

John Dryden Kazar, Jr., "No Early Pardon for Traitors: Rebellion in Massachusetts in 1787"
Historical Journal of Massachusetts Volume 33, No. 2 (Summer 2005).

Published by: Institute for Massachusetts Studies and Westfield State University

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Editor, *Historical Journal of Massachusetts*
c/o Westfield State University
577 Western Ave. Westfield MA 01086



**No Early Pardon for Traitors:
Rebellion in Massachusetts in 1787**

By

John Dryden Kazar, Jr.

The men of eighteenth century Massachusetts would probably have had substantial political experience. An adult male of 60 years could have lived through two colonial wars and witnessed some historical events: declaring independence of Britain, fighting a revolution, writing the state constitutions of 1778 and 1780 and forming the Articles of Confederation. He would have faced severe cold and snow during the winter of 1787 if he had taken part in the rebellion.

Despite the heavy snow, hundreds of yeoman farmers and laborers were marching around the state, shutting down courthouses to prevent being called to account for what they considered unfair taxation.¹ The “Regulators,” as they called themselves, were defeated as a military force by February, 1787. Many of them fled the state in search of freer lands and fewer taxes. Others remained politically active in the state legislature in an attempt to obtain tax relief, a pardon for their captured leaders and cheap western lands. Governor Bowdoin, meanwhile, directed efforts towards punishing the rebellious subjects in ways that would reassure merchants and lawyers that the judicial system was safe, and to reward the officers for suppressing the rebellion.² Conservatives

¹ David Ludlum, *New England Weather Book* (Boston: Houghton Mifflin, 1976), 122.

² David Szatmary, *Shays Rebellion* (Amherst: University of MA Press, 1980),

on the Council wished to hang the leaders and limit the role of the yeomen in politics.

Many families had been moving into New York since 1785 as a result of a great inflation of housing costs. In 1786, rents had increased from 50 pounds sterling to almost 150 pounds. Capitalists were investing in land development, since the British government had discouraged industrial development by the colonies. Accompanying independence was a loss of wartime commerce and a host of debts to foreign states. Credit languished and a chief resource for paying debts lay with the sale of the western territories. The Articles of Confederation gave wide powers to the national Congress over state borders and western lands. Many settlers ignored borders and eschewed taxes and military service, sometimes hoping to create entirely new places to live peacefully. Massachusetts had a border dispute with New York, but this was resolved in December of 1786 with the former state recognizing New York's sovereignty in return for rights to the soil of six million acres. This attracted the attention of both land speculators and of those Regulators who had fled as well as those left behind.³

As for those Regulators left behind, many felt that they had been unfairly prosecuted by the government, especially those charged with treason or sedition. The Commonwealth believed that as the constitution guaranteed trial by a jury of peers it appeared to the governor and the Council that Regulators called as jurors probably would free any rebellious leaders. The Secretary of State suggested making the yeomen "think differently": a merchant would produce a "slavish fear," a lawyer wished an entire town to suffer "outlawry," and a general would totally disqualify some forever. Governor Bowdoin, a leading merchant, had been elected in 1785 in a bitter campaign. His military commander was General Benjamin Lincoln, the Secretary of War in 1783. Both failed to discern the extent of support for the Regulators among the people.⁴

5-6, 17.

³ Merrill Jensen, *The New Nation* (New York: AA Knopf, 1963), 24, 117; Richard B. Morris, *The Forging of the Union* (New York: Harper & Row, 1987), 222; Shaw Livermore, *Early American Land Companies* (New York: Octagon Books, 1968), xxiv; Robert Ernst, *Rufus King* (Chapel Hill: University of NC Press, 1968), 5.

⁴ Lincoln to Price, February 2, 1787; Porter, Phelps, Huntington Papers; Box 118,

Conservatives now called for limiting the power of the Regulators by disqualifying them from voting. On February 16, 1787, the legislature enacted a Disqualification Act, which prevented any known rebel from serving in any military or civil capacity.⁵

While the effort of the Bowdoin administration to punish the rebels has been examined by David Szatmary in his *Shays Rebellion* and others, there has been no full examination of the efforts of the Hancock administration, which followed in May, 1787 and eventually pardoned all but two of the rebels. George Minot, Clerk to the House in 1787, believed there were two factions vying for control of the Senate, one representing rural and the other commercial interests.⁶ The former sought reforms and pardons; the latter to punish and to control the Regulators in politics. Each faction sought to control the Council which reviewed the capital sentences for pardoning and was usually drawn from the Senate, which represented the commercial interest.⁷

The pardoning process and the reprieves that accompanied them may have had serious implications. George Minot, Clerk of the House of Representatives in 1786, said that the reprieves were done to obtain the “pacifick conduct” of the rebels who had fled out of the state. This comment suggests that the state government was not unwilling to bargain with the country party of Regulators who remained behind when their comrades fled. Problems arose when hundreds of families, with armed militia, sought refuge in Vermont, Connecticut, New Hampshire and New York. From these states rebels raided Massachusetts, looting stores and burning homes.

Massachusetts wanted these rebels back: to prosecute their leaders and to rehabilitate and resettle the farmers. The government did not want them to settle elsewhere, especially in the New York lands, which were to be sold to pay the foreign debts. Yet the borders had been opened by the rebels, Massachusetts had just signed for the new lands, the Maine

Folio 14, Amherst College Archives, Amherst, MA; Szatmary, 90.

⁵ Henshaw to Bowdoin, February 14, 1787, Bowdoin-Temple Papers, Reel 49, 37-37, 350, Massachusetts Historical Society (MHS).

⁶ George Minot, *The History of the Insurrection in Massachusetts* (Freeport: Books for Libraries, 1970), 174-178.

⁷ Robert Feer, *Shays Rebellion* (New York: Garland Publishing, 1988), 432-435.

counties were now threatening secession, and the Confederation government was about to establish a military government in the Ohio lands in the west.⁸ The situation was openly explosive.

The army officers, who sought to settle in the Ohio lands, agreed with the Bowdoin faction on its suppression of the Regulators. The yeomen openly coveted the “New York lands”, where they could be independent. When the yeomen were in power in the legislature in 1782-83, they prevented the use of tax money to pay the interest on the Army notes. These notes, given to soldiers in lieu of cash on discharge from the army, were mostly in the hands of speculating officers and merchants.⁹ The officers had also received a commuted pension lump sum equal to five years’ pay. This gave them priority positioning for settling the western lands.¹⁰ The failure of the yeoman faction in the state legislature of 1782-83, to change these policies, contributed to the armed uprising in 1786, and prefigured a threat by the rebels to settle the New York lands.¹¹

The rebels believed that their disqualification from jury service was unconstitutional and felt that their leaders had been unfairly sentenced to death. The Bowdoin faction, which included chiefly merchants and lawyers, pressed for the trials however, promising that they would respect the state constitution, which provided “adequate protection” against arbitrary proceedings. The state constitution required two witnesses to any overt act of treason; there could be no general legislative attainder, and no “corruption of the blood “obtained beyond the offender.¹² Several Regulators, however, transferred their property to relatives prior to the

⁸ Minot, 187-188; Szatmary, 58; Jensen, 343, 358.

⁹ Robert Taylor, *Western Massachusetts in the Revolution* (Millwood, NY: Kraus Reprint, 1979), 130-133.

¹⁰ Stephen Higginson to Samuel Adams, Philadelphia, May 29, 1783, Edmund Burnett, Ed. *Letters of Members of the Continental Congress* (Washington: Government Printing Office, 1931-36), VII, 167-168; General Putnam to General Knox, October 23, 1783, Knox Manuscript, XV, 96, MA Historical Society, Boston.

¹¹ John Noble, “A Few Notes on Shays Rebellion,” American Antiquarian Society, *Proceedings*, New Series XV (1902-1903), 332-335.

¹² Bradley Chapin, *The American Law of Treason* (Seattle: University of WA, 1964), 43-44, 75-79.

battle at the Springfield Armory. Most farmers, fearing charges of sedition, were reluctant to speak out or to write about their grievances. The Regulators were upset about the government view on sedition, for they believed that the Revolution had been fought, in part, to remove the English common law limits on speech and the press, which had condemned many early colonial publications. Leonard Levy, in his *Freedom of Speech and Press in Early American History*, contends that a seditious libel could be construed from simply challenging the prestige of the government. This was the construction given by the courts in the cases of George Brock and Gideon Pond, who wrote articles supporting Captain Daniel Shays, a revolutionary war hero, now commanding the rebels.¹³

The “cords of justice” had been drawn too tightly, said the *Massachusetts Centinel*. The restrictions on speech and the press, and the refusal of the Bank of Massachusetts, owned by the Phillips merchants, to grant loans to the farmers, drove hundreds out of the state. The “middling” class, once so strong in Worcester County, was broken in ranks by impoverishment and imprisonment. In quick succession, the Bowdoin government had enacted a Militia Act to court-martial mutinous militiamen; a Riot Act to prohibit twelve or more armed persons from collecting publicly; the suspension of habeas corpus for anyone deemed “unfriendly to government,” and on November 16, 1786, a law preventing “false reports to the prejudice of government.”¹⁴

With predictions of a renewal of violence, Bowdoin continued to be “the inflexible foe of the Shaysites.” On March 3, General Lincoln reported to the governor that large numbers of rebels were moving about New England, “some are returning here, others are seeking settlements in Vermont.” The government committee on migration sought to prevent the rebels from leaving the state and “conveying away their estates.” Bowdoin would punish the rebel leaders, reconciling them “to that government under which we wish them to live.” At the governor’s insistence, therefore, a law was enacted on March 5, 1787, requiring every male citizen to be assessed and to be required to report for duty at intervals

¹³ Leonard Levy, *Freedom of Speech and Press in Early American History* (New York: Harper Torchbooks, 1963), 2, note 4, 10-11.

¹⁴ Van Beck Hall, *Politics Without Parties* (Pittsburgh: University Press, 1972), 37-38; *Massachusetts Gazette*, April 2, 1787; *Massachusetts Centinel*, March 17-28, 1787.

on state road gangs, with “oxen, horses, cart and plough.”¹⁵

Finally, an order required all commanding officers to prevent the rebels from leaving the state with their possessions. The refugees may have expedited their departure when Secretary of War, Henry Knox, published a plan for a federal militia, requiring all male citizens, ages 18-60, to serve in a militia corps. By the end of March, between 2500 and 3000 insurgents had left Massachusetts; a number equal to about half the population of Hampshire County, which was then considerably larger.¹⁶ The Army officers planned to move also, and on March 14, the officers advertised for those wishing to move to “the Ohio Country.”¹⁷

Bowdoin, who supported a stronger national government, was joined by lawyer Rufus King and by merchant Stephen Higginson, in moving for appointments to the Philadelphia Convention in May, which they hoped would provide for improved commercial actions on the national level. The legislature, which was dominated by aristocratic merchants and lawyers, quickly and carefully excluded the yeoman farmers and laborers from these appointments. Rufus King was chosen because he was a lawyer and supported Bowdoin and national power. Merchant Elbridge Gerry was also chosen, as he was allied with the Warren-Adams faction, but he was opposed to stronger national power. There were no farmers chosen and only one deputy came from the western counties: Caleb Strong, a lawyer and state senator. The Senate concurred with the decisions, only requiring that the Articles of Confederation be revised, but not replaced.¹⁸

Salem merchant Stephen Higginson was suspicious of the talents of the common yeoman. He felt that the people of the interior of Massachusetts were deluded enough to seek control of the state government and they might shift the tax burden from land to commerce,

¹⁵ Lincoln to Bowdoin, Pittsfield, March 3, 1787, *Worcester Magazine*; MA House of Representatives, *Journal*, February 15, 1787.

¹⁶ Szatmary, 108.

¹⁷ *Massachusetts Gazette*, April 11 and May 14, 1787.

¹⁸ King to Gerry in Charles King, *The Life and Correspondence of Rufus King* (New York: GP Putnam’s Sons, 1894), I, 201-202; Higgins to [Osgood], February 7, 1787, Osgood Papers, New York Historical Society (NYHS), New York City, New York..

where wealth was in hard money. Yeomen should not receive any appointment to the Philadelphia Convention, nor even serve in the legislature, for they opposed all distinctions of rank and would use power unwisely. Harvard-trained lawyer Fisher Ames also attacked the idea of yeoman in the governing body, for they were men of passion, who would make laws introducing paper money.¹⁹

Ames did not believe in taking all power from the popular part of society. He believed, as did John Adams, that popular passions had a place in a republic, which might otherwise degenerate into slavery. Yet when Adams heard from Col. Benjamin Hichborn, who had captured rebel co-commander Job Shattuck, he complained that “a Shattuck or a Shays” was a tyrant for uprooting law and justice. Moderate conservatives, such as Minot, now questioned the administration’s strategy of enforcing civil disqualification and imposing capital sentences, while at the same time raising taxes. This action, according to Minot, had “called up old parties and some opposition.” He believed that too powerful a victory over the Regulators might shut the door to political dissent and harm the programs of future administrations. James Madison, writing later in *Federalist Number 43*, stated that in a free government, factions “wreaked their alternate malignity on each other,” creating artificial treasons.²⁰

Massachusetts’ representative in the Confederation Congress, Nathan Dane, thought the mass migration out of state would become a national as well as a state problem. Continued migration westward, while the North and South were not agreed on a national policy towards Spanish control of the lower Mississippi River, meant that controlling the departing yeomen might become impossible.²¹ The proposal by the North to allow the closing of the river for 25 years, in return for “most favorable” trade with Spain, was unacceptable to the South, especially for the Kentucky settlers, whose trade would be adversely affected. Virginia’s leaders complained that the North would keep the South from gaining

¹⁹ Higginson to [Nathan Dane], Boston, March 3, 1787, Nathan Dane Papers, Beverly Historical Society, Beverly, MA; Seth Ames, Ed., *The Works of Fisher Ames* (New York: DaCapo Press, 1969), II, 103-104 (Camillus 2).

²⁰ Gordon Wood, *The Radicalism of the American Revolution* (New York: Knopf, 1992), 230-231; Minot to Dane, March 3, 1787, Norcross Papers, MS 2, MHS.

²¹ Dane to Thomas Dwight, New York, March 12, 1787, *Burnett, Letters, VIII*, 556-557.

votes in Congress by opposing the statehood of Kentucky while coveting “the vacant lands of New York” themselves. When Virginia passed statehood acts for Kentucky in 1785, there was little doubt that the South sought to gain the balance of power in the Congress.

If the yeoman rebels were allowed to settle the New York lands, and join forces with the Connecticut yeomen in western Pennsylvania, they probably would create an independent state, compromising the sovereignty of the latter state and upsetting the “natural” growth of the Union. Lincoln advised Bowdoin that the “Disaffection...is spreading to the neighbouring States.” To complicate the situation further, the British military refused to evacuate the northwest posts. Dane said that Britain “would not scruple to disturb our peace.”²²

The sectional debate over the growth of the Union was fast deepening, when leaders such as Dane could state that “the 13 States formed ye body politic...[and] no other States can be admitted...[or] it would be in the power of nine States to balance the union at pleasure by dividing old states and making new ones.” Madison had also stated that the Massachusetts proposal for “shutting the Mississippi threatened an alienation of Kentucky...from any increase of federal power.”²³

The Army officers and the merchant-speculators agreed with Governor Bowdoin and his administration that there was a predilection of western settlers to become independent. There was a current “disposition to enforce popular plans by insurrection...in several parts of the continent,” as Minot put the matter. Yeomen in Virginia, in April 1787, had boycotted auctions of farms being sold for debt and in May, the King William Courthouse was burned down. As late as August, 1787, hundreds of yeomen stopped the Greenbrier County Court.²⁴

Such activities, if uncontrolled, could reduce the value of the western lands. The fear of settlers creating new states was spreading through the new republic. Hugh Williamson, North Carolina deputy to the Philadelphia Convention thought there might be even more attempts as some his own counties had tried with the ill-fated “State of Franklin” in

²² H. James Henderson, *Party Politics in the Confederation Congress* (New York: McGraw Hill, 1974), 387-393.

²³ Ronald Hoffman and Peter Albert, Ed., *Sovereign States in an Age of Uncertainty* (Charlottesville: University Press of Virginia, 1981), 242-243.

²⁴ Minot, 151; Szatmary, *Shays*, 125-126, for burned courthouse.

1784. With reference now to the Massachusetts and Connecticut yeomen, Williamson told William Samuel Johnson, the deputy from Connecticut, that if more leniency had been shown to the “dissidents from other States, our Union would not now be disgraced by ‘*imperium in imperio*’.”²⁵ This reference to a clashing of sovereignties was a constant menace to the political stability of the Union, and was one of the reasons for the establishment of a military-directed territorial government in the Ohio Territory. When Nathaniel Gorham, Charlestown merchant and a Massachusetts deputy to the national convention, set out for the Philadelphia Convention in April, he told the Bowdoin administration that he was opposed to any withdrawal of troops from western Massachusetts.²⁶

Bowdoin attempted to recover the refugees through extradition, but Vermont Governor Thomas Chittenden refused to cooperate, complaining that the fugitives would be hauled off “to the halter” in the politically unstable government of Massachusetts.²⁷ These movements convinced the Massachusetts legislature to quickly ratify the cession to Massachusetts of the New York lands.²⁸ On February 20, New York formally abolished feudal tenure in this area, making it immediately available to Massachusetts for resale to speculators.²⁹ The Vermont legislature passed a Riot Act, allowing those rebels who had entered Vermont to be deported to Massachusetts for trial. Governor Chittenden was left to enforce the act but he refused to do so.³⁰

Was the net closing on the rebel diaspora? Did Bowdoin lack

²⁵ Patricia Watlington, *The Partisan Spirit* (New York: Atheneum Press, 1972), 121-122.

²⁶ General Henry Jackson to Henry Knox, April 8, 1787, Knox Papers, XX, 17, Massachusetts Historical Society.

²⁷ Szartmary, 117-118.

²⁸ Amory, *Sullivan*, I, 164.

²⁹ Shosuke Sato, “History of the Land Question in the United States,” Johns Hopkins University Studies in Historical and Political Science (Baltimore: Johns Hopkins University Press, 1886), 4 Ser., VII-IX, 13.

³⁰ Michael Belleslises, *Revolutionary Outlaws* (Charlottesville: University Press of Virginia, 1993), 246-251; Szartmary, 117-118.

confidence in the ability of Massachusetts to deal with the Regulators? New York was not more confident that Massachusetts would handle safely the sale of the lands, despite the fact that any yeomen would become citizens of New York. If the yeomen squatted, it would end any profits from the land sales. Yet Bowdoin had not consented to a single agrarian reform, but opposed a paper money emission, an expanded tender law, a reform of the court system, or a removal of the capital to the interior of Massachusetts. Instead, state trials continued, resulting in 200 more convictions for treason or sedition in Hampshire County and 200 more in Worcester County. Eighteen rebels were sentenced to be hanged and whoever took part in the rebellion had to swear allegiance and surrender any weapons.³¹ Furious at the convictions, yeomen hiding in New York raided Berkshire County, intending to kill Theodore Sedgwick, who supported the hangings. In April, yeomen burned the farm lands of General William Shepard, intending to assassinate him as well as General Lincoln. None of these men were killed, but residents were terrified and Council conservatives sought retribution.³² The Bowdoin faction seemed to be in a quandary.

Since campaigning for spring elections had already begun, the Bowdoin government wisely postponed the executions until June 21, thus requiring the incoming Hancock faction to make the final decisions. Thomas Cushing had defeated General Lincoln for lieutenant governor, for although Lincoln had suppressed the rebellion he was a member of the military Order of Cincinnati and was opposed by the Warren-Adams faction, which feared the entry of the military into politics. James Warren was elected Speaker of the House and Samuel Adams became Senate president.³³ Fisher Ames, writing as "Brutus," believed that a Bowdoin-Lincoln administration would link the "Military and Monied interest." Hancock won a majority vote of 18,000 to 6000, and this

³¹ Szatmary, 83; MA Supreme Judicial Court, Great Barrington, March, 1787 and Northampton, April 1787, Shays Rebellion Papers, Vol. 189, Massachusetts State Archives; Noble, "Notes on Shays," American Antiquarian Society, *Proceedings*, New Series XV, 202-204.

³² Szatmary, *Shays*, 109-113.

³³ MA Council Records, 30, 185-186; Warren-Adams Letters, in MHS, *Collections* (1925), Vol. 73, No. 2, 291-293; *Massachusetts Centinel*, March 24, 1787.

presented the governor with a direct challenge by the yeomen faction to pardon their convicted leaders. Realizing that both the yeoman and Warren-Adams factions opposed the officer corps, Hancock turned first towards a reform of the mutilated militia companies, while accusing Bowdoin of violating the constitution by depriving the rebels of their rights, and of "...crushing the poor to death."³⁴

James Sullivan, a former judge, who had served on the committee to reorganize the laws after the British left, now joined the Hancock administration. Sullivan's own interest in land speculation, especially on the western New York lands was well known. In Congress in 1783, Sullivan, during the abortive Ely rebellion, proposed allowing the rebels to pay taxes in goods after they had attacked Springfield in 1783. Sullivan would suppress the rebels but would not agree to demean them or harry them out of politics, as Bowdoin would do, for he believed that the "leveling spirit" was dangerous.³⁵ Sullivan knew that the Bowdoin faction had designed the disqualifying action to keep themselves in office and he also believed that General Lincoln wished that the Supreme Judicial Court would follow the Army and "string up some of the rebels," but the judges disagreed.³⁶

During June, the concern of the Hancock administration turned to the weight of the country people in the legislature. The Regulators were well represented among the 150 new members, as well as the eleven new Senators. Higginson thought that the Bowdoin faction could count on a majority of the 40 Senators on the great national questions, such as sale of the western lands. Nathan Dane worried that as the population grew, the House might increase to as many as 250 members and then "no man can tell what direction they may take" with respect to public policy. Dane's anxiety increased when he heard from Gorham that the Philadelphia Convention was almost unanimous in desiring a new national government. Dane's colleague in Congress, Dr. Samuel Holten, who was known to favor the yeomen, was spreading the word that "the people were to be called on to take arms to carry into effect immediately the report of the

³⁴ Hall, *Politics*, 228-36.

³⁵ Amory, *Sullivan*, I, 172-175.

³⁶ Sullivan to King, Boston, February 25, 1787, King Papers, Box 1, NYHS.

Convention.” Dane feared civil war might follow.³⁷

Holten’s heresy was troubling enough, but Dane also worried that Holten might resign because of his health. This would leave Dane the only delegate from Massachusetts and would leave the state without a vote. It would open up the necessity for replacements to Congress, according to the Fifth of the Articles of Confederation. Any of the factions could produce a delegate, including the Regulators. The new vacancies could be filled at anytime by the state involved, as the Committee on Qualifications at Congress wished all states to send at least three delegates to avoid negative voting. Moreover, frequent absenteeism produced unstable conditions and since no one Congressional faction could gain power to set the agenda, any one delegate could obstruct legislation.³⁸

The factions in Massachusetts contested for direction of policy at this time. The Bowdoinites declined after defeat in the election and Hancock was opposed principally by the Warren-Adams faction, which complained that Hancock was not supporting programs for commercial interests. Warren thought this was a weakness and Gerry said Hancock was a demagogue and unworthy to be a leader, despite the latter’s pledging his fortune for the Whig cause.³⁹ With the arrival of James Sullivan, a Maine lawyer and former judge, the Hancock camp was strengthened and this also served to sharpen the debate over punishment of the Regulators. Sullivan had chaired the Committee on the Western Lands while in the state legislature and had also helped settle the boundary line between Massachusetts and New York in 1785. Sullivan had also been elected to the Governor’s Council, along with Oliver Phelps, a state senator and purchasing officer during the Revolution. Colonel Israel Hutchinson of Danvers, a hero of the Battle of Bunker Hill, also joined the Council to the disgust of Dane, who called him an “unwearied advocate for paper money.” Sullivan, Phelps and Gorham now formed a company to purchase as much of the New York lands as they could get. Hutchinson was on the Council to free the convicted yeomen, to plead for paper

³⁷ Higginson to Dane, Boston, June 3, 1787, Dane Papers, Beverly.

³⁸ Holten to Gorham, August 8, 1787, Holten Papers (microfilm), Reel 1, Danvers Historical Society, Danvers, MA.

³⁹ Hall, *Politics*, 191-192.

money and to help solve the sale of the western lands in favor of the yeomen, who had added to their numbers in the state legislature.⁴⁰

The Hancock administration was reluctant to hold congressional elections for fear that the reinforced yeoman faction in the legislature might elect delegates to Congress who would alter work on the northwest territorial ordinance. This might include the price of land sales, or because their comrades were thought unfit to settle, delay the organization of the territory infinitely. Meanwhile the Congress had adjourned for lack of a quorum, so there was a reasonable excuse to delay the elections. A lottery was established on June 21 to sell lands in the Maine counties and so lure the yeomen away from the western enterprises. Rufus King, a Maine lawyer and a former delegate to Congress, was happy that there would be no “dunces” going to the Congress.⁴¹

Sullivan now made a direct appeal to the Council for negotiated justice for Jason Parmenter, a Regulator who was accused of both murder and treason. Parmenter had shot and killed a state militiaman in a sudden exchange of gunfire as they encountered one another riding in sleighs in the woods near Northfield. Sullivan argued that the murder charge should be reduced to manslaughter, as the firing was a *recontre* (a counter blow). Parmenter was also charged with petit-treason, which was a citizen killing an officer of state. Treason was also a capital offense, so the Regulators seemed to be in a difficult position. Sullivan now argued that a law passed in 1785, while the new republic was rewriting old English laws on treason, allowed a simple murder charge for this kind of treason, eliminating the frightful punishment of being hanged, drawn and quartered. Sullivan then boldly asked for a pardon for the treason charge, predicting that this would be seen as a “merciful” action.⁴²

The conservatives on the Council reluctantly agreed to a reprieve for all of the convicts until August 2, in the interest of peace. It was agreed, however, that there would be a sham execution on the original date set for the execution -- June 21. When that date arrived, Henry McCullough and

⁴⁰ Amory, I, 144-148, see for data on James Sullivan.

⁴¹ Jillson, *Congressional Dynamics* (Stanford: Stanford University Press, 1994), 274-277; MA Land Office, *Records*, Ser. 690x, Lottery Letters, RG EA4, MHS.

⁴² Amory, I, 203-207; MA, *The Laws of the Commonwealth of Massachusetts, 1780-1807* (Boston: Thomas Andrews & Manning & Loring, 1807), 236.

Jason Parmenter were “carried to the Gallows with their Coffins in the Cart,” and promptly reprieved by order of the sheriff. On June 23, Henry Gale was brought before the crowd in Worcester for a similar spectacle of the power of forgiveness.⁴³ The Council also agreed to a general indemnification of all rebels not yet convicted, for “all past Treasons, misprisions of Treason & Felonies.” Several of the rebel leaders, including Shays, were exempted and they were condemned to outlawry. For these men, the writ *Scire Facias ut Legatum* was issued, allowing any citizen to kill them on sight.⁴⁴

There were mixed reviews for such liberating tendencies of the Hancock administration. The *Salem Mercury* denounced the reprieves for causing a diminution of property values. Yet even Theodore Sedgwick, a Yale lawyer from Stockbridge and supporter of death sentences, knew that some measure of leniency was politically prudent in order to discourage the yeomen from seeking the legislative arena. Sedgwick warned that an opportunist faction such as the anti-lawyer Austin faction, which might abolish common law, combine with Dr Charles Jarvis, a state medical officer and social reformer who was friendly towards Hancock, or join with the Regulators to send a delegate to the Confederation Congress. A frustrated Stephen Higginson now wished that the “...convicts will be executed....and the Convention may conduct better than we expected.”⁴⁵

Continuing the difficult negotiations, Hancock obtained support from Oliver Prescott, major general of the state militia, for a pardon for Job Shattuck, who had been expelled from the Cincinnati and was scorned by the elite as their betrayer. On June 19, Hancock read the petition from Prescott and it was promptly denied. Two days later Phelps, the land speculator, proposed that his company purchase one million acres of the New York lands for 300,000 pounds sterling. On June 26, with the hanging of Job two days away, Phelps called for a reconsideration of the pardon for Job. “After some debate,” the House voted to approve the purchase, but at a price of one pound and sixpence per acre, a much greater sum than Phelps had offered. There was much opposition in the Senate to

⁴³ MA Council, *Records*, 30, 302-305; MA Council, *Chambers*, January to June, 1787, V. 319, MA State Archives.

⁴⁴ MA Council, *Records*, 30/201-203; Noble, “Notes on Shays,” 225-226.

⁴⁵ *Salem Mercury*, July 3, 1878.

this attempt to delay the sale. The Council voted to reprieve Job until July 26, 1787.⁴⁶

The legislature now agreed to vote for delegates to the Congress in order to break the stalemate on the purchase. Those chosen included lawyers Dane and Sedgwick and merchant Samuel Otis, a Boston wholesaler. The fourth delegate was to be a compromise and a favorite of the “country party.” The yeomen proposed Jonathan Grout of Worcester, a veteran and a Whig, but thought too radical by conservatives for his views on lawyers. The legislature finally agreed to accept George Thacher, a Maine lawyer who had defended the use of the county convention as a constitutional right. The House agreed also to consider a bill that would abolish the Court of Common Pleas, which had caused much distress to the yeomen. The Senate now promised that there would be no more prosecutions for sedition. Since there was no agreement on the lands purchase, the legislature adjourned until October. The Council remained in session.⁴⁷

The reprieves signaled the intention of the Hancock administration to continue holding the convicts as hostages for the good behavior of all of the yeomen Regulators. Hancock had been governor when the Rev. Samuel Ely had led earlier rebels in an attack on the Northampton Court. Ely had escaped from jail and the rebel militia had offered three of their officers as hostages for the return of Ely. When Hancock heard of this he issued a State Warrant to move the hostages to Boston. Ely was returned by local choice, however, and Hancock did not forget the episode.⁴⁸ Councilor David Sewall, a lawyer from York County, was sure that the county members of the legislature would return home, stir up new county conventions, and “misrepresent the doings of the Legislature.”⁴⁹

Preventing yeomen from exploiting the western lands was seen as

⁴⁶ Prescott to [Council], Groton, June 19, 1787, MS Acc. 682 (12), Boston Public Library.

⁴⁷ MA House, *Journal*, Vol. 8, 110-112, 137.

⁴⁸ Szatmary, *Shays*, 43; Taylor, *Western Massachusetts*, 116-117, for Ely uprising.

⁴⁹ Sewall to Thatcher, York, October 16, 1786, *Historical Magazine*, 2 ser, 6 (November, 1869), No. 5, 257-258.

one of the most hopeful productions of the Confederation.⁵⁰ Another success would be the ban on slavery in the Northwest Territory. The southern leaders were aware of Rufus King's proposal to do this, yet they did not oppose it. Peter Onuf, in his *Statehood and Union*, says that there was common ground with concern for a rapid, "orderly settlement north of the Ohio," and that Washington saw great difficulty in the "rage for speculating in" the Ohio lands.⁵¹ It may also be true that the reluctance by the southerners to obstruct this provision of the Ordinance was due to the greater fear that the yeomen from Massachusetts might join the Connecticut settlers in Pennsylvania and form an independent state, or even form an alliance with a foreign power, such as Canada, thus spoiling the South's attempt to control the Confederation.

Speaker of the House James Warren received a message from convention delegate Elbridge Gerry during the recess at Philadelphia. Gerry reported that the convention would probably end in a month or six weeks and the result would probably be a national government whose powers would not permit the frequent changes found in state governments. By this time, the Regulators, who were so fond of making changes to the common law, had gone home and the administration had only conflicting news reports about Captain Shays and his men. On July 26, the *New York Journal* reported that robberies by Shays' followers had destroyed his popularity. With the national convention incomplete and with no true knowledge of the refugee yeomen, the Council met again on July 25 and relieved the rest of the convicts for six more weeks.⁵²

The merchant "friends of government," while still in fear of those Regulators who had terrorized them in the summer of 1787, now became bolder and announced their wish for a national government that would check social discord. News accounts had circulated since May that Shays and a new army would soon invade Massachusetts, and conservative writers expressed their anger about this. The *New York Daily Advertiser*

⁵⁰ John Alexander, *The Selling of the Constitutional Convention* (Madison: Madison House, 1990), 99.

⁵¹ Grayson to Madison, New York, August 8, 1787, Burnett, *Letters*, VIII, 631-633; Peter Onuff, *Statehood and Union* (Indianapolis: Indiana University Press, 1987), 34-35, 110-111.

⁵² Alexander, *Selling*, 142-143 and Notes 65-66.

pontificated that these desperate men had “stained national character” and insisted that only men of property could provide real security. Even more demeaning was the tone of the *Salem Mercury*, criticizing the Regulators for being ignorant of the need to grant new powers to Continental government, because of “base and selfish views...[and] weak intellects.”⁵³ Such criticisms and denunciations were not what the Hancock administration wanted to hear, for such words of contempt might exacerbate conservative feelings against the convicts and lead to pressure to carry out the executions. The administration would then lose its influence in restraining the rebels and Massachusetts might again witness violence and hostage-taking. Such a weakness could produce even further efforts at the national convention by Madison to limit or even to negate the power of the states with relation to the national government. On August 2, 1787, on the date originally set for the execution of convicts Wilson and Austin (now reprieved), state secretary John Avery wrote to Dr. Holten in an attempt to reduce the disaffection of the rebels. Avery suggested that mercy for the convicts would “conciliate the Minds of the disaffected.”⁵⁴

Holten, however, had retired from public life, but James Warren, the new Speaker, displayed resentment at the lack of progress towards reconciliation by both Bowdoin and Hancock. Critical of the former for suspending the *habeas* and of the latter for allowing the return of the Loyalists, James and his wife Mercy, believing themselves to be “lovers of virtue,” now openly sympathized with the poverty of the Regulators. General Warren felt that “the People were Irritated, not softened and conciliated...the Rebels were dispersed, but not subdued.” As for the Bowdoin faction, Warren claimed that “...for fear that Capt. Shays should destroy the Constitution they violated it themselves.”⁵⁵

Yeomen in other states were no calmer, but were tending “to insurrection in several quarters” of Virginia, as well as in Maryland, South Carolina, New Jersey, and Pennsylvania. The administration’s attempt to restore order in Massachusetts by appealing to the yeomen to accept

⁵³ John Kasson, *Civilizing the Machine* (New York: Grossman Publishers, 1976), 29-32.

⁵⁴ Holten Papers, MS 26, Fol. 1, Essex Institute, Salem, MA; Minot, 188.

⁵⁵ William Fowler, *The Baron of Beacon Hill* (Boston: Houghton Mifflin Co., 1980), 238-241 and Note 51.

Council measures on reprieves had only exacerbated an already tense situation. The country people, who seemed to know when the elite were treating them in, a discourteous manner, believed that the Hancock administration which they helped elect to office, was using their convicted leaders as bait to restore conservative government. While the Congress was setting up a military government in the western territories, which would have the power to exclude undesirables like them. Further, Congress would “fix the character and politics throughout the whole territory” and keep them out.⁵⁶

The yeomen feared that the common people would soon lose control of the state legislatures as well. The rich and well-born leaders of both the South and the North shared in the belief that the rebellion of the country people everywhere in the nation originated in the baseness of the common man. Therefore, it was essential that the Northwest Territory be placed under military governance, despite its anomalous existence in a republic. The acceptance of a strong military presence also suggested a mutual protection covenant against both black slaves and white bandits, leading the Union towards a more controlled social order. Edward Corwin suggests that the state legislatures had arrogated too much power and the Connecticut settlers in Pennsylvania were likely to become a notorious example of *imperium in imperio*, wherein an elected despotism ruled without veto or judicial review. Not all factions in Massachusetts accepted a controlled new social order. While condemning the violence of Shaysism, many republicans such as the Warrens and Gerry continued to oppose too strong a national government, in fear that any further debasement of the yeoman class would surely lead to a decline in the social fabric. Mercy Warren felt that the newly-rich merchants were to blame for debasing their fellow Americans; the merchants were “lordlings who in splendid idleness may riot on the hard earnings of the peasant and the mechanic.” While Gorham in Philadelphia had proposed having the “Atlantic States...dealing out the right of Representation in safe proportions to the Western States,” others, such as George Mason, who refused to sign the Constitution, insisted instead that the yeomen in the “Western States...must be treated as equals...or they might break from us in defiance.”⁵⁷

⁵⁶ Rutland, *Papers of Madison*, X, 165; Burnett, *Letters*, VIII, 629-631.

⁵⁷ Warren, 378; Edward Corwin, “The Progress of Constitutional Theory Between the Declaration of Independence and the Meeting of the Philadelphia

The governor of New York, George Clinton, believed that the break may have already begun in his state. He informed Governor Hancock in August, 1787, as the Massachusetts legislature was in recess, that the former commissioner to the Indian tribes of New York, John Livingston, was attempting to lease extensive lands from the tribes for speculative purposes. These lands included the area already ceded to Massachusetts by New York, which the private company of Phelps, Gorham and Sullivan was attempting to purchase and resell. The price which the company offered was already under consideration. On August 26, Colonel Timothy Pickering, the judge of Wyoming County, where the Connecticut yeomen resided, reported that Livingston was on his way to Tioga Point, New York, about four miles across the border from Wyoming County. Livingston planned to meet with the Connecticut settlers there, "to consult on a plan for forming an independent state of this settlement [Wyoming]...& of the neighbouring parts of New-York." The Council met in emergency session, but since neither Hancock nor Phelps was present, the lieutenant-governor and the others voted to reprieve the convicts again until "such time in September...as His Excellency shall be pleased."⁵⁸

For Hancock, who had hardly been elected when the rebels seized two civilians as hostages, swearing to kill them whenever any of their leaders should be executed, the moment had arrived to make full use of the pardoning power, for these civilians had been released. It seemed as if a state crisis had been reached: Congress had signed a contract with the army officers to police the Ohio lands, the Philadelphia Convention was about to produce a new national constitution, and some of the convicts had escaped from prison. On September 12, five days before the signing of the Constitution, the governor and Council pardoned the remaining convicts. Yet even as Hancock ordered the discharge of the remaining troops in the western counties, he held onto several other rebels who had been charged with robbery as well as treason or sedition. He also sent Attorney General Paine into the western circuit to prosecute any new cases of sedition known to the courts. Hancock still had to deal with the surreptitious movements of the irregular followers of Shays and to preserve the option

Convention," *AHR*, 30, No. 3 (April, 1925), 517-524

⁵⁸ Alexander Flick, Ed., *History of the State of New York* (New York: Columbia University Press, 1934), V, 148-152; MA Council, *Records*, 30/243..

to sell the New York lands. These were lands which Madison confided to Monroe represented the “surest field of speculation of any in the US...and [which] has long borne a high price.”⁵⁹

While many thought that Hancock and Sullivan had let the convicts off too lightly for having committed treason, others worried that the real problem lay in the extremist thought and action dominating Massachusetts politics. Gerry had refused to sign the Constitution, believing that civil war would result from a contest for power between the democrats and the aristocracy. John Quincy Adams was not happy with the new national powers proposed, saying the Constitution was “calculated to increase the influence, power and wealth of those who have any already.”⁶⁰ Putting down the rebellion and diminishing the yeomen class had raised up a new moneyed class that supported a centralized government. When the yeomen in Wyoming County, Pennsylvania, heard of the signing of the document, they assembled in arms believing that they would soon be joined by the Regulators. This action led Benjamin Franklin, President of Pennsylvania, to call for the arrest of the settlers who were “collecting near the Line” of New York, where they expected “reinforcement from Shays’ late Partisans.”⁶¹

Massachusetts and its governor came under verbal attack for allowing its citizens to run amok. Lawyer James Wilson, Pennsylvania deputy to the Convention, claimed that the commotions in Massachusetts had ignited the flames of insurrection in “every quarter “of the nation. The *Pennsylvania Gazette* accused Hancock and his faction of allowing the rebels in the legislature to make laws “to exempt themselves from punishment.” These derogatory comments could not be allowed to go unanswered, especially now that speculating merchants feared to hold securities for market increases that might not occur, due to the news that Livingston and a “small army of Shays’ men” would settle in the New

⁵⁹ Fitch Oliver, Ed., *The Diary of William Pynchon* (Boston: n.p., 1890), 280.

⁶⁰ United States, *Documentary History of the Constitution* (Washington: Department of State, 1900), III, 768-769; John Quincy Adams, *Life in a New England Town* (Boston: Little, Brown, 1903), 33,46.

⁶¹ Albert Smyth, *The Writings of Benjamin Franklin* (New York: The MacMillan Co., 1907), IX, 610-611; Robert Taylor, *The Susquehanna Company Papers* (Ithica: Cornell University Press, 1969), IX, 207, 277-278.

York lands. On October 18, therefore, at a joint session of the two houses of the legislature, Hancock read a letter from Clinton revealing what he called a “wicked combination...to deprive this Commonwealth...of the lands.” Oliver Phelps now left the Council on a journey to New York in order to confront Livingston with the Massachusetts claim. Governor Clinton moved to have the leases with the tribes nullified.⁶²

The Council now began examining the cases of other rebels who had been found guilty of treason or robbery of munitions. Those sentenced to death included John Bly, Charles Rose, William Manning, and Captain Perez Hamlin, whose band of rebels had terrorized Berkshire County. Hamlin’s wounds were so severe that his case was postponed. In November, the Council agreed that Bly, Rose, and Manning would be hanged on December 6, immediately following the scheduled elections at Great Barrington for delegates to the ratification convention in Boston. Petitions for pardons by Rose and Bly were denied by Council on November 14-15, and Manning’s case was postponed.⁶³

As Phelps made plans to seek an accommodation with Livingston, Nathaniel Gorham took up the quest for the land purchase in New York. His petition was referred to a joint committee of Senate and House. A final appeal by Manning’s wife and children was rejected on November 12 and on November 13 the House voted the Phelps-Gorham-Sullivan company a quit-claim for 400,000 acres, instead of a million acres of the lands.⁶⁴ During the period of debate on pardons, the legislature acted on matters of import to persuade the Regulators not to obstruct the land purchase and to accept other terms and conditions. On November 13-15 the Senate rejected a proposal to suspend the law for the collection of private debt, but they did agree to remit the fines already imposed on those convicted of sedition. A bill to regulate the fees and the practice of lawyers was rejected at a third reading by the Senate, and the House consented on November 21. The bill had been drawn up by those most

⁶² Bernard Bailyn, *The Debate on the Constitution* (New York: The Library of America, Part I, 1993), 859.

⁶³ MA, Supreme Judicial Court, *Files*, Suffolk, 1197-1199, Case 160538, Massachusetts State Archives.

⁶⁴ MA, House, *Journal*, Senate, *Journal*, October 27-November 16; Council, *Records*, 30/279-280, Massachusetts State Archives.

violently opposed to the lawyers' fee system and the latter were united in opposition. A joint committee on the western lands was appointed and they voted unanimously to refer the final decision on the lands to the next sitting of the legislature. The House agreed to this but the Senate was unwilling.⁶⁵

The conservatives in the Senate were conducting a clever scheme of baiting the agenda with the capital cases, while advancing reforms that they had no intention of granting until the Regulators released the lands to the speculators. The bill to reform the lawyers had been defeated; the issuing of more paper money had not made it out of committee; the suspension of debts bill had not gone beyond a second reading, and the proposals to abolish the Court of Common Pleas, and to increase the number of Supreme Court justices, were still in committee. Little wonder that the House moved for adjournment. One good reason for the Senate to wish a continuance was the case of William Manning, which had been postponed. The Council had discovered he was not Elisha Manning, who had been one of the leaders of the rebellion and who had escaped from jail. Hancock personally "nullified" the death sentence and William Manning was sentenced to seven years in prison at Castle Island. The legislature, realizing that stricter citizenship requirements were needed, now required anyone who would become a citizen to present references and state how long a resident. Residents of Kentucky, meeting at Danville on December 27, 1786, had even stated that an American could "expatriate" himself. The legislature adjourned to January.⁶⁶

This adjournment was necessary to permit the continued elections for delegates to the ratifying convention in Boston. Debate on the issue of the proposed national government continued in the newspapers, including vicious comments on the naturally debased condition of the yeoman class and their failure to serve appeared in the *Hampshire Gazette* supporting the debtor yeomen, alleging that it was "unchristian" for a government to force anyone to sell his farm to pay oppressive taxes. This kind of statement reflects an earlier Puritan time when the community might perhaps share in economic hard times. During the depression of the early 1640s, laws were enacted to protect both creditor and debtor in order to

⁶⁵ House and Senate *Journals*, November 16-24; Robert Taylor, Ed., *Diary of John Quincy Adams* (Cambridge: n.p. 1981), II, 313-314.

⁶⁶ MA, Council, *Records*, 30/277-286.

protect the price structure. In 1640, the debtor could not be made to pay in money but could pay in goods. The goods were to be sold at half their worth so that people may not “bee undone and yet their debts not satisfied.” This probably represents the “virtuous” public policy ideas of the Warren-Adams faction; they who abjured social conflict, yet would drive away Tory aristocrats.⁶⁷ The writer was soon answered by a supporter of the established government and its common law, which regularly upheld the right of the merchant to go to court and seize property for payment of overdue debts. Yet laws had been passed in the legislature modifying the common law on debtors, even suspending debts or allowing payment of taxes with tobacco, for example. The writer was soon followed by another, who knew what the true purpose of the first writer was. He believed that it was nothing less than the substitution of legislative laws for common law, and the permanent alteration of the latter to satisfy a “junta of needy expectants” of welfare aid that was “paramount to law.” This was what Rufus King was so disgusted about when he refused to have “dunces” going to Congress and what Higginson raved about in his letters to Knox, seeking a strong national government where merchant rights could be frozen in time.

These apprehensions were soon confirmed by “Brutus,” who had started the debate on September 5. He now struck another blow for the debtor class, championing their right to political resistance where the previous administration had “caused a deficiency of public credit,” although he does not suggest how that deficiency might have been caused. He did say that in a republic, political resistance can mean the “legislative interposition” into the common law on debts and contracts. This was not what the merchants and lawyers who drafted the state constitution intended. No one could have foreseen such a long war and its results, including the Ely and Shaysite uprisings. We need a new social order, according to conservative lawmakers, who pointed out that the traitors of 1783 and 1786 had defeated a bill which would have allowed the Supreme Judicial Court to try cases of obstruction of justice.⁶⁸ Gordon Wood quotes the *Pennsylvania Packet* on 2 September 1786 as suggesting only the courts can deal successfully with contending parties, not the

⁶⁷ George Lee Haskins, *Law and Authority in Early Massachusetts* (New York: The MacMillan Co., 1960), 216-220.

⁶⁸ *Hampshire Gazette*, September 5 to December 19, 1787.

assemblies. Wood also says that the early republican idealism, which called for public service in a disinterested way, was all right for Samuel Adams, but not for George Washington or Alexander Hamilton, who believed only a few such persons would survive.⁶⁹

These feelings tended to escalate the political attacks in the newspapers by nationalist writers, who were now more anxious than ever to see the convicts hanged, as the existence of the way of life of the commercial class of merchants and the professional aristocracy of lawyers were in grave danger, they said. The editor of the *Massachusetts Centinel*, Benjamin Russell, who also was the leader of the Boston Mechanics Association, refused to print unsigned articles that opposed ratification. The mechanics and artisans were biased towards the adoption of the Constitution, for they sought protective tariff legislation from a strong national government. Others in Boston were uneasy, and George Minot noted in his *Journal* that it was probably unsafe for anyone opposed to the Constitution to sign his name to an article. Nathan Dane complained to Caleb Strong, who had returned early from his place in the convention, without signing the Constitution, that the zeal with which “the adoption...is hurried especially in some seaport towns...to me is very questionable policy.”⁷⁰

The nationalists’ zeal was due to the real fear that the Bowdoin-Parsons faction could not overcome the opposition of a possible combination of the followers of anti-lawyer small businessman Austin, the Regulators and the anti-nationalist Warren-Adams faction. As for the Hancock faction, the governor had been warned by Chief Justice William Cushing not to suspend all of the executions. Already, the Town of Boston had been treated to an unusual parade of the Boston Regiment of Cadets, who later toasted their Captain-General, Governor Hancock, asking Heaven to strike down the anarchists. Hancock sent off warrants for the execution of Rose and Bly to Sheriff Hyde of Berkshire County.

Great Barrington had already elected William Whiting, the disgraced jurist and seditionist, to be their delegate to the ratifying convention, the people fearing that they “will be disarmed [and] a standing army will be formed” under the new government. Sedgwick and his friends were

⁶⁹ Wood, *Radicalism*, 323, 252-253.

⁷⁰ Merrill Jensen, Ed., *The Documentary History of the Ratification of the Constitution* (Madison: University of Wisconsin Press, 1981), XIII, 313-314.

dismayed and arranged for a new election two days before the hanging a nationalist candidate was elected. A day after the hanging, a nationalist was elected in Sheffield, despite protests that men voted who were not legal residents.⁷¹

The execution was a solemn affair and “scarcely a threat was uttered or a murmur heard against government.” In Stockbridge, Sedgwick himself was elected a delegate after convincing the Rev. John Bacon to stop saying that the new national government would be only “for great men and lawyers.” In Williamstown, the selectmen met quickly and those few present had no difficulty electing another nationalist delegate.⁷²

Despite these successes, the nationalists feared that they might have already lost the vote to the more numerous anti-nationalists. The latter’s argument that the legislature “has an inherent right to alter the common law, [when] not particularly guarded in the constitution” of the state, was an anathema to lawyers such as Rufus King.⁷³ King was so distraught that he was reluctant even to attend the convention, and Gorham was so upset about King that he pressured Caleb Strong, who had earlier refused to sign the document at Philadelphia, to show up in Boston to ratify it. Gorham told the erstwhile deputy from Massachusetts, “don’t fail as you regard [two words deleted] in some measure your own character.” Fisher Ames, fearing that amendments might be proposed by the Hancock faction, which could dilute the effectiveness of the proposed document, summoned Theophilus Parsons for advice, “for the judiciary system is in jeopardy.”⁷⁴

Throughout January, the worried nationalists increased their abusive comments about the anti-nationalists, calling them “irreclaimable malignants,” lumping together the Austin, Regulator, and Warren-Adams factions as the opposition. Sometimes the Regulators were accused of

⁷¹ Warrants for Rose and Bly, MA, Council, *Files*, Massachusetts State Archives.

⁷² *Hampshire Gazette*, December 19, 1787.

⁷³ “Thatcher Papers,” *Historical Magazine*, 2 Ser., Vol. 6 (November, 1869), No. 5, 266.

⁷⁴ Gorham to Strong, Boston, December 31, 1787, Strong Papers, Fol. 1, Forbes Library, Northampton, MA; Theophilus Parsons, *Memoir of Theophilus Parsons* (New York: DeCapo Press, 1970), 462.

immorality: Dr. Holten was told that “Pope and Sally” remained unmarried, even though she had moved her furniture into his house, Nathaniel Ames recorded in his *Diary* that Rebecca Harris had gone away with Winslow Warren, and Hannah Winthrop complained to her niece of the “Licentiousness of the present” generation. Robert Gross demonstrates that young single women and widows of men killed in action were taking control of their personal lives in post-war America.⁷⁵

The ratifying convention opened officially January 9, 1788, in Boston. The Hancock faction felt that they held the balance of power between the nationalist faction of Bowdoin-Parsons and the anti-nationalist Warren-Adams faction, by their control over the rebels in the General Court. Both the Warren-Adams faction and the Regulators sought to preserve as many state and local powers as possible. They desired their representatives to report as frequently as possible and to vote for them in nearby localities. They opposed the national militia which had been proposed by General Knox, Secretary of War as a potential threat to local arms. They did not welcome taxation by a national government.

The Massachusetts ratification was important and if the vote was a negative one, Madison believed that the Pennsylvania minority “would try to set aside” their own ratification.⁷⁶ Gerry, who was allied with the Warren-Adams faction, told Samuel Adams and James Warren as early as October 18, 1787, that he saw merit in amendments, implying that they would vote in favor if this was done. Caleb Strong did at last appear in the convention, after being shamed by Gorham, and Strong’s motion to discuss the document in detail, prevented an early and probably fatal vote against the constitution.⁷⁷

Debate continued throughout January with both nationalists and anti-nationalists speaking: Samuel Adams argued that a national government in a federal union of sovereign states would be destructive of their peace and safety -- an *imperia in imperio*. James Winthrop, Librarian of Harvard College, wrote several articles critical of the proposed Congressional intrusion into the elective process and the militia.

⁷⁵ Samuel Harding, *The Contest Over the Ratification of the Federal Constitution in Massachusetts* (New York: DaCapo Press, 1970), 104.

⁷⁶ Taylor, 171 and Note 14.

⁷⁷ Szatmary, *Shays*, 132; Taylor, 174.

Amos Singletary of Worcester County decried aristocracy in general, suggesting that the “lawyers, and men of learning, and moneyed men...[would] get all the power and all the money into their own hands.”⁷⁸ John De Witt rejected the constitution as an instrument to produce more wealth for Army officers and “holders of publick securities.” Dr. Charles Jarvis, who was aligned with Hancock, even gave speeches out of doors.⁷⁹

The Boston Mechanics, led by Paul Revere, met at the Green Dragon and voted for the constitution almost unanimously. When Samuel Adams, who had already announced against the document, heard of this vote, he retreated from the general debate and backed away in a debate with Ames over elections.⁸⁰ Finally, Governor Hancock arrived at the convention and presented nine amendments, evidently written by Parsons. King had written to Knox on February 1, 1788 that Hancock would support Bowdoin and the Constitution: “We told him that if Virginia does not unite...he is considered the only fair candidate for President.” These amendments, seconded by Samuel Adams, represented the necessity for all residual powers to be held by the States themselves. Five days later, a vote was taken and the nationalists won, but by only 19 votes.⁸¹

The effect of Governor Hancock’s apparent victory was not lost on the Regulators who were in the state legislature. Hancock returned to the Council on February 4, 1788. Oliver Phelps had not returned from New York where Livingston had tried to lease most of the land of the Oneidas -- about two-fifths of the entire state of New York -- but that state had ruled against the lease. Further action on the purchase by Gorham and Phelps was postponed until the March meeting of the legislature.⁸²

On February 27, Hancock addressed a joint session of the legislature at which he stressed the importance of settling the issue of the state-owned lands, which he referred to as “common” to all citizens. Appealing to his

⁷⁸ Paul Lewis, *The Grand Incendiary* (Dial Press: n.p. 1973), 357-358.

⁷⁹ Harding, *Contest*, 24-27.

⁸⁰ John Miller, *Samuel Adams* (Stanford: Stanford University Press, 1936), 377-382.

⁸¹ Harding, 86.

⁸² MA, Council, *Records*, 30/300, MSA.

listeners' civic virtue, Hancock said that their heavy debts to foreigners as well as to other citizens, could be paid with these "ample resources, if wisely & expeditiously improved by that spirit of unanimity & discernment [that] will always distinguish your conduct," referring to both the Maine and the New York lands. He beseeched the House and Senate to throw into oblivion the recent "commotions," adding that yet another rebel leader, Luke Day, had been captured in New Hampshire. Some of the settlers had already moved to the New York lands, including 25 "Friends" of Jemima Wilkinson's new religious sect to Lake Seneca, and the Dighton Company from Plymouth County, to settle just south of that lake. Others from Massachusetts may have settled in Ohio Territory.⁸³ As for the lands in New York, being contested between Livingston and Phelps, Governor Clinton sent an armed force to evict the Livingston settlers in March, 1788, and on March 17, Phelps and Gorham repeated their proposal to purchase lands in New York from the Massachusetts government.⁸⁴ On March 31, the House of Representatives voted its approval, and the legislature as a whole agreed by joint resolution. On July 4, 1788, at Buffalo Creek, New York, Phelps and Livingston met with Red Jacket and Joseph Brant of the Senecas for a final agreement. The several tribes were offered \$5,000 and an annuity of \$500 forever, the whole estate being estimated at 2,600,000 acres. Livingston and his Canadian partners were offered shares in the Phelps-Gorham enterprise for \$100,000. The land had been originally ceded to Massachusetts by New York in December, 1786.⁸⁵

Perhaps it had not been so much an appeal to civic virtue by Hancock that led the way to this part of the Revolutionary settlement, as it was the failure of the Regulators to regulate so many walks of civic life. Many veterans had fought against the British and now found themselves destitute of land and homes. They were unable to prevent the return of the hated Tories. Their struggle for freedom of speech was not at all successful, for their own legislature had made a law that forbade any

⁸³ Brandes, 330-331; Turner, *Pioneer*, 155-156, 198-199; Szartmary, 117-119.

⁸⁴ Turner, 107-108; MA House of Representatives, *Journal*, 455-472.

⁸⁵ *Ibid.*; Robert East, "The Massachusetts Conservatives in the Critical Period" in Richard Morris, Ed., *The Era of the American Revolution* (New York: Harper & Row, 1939), 363.

“false reports to the prejudice of government.” They felt they could no longer protest heavy taxes. They were subjected to verbal assaults despite their efforts to conduct reasonable debate in the legislature. When they petitioned for grants of land within the state, they were either ignored or offered less desirable lands in Maine. When they wished to migrate, believing themselves released from the king’s restraint, they were prevented by military force.⁸⁶ They had been denied paper money issues. As for changes in the practice of law and of the courts, they had been unsuccessful, despite the efforts of the Austin faction. They lacked experience and money to form a real faction and they had little money to send their own representative to Congress, although Dr. Charles Jarvis might have helped them. Their leaders were ashamed to contest for power with the aristocratic merchants and lawyers who dominated state offices and who rebuked the yeomen for being naive about governing, for speaking without thought and for high treason, seditious conduct ,and murder.

Hancock and Sullivan may have seen the yeomen as equal beneficiaries of the Revolution, but with the Hancock faction dedicated to saving the lives of the rebels, and the lands of New York from the rebels, there was not much time for educating the latter in republican government. Michael Lienesch, in his article “Historical Theory and Political Reform: Two Perspectives in Confederation Politics,” says that the other factions feared that anarchy and despotism would result from the lack of balance in society, and that Sullivan, in support of balance, would have allowed the yeomen in a mixed government if the latter would allow for some mistakes in governing and not reject the government altogether.⁸⁷

An angry Regulator force was not ready for compromise, however. An economic inequality had been established by the merchants, who had seized Loyalist property and then based taxes on land and polls. As the officer corps moved westward to police Ohio Territory, the newly-rich merchants took their places in government, but exercised power unwisely

⁸⁶ Szatmary, 84.

⁸⁷ East, “Massachusetts Conservatives,” 389; Michael Lienesch, “Historical Theory and Political Reform: Two Perspectives on Confederation Politics,” *The Review of Politics*, 45 (January, 1983), 99-104; William Pencak, “The Response to Shays Rebellion Reconsidered,” Robert Gross, ed. *In Debt to Shays* (Charlottesville: University Press of Virginia, 1993), 138.

and then blamed the yeomen for not paying their taxes. Hancock exercised power over the Regulators because they were complicating government policy with respect to the land sales, which could pay off the public debt and establish credit for the commerce of the Commonwealth.

The Bowdoin administration feared the Regulators and claimed to have saved the republic from a yeoman class of democratic tyrants who scorned the common law, which governed them all. The Hancock faction sought to save the republic from a new merchant-lawyer aristocracy, whose leadership lacked the skill and temperament to govern the yeomen wisely. Hancock felt that capital punishment “should be avoided for the public good.” Samuel Walker, in his *Popular Justice*, says that during the decade of 1780-1790, out of 48 people sentenced to death for all crimes, 19 of these were pardoned or commuted. Several of these pardons should be attributed to the Hancock administration, which genuinely wished to preserve a balanced society. Even the lieutenant-governor under Bowdoin, Thomas Cushing, declared independently that “it would not be best to execute all” of the Regulator leaders.⁸⁸ Hancock, Cushing and Sullivan would prevent merchants and lawyers such as Bowdoin, Higginson and Sedgwick from making the mistake of executing their fellow citizens. The Hancock faction would preserve balance by relocating the Regulators to Maine or letting them purchase western lands; not by demeaning them or by destroying them politically. Hancock did not believe in capital punishment, for he and Cushing as well as Sullivan knew better than to execute so many souls in Western Massachusetts. If the Chief Justice had not intervened, perhaps none of the convicts would have been executed.

⁸⁸ Samuel Walker, *Popular Justice* (New York: Oxford University Press, 1998), 35; Cushing to Newman, Northampton, April 9, 1787, Cushing Family Papers, 1773-1857, MHS.