into a vast variety of voluminous authors we *can come at* the English constitution.—I premise all this to shew the propriety of *that* people insisting on an *expressed* bill of rights, and on several other great instruments which at different opportunities they acquired—Because their constitution being only to be collected out of the dust of ages, and from the meer opinions of the learned, it was just they should procure their kings to sign and seal, if I may so express it, a plain and express confirmation of those parts of their constitution which former monarchs had denied or violated. This is a short history of the origin of a bill of rights.

We are now to see what use such an instrument would be in the lately proposed form of federal government.

If we had not a state constitution already declared on paper—and if we were now in the same circumstances we were when we seceded from Britain, and before we had ascertained and declared all our rights, it might be more necessary for us to do it *now* when we are to form a new federal constitution. But agreeably to the theory of the original contract, and which authors once thought visionary, we assembled in a state convention eight years since, and then plainly distinguished, agreed to, and published a bill of rights and form of government for this Commonwealth.—I now undertake to say that we part with few or none of these rights by accepting the

new federal constitution—that *where* we part with *any*, it is in exchange for others that are national, and fully expressed; and that some of those rights ascertained in the state constitution are even repeated in that which is offered by the federal convention. The very reason why some of those are thus *repeated* is because those rights were considered essential by the federal convention, and are not found in the particular constitutions of all the States, as they are in that of Massachusetts. And the reason why *some* rights which are expressed in the Massachusetts constitution, *are not* repeated in the federal plan is because such rights are plainly expressed in *all* the other state constitutions. Thus for example, the tenth section of the first federal article (which by the way, as well as the ninth section, is a bill of rights) declares that no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. Now this declaration (except that of the *ex post facto* law, which we shall hereafter consider) is altogether superfluous as it relates to Massachusetts, because our own constitution includes the same restrictions: But it is quite necessary for those States whose forms of government contain no such regulations.

According to this idea then, we have our rights more clearly expressed than formerly; for we *retain* all those rights which are prefixed to our state constitution, and which are not expressly given up to the national government; in addition to which we have those other rights which are *not* in the state constitution, but which are expressed in the *federal.*—The 24th article of our own state bill of rights declares, for example, that laws made to punish for actions done before the existence of such laws, &c. are unjust. This relates then to *ex post facto* laws in criminal prosecutions: But our state bill of rights is silent as to any *ex post facto* laws which relate to property, and civil prosecutions; though it must be confessed that such laws are as much against the nature of government as those relating to crimes. The federal constitution has accordingly guarded against such laws, and clearly, because some states, of which our own is one, have not observed such a restriction. Here then is one example at least of our own bill of rights being amended by the federal; or rather of a distinct right expressed in the federal, but not in the state constitution.

The first section in the federal form will help our eye-sight, if we are not determined to be blind, to see that we retain all our rights, which we have not expressly relinquished to the union—That section declares, that all legislative powers herein given (*i.e.* given in the new constitution) shall be vested in Congress, &c.—The legislative powers which are *not* given therein, are surely not in Congress; and if not in Congress are retained by the several states, and secured by their several constitutions. . . .

CITE AS: John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, Vol. IV: Massachusetts [1] (Madison, Wis.: Wisconsin Historical Society Press, 1997), 328–32.