

**THE CENTENNIAL OF
THE MASSACHUSETTS
CONSTITUTION**

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The Centennial of the Massachusetts Constitution by Alexander H. Bullock

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ALEXANDER H. BULLOCK

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PREPARED AT THE REQUEST OF THE PRESIDENT OF THE AMERICAN
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BY
ALEXANDER H. BULLOCK.

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THE CENTENNIAL OF THE MASSACHUSETTS CONSTITUTION.

THE Colony of Massachusetts had hardly secured a firm foothold here as a permanent settlement, exercising the functions of government, when the colonists began to make a demand for a formula of securities or liberties, the equivalent of which is nearly expressed by our term Constitution. The Englishman, removed to a home in Massachusetts Bay, passed at once under the elation and expansion of a conscious freeman. The records of that time reveal to us, as clearly as any history can disclose the consciousness of a generation of men two centuries and a half after their existence, that the freshly arrived immigrant felt the traditional restraints of his European life falling from him, and was consciously invested with new dignity and hope, with new resolve and power. Within four years after the coming of Winthrop the settlers became impatient that their liberties should be registered in clearly defined form and ordinance. This impatience manifested itself as early as 1634 in palpable proceedings, which aimed at having their rights reduced to the letter and form which should limit even the magistrates who had their highest confidence. Having already obtained the right of popular representation by deputies, they secured in 1635 the appointment of a commission, as we should now call it, which should "frame a body of grounds of laws, in resemblance to Magna Charta,

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which should be received for fundamental laws." This commission, several times changed as to its members, finally secured in 1641 the enactment of the code of a hundred laws, called the Body of Liberties, of which a copy was discovered in the old Athenæum in Boston by Mr. Francis C. Gray about sixty years ago. This first American code of public and private securities, the Magna Charta of that day, may in a certain sense be termed the first Constitution of this Commonwealth; or rather, reading the articles in the light of all which has happened since, I should venture to call them the Massachusetts Institutes. A perusal of this code cannot fail to vindicate the claim of its author, Nathaniel Ward, minister of the town of Ipswich, to our grateful remembrance for having brought to America great benefits from his study and practice of law in England; and I am sure that every thoughtful reader of this Puritan pandect will cordially concur in the opinion, which forty years ago Mr. Gray pronounced before the Massachusetts Historical Society, that it manifests a quality of wisdom, equity and public adaptation far in advance of the time in which it was written. To this opinion I will add, that after allowance for that portion of these institutes which was derived from the Pentateuch, and which must be accepted as the reflected sentiment of a Theocracy which is scarcely appreciable in our own time, there are other parts of this constitutional breviary which bear the marks of bold and statesmanlike originality fit for the affairs of a complete modern commonwealth. That they may be regarded as having been the forecasting of the coming state, is attested by some of them having since been incorporated into our present Constitution. Although these Fundamentals were

Early Aim at Independent Government.

adopted for only a term of three years, yet the more important of them passed into the volume of enduring colonial legislation, and aided largely in the gradual framing of the beneficent fabric which now overshadows us with the safety which everybody feels, but which not everybody traces to its simple and august beginning.

During the one hundred and forty-four years which intervened between the founding of the colony and the first decisive act of Gage at Salem in 1774, which heralded a new era, the people of Massachusetts continued under the government of the charters. But during the whole of this period there was a constant though varying accumulation and cohesion of the elements of a sovereign and free state. Ours was in many respects a free republic from the start, and our provincial annals abound in prophetic signs of coming independence. The spirit of this independence was never in profound sleep, from the first and singular fortifying of the harbor, five years after the advent, to the day of the first levy of arms in the next century. In many of those years kings were so deeply engrossed in home pleasures and home politics, and in many other years the puritans were so deeply engrossed in their own civil and religious strifes, that the reader of events is often diverted from observing the under-current which was steadily bearing the state towards the only ultimate result. This province was at no time without statesmen grounded in the learning of the English Constitution, and in all the progressive stages of the rising local republic their discernment was fully equal to every changing situation. In that school of trial they were practicing themselves for their purpose more rapidly than they knew, and were practicing a more profound policy.

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than was known by their kings. Their purpose as freemen was frequently held in reserve by a masterly suppression, and their assurance as prophets was frequently held in check by a masterly diplomacy. Under Cromwell the Massachusetts puritan moved in straight lines towards independence, under Charles restored the Massachusetts puritan was politic as a Machiavel or a Talleyrand; but under every reign he was constantly advancing in the grooves of destiny, sometimes a little tortuous and sometimes very direct, always towards his freedom. Such drift and purpose must sometime reach its end, and when a king so resolute and obstinate as George the Third sat on the throne, and a puritan so resolute and obstinate as Samuel Adams directed Massachusetts, the end could no longer be postponed.

The adoption of the Declaration of Independence in 1776 introduced in the several states new forms of government which were without precedent or example in the world. When colonial dependency was annulled and autonomy took its place in thirteen republics, a new method of formulating the will of states came into use and became henceforth distinctively THE AMERICAN SYSTEM. Written constitutions, framed by the people for their own government, and made unalterable even by themselves save in most indubitable and solemn manner, accepted as the only source of power to all administrations and absolute criteria of security to all subjects, have now been in use here during a century and have set us apart from the other peoples of the globe. The adoption of the American plan was a logical necessity. The dissolution of dependency cast Americans upon their own capacity for government with no guidance except their

Written Constitutions, the American Plan.

knowledge of history and their own shackled experience. They had grown up in the knowledge of the muniments of the British Constitution, but the elemental principles of that Constitution for public and private liberty lay spread over five centuries and a half since Magna Charta, had never had any existence as a code, and had neither the unity of one fixed interpretation by continuous generations, nor any sanction of immutability. Since English constitutional liberties had been in their origin concessions from the crown, given in times of exceptional popular awakening, even the repetition of the demand and concession from reign to reign had scarcely given the ease of repose to the mind of the subject. According to the authority of Professor Creasy, in his work on the English Constitution, the terms of Magna Charta itself have needed to be confirmed by kings and parliaments upwards of thirty times. Even in the present day of established construction, in which the English constitution has attained a complete solidity of crystallization, if we seek to find its rise and growth we have to read with collating care the histories of Hallam and May extending over a period of nearly five hundred years; and after all the reading we come to no such muniments as those of our own written Constitution, founded in a universally acknowledged social compact, "the whole people covenanting with each citizen and each citizen covenanting with the whole people;" so unshackled in outline, so solid in framework, so solemn in sanction, as to be beyond every fear short of revolution. The term unconstitutional as it is used in England bears a signification altogether different from its meaning in Massachusetts. "By the term unconstitutional, [says Hallam], as distinguished from the term illegal, I