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Early United States Political Thought

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Constitutional Convention Debates Vol. I and II
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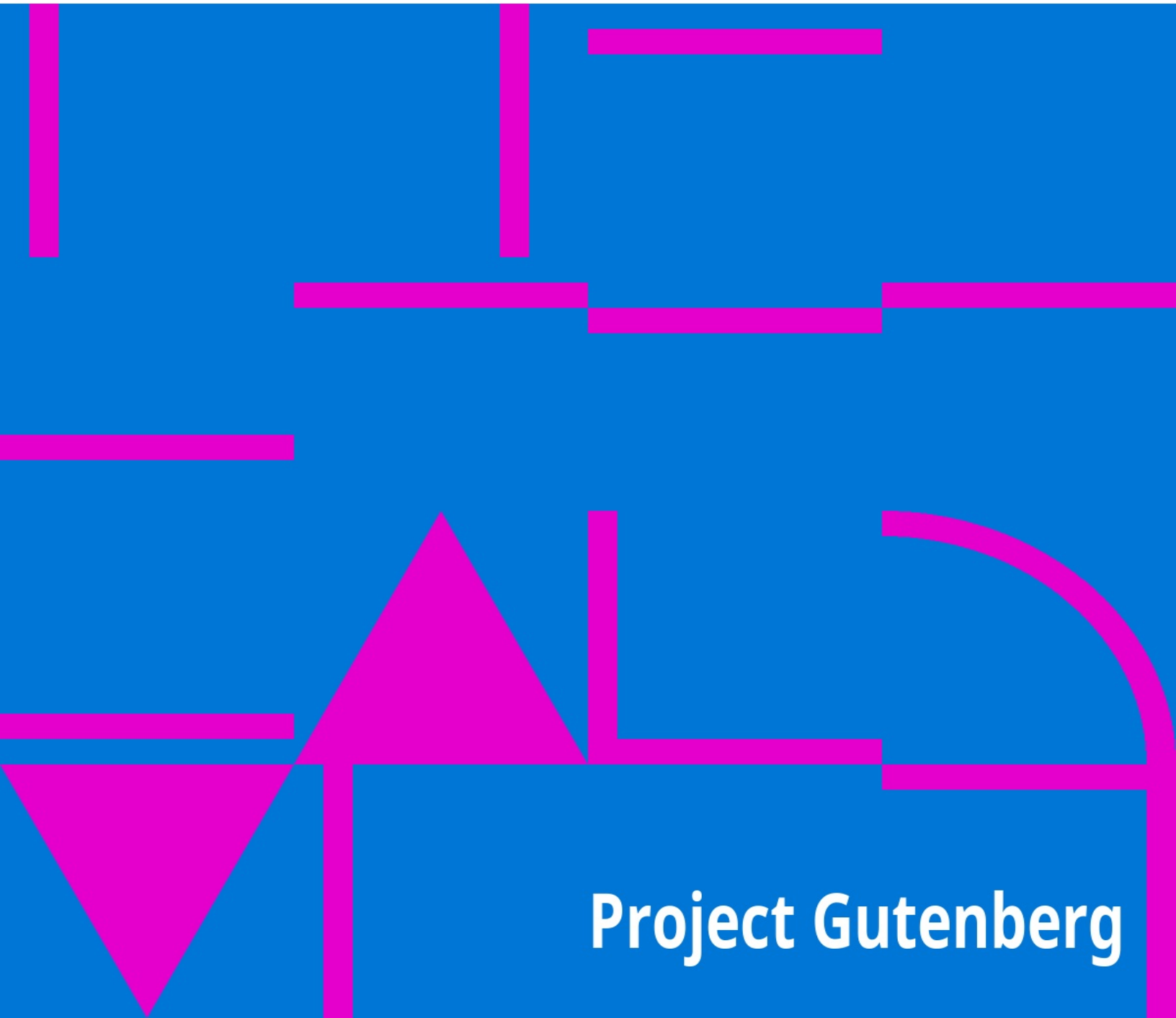
The Federalist Papers

Alexander Hamilton et al.



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THE FEDERALIST PAPERS

By

Alexander Hamilton,

John Jay,

James Madison

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FEDERALIST No. 1. General Introduction

For the Independent Journal. Saturday, October 27, 1787

HAMILTON

To the People of the State of New York:

AFTER an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

This idea will add the inducements of philanthropy to those of patriotism, to heighten the solicitude which all considerate and good men must feel for the event. Happy will it be if our choice should be directed by a judicious estimate of our true interests, unperplexed and unbiased by considerations not connected with the public good. But this is a thing more ardently to be wished than seriously to be expected. The plan offered to our deliberations affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects foreign to its merits, and of views, passions and prejudices little favorable to the discovery of truth.

Among the most formidable of the obstacles which the new Constitution will have to encounter may readily be distinguished the obvious interest of

a certain class of men in every State to resist all changes which may hazard a diminution of the power, emolument, and consequence of the offices they hold under the State establishments; and the perverted ambition of another class of men, who will either hope to aggrandize themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am well aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men (merely because their situations might subject them to suspicion) into interested or ambitious views. Candor will oblige us to admit that even such men may be actuated by upright intentions; and it cannot be doubted that much of the opposition which has made its appearance, or may hereafter make its appearance, will spring from sources, blameless at least, if not respectable—the honest errors of minds led astray by preconceived jealousies and fears. So numerous indeed and so powerful are the causes which serve to give a false bias to the judgment, that we, upon many occasions, see wise and good men on the wrong as well as on the right side of questions of the first magnitude to society. This circumstance, if duly attended to, would furnish a lesson of moderation to those who are ever so much persuaded of their being in the right in any controversy. And a further reason for caution, in this respect, might be drawn from the reflection that we are not always sure that those who advocate the truth are influenced by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives not more laudable than these, are apt to operate as well upon those who support as those who oppose the right side of a question. Were there not even these inducements to moderation, nothing could be more ill-judged than that intolerant spirit which has, at all times, characterized political parties. For in politics, as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet, however just these sentiments will be allowed to be, we have already sufficient indications that it will happen in this as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude that they will mutually hope to evince the justness of their

opinions, and to increase the number of their converts by the loudness of their declamations and the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government will be stigmatized as the offspring of a temper fond of despotic power and hostile to the principles of liberty. An over-scrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretense and artifice, the stale bait for popularity at the expense of the public good. It will be forgotten, on the one hand, that jealousy is the usual concomitant of love, and that the noble enthusiasm of liberty is apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interest can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidden appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues, and ending tyrants.

In the course of the preceding observations, I have had an eye, my fellow-citizens, to putting you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions other than those which may result from the evidence of truth. You will, no doubt, at the same time, have collected from the general scope of them, that they proceed from a source not unfriendly to the new Constitution. Yes, my countrymen, I own to you that, after having given it an attentive consideration, I am clearly of opinion it is your interest to adopt it. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves which I do not feel. I will not amuse you with an appearance of deliberation when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not, however, multiply professions on this head. My motives must remain in the depository of my own breast. My arguments will be open to all, and may be

judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth.

I propose, in a series of papers, to discuss the following interesting particulars:

THE UTILITY OF THE UNION TO YOUR POLITICAL PROSPERITY THE INSUFFICIENCY OF THE PRESENT CONFEDERATION TO PRESERVE THAT UNION THE NECESSITY OF A GOVERNMENT AT LEAST EQUALLY ENERGETIC WITH THE ONE PROPOSED, TO THE ATTAINMENT OF THIS OBJECT THE CONFORMITY OF THE PROPOSED CONSTITUTION TO THE TRUE PRINCIPLES OF REPUBLICAN GOVERNMENT ITS ANALOGY TO YOUR OWN STATE CONSTITUTION and lastly, THE ADDITIONAL SECURITY WHICH ITS ADOPTION WILL AFFORD TO THE PRESERVATION OF THAT SPECIES OF GOVERNMENT, TO LIBERTY, AND TO PROPERTY.

In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to your attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every State, and one, which it may be imagined, has no adversaries. But the fact is, that we already hear it whispered in the private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole.(1) This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance an open avowal of it. For nothing can be more evident, to those who are able to take an enlarged view of the subject, than the alternative of an adoption of the new Constitution or a dismemberment of the Union. It will therefore be of use to begin by examining the advantages of that Union, the certain evils, and the probable dangers, to which every State will be exposed from its dissolution. This shall accordingly constitute the subject of my next address.

PUBLIUS

1. The same idea, tracing the arguments to their consequences, is held out in several of the late publications against the new Constitution.

FEDERALIST No. 2. Concerning Dangers from Foreign Force and Influence

For the Independent Journal. Wednesday, October 31, 1787

JAY

To the People of the State of New York:

WHEN the people of America reflect that they are now called upon to decide a question, which, in its consequences, must prove one of the most important that ever engaged their attention, the propriety of their taking a very comprehensive, as well as a very serious, view of it, will be evident.

Nothing is more certain than the indispensable necessity of government, and it is equally undeniable, that whenever and however it is instituted, the people must cede to it some of their natural rights in order to vest it with requisite powers. It is well worthy of consideration therefore, whether it would conduce more to the interest of the people of America that they should, to all general purposes, be one nation, under one federal government, or that they should divide themselves into separate confederacies, and give to the head of each the same kind of powers which they are advised to place in one national government.

It has until lately been a received and uncontradicted opinion that the prosperity of the people of America depended on their continuing firmly united, and the wishes, prayers, and efforts of our best and wisest citizens have been constantly directed to that object. But politicians now appear, who insist that this opinion is erroneous, and that instead of looking for safety and happiness in union, we ought to seek it in a division of the States into distinct confederacies or sovereignties. However extraordinary this new doctrine may appear, it nevertheless has its advocates; and certain characters who were much opposed to it formerly, are at present of the number. Whatever may be the arguments or inducements which have wrought this change in the sentiments and declarations of these gentlemen, it certainly would not be wise in the people at large to adopt these new

political tenets without being fully convinced that they are founded in truth and sound policy.

It has often given me pleasure to observe that independent America was not composed of detached and distant territories, but that one connected, fertile, wide-spreading country was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams, for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances, present them with highways for the easy communication of friendly aids, and the mutual transportation and exchange of their various commodities.

With equal pleasure I have as often taken notice that Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence.

This country and this people seem to have been made for each other, and it appears as if it was the design of Providence, that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties.

Similar sentiments have hitherto prevailed among all orders and denominations of men among us. To all general purposes we have uniformly been one people each individual citizen everywhere enjoying the same national rights, privileges, and protection. As a nation we have made peace and war; as a nation we have vanquished our common enemies; as a nation we have formed alliances, and made treaties, and entered into various compacts and conventions with foreign states.

A strong sense of the value and blessings of union induced the people, at a very early period, to institute a federal government to preserve and perpetuate it. They formed it almost as soon as they had a political existence; nay, at a time when their habitations were in flames, when many of their citizens were bleeding, and when the progress of hostility and

desolation left little room for those calm and mature inquiries and reflections which must ever precede the formation of a wise and well-balanced government for a free people. It is not to be wondered at, that a government instituted in times so inauspicious, should on experiment be found greatly deficient and inadequate to the purpose it was intended to answer.

This intelligent people perceived and regretted these defects. Still continuing no less attached to union than enamored of liberty, they observed the danger which immediately threatened the former and more remotely the latter; and being persuaded that ample security for both could only be found in a national government more wisely framed, they as with one voice, convened the late convention at Philadelphia, to take that important subject under consideration.

This convention composed of men who possessed the confidence of the people, and many of whom had become highly distinguished by their patriotism, virtue and wisdom, in times which tried the minds and hearts of men, undertook the arduous task. In the mild season of peace, with minds unoccupied by other subjects, they passed many months in cool, uninterrupted, and daily consultation; and finally, without having been awed by power, or influenced by any passions except love for their country, they presented and recommended to the people the plan produced by their joint and very unanimous councils.

Admit, for so is the fact, that this plan is only RECOMMENDED, not imposed, yet let it be remembered that it is neither recommended to BLIND approbation, nor to BLIND reprobation; but to that sedate and candid consideration which the magnitude and importance of the subject demand, and which it certainly ought to receive. But this (as was remarked in the foregoing number of this paper) is more to be wished than expected, that it may be so considered and examined. Experience on a former occasion teaches us not to be too sanguine in such hopes. It is not yet forgotten that well-grounded apprehensions of imminent danger induced the people of America to form the memorable Congress of 1774. That body recommended certain measures to their constituents, and the event proved their wisdom; yet it is fresh in our memories how soon the press began to teem with pamphlets and weekly papers against those very measures. Not only many of the officers of government, who obeyed the dictates of

personal interest, but others, from a mistaken estimate of consequences, or the undue influence of former attachments, or whose ambition aimed at objects which did not correspond with the public good, were indefatigable in their efforts to persuade the people to reject the advice of that patriotic Congress. Many, indeed, were deceived and deluded, but the great majority of the people reasoned and decided judiciously; and happy they are in reflecting that they did so.

They considered that the Congress was composed of many wise and experienced men. That, being convened from different parts of the country, they brought with them and communicated to each other a variety of useful information. That, in the course of the time they passed together in inquiring into and discussing the true interests of their country, they must have acquired very accurate knowledge on that head. That they were individually interested in the public liberty and prosperity, and therefore that it was not less their inclination than their duty to recommend only such measures as, after the most mature deliberation, they really thought prudent and advisable.

These and similar considerations then induced the people to rely greatly on the judgment and integrity of the Congress; and they took their advice, notwithstanding the various arts and endeavors used to deter them from it. But if the people at large had reason to confide in the men of that Congress, few of whom had been fully tried or generally known, still greater reason have they now to respect the judgment and advice of the convention, for it is well known that some of the most distinguished members of that Congress, who have been since tried and justly approved for patriotism and abilities, and who have grown old in acquiring political information, were also members of this convention, and carried into it their accumulated knowledge and experience.

It is worthy of remark that not only the first, but every succeeding Congress, as well as the late convention, have invariably joined with the people in thinking that the prosperity of America depended on its Union. To preserve and perpetuate it was the great object of the people in forming that convention, and it is also the great object of the plan which the convention has advised them to adopt. With what propriety, therefore, or for what good purposes, are attempts at this particular period made by some men to depreciate the importance of the Union? Or why is it suggested that three or

four confederacies would be better than one? I am persuaded in my own mind that the people have always thought right on this subject, and that their universal and uniform attachment to the cause of the Union rests on great and weighty reasons, which I shall endeavor to develop and explain in some ensuing papers. They who promote the idea of substituting a number of distinct confederacies in the room of the plan of the convention, seem clearly to foresee that the rejection of it would put the continuance of the Union in the utmost jeopardy. That certainly would be the case, and I sincerely wish that it may be as clearly foreseen by every good citizen, that whenever the dissolution of the Union arrives, America will have reason to exclaim, in the words of the poet: "FAREWELL! A LONG FAREWELL TO ALL MY GREATNESS."

PUBLIUS

FEDERALIST No. 3. The Same Subject Continued (Concerning Dangers From Foreign Force and Influence)

For the Independent Journal. Saturday, November 3, 1787

JAY

To the People of the State of New York:

IT IS not a new observation that the people of any country (if, like the Americans, intelligent and wellinformed) seldom adopt and steadily persevere for many years in an erroneous opinion respecting their interests. That consideration naturally tends to create great respect for the high opinion which the people of America have so long and uniformly entertained of the importance of their continuing firmly united under one federal government, vested with sufficient powers for all general and national purposes.

The more attentively I consider and investigate the reasons which appear to have given birth to this opinion, the more I become convinced that they are cogent and conclusive.

Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their SAFETY seems to be the first. The SAFETY of the people doubtless has relation to a great variety of circumstances and considerations, and consequently affords great latitude to those who wish to define it precisely and comprehensively.

At present I mean only to consider it as it respects security for the preservation of peace and tranquillity, as well as against dangers from FOREIGN ARMS AND INFLUENCE, as from dangers of the LIKE KIND arising from domestic causes. As the former of these comes first in order, it is proper it should be the first discussed. Let us therefore proceed to examine whether the people are not right in their opinion that a cordial Union, under an efficient national government, affords them the best security that can be devised against HOSTILITIES from abroad.

The number of wars which have happened or will happen in the world will always be found to be in proportion to the number and weight of the causes, whether REAL or PRETENDED, which PROVOKE or INVITE them. If this remark be just, it becomes useful to inquire whether so many JUST causes of war are likely to be given by UNITED AMERICA as by DISUNITED America; for if it should turn out that United America will probably give the fewest, then it will follow that in this respect the Union tends most to preserve the people in a state of peace with other nations.

The JUST causes of war, for the most part, arise either from violation of treaties or from direct violence. America has already formed treaties with no less than six foreign nations, and all of them, except Prussia, are maritime, and therefore able to annoy and injure us. She has also extensive commerce with Portugal, Spain, and Britain, and, with respect to the two latter, has, in addition, the circumstance of neighborhood to attend to.

It is of high importance to the peace of America that she observe the laws of nations towards all these powers, and to me it appears evident that this will be more perfectly and punctually done by one national government than it could be either by thirteen separate States or by three or four distinct confederacies.

Because when once an efficient national government is established, the best men in the country will not only consent to serve, but also will generally be appointed to manage it; for, although town or country, or other contracted influence, may place men in State assemblies, or senates, or courts of justice, or executive departments, yet more general and extensive reputation for talents and other qualifications will be necessary to recommend men to offices under the national government,—especially as it will have the widest field for choice, and never experience that want of proper persons which is not uncommon in some of the States. Hence, it will result that the administration, the political counsels, and the judicial decisions of the national government will be more wise, systematical, and judicious than those of individual States, and consequently more satisfactory with respect to other nations, as well as more SAFE with respect to us.

Because, under the national government, treaties and articles of treaties, as well as the laws of nations, will always be expounded in one sense and executed in the same manner,—whereas, adjudications on the same points

and questions, in thirteen States, or in three or four confederacies, will not always accord or be consistent; and that, as well from the variety of independent courts and judges appointed by different and independent governments, as from the different local laws and interests which may affect and influence them. The wisdom of the convention, in committing such questions to the jurisdiction and judgment of courts appointed by and responsible only to one national government, cannot be too much commended.

Because the prospect of present loss or advantage may often tempt the governing party in one or two States to swerve from good faith and justice; but those temptations, not reaching the other States, and consequently having little or no influence on the national government, the temptation will be fruitless, and good faith and justice be preserved. The case of the treaty of peace with Britain adds great weight to this reasoning.

Because, even if the governing party in a State should be disposed to resist such temptations, yet as such temptations may, and commonly do, result from circumstances peculiar to the State, and may affect a great number of the inhabitants, the governing party may not always be able, if willing, to prevent the injustice meditated, or to punish the aggressors. But the national government, not being affected by those local circumstances, will neither be induced to commit the wrong themselves, nor want power or inclination to prevent or punish its commission by others.

So far, therefore, as either designed or accidental violations of treaties and the laws of nations afford JUST causes of war, they are less to be apprehended under one general government than under several lesser ones, and in that respect the former most favors the SAFETY of the people.

As to those just causes of war which proceed from direct and unlawful violence, it appears equally clear to me that one good national government affords vastly more security against dangers of that sort than can be derived from any other quarter.

Because such violences are more frequently caused by the passions and interests of a part than of the whole; of one or two States than of the Union. Not a single Indian war has yet been occasioned by aggressions of the present federal government, feeble as it is; but there are several instances of Indian hostilities having been provoked by the improper conduct of

individual States, who, either unable or unwilling to restrain or punish offenses, have given occasion to the slaughter of many innocent inhabitants.

The neighborhood of Spanish and British territories, bordering on some States and not on others, naturally confines the causes of quarrel more immediately to the borderers. The bordering States, if any, will be those who, under the impulse of sudden irritation, and a quick sense of apparent interest or injury, will be most likely, by direct violence, to excite war with these nations; and nothing can so effectually obviate that danger as a national government, whose wisdom and prudence will not be diminished by the passions which actuate the parties immediately interested.

But not only fewer just causes of war will be given by the national government, but it will also be more in their power to accommodate and settle them amicably. They will be more temperate and cool, and in that respect, as well as in others, will be more in capacity to act advisedly than the offending State. The pride of states, as well as of men, naturally disposes them to justify all their actions, and opposes their acknowledging, correcting, or repairing their errors and offenses. The national government, in such cases, will not be affected by this pride, but will proceed with moderation and candor to consider and decide on the means most proper to extricate them from the difficulties which threaten them.

Besides, it is well known that acknowledgments, explanations, and compensations are often accepted as satisfactory from a strong united nation, which would be rejected as unsatisfactory if offered by a State or confederacy of little consideration or power.

In the year 1685, the state of Genoa having offended Louis XIV., endeavored to appease him. He demanded that they should send their Doge, or chief magistrate, accompanied by four of their senators, to FRANCE, to ask his pardon and receive his terms. They were obliged to submit to it for the sake of peace. Would he on any occasion either have demanded or have received the like humiliation from Spain, or Britain, or any other POWERFUL nation?

PUBLIUS

FEDERALIST No. 4. The Same Subject Continued (Concerning Dangers From Foreign Force and Influence)

For the Independent Journal. Wednesday, November 7, 1787

JAY

To the People of the State of New York:

MY LAST paper assigned several reasons why the safety of the people would be best secured by union against the danger it may be exposed to by JUST causes of war given to other nations; and those reasons show that such causes would not only be more rarely given, but would also be more easily accommodated, by a national government than either by the State governments or the proposed little confederacies.

But the safety of the people of America against dangers from FOREIGN force depends not only on their forbearing to give JUST causes of war to other nations, but also on their placing and continuing themselves in such a situation as not to INVITE hostility or insult; for it need not be observed that there are PRETENDED as well as just causes of war.

It is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting anything by it; nay, absolute monarchs will often make war when their nations are to get nothing by it, but for the purposes and objects merely personal, such as thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans. These and a variety of other motives, which affect only the mind of the sovereign, often lead him to engage in wars not sanctified by justice or the voice and interests of his people. But, independent of these inducements to war, which are more prevalent in absolute monarchies, but which well deserve our attention, there are others which affect nations as often as kings; and some of them will on examination be found to grow out of our relative situation and circumstances.

With France and with Britain we are rivals in the fisheries, and can supply their markets cheaper than they can themselves, notwithstanding any efforts to prevent it by bounties on their own or duties on foreign fish.

With them and with most other European nations we are rivals in navigation and the carrying trade; and we shall deceive ourselves if we suppose that any of them will rejoice to see it flourish; for, as our carrying trade cannot increase without in some degree diminishing theirs, it is more their interest, and will be more their policy, to restrain than to promote it.

In the trade to China and India, we interfere with more than one nation, inasmuch as it enables us to partake in advantages which they had in a manner monopolized, and as we thereby supply ourselves with commodities which we used to purchase from them.

The extension of our own commerce in our own vessels cannot give pleasure to any nations who possess territories on or near this continent, because the cheapness and excellence of our productions, added to the circumstance of vicinity, and the enterprise and address of our merchants and navigators, will give us a greater share in the advantages which those territories afford, than consists with the wishes or policy of their respective sovereigns.

Spain thinks it convenient to shut the Mississippi against us on the one side, and Britain excludes us from the Saint Lawrence on the other; nor will either of them permit the other waters which are between them and us to become the means of mutual intercourse and traffic.

From these and such like considerations, which might, if consistent with prudence, be more amplified and detailed, it is easy to see that jealousies and uneasinesses may gradually slide into the minds and cabinets of other nations, and that we are not to expect that they should regard our advancement in union, in power and consequence by land and by sea, with an eye of indifference and composure.

The people of America are aware that inducements to war may arise out of these circumstances, as well as from others not so obvious at present, and that whenever such inducements may find fit time and opportunity for operation, pretenses to color and justify them will not be wanting. Wisely, therefore, do they consider union and a good national government as necessary to put and keep them in SUCH A SITUATION as, instead of INVITING war, will tend to repress and discourage it. That situation

consists in the best possible state of defense, and necessarily depends on the government, the arms, and the resources of the country.

As the safety of the whole is the interest of the whole, and cannot be provided for without government, either one or more or many, let us inquire whether one good government is not, relative to the object in question, more competent than any other given number whatever.

One government can collect and avail itself of the talents and experience of the ablest men, in whatever part of the Union they may be found. It can move on uniform principles of policy. It can harmonize, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each. In the formation of treaties, it will regard the interest of the whole, and the particular interests of the parts as connected with that of the whole. It can apply the resources and power of the whole to the defense of any particular part, and that more easily and expeditiously than State governments or separate confederacies can possibly do, for want of concert and unity of system. It can place the militia under one plan of discipline, and, by putting their officers in a proper line of subordination to the Chief Magistrate, will, as it were, consolidate them into one corps, and thereby render them more efficient than if divided into thirteen or into three or four distinct independent companies.

What would the militia of Britain be if the English militia obeyed the government of England, if the Scotch militia obeyed the government of Scotland, and if the Welsh militia obeyed the government of Wales? Suppose an invasion; would those three governments (if they agreed at all) be able, with all their respective forces, to operate against the enemy so effectually as the single government of Great Britain would?

We have heard much of the fleets of Britain, and the time may come, if we are wise, when the fleets of America may engage attention. But if one national government, had not so regulated the navigation of Britain as to make it a nursery for seamen—if one national government had not called forth all the national means and materials for forming fleets, their prowess and their thunder would never have been celebrated. Let England have its navigation and fleet—let Scotland have its navigation and fleet—let Wales have its navigation and fleet—let Ireland have its navigation and fleet—let those four of the constituent parts of the British empire be be under four

independent governments, and it is easy to perceive how soon they would each dwindle into comparative insignificance.

Apply these facts to our own case. Leave America divided into thirteen or, if you please, into three or four independent governments—what armies could they raise and pay—what fleets could they ever hope to have? If one was attacked, would the others fly to its succor, and spend their blood and money in its defense? Would there be no danger of their being flattered into neutrality by its specious promises, or seduced by a too great fondness for peace to decline hazarding their tranquillity and present safety for the sake of neighbors, of whom perhaps they have been jealous, and whose importance they are content to see diminished? Although such conduct would not be wise, it would, nevertheless, be natural. The history of the states of Greece, and of other countries, abounds with such instances, and it is not improbable that what has so often happened would, under similar circumstances, happen again.

But admit that they might be willing to help the invaded State or confederacy. How, and when, and in what proportion shall aids of men and money be afforded? Who shall command the allied armies, and from which of them shall he receive his orders? Who shall settle the terms of peace, and in case of disputes what umpire shall decide between them and compel acquiescence? Various difficulties and inconveniences would be inseparable from such a situation; whereas one government, watching over the general and common interests, and combining and directing the powers and resources of the whole, would be free from all these embarrassments, and conduce far more to the safety of the people.

But whatever may be our situation, whether firmly united under one national government, or split into a number of confederacies, certain it is, that foreign nations will know and view it exactly as it is; and they will act toward us accordingly. If they see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our credit re-established, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If, on the other hand, they find us either destitute of an effectual government (each State doing right or wrong, as to its rulers may seem convenient), or split into three or four independent and probably discordant

republics or confederacies, one inclining to Britain, another to France, and a third to Spain, and perhaps played off against each other by the three, what a poor, pitiful figure will America make in their eyes! How liable would she become not only to their contempt but to their outrage, and how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against themselves.

PUBLIUS

FEDERALIST No. 5. The Same Subject Continued (Concerning Dangers From Foreign Force and Influence)

For the Independent Journal. Saturday, November 10, 1787

JAY

To the People of the State of New York:

QUEEN ANNE, in her letter of the 1st July, 1706, to the Scotch Parliament, makes some observations on the importance of the UNION then forming between England and Scotland, which merit our attention. I shall present the public with one or two extracts from it: "An entire and perfect union will be the solid foundation of lasting peace: It will secure your religion, liberty, and property; remove the animosities amongst yourselves, and the jealousies and differences betwixt our two kingdoms. It must increase your strength, riches, and trade; and by this union the whole island, being joined in affection and free from all apprehensions of different interest, will be ENABLED TO RESIST ALL ITS ENEMIES." "We most earnestly recommend to you calmness and unanimity in this great and weighty affair, that the union may be brought to a happy conclusion, being the only EFFECTUAL way to secure our present and future happiness, and disappoint the designs of our and your enemies, who will doubtless, on this occasion, USE THEIR UTMOST ENDEAVORS TO PREVENT OR DELAY THIS UNION."

It was remarked in the preceding paper, that weakness and divisions at home would invite dangers from abroad; and that nothing would tend more to secure us from them than union, strength, and good government within ourselves. This subject is copious and cannot easily be exhausted.

The history of Great Britain is the one with which we are in general the best acquainted, and it gives us many useful lessons. We may profit by their experience without paying the price which it cost them. Although it seems obvious to common sense that the people of such an island should be but

one nation, yet we find that they were for ages divided into three, and that those three were almost constantly embroiled in quarrels and wars with one another. Notwithstanding their true interest with respect to the continental nations was really the same, yet by the arts and policy and practices of those nations, their mutual jealousies were perpetually kept inflamed, and for a long series of years they were far more inconvenient and troublesome than they were useful and assisting to each other.

Should the people of America divide themselves into three or four nations, would not the same thing happen? Would not similar jealousies arise, and be in like manner cherished? Instead of their being "joined in affection" and free from all apprehension of different "interests," envy and jealousy would soon extinguish confidence and affection, and the partial interests of each confederacy, instead of the general interests of all America, would be the only objects of their policy and pursuits. Hence, like most other BORDERING nations, they would always be either involved in disputes and war, or live in the constant apprehension of them.

The most sanguine advocates for three or four confederacies cannot reasonably suppose that they would long remain exactly on an equal footing in point of strength, even if it was possible to form them so at first; but, admitting that to be practicable, yet what human contrivance can secure the continuance of such equality? Independent of those local circumstances which tend to beget and increase power in one part and to impede its progress in another, we must advert to the effects of that superior policy and good management which would probably distinguish the government of one above the rest, and by which their relative equality in strength and consideration would be destroyed. For it cannot be presumed that the same degree of sound policy, prudence, and foresight would uniformly be observed by each of these confederacies for a long succession of years.

Whenever, and from whatever causes, it might happen, and happen it would, that any one of these nations or confederacies should rise on the scale of political importance much above the degree of her neighbors, that moment would those neighbors behold her with envy and with fear. Both those passions would lead them to countenance, if not to promote, whatever might promise to diminish her importance; and would also restrain them from measures calculated to advance or even to secure her prosperity. Much time would not be necessary to enable her to discern these unfriendly

dispositions. She would soon begin, not only to lose confidence in her neighbors, but also to feel a disposition equally unfavorable to them. Distrust naturally creates distrust, and by nothing is good-will and kind conduct more speedily changed than by invidious jealousies and uncandid imputations, whether expressed or implied.

The North is generally the region of strength, and many local circumstances render it probable that the most Northern of the proposed confederacies would, at a period not very distant, be unquestionably more formidable than any of the others. No sooner would this become evident than the NORTHERN HIVE would excite the same ideas and sensations in the more southern parts of America which it formerly did in the southern parts of Europe. Nor does it appear to be a rash conjecture that its young swarms might often be tempted to gather honey in the more blooming fields and milder air of their luxurious and more delicate neighbors.

They who well consider the history of similar divisions and confederacies will find abundant reason to apprehend that those in contemplation would in no other sense be neighbors than as they would be borderers; that they would neither love nor trust one another, but on the contrary would be a prey to discord, jealousy, and mutual injuries; in short, that they would place us exactly in the situations in which some nations doubtless wish to see us, viz., FORMIDABLE ONLY TO EACH OTHER.

From these considerations it appears that those gentlemen are greatly mistaken who suppose that alliances offensive and defensive might be formed between these confederacies, and would produce that combination and union of wills of arms and of resources, which would be necessary to put and keep them in a formidable state of defense against foreign enemies.

When did the independent states, into which Britain and Spain were formerly divided, combine in such alliance, or unite their forces against a foreign enemy? The proposed confederacies will be DISTINCT NATIONS. Each of them would have its commerce with foreigners to regulate by distinct treaties; and as their productions and commodities are different and proper for different markets, so would those treaties be essentially different. Different commercial concerns must create different interests, and of course different degrees of political attachment to and connection with different foreign nations. Hence it might and probably would happen that the foreign nation with whom the SOUTHERN confederacy might be at war would be

the one with whom the NORTHERN confederacy would be the most desirous of preserving peace and friendship. An alliance so contrary to their immediate interest would not therefore be easy to form, nor, if formed, would it be observed and fulfilled with perfect good faith.

Nay, it is far more probable that in America, as in Europe, neighboring nations, acting under the impulse of opposite interests and unfriendly passions, would frequently be found taking different sides. Considering our distance from Europe, it would be more natural for these confederacies to apprehend danger from one another than from distant nations, and therefore that each of them should be more desirous to guard against the others by the aid of foreign alliances, than to guard against foreign dangers by alliances between themselves. And here let us not forget how much more easy it is to receive foreign fleets into our ports, and foreign armies into our country, than it is to persuade or compel them to depart. How many conquests did the Romans and others make in the characters of allies, and what innovations did they under the same character introduce into the governments of those whom they pretended to protect.

Let candid men judge, then, whether the division of America into any given number of independent sovereignties would tend to secure us against the hostilities and improper interference of foreign nations.

PUBLIUS

FEDERALIST No. 6. Concerning Dangers from Dissensions Between the States

For the Independent Journal. Wednesday, November 14, 1787

HAMILTON

To the People of the State of New York:

THE three last numbers of this paper have been dedicated to an enumeration of the dangers to which we should be exposed, in a state of disunion, from the arms and arts of foreign nations. I shall now proceed to delineate dangers of a different and, perhaps, still more alarming kind—those which will in all probability flow from dissensions between the States themselves, and from domestic factions and convulsions. These have been already in some instances slightly anticipated; but they deserve a more particular and more full investigation.

A man must be far gone in Utopian speculations who can seriously doubt that, if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other. To presume a want of motives for such contests as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent, unconnected sovereignties in the same neighborhood, would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages.

The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society. Of this description are the love of power or the desire of pre-eminence and dominion—the jealousy of power, or the desire of equality and safety. There are others which have a more circumscribed though an equally operative influence within their spheres. Such are the rivalships and competitions of commerce between commercial nations. And there are others, not less numerous than either of the former, which take

their origin entirely in private passions; in the attachments, enmities, interests, hopes, and fears of leading individuals in the communities of which they are members. Men of this class, whether the favorites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquillity to personal advantage or personal gratification.

The celebrated Pericles, in compliance with the resentment of a prostitute,(1) at the expense of much of the blood and treasure of his countrymen, attacked, vanquished, and destroyed the city of the SAMMIANS. The same man, stimulated by private pique against the MEGARENSIANS,(2) another nation of Greece, or to avoid a prosecution with which he was threatened as an accomplice of a supposed theft of the statuary Phidias,(3) or to get rid of the accusations prepared to be brought against him for dissipating the funds of the state in the purchase of popularity,(4) or from a combination of all these causes, was the primitive author of that famous and fatal war, distinguished in the Grecian annals by the name of the PELOPONNESIAN war; which, after various vicissitudes, intermissions, and renewals, terminated in the ruin of the Athenian commonwealth.

The ambitious cardinal, who was prime minister to Henry VIII., permitting his vanity to aspire to the triple crown,(5) entertained hopes of succeeding in the acquisition of that splendid prize by the influence of the Emperor Charles V. To secure the favor and interest of this enterprising and powerful monarch, he precipitated England into a war with France, contrary to the plainest dictates of policy, and at the hazard of the safety and independence, as well of the kingdom over which he presided by his counsels, as of Europe in general. For if there ever was a sovereign who bid fair to realize the project of universal monarchy, it was the Emperor Charles V., of whose intrigues Wolsey was at once the instrument and the dupe.

The influence which the bigotry of one female,(6) the petulance of another,(7) and the cabals of a third,(8) had in the contemporary policy, ferments, and pacifications, of a considerable part of Europe, are topics that have been too often descanted upon not to be generally known.

To multiply examples of the agency of personal considerations in the production of great national events, either foreign or domestic, according to

their direction, would be an unnecessary waste of time. Those who have but a superficial acquaintance with the sources from which they are to be drawn, will themselves recollect a variety of instances; and those who have a tolerable knowledge of human nature will not stand in need of such lights to form their opinion either of the reality or extent of that agency. Perhaps, however, a reference, tending to illustrate the general principle, may with propriety be made to a case which has lately happened among ourselves. If Shays had not been a DESPERATE DEBTOR, it is much to be doubted whether Massachusetts would have been plunged into a civil war.

But notwithstanding the concurring testimony of experience, in this particular, there are still to be found visionary or designing men, who stand ready to advocate the paradox of perpetual peace between the States, though dismembered and alienated from each other. The genius of republics (say they) is pacific; the spirit of commerce has a tendency to soften the manners of men, and to extinguish those inflammable humors which have so often kindled into wars. Commercial republics, like ours, will never be disposed to waste themselves in ruinous contentions with each other. They will be governed by mutual interest, and will cultivate a spirit of mutual amity and concord.

Is it not (we may ask these projectors in politics) the true interest of all nations to cultivate the same benevolent and philosophic spirit? If this be their true interest, have they in fact pursued it? Has it not, on the contrary, invariably been found that momentary passions, and immediate interest, have a more active and imperious control over human conduct than general or remote considerations of policy, utility or justice? Have republics in practice been less addicted to war than monarchies? Are not the former administered by MEN as well as the latter? Are there not aversions, predilections, rivalships, and desires of unjust acquisitions, that affect nations as well as kings? Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known that their determinations are often governed by a few individuals in whom they place confidence, and are, of course, liable to be tinctured by the passions and views of those individuals? Has commerce hitherto done anything more than change the objects of war? Is not the love of wealth as domineering and enterprising a passion as that of power or glory? Have there not been as many wars founded upon commercial motives since that has become the prevailing

system of nations, as were before occasioned by the cupidity of territory or dominion? Has not the spirit of commerce, in many instances, administered new incentives to the appetite, both for the one and for the other? Let experience, the least fallible guide of human opinions, be appealed to for an answer to these inquiries.

Sparta, Athens, Rome, and Carthage were all republics; two of them, Athens and Carthage, of the commercial kind. Yet were they as often engaged in wars, offensive and defensive, as the neighboring monarchies of the same times. Sparta was little better than a wellregulated camp; and Rome was never sated of carnage and conquest.

Carthage, though a commercial republic, was the aggressor in the very war that ended in her destruction. Hannibal had carried her arms into the heart of Italy and to the gates of Rome, before Scipio, in turn, gave him an overthrow in the territories of Carthage, and made a conquest of the commonwealth.

Venice, in later times, figured more than once in wars of ambition, till, becoming an object to the other Italian states, Pope Julius II. found means to accomplish that formidable league,(9) which gave a deadly blow to the power and pride of this haughty republic.

The provinces of Holland, till they were overwhelmed in debts and taxes, took a leading and conspicuous part in the wars of Europe. They had furious contests with England for the dominion of the sea, and were among the most persevering and most implacable of the opponents of Louis XIV.

In the government of Britain the representatives of the people compose one branch of the national legislature. Commerce has been for ages the predominant pursuit of that country. Few nations, nevertheless, have been more frequently engaged in war; and the wars in which that kingdom has been engaged have, in numerous instances, proceeded from the people.

There have been, if I may so express it, almost as many popular as royal wars. The cries of the nation and the importunities of their representatives have, upon various occasions, dragged their monarchs into war, or continued them in it, contrary to their inclinations, and sometimes contrary to the real interests of the State. In that memorable struggle for superiority between the rival houses of AUSTRIA and BOURBON, which so long kept Europe in a flame, it is well known that the antipathies of the English against the French, seconding the ambition, or rather the avarice, of a

favorite leader,(10) protracted the war beyond the limits marked out by sound policy, and for a considerable time in opposition to the views of the court.

The wars of these two last-mentioned nations have in a great measure grown out of commercial considerations,—the desire of supplanting and the fear of being supplanted, either in particular branches of traffic or in the general advantages of trade and navigation, and sometimes even the more culpable desire of sharing in the commerce of other nations without their consent.

The last war but between Britain and Spain sprang from the attempts of the British merchants to prosecute an illicit trade with the Spanish main. These unjustifiable practices on their part produced severity on the part of the Spaniards toward the subjects of Great Britain which were not more justifiable, because they exceeded the bounds of a just retaliation and were chargeable with inhumanity and cruelty. Many of the English who were taken on the Spanish coast were sent to dig in the mines of Potosi; and by the usual progress of a spirit of resentment, the innocent were, after a while, confounded with the guilty in indiscriminate punishment. The complaints of the merchants kindled a violent flame throughout the nation, which soon after broke out in the House of Commons, and was communicated from that body to the ministry. Letters of reprisal were granted, and a war ensued, which in its consequences overthrew all the alliances that but twenty years before had been formed with sanguine expectations of the most beneficial fruits.

From this summary of what has taken place in other countries, whose situations have borne the nearest resemblance to our own, what reason can we have to confide in those reveries which would seduce us into an expectation of peace and cordiality between the members of the present confederacy, in a state of separation? Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, weaknesses and evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age, and to adopt as a practical maxim for the direction of our political conduct that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?

Let the point of extreme depression to which our national dignity and credit have sunk, let the inconveniences felt everywhere from a lax and ill administration of government, let the revolt of a part of the State of North Carolina, the late menacing disturbances in Pennsylvania, and the actual insurrections and rebellions in Massachusetts, declare—!

So far is the general sense of mankind from corresponding with the tenets of those who endeavor to lull asleep our apprehensions of discord and hostility between the States, in the event of disunion, that it has from long observation of the progress of society become a sort of axiom in politics, that vicinity or nearness of situation, constitutes nations natural enemies. An intelligent writer expresses himself on this subject to this effect: "NEIGHBORING NATIONS (says he) are naturally enemies of each other unless their common weakness forces them to league in a CONFEDERATE REPUBLIC, and their constitution prevents the differences that neighborhood occasions, extinguishing that secret jealousy which disposes all states to aggrandize themselves at the expense of their neighbors."(11) This passage, at the same time, points out the EVIL and suggests the REMEDY.

PUBLIUS

1. Aspasia, vide "Plutarch's Life of Pericles."

2. Ibid.

3. Ibid.

4. Ibid. Phidias was supposed to have stolen some public gold, with the connivance of Pericles, for the embellishment of the statue of Minerva.

5. Worn by the popes.

6. Madame de Maintenon.

7. Duchess of Marlborough.

8. Madame de Pompadour.

9. The League of Cambray, comprehending the Emperor, the King of France, the King of Aragon, and most of the Italian princes and states.

10. The Duke of Marlborough.

11. Vide "Principes des Negociations" par l'Abbé de Mably.

FEDERALIST No. 7. The Same Subject Continued (Concerning Dangers from Dissensions Between the States)

For the Independent Journal. Thursday, November 15, 1787

HAMILTON

To the People of the State of New York:

IT IS sometimes asked, with an air of seeming triumph, what inducements could the States have, if disunited, to make war upon each other? It would be a full answer to this question to say—precisely the same inducements which have, at different times, deluged in blood all the nations in the world. But, unfortunately for us, the question admits of a more particular answer. There are causes of differences within our immediate contemplation, of the tendency of which, even under the restraints of a federal constitution, we have had sufficient experience to enable us to form a judgment of what might be expected if those restraints were removed.

Territorial disputes have at all times been found one of the most fertile sources of hostility among nations. Perhaps the greatest proportion of wars that have desolated the earth have sprung from this origin. This cause would exist among us in full force. We have a vast tract of unsettled territory within the boundaries of the United States. There still are discordant and undecided claims between several of them, and the dissolution of the Union would lay a foundation for similar claims between them all. It is well known that they have heretofore had serious and animated discussion concerning the rights to the lands which were ungranted at the time of the Revolution, and which usually went under the name of crown lands. The States within the limits of whose colonial governments they were comprised have claimed them as their property, the others have contended that the rights of the crown in this article devolved upon the Union; especially as to all that part of the Western territory which, either by actual possession, or through the submission of the Indian proprietors, was subjected to the jurisdiction of the king of Great Britain, till it was

relinquished in the treaty of peace. This, it has been said, was at all events an acquisition to the Confederacy by compact with a foreign power. It has been the prudent policy of Congress to appease this controversy, by prevailing upon the States to make cessions to the United States for the benefit of the whole. This has been so far accomplished as, under a continuation of the Union, to afford a decided prospect of an amicable termination of the dispute. A dismemberment of the Confederacy, however, would revive this dispute, and would create others on the same subject. At present, a large part of the vacant Western territory is, by cession at least, if not by any anterior right, the common property of the Union. If that were at an end, the States which made the cession, on a principle of federal compromise, would be apt when the motive of the grant had ceased, to reclaim the lands as a reversion. The other States would no doubt insist on a proportion, by right of representation. Their argument would be, that a grant, once made, could not be revoked; and that the justice of participating in territory acquired or secured by the joint efforts of the Confederacy, remained undiminished. If, contrary to probability, it should be admitted by all the States, that each had a right to a share of this common stock, there would still be a difficulty to be surmounted, as to a proper rule of apportionment. Different principles would be set up by different States for this purpose; and as they would affect the opposite interests of the parties, they might not easily be susceptible of a pacific adjustment.

In the wide field of Western territory, therefore, we perceive an ample theatre for hostile pretensions, without any umpire or common judge to interpose between the contending parties. To reason from the past to the future, we shall have good ground to apprehend, that the sword would sometimes be appealed to as the arbiter of their differences. The circumstances of the dispute between Connecticut and Pennsylvania, respecting the land at Wyoming, admonish us not to be sanguine in expecting an easy accommodation of such differences. The articles of confederation obliged the parties to submit the matter to the decision of a federal court. The submission was made, and the court decided in favor of Pennsylvania. But Connecticut gave strong indications of dissatisfaction with that determination; nor did she appear to be entirely resigned to it, till, by negotiation and management, something like an equivalent was found for the loss she supposed herself to have sustained. Nothing here said is intended to convey the slightest censure on the conduct of that State. She no

doubt sincerely believed herself to have been injured by the decision; and States, like individuals, acquiesce with great reluctance in determinations to their disadvantage.

Those who had an opportunity of seeing the inside of the transactions which attended the progress of the controversy between this State and the district of Vermont, can vouch the opposition we experienced, as well from States not interested as from those which were interested in the claim; and can attest the danger to which the peace of the Confederacy might have been exposed, had this State attempted to assert its rights by force. Two motives preponderated in that opposition: one, a jealousy entertained of our future power; and the other, the interest of certain individuals of influence in the neighboring States, who had obtained grants of lands under the actual government of that district. Even the States which brought forward claims, in contradiction to ours, seemed more solicitous to dismember this State, than to establish their own pretensions. These were New Hampshire, Massachusetts, and Connecticut. New Jersey and Rhode Island, upon all occasions, discovered a warm zeal for the independence of Vermont; and Maryland, till alarmed by the appearance of a connection between Canada and that State, entered deeply into the same views. These being small States, saw with an unfriendly eye the perspective of our growing greatness. In a review of these transactions we may trace some of the causes which would be likely to embroil the States with each other, if it should be their unpropitious destiny to become disunited.

The competitions of commerce would be another fruitful source of contention. The States less favorably circumstanced would be desirous of escaping from the disadvantages of local situation, and of sharing in the advantages of their more fortunate neighbors. Each State, or separate confederacy, would pursue a system of commercial policy peculiar to itself. This would occasion distinctions, preferences, and exclusions, which would beget discontent. The habits of intercourse, on the basis of equal privileges, to which we have been accustomed since the earliest settlement of the country, would give a keener edge to those causes of discontent than they would naturally have independent of this circumstance. WE SHOULD BE READY TO DENOMINATE INJURIES THOSE THINGS WHICH WERE IN REALITY THE JUSTIFIABLE ACTS OF INDEPENDENT SOVEREIGNTIES CONSULTING A DISTINCT INTEREST. The spirit of enterprise, which characterizes the commercial part of America, has left no

occasion of displaying itself unimproved. It is not at all probable that this unbridled spirit would pay much respect to those regulations of trade by which particular States might endeavor to secure exclusive benefits to their own citizens. The infractions of these regulations, on one side, the efforts to prevent and repel them, on the other, would naturally lead to outrages, and these to reprisals and wars.

The opportunities which some States would have of rendering others tributary to them by commercial regulations would be impatiently submitted to by the tributary States. The relative situation of New York, Connecticut, and New Jersey would afford an example of this kind. New York, from the necessities of revenue, must lay duties on her importations. A great part of these duties must be paid by the inhabitants of the two other States in the capacity of consumers of what we import. New York would neither be willing nor able to forego this advantage. Her citizens would not consent that a duty paid by them should be remitted in favor of the citizens of her neighbors; nor would it be practicable, if there were not this impediment in the way, to distinguish the customers in our own markets. Would Connecticut and New Jersey long submit to be taxed by New York for her exclusive benefit? Should we be long permitted to remain in the quiet and undisturbed enjoyment of a metropolis, from the possession of which we derived an advantage so odious to our neighbors, and, in their opinion, so oppressive? Should we be able to preserve it against the incumbent weight of Connecticut on the one side, and the co-operating pressure of New Jersey on the other? These are questions that temerity alone will answer in the affirmative.

The public debt of the Union would be a further cause of collision between the separate States or confederacies. The apportionment, in the first instance, and the progressive extinguishment afterward, would be alike productive of ill-humor and animosity. How would it be possible to agree upon a rule of apportionment satisfactory to all? There is scarcely any that can be proposed which is entirely free from real objections. These, as usual, would be exaggerated by the adverse interest of the parties. There are even dissimilar views among the States as to the general principle of discharging the public debt. Some of them, either less impressed with the importance of national credit, or because their citizens have little, if any, immediate interest in the question, feel an indifference, if not a repugnance, to the payment of the domestic debt at any rate. These would be inclined to

magnify the difficulties of a distribution. Others of them, a numerous body of whose citizens are creditors to the public beyond proportion of the State in the total amount of the national debt, would be strenuous for some equitable and effective provision. The procrastinations of the former would excite the resentments of the latter. The settlement of a rule would, in the meantime, be postponed by real differences of opinion and affected delays. The citizens of the States interested would clamour; foreign powers would urge for the satisfaction of their just demands, and the peace of the States would be hazarded to the double contingency of external invasion and internal contention.

Suppose the difficulties of agreeing upon a rule surmounted, and the apportionment made. Still there is great room to suppose that the rule agreed upon would, upon experiment, be found to bear harder upon some States than upon others. Those which were sufferers by it would naturally seek for a mitigation of the burden. The others would as naturally be disinclined to a revision, which was likely to end in an increase of their own incumbrances. Their refusal would be too plausible a pretext to the complaining States to withhold their contributions, not to be embraced with avidity; and the non-compliance of these States with their engagements would be a ground of bitter discussion and altercation. If even the rule adopted should in practice justify the equality of its principle, still delinquencies in payments on the part of some of the States would result from a diversity of other causes—the real deficiency of resources; the mismanagement of their finances; accidental disorders in the management of the government; and, in addition to the rest, the reluctance with which men commonly part with money for purposes that have outlived the exigencies which produced them, and interfere with the supply of immediate wants. Delinquencies, from whatever causes, would be productive of complaints, recriminations, and quarrels. There is, perhaps, nothing more likely to disturb the tranquillity of nations than their being bound to mutual contributions for any common object that does not yield an equal and coincident benefit. For it is an observation, as true as it is trite, that there is nothing men differ so readily about as the payment of money.

Laws in violation of private contracts, as they amount to aggressions on the rights of those States whose citizens are injured by them, may be considered as another probable source of hostility. We are not authorized to expect that a more liberal or more equitable spirit would preside over the

legislations of the individual States hereafter, if unrestrained by any additional checks, than we have heretofore seen in too many instances disgracing their several codes. We have observed the disposition to retaliation excited in Connecticut in consequence of the enormities perpetrated by the Legislature of Rhode Island; and we reasonably infer that, in similar cases, under other circumstances, a war, not of PARCHMENT, but of the sword, would chastise such atrocious breaches of moral obligation and social justice.

The probability of incompatible alliances between the different States or confederacies and different foreign nations, and the effects of this situation upon the peace of the whole, have been sufficiently unfolded in some preceding papers. From the view they have exhibited of this part of the subject, this conclusion is to be drawn, that America, if not connected at all, or only by the feeble tie of a simple league, offensive and defensive, would, by the operation of such jarring alliances, be gradually entangled in all the pernicious labyrinths of European politics and wars; and by the destructive contentions of the parts into which she was divided, would be likely to become a prey to the artifices and machinations of powers equally the enemies of them all. Divide et impera(1) must be the motto of every nation that either hates or fears us.(2)

PUBLIUS

1. Divide and command.

2. In order that the whole subject of these papers may as soon as possible be laid before the public, it is proposed to publish them four times a week—on Tuesday in the New York Packet and on Thursday in the Daily Advertiser.

FEDERALIST No. 8. The Consequences of Hostilities Between the States

From the New York Packet. Tuesday, November 20, 1787.

HAMILTON

To the People of the State of New York:

ASSUMING it therefore as an established truth that the several States, in case of disunion, or such combinations of them as might happen to be formed out of the wreck of the general Confederacy, would be subject to those vicissitudes of peace and war, of friendship and enmity, with each other, which have fallen to the lot of all neighboring nations not united under one government, let us enter into a concise detail of some of the consequences that would attend such a situation.

War between the States, in the first period of their separate existence, would be accompanied with much greater distresses than it commonly is in those countries where regular military establishments have long obtained. The disciplined armies always kept on foot on the continent of Europe, though they bear a malignant aspect to liberty and economy, have, notwithstanding, been productive of the signal advantage of rendering sudden conquests impracticable, and of preventing that rapid desolation which used to mark the progress of war prior to their introduction. The art of fortification has contributed to the same ends. The nations of Europe are encircled with chains of fortified places, which mutually obstruct invasion. Campaigns are wasted in reducing two or three frontier garrisons, to gain admittance into an enemy's country. Similar impediments occur at every step, to exhaust the strength and delay the progress of an invader. Formerly, an invading army would penetrate into the heart of a neighboring country almost as soon as intelligence of its approach could be received; but now a comparatively small force of disciplined troops, acting on the defensive, with the aid of posts, is able to impede, and finally to frustrate, the enterprises of one much more considerable. The history of war, in that quarter of the globe, is no longer a history of nations subdued and empires

overturned, but of towns taken and retaken; of battles that decide nothing; of retreats more beneficial than victories; of much effort and little acquisition.

In this country the scene would be altogether reversed. The jealousy of military establishments would postpone them as long as possible. The want of fortifications, leaving the frontiers of one state open to another, would facilitate inroads. The populous States would, with little difficulty, overrun their less populous neighbors. Conquests would be as easy to be made as difficult to be retained. War, therefore, would be desultory and predatory. PLUNDER and devastation ever march in the train of irregulars. The calamities of individuals would make the principal figure in the events which would characterize our military exploits.

This picture is not too highly wrought; though, I confess, it would not long remain a just one. Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free.

The institutions chiefly alluded to are STANDING ARMIES and the correspondent appendages of military establishments. Standing armies, it is said, are not provided against in the new Constitution; and it is therefore inferred that they may exist under it.(1) Their existence, however, from the very terms of the proposition, is, at most, problematical and uncertain. But standing armies, it may be replied, must inevitably result from a dissolution of the Confederacy. Frequent war and constant apprehension, which require a state of as constant preparation, will infallibly produce them. The weaker States or confederacies would first have recourse to them, to put themselves upon an equality with their more potent neighbors. They would endeavor to supply the inferiority of population and resources by a more regular and effective system of defense, by disciplined troops, and by fortifications. They would, at the same time, be necessitated to strengthen the executive arm of government, in doing which their constitutions would acquire a

progressive direction toward monarchy. It is of the nature of war to increase the executive at the expense of the legislative authority.

The expedients which have been mentioned would soon give the States or confederacies that made use of them a superiority over their neighbors. Small states, or states of less natural strength, under vigorous governments, and with the assistance of disciplined armies, have often triumphed over large states, or states of greater natural strength, which have been destitute of these advantages. Neither the pride nor the safety of the more important States or confederacies would permit them long to submit to this mortifying and adventitious superiority. They would quickly resort to means similar to those by which it had been effected, to reinstate themselves in their lost pre-eminence. Thus, we should, in a little time, see established in every part of this country the same engines of despotism which have been the scourge of the Old World. This, at least, would be the natural course of things; and our reasonings will be the more likely to be just, in proportion as they are accommodated to this standard.

These are not vague inferences drawn from supposed or speculative defects in a Constitution, the whole power of which is lodged in the hands of a people, or their representatives and delegates, but they are solid conclusions, drawn from the natural and necessary progress of human affairs.

It may, perhaps, be asked, by way of objection to this, why did not standing armies spring up out of the contentions which so often distracted the ancient republics of Greece? Different answers, equally satisfactory, may be given to this question. The industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce, are incompatible with the condition of a nation of soldiers, which was the true condition of the people of those republics. The means of revenue, which have been so greatly multiplied by the increase of gold and silver and of the arts of industry, and the science of finance, which is the offspring of modern times, concurring with the habits of nations, have produced an entire revolution in the system of war, and have rendered disciplined armies, distinct from the body of the citizens, the inseparable companions of frequent hostility.

There is a wide difference, also, between military establishments in a country seldom exposed by its situation to internal invasions, and in one

which is often subject to them, and always apprehensive of them. The rulers of the former can have no good pretext, if they are even so inclined, to keep on foot armies so numerous as must of necessity be maintained in the latter. These armies being, in the first case, rarely, if at all, called into activity for interior defense, the people are in no danger of being broken to military subordination. The laws are not accustomed to relaxations, in favor of military exigencies; the civil state remains in full vigor, neither corrupted, nor confounded with the principles or propensities of the other state. The smallness of the army renders the natural strength of the community an overmatch for it; and the citizens, not habituated to look up to the military power for protection, or to submit to its oppressions, neither love nor fear the soldiery; they view them with a spirit of jealous acquiescence in a necessary evil, and stand ready to resist a power which they suppose may be exerted to the prejudice of their rights.

The army under such circumstances may usefully aid the magistrate to suppress a small faction, or an occasional mob, or insurrection; but it will be unable to enforce encroachments against the united efforts of the great body of the people.

In a country in the predicament last described, the contrary of all this happens. The perpetual menacings of danger oblige the government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionably degrades the condition of the citizen. The military state becomes elevated above the civil. The inhabitants of territories, often the theatre of war, are unavoidably subjected to frequent infringements on their rights, which serve to weaken their sense of those rights; and by degrees the people are brought to consider the soldiery not only as their protectors, but as their superiors. The transition from this disposition to that of considering them masters, is neither remote nor difficult; but it is very difficult to prevail upon a people under such impressions, to make a bold or effectual resistance to usurpations supported by the military power.

The kingdom of Great Britain falls within the first description. An insular situation, and a powerful marine, guarding it in a great measure against the possibility of foreign invasion, supersede the necessity of a numerous army within the kingdom. A sufficient force to make head against a sudden

descent, till the militia could have time to rally and embody, is all that has been deemed requisite. No motive of national policy has demanded, nor would public opinion have tolerated, a larger number of troops upon its domestic establishment. There has been, for a long time past, little room for the operation of the other causes, which have been enumerated as the consequences of internal war. This peculiar felicity of situation has, in a great degree, contributed to preserve the liberty which that country to this day enjoys, in spite of the prevalent venality and corruption. If, on the contrary, Britain had been situated on the continent, and had been compelled, as she would have been, by that situation, to make her military establishments at home coextensive with those of the other great powers of Europe, she, like them, would in all probability be, at this day, a victim to the absolute power of a single man. It is possible, though not easy, that the people of that island may be enslaved from other causes; but it cannot be by the prowess of an army so inconsiderable as that which has been usually kept up within the kingdom.

If we are wise enough to preserve the Union we may for ages enjoy an advantage similar to that of an insulated situation. Europe is at a great distance from us. Her colonies in our vicinity will be likely to continue too much disproportioned in strength to be able to give us any dangerous annoyance. Extensive military establishments cannot, in this position, be necessary to our security. But if we should be disunited, and the integral parts should either remain separated, or, which is most probable, should be thrown together into two or three confederacies, we should be, in a short course of time, in the predicament of the continental powers of Europe—our liberties would be a prey to the means of defending ourselves against the ambition and jealousy of each other.

This is an idea not superficial or futile, but solid and weighty. It deserves the most serious and mature consideration of every prudent and honest man of whatever party. If such men will make a firm and solemn pause, and meditate dispassionately on the importance of this interesting idea; if they will contemplate it in all its attitudes, and trace it to all its consequences, they will not hesitate to part with trivial objections to a Constitution, the rejection of which would in all probability put a final period to the Union. The airy phantoms that flit before the distempered imaginations of some of its adversaries would quickly give place to the more substantial forms of dangers, real, certain, and formidable.

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1. This objection will be fully examined in its proper place, and it will be shown that the only natural precaution which could have been taken on this subject has been taken; and a much better one than is to be found in any constitution that has been heretofore framed in America, most of which contain no guard at all on this subject.

FEDERALIST No. 9. The Union as a Safeguard Against Domestic Faction and Insurrection

For the Independent Journal. Wednesday, November 21, 1787

HAMILTON

To the People of the State of New York:

A FIRM Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection. It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy. If they exhibit occasional calms, these only serve as short-lived contrast to the furious storms that are to succeed. If now and then intervals of felicity open to view, we behold them with a mixture of regret, arising from the reflection that the pleasing scenes before us are soon to be overwhelmed by the tempestuous waves of sedition and party rage. If momentary rays of glory break forth from the gloom, while they dazzle us with a transient and fleeting brilliancy, they at the same time admonish us to lament that the vices of government should pervert the direction and tarnish the lustre of those bright talents and exalted endowments for which the favored soils that produced them have been so justly celebrated.

From the disorders that disfigure the annals of those republics the advocates of despotism have drawn arguments, not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and partisans. Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have, in a few glorious instances, refuted their gloomy sophisms. And, I trust, America will be the

broad and solid foundation of other edifices, not less magnificent, which will be equally permanent monuments of their errors.

But it is not to be denied that the portraits they have sketched of republican government were too just copies of the originals from which they were taken. If it had been found impracticable to have devised models of a more perfect structure, the enlightened friends to liberty would have been obliged to abandon the cause of that species of government as indefensible. The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided. To this catalogue of circumstances that tend to the amelioration of popular systems of civil government, I shall venture, however novel it may appear to some, to add one more, on a principle which has been made the foundation of an objection to the new Constitution; I mean the ENLARGEMENT of the ORBIT within which such systems are to revolve, either in respect to the dimensions of a single State or to the consolidation of several smaller States into one great Confederacy. The latter is that which immediately concerns the object under consideration. It will, however, be of use to examine the principle in its application to a single State, which shall be attended to in another place.

The utility of a Confederacy, as well to suppress faction and to guard the internal tranquillity of States, as to increase their external force and security, is in reality not a new idea. It has been practiced upon in different countries and ages, and has received the sanction of the most approved writers on the subject of politics. The opponents of the plan proposed have, with great assiduity, cited and circulated the observations of Montesquieu on the necessity of a contracted territory for a republican government. But they seem not to have been apprised of the sentiments of that great man expressed in another part of his work, nor to have adverted to the

consequences of the principle to which they subscribe with such ready acquiescence.

When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions far short of the limits of almost every one of these States. Neither Virginia, Massachusetts, Pennsylvania, New York, North Carolina, nor Georgia can by any means be compared with the models from which he reasoned and to which the terms of his description apply. If we therefore take his ideas on this point as the criterion of truth, we shall be driven to the alternative either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord, and the miserable objects of universal pity or contempt. Some of the writers who have come forward on the other side of the question seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger States as a desirable thing. Such an infatuated policy, such a desperate expedient, might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue, but it could never promote the greatness or happiness of the people of America.

Referring the examination of the principle itself to another place, as has been already mentioned, it will be sufficient to remark here that, in the sense of the author who has been most emphatically quoted upon the occasion, it would only dictate a reduction of the SIZE of the more considerable MEMBERS of the Union, but would not militate against their being all comprehended in one confederate government. And this is the true question, in the discussion of which we are at present interested.

So far are the suggestions of Montesquieu from standing in opposition to a general Union of the States, that he explicitly treats of a confederate republic as the expedient for extending the sphere of popular government, and reconciling the advantages of monarchy with those of republicanism.

"It is very probable," (says he(1)) "that mankind would have been obliged at length to live constantly under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical government. I mean a CONFEDERATE REPUBLIC."

"This form of government is a convention by which several smaller STATES agree to become members of a larger ONE, which they intend to form. It is a kind of assemblage of societies that constitute a new one, capable of increasing, by means of new associations, till they arrive to such a degree of power as to be able to provide for the security of the united body."

"A republic of this kind, able to withstand an external force, may support itself without any internal corruptions. The form of this society prevents all manner of inconveniences."

"If a single member should attempt to usurp the supreme authority, he could not be supposed to have an equal authority and credit in all the confederate states. Were he to have too great influence over one, this would alarm the rest. Were he to subdue a part, that which would still remain free might oppose him with forces independent of those which he had usurped and overpower him before he could be settled in his usurpation."

"Should a popular insurrection happen in one of the confederate states the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound. The state may be destroyed on one side, and not on the other; the confederacy may be dissolved, and the confederates preserve their sovereignty."

"As this government is composed of small republics, it enjoys the internal happiness of each; and with respect to its external situation, it is possessed, by means of the association, of all the advantages of large monarchies."

I have thought it proper to quote at length these interesting passages, because they contain a luminous abridgment of the principal arguments in favor of the Union, and must effectually remove the false impressions which a misapplication of other parts of the work was calculated to make. They have, at the same time, an intimate connection with the more immediate design of this paper; which is, to illustrate the tendency of the Union to repress domestic faction and insurrection.

A distinction, more subtle than accurate, has been raised between a CONFEDERACY and a CONSOLIDATION of the States. The essential characteristic of the first is said to be, the restriction of its authority to the members in their collective capacities, without reaching to the individuals of whom they are composed. It is contended that the national council ought

to have no concern with any object of internal administration. An exact equality of suffrage between the members has also been insisted upon as a leading feature of a confederate government. These positions are, in the main, arbitrary; they are supported neither by principle nor precedent. It has indeed happened, that governments of this kind have generally operated in the manner which the distinction taken notice of, supposes to be inherent in their nature; but there have been in most of them extensive exceptions to the practice, which serve to prove, as far as example will go, that there is no absolute rule on the subject. And it will be clearly shown in the course of this investigation that as far as the principle contended for has prevailed, it has been the cause of incurable disorder and imbecility in the government.

The definition of a CONFEDERATE REPUBLIC seems simply to be "an assemblage of societies," or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government.

In the Lycian confederacy, which consisted of twenty-three CITIES or republics, the largest were entitled to THREE votes in the COMMON COUNCIL, those of the middle class to TWO, and the smallest to ONE. The COMMON COUNCIL had the appointment of all the judges and magistrates of the respective CITIES. This was certainly the most, delicate species of interference in their internal administration; for if there be any thing that seems exclusively appropriated to the local jurisdictions, it is the appointment of their own officers. Yet Montesquieu, speaking of this association, says: "Were I to give a model of an excellent Confederate Republic, it would be that of Lycia." Thus we perceive that the distinctions insisted upon were not within the contemplation of this enlightened civilian; and we shall be led to conclude, that they are the novel refinements of an erroneous theory.

PUBLIUS

1. "Spirit of Laws," vol. i., book ix., chap. i.

FEDERALIST No. 10. The Same Subject Continued (The Union as a Safeguard Against Domestic Faction and Insurrection)

From the Daily Advertiser. Thursday, November 22, 1787.

MADISON

To the People of the State of New York:

AMONG the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we

labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be

encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to

concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the

people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which

renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular

member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

PUBLIUS

FEDERALIST No. 11. The Utility of the Union in Respect to Commercial Relations and a Navy

For the Independent Journal. Saturday, November 24, 1787

HAMILTON

To the People of the State of New York:

THE importance of the Union, in a commercial light, is one of those points about which there is least room to entertain a difference of opinion, and which has, in fact, commanded the most general assent of men who have any acquaintance with the subject. This applies as well to our intercourse with foreign countries as with each other.

There are appearances to authorize a supposition that the adventurous spirit, which distinguishes the commercial character of America, has already excited uneasy sensations in several of the maritime powers of Europe. They seem to be apprehensive of our too great interference in that carrying trade, which is the support of their navigation and the foundation of their naval strength. Those of them which have colonies in America look forward to what this country is capable of becoming, with painful solicitude. They foresee the dangers that may threaten their American dominions from the neighborhood of States, which have all the dispositions, and would possess all the means, requisite to the creation of a powerful marine. Impressions of this kind will naturally indicate the policy of fostering divisions among us, and of depriving us, as far as possible, of an ACTIVE COMMERCE in our own bottoms. This would answer the threefold purpose of preventing our interference in their navigation, of monopolizing the profits of our trade, and of clipping the wings by which we might soar to a dangerous greatness. Did not prudence forbid the detail, it would not be difficult to trace, by facts, the workings of this policy to the cabinets of ministers.

If we continue united, we may counteract a policy so unfriendly to our prosperity in a variety of ways. By prohibitory regulations, extending, at the same time, throughout the States, we may oblige foreign countries to bid

against each other, for the privileges of our markets. This assertion will not appear chimerical to those who are able to appreciate the importance of the markets of three millions of people—increasing in rapid progression, for the most part exclusively addicted to agriculture, and likely from local circumstances to remain so—to any manufacturing nation; and the immense difference there would be to the trade and navigation of such a nation, between a direct communication in its own ships, and an indirect conveyance of its products and returns, to and from America, in the ships of another country. Suppose, for instance, we had a government in America, capable of excluding Great Britain (with whom we have at present no treaty of commerce) from all our ports; what would be the probable operation of this step upon her politics? Would it not enable us to negotiate, with the fairest prospect of success, for commercial privileges of the most valuable and extensive kind, in the dominions of that kingdom? When these questions have been asked, upon other occasions, they have received a plausible, but not a solid or satisfactory answer. It has been said that prohibitions on our part would produce no change in the system of Britain, because she could prosecute her trade with us through the medium of the Dutch, who would be her immediate customers and paymasters for those articles which were wanted for the supply of our markets. But would not her navigation be materially injured by the loss of the important advantage of being her own carrier in that trade? Would not the principal part of its profits be intercepted by the Dutch, as a compensation for their agency and risk? Would not the mere circumstance of freight occasion a considerable deduction? Would not so circuitous an intercourse facilitate the competitions of other nations, by enhancing the price of British commodities in our markets, and by transferring to other hands the management of this interesting branch of the British commerce?

A mature consideration of the objects suggested by these questions will justify a belief that the real disadvantages to Britain from such a state of things, conspiring with the pre-possessions of a great part of the nation in favor of the American trade, and with the importunities of the West India islands, would produce a relaxation in her present system, and would let us into the enjoyment of privileges in the markets of those islands elsewhere, from which our trade would derive the most substantial benefits. Such a point gained from the British government, and which could not be expected without an equivalent in exemptions and immunities in our markets, would

be likely to have a correspondent effect on the conduct of other nations, who would not be inclined to see themselves altogether supplanted in our trade.

A further resource for influencing the conduct of European nations toward us, in this respect, would arise from the establishment of a federal navy. There can be no doubt that the continuance of the Union under an efficient government would put it in our power, at a period not very distant, to create a navy which, if it could not vie with those of the great maritime powers, would at least be of respectable weight if thrown into the scale of either of two contending parties. This would be more peculiarly the case in relation to operations in the West Indies. A few ships of the line, sent opportunely to the reinforcement of either side, would often be sufficient to decide the fate of a campaign, on the event of which interests of the greatest magnitude were suspended. Our position is, in this respect, a most commanding one. And if to this consideration we add that of the usefulness of supplies from this country, in the prosecution of military operations in the West Indies, it will readily be perceived that a situation so favorable would enable us to bargain with great advantage for commercial privileges. A price would be set not only upon our friendship, but upon our neutrality. By a steady adherence to the Union we may hope, erelong, to become the arbiter of Europe in America, and to be able to incline the balance of European competitions in this part of the world as our interest may dictate.

But in the reverse of this eligible situation, we shall discover that the rivalships of the parts would make them checks upon each other, and would frustrate all the tempting advantages which nature has kindly placed within our reach. In a state so insignificant our commerce would be a prey to the wanton intermeddlings of all nations at war with each other; who, having nothing to fear from us, would with little scruple or remorse, supply their wants by depredations on our property as often as it fell in their way. The rights of neutrality will only be respected when they are defended by an adequate power. A nation, despicable by its weakness, forfeits even the privilege of being neutral.

Under a vigorous national government, the natural strength and resources of the country, directed to a common interest, would baffle all the combinations of European jealousy to restrain our growth. This situation would even take away the motive to such combinations, by inducing an

impracticability of success. An active commerce, an extensive navigation, and a flourishing marine would then be the offspring of moral and physical necessity. We might defy the little arts of the little politicians to control or vary the irresistible and unchangeable course of nature.

But in a state of disunion, these combinations might exist and might operate with success. It would be in the power of the maritime nations, availing themselves of our universal impotence, to prescribe the conditions of our political existence; and as they have a common interest in being our carriers, and still more in preventing our becoming theirs, they would in all probability combine to embarrass our navigation in such a manner as would in effect destroy it, and confine us to a PASSIVE COMMERCE. We should then be compelled to content ourselves with the first price of our commodities, and to see the profits of our trade snatched from us to enrich our enemies and persecutors. That unequaled spirit of enterprise, which signalizes the genius of the American merchants and navigators, and which is in itself an inexhaustible mine of national wealth, would be stifled and lost, and poverty and disgrace would overspread a country which, with wisdom, might make herself the admiration and envy of the world.

There are rights of great moment to the trade of America which are rights of the Union—I allude to the fisheries, to the navigation of the Western lakes, and to that of the Mississippi. The dissolution of the Confederacy would give room for delicate questions concerning the future existence of these rights; which the interest of more powerful partners would hardly fail to solve to our disadvantage. The disposition of Spain with regard to the Mississippi needs no comment. France and Britain are concerned with us in the fisheries, and view them as of the utmost moment to their navigation. They, of course, would hardly remain long indifferent to that decided mastery, of which experience has shown us to be possessed in this valuable branch of traffic, and by which we are able to undersell those nations in their own markets. What more natural than that they should be disposed to exclude from the lists such dangerous competitors?

This branch of trade ought not to be considered as a partial benefit. All the navigating States may, in different degrees, advantageously participate in it, and under circumstances of a greater extension of mercantile capital, would not be unlikely to do it. As a nursery of seamen, it now is, or when time shall have more nearly assimilated the principles of navigation in the

several States, will become, a universal resource. To the establishment of a navy, it must be indispensable.

To this great national object, a NAVY, union will contribute in various ways. Every institution will grow and flourish in proportion to the quantity and extent of the means concentred towards its formation and support. A navy of the United States, as it would embrace the resources of all, is an object far less remote than a navy of any single State or partial confederacy, which would only embrace the resources of a single part. It happens, indeed, that different portions of confederated America possess each some peculiar advantage for this essential establishment. The more southern States furnish in greater abundance certain kinds of naval stores—tar, pitch, and turpentine. Their wood for the construction of ships is also of a more solid and lasting texture. The difference in the duration of the ships of which the navy might be composed, if chiefly constructed of Southern wood, would be of signal importance, either in the view of naval strength or of national economy. Some of the Southern and of the Middle States yield a greater plenty of iron, and of better quality. Seamen must chiefly be drawn from the Northern hive. The necessity of naval protection to external or maritime commerce does not require a particular elucidation, no more than the conduciveness of that species of commerce to the prosperity of a navy.

An unrestrained intercourse between the States themselves will advance the trade of each by an interchange of their respective productions, not only for the supply of reciprocal wants at home, but for exportation to foreign markets. The veins of commerce in every part will be replenished, and will acquire additional motion and vigor from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope, from the diversity in the productions of different States. When the staple of one fails from a bad harvest or unproductive crop, it can call to its aid the staple of another. The variety, not less than the value, of products for exportation contributes to the activity of foreign commerce. It can be conducted upon much better terms with a large number of materials of a given value than with a small number of materials of the same value; arising from the competitions of trade and from the fluctuations of markets. Particular articles may be in great demand at certain periods, and unsalable at others; but if there be a variety of articles, it can scarcely happen that they should all be at one time in the latter predicament, and on this account the operations of the merchant would be less liable to any considerable

obstruction or stagnation. The speculative trader will at once perceive the force of these observations, and will acknowledge that the aggregate balance of the commerce of the United States would bid fair to be much more favorable than that of the thirteen States without union or with partial unions.

It may perhaps be replied to this, that whether the States are united or disunited, there would still be an intimate intercourse between them which would answer the same ends; this intercourse would be fettered, interrupted, and narrowed by a multiplicity of causes, which in the course of these papers have been amply detailed. A unity of commercial, as well as political, interests, can only result from a unity of government.

There are other points of view in which this subject might be placed, of a striking and animating kind. But they would lead us too far into the regions of futurity, and would involve topics not proper for a newspaper discussion. I shall briefly observe, that our situation invites and our interests prompt us to aim at an ascendant in the system of American affairs. The world may politically, as well as geographically, be divided into four parts, each having a distinct set of interests. Unhappily for the other three, Europe, by her arms and by her negotiations, by force and by fraud, has, in different degrees, extended her dominion over them all. Africa, Asia, and America, have successively felt her domination. The superiority she has long maintained has tempted her to plume herself as the Mistress of the World, and to consider the rest of mankind as created for her benefit. Men admired as profound philosophers have, in direct terms, attributed to her inhabitants a physical superiority, and have gravely asserted that all animals, and with them the human species, degenerate in America—that even dogs cease to bark after having breathed awhile in our atmosphere.(1) Facts have too long supported these arrogant pretensions of the Europeans. It belongs to us to vindicate the honor of the human race, and to teach that assuming brother, moderation. Union will enable us to do it. Disunion will will add another victim to his triumphs. Let Americans disdain to be the instruments of European greatness! Let the thirteen States, bound together in a strict and indissoluble Union, concur in erecting one great American system, superior to the control of all transatlantic force or influence, and able to dictate the terms of the connection between the old and the new world!

PUBLIUS "Recherches philosophiques sur les Americains."

FEDERALIST No. 12. The Utility of the Union In Respect to Revenue

From the New York Packet. Tuesday, November 27, 1787.

HAMILTON

To the People of the State of New York:

THE effects of Union upon the commercial prosperity of the States have been sufficiently delineated. Its tendency to promote the interests of revenue will be the subject of our present inquiry.

The prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares. By multiplying the means of gratification, by promoting the introduction and circulation of the precious metals, those darling objects of human avarice and enterprise, it serves to vivify and invigorate the channels of industry, and to make them flow with greater activity and copiousness. The assiduous merchant, the laborious husbandman, the active mechanic, and the industrious manufacturer,—all orders of men, look forward with eager expectation and growing alacrity to this pleasing reward of their toils. The often-agitated question between agriculture and commerce has, from indubitable experience, received a decision which has silenced the rivalship that once subsisted between them, and has proved, to the satisfaction of their friends, that their interests are intimately blended and interwoven. It has been found in various countries that, in proportion as commerce has flourished, land has risen in value. And how could it have happened otherwise? Could that which procures a freer vent for the products of the earth, which furnishes new incitements to the cultivation of land, which is the most powerful instrument in increasing the quantity of money in a state—could that, in fine, which is the faithful handmaid of labor and industry, in every shape, fail to augment that article, which is the prolific parent of far the greatest part of the objects upon which they are exerted? It is astonishing that so simple a truth should ever have

had an adversary; and it is one, among a multitude of proofs, how apt a spirit of ill-informed jealousy, or of too great abstraction and refinement, is to lead men astray from the plainest truths of reason and conviction.

The ability of a country to pay taxes must always be proportioned, in a great degree, to the quantity of money in circulation, and to the celerity with which it circulates. Commerce, contributing to both these objects, must of necessity render the payment of taxes easier, and facilitate the requisite supplies to the treasury. The hereditary dominions of the Emperor of Germany contain a great extent of fertile, cultivated, and populous territory, a large proportion of which is situated in mild and luxuriant climates. In some parts of this territory are to be found the best gold and silver mines in Europe. And yet, from the want of the fostering influence of commerce, that monarch can boast but slender revenues. He has several times been compelled to owe obligations to the pecuniary succors of other nations for the preservation of his essential interests, and is unable, upon the strength of his own resources, to sustain a long or continued war.

But it is not in this aspect of the subject alone that Union will be seen to conduce to the purpose of revenue. There are other points of view, in which its influence will appear more immediate and decisive. It is evident from the state of the country, from the habits of the people, from the experience we have had on the point itself, that it is impracticable to raise any very considerable sums by direct taxation. Tax laws have in vain been multiplied; new methods to enforce the collection have in vain been tried; the public expectation has been uniformly disappointed, and the treasuries of the States have remained empty. The popular system of administration inherent in the nature of popular government, coinciding with the real scarcity of money incident to a languid and mutilated state of trade, has hitherto defeated every experiment for extensive collections, and has at length taught the different legislatures the folly of attempting them.

No person acquainted with what happens in other countries will be surprised at this circumstance. In so opulent a nation as that of Britain, where direct taxes from superior wealth must be much more tolerable, and, from the vigor of the government, much more practicable, than in America, far the greatest part of the national revenue is derived from taxes of the indirect kind, from imposts, and from excises. Duties on imported articles form a large branch of this latter description.

In America, it is evident that we must a long time depend for the means of revenue chiefly on such duties. In most parts of it, excises must be confined within a narrow compass. The genius of the people will ill brook the inquisitive and peremptory spirit of excise laws. The pockets of the farmers, on the other hand, will reluctantly yield but scanty supplies, in the unwelcome shape of impositions on their houses and lands; and personal property is too precarious and invisible a fund to be laid hold of in any other way than by the imperceptible agency of taxes on consumption.

If these remarks have any foundation, that state of things which will best enable us to improve and extend so valuable a resource must be best adapted to our political welfare. And it cannot admit of a serious doubt, that this state of things must rest on the basis of a general Union. As far as this would be conducive to the interests of commerce, so far it must tend to the extension of the revenue to be drawn from that source. As far as it would contribute to rendering regulations for the collection of the duties more simple and efficacious, so far it must serve to answer the purposes of making the same rate of duties more productive, and of putting it into the power of the government to increase the rate without prejudice to trade.

The relative situation of these States; the number of rivers with which they are intersected, and of bays that wash their shores; the facility of communication in every direction; the affinity of language and manners; the familiar habits of intercourse;—all these are circumstances that would conspire to render an illicit trade between them a matter of little difficulty, and would insure frequent evasions of the commercial regulations of each other. The separate States or confederacies would be necessitated by mutual jealousy to avoid the temptations to that kind of trade by the lowness of their duties. The temper of our governments, for a long time to come, would not permit those rigorous precautions by which the European nations guard the avenues into their respective countries, as well by land as by water; and which, even there, are found insufficient obstacles to the adventurous stratagems of avarice.

In France, there is an army of patrols (as they are called) constantly employed to secure their fiscal regulations against the inroads of the dealers in contraband trade. Mr. Neckar computes the number of these patrols at upwards of twenty thousand. This shows the immense difficulty in preventing that species of traffic, where there is an inland communication,

and places in a strong light the disadvantages with which the collection of duties in this country would be encumbered, if by disunion the States should be placed in a situation, with respect to each other, resembling that of France with respect to her neighbors. The arbitrary and vexatious powers with which the patrols are necessarily armed, would be intolerable in a free country.

If, on the contrary, there be but one government pervading all the States, there will be, as to the principal part of our commerce, but ONE SIDE to guard—the ATLANTIC COAST. Vessels arriving directly from foreign countries, laden with valuable cargoes, would rarely choose to hazard themselves to the complicated and critical perils which would attend attempts to unlade prior to their coming into port. They would have to dread both the dangers of the coast, and of detection, as well after as before their arrival at the places of their final destination. An ordinary degree of vigilance would be competent to the prevention of any material infractions upon the rights of the revenue. A few armed vessels, judiciously stationed at the entrances of our ports, might at a small expense be made useful sentinels of the laws. And the government having the same interest to provide against violations everywhere, the co-operation of its measures in each State would have a powerful tendency to render them effectual. Here also we should preserve by Union, an advantage which nature holds out to us, and which would be relinquished by separation. The United States lie at a great distance from Europe, and at a considerable distance from all other places with which they would have extensive connections of foreign trade. The passage from them to us, in a few hours, or in a single night, as between the coasts of France and Britain, and of other neighboring nations, would be impracticable. This is a prodigious security against a direct contraband with foreign countries; but a circuitous contraband to one State, through the medium of another, would be both easy and safe. The difference between a direct importation from abroad, and an indirect importation through the channel of a neighboring State, in small parcels, according to time and opportunity, with the additional facilities of inland communication, must be palpable to every man of discernment.

It is therefore evident, that one national government would be able, at much less expense, to extend the duties on imports, beyond comparison, further than would be practicable to the States separately, or to any partial confederacies. Hitherto, I believe, it may safely be asserted, that these

duties have not upon an average exceeded in any State three per cent. In France they are estimated to be about fifteen per cent., and in Britain they exceed this proportion.(1) There seems to be nothing to hinder their being increased in this country to at least treble their present amount. The single article of ardent spirits, under federal regulation, might be made to furnish a considerable revenue. Upon a ratio to the importation into this State, the whole quantity imported into the United States may be estimated at four millions of gallons; which, at a shilling per gallon, would produce two hundred thousand pounds. That article would well bear this rate of duty; and if it should tend to diminish the consumption of it, such an effect would be equally favorable to the agriculture, to the economy, to the morals, and to the health of the society. There is, perhaps, nothing so much a subject of national extravagance as these spirits.

What will be the consequence, if we are not able to avail ourselves of the resource in question in its full extent? A nation cannot long exist without revenues. Destitute of this essential support, it must resign its independence, and sink into the degraded condition of a province. This is an extremity to which no government will of choice accede. Revenue, therefore, must be had at all events. In this country, if the principal part be not drawn from commerce, it must fall with oppressive weight upon land. It has been already intimated that excises, in their true signification, are too little in unison with the feelings of the people, to admit of great use being made of that mode of taxation; nor, indeed, in the States where almost the sole employment is agriculture, are the objects proper for excise sufficiently numerous to permit very ample collections in that way. Personal estate (as has been before remarked), from the difficulty in tracing it, cannot be subjected to large contributions, by any other means than by taxes on consumption. In populous cities, it may be enough the subject of conjecture, to occasion the oppression of individuals, without much aggregate benefit to the State; but beyond these circles, it must, in a great measure, escape the eye and the hand of the tax-gatherer. As the necessities of the State, nevertheless, must be satisfied in some mode or other, the defect of other resources must throw the principal weight of public burdens on the possessors of land. And as, on the other hand, the wants of the government can never obtain an adequate supply, unless all the sources of revenue are open to its demands, the finances of the community, under such embarrassments, cannot be put into a situation consistent with its

respectability or its security. Thus we shall not even have the consolations of a full treasury, to atone for the oppression of that valuable class of the citizens who are employed in the cultivation of the soil. But public and private distress will keep pace with each other in gloomy concert; and unite in deploring the infatuation of those counsels which led to disunion.

PUBLIUS

1. If my memory be right they amount to twenty per cent.

FEDERALIST No. 13. Advantage of the Union in Respect to Economy in Government

For the Independent Journal. Wednesday, November 28, 1787

HAMILTON

To the People of the State of New York:

As CONNECTED with the subject of revenue, we may with propriety consider that of economy. The money saved from one object may be usefully applied to another, and there will be so much the less to be drawn from the pockets of the people. If the States are united under one government, there will be but one national civil list to support; if they are divided into several confederacies, there will be as many different national civil lists to be provided for—and each of them, as to the principal departments, coextensive with that which would be necessary for a government of the whole. The entire separation of the States into thirteen unconnected sovereignties is a project too extravagant and too replete with danger to have many advocates. The ideas of men who speculate upon the dismemberment of the empire seem generally turned toward three confederacies—one consisting of the four Northern, another of the four Middle, and a third of the five Southern States. There is little probability that there would be a greater number. According to this distribution, each confederacy would comprise an extent of territory larger than that of the kingdom of Great Britain. No well-informed man will suppose that the affairs of such a confederacy can be properly regulated by a government less comprehensive in its organs or institutions than that which has been proposed by the convention. When the dimensions of a State attain to a certain magnitude, it requires the same energy of government and the same forms of administration which are requisite in one of much greater extent. This idea admits not of precise demonstration, because there is no rule by which we can measure the momentum of civil power necessary to the government of any given number of individuals; but when we consider that the island of Britain, nearly commensurate with each of the supposed

confederacies, contains about eight millions of people, and when we reflect upon the degree of authority required to direct the passions of so large a society to the public good, we shall see no reason to doubt that the like portion of power would be sufficient to perform the same task in a society far more numerous. Civil power, properly organized and exerted, is capable of diffusing its force to a very great extent; and can, in a manner, reproduce itself in every part of a great empire by a judicious arrangement of subordinate institutions.

The supposition that each confederacy into which the States would be likely to be divided would require a government not less comprehensive than the one proposed, will be strengthened by another supposition, more probable than that which presents us with three confederacies as the alternative to a general Union. If we attend carefully to geographical and commercial considerations, in conjunction with the habits and prejudices of the different States, we shall be led to conclude that in case of disunion they will most naturally league themselves under two governments. The four Eastern States, from all the causes that form the links of national sympathy and connection, may with certainty be expected to unite. New York, situated as she is, would never be unwise enough to oppose a feeble and unsupported flank to the weight of that confederacy. There are other obvious reasons that would facilitate her accession to it. New Jersey is too small a State to think of being a frontier, in opposition to this still more powerful combination; nor do there appear to be any obstacles to her admission into it. Even Pennsylvania would have strong inducements to join the Northern league. An active foreign commerce, on the basis of her own navigation, is her true policy, and coincides with the opinions and dispositions of her citizens. The more Southern States, from various circumstances, may not think themselves much interested in the encouragement of navigation. They may prefer a system which would give unlimited scope to all nations to be the carriers as well as the purchasers of their commodities. Pennsylvania may not choose to confound her interests in a connection so adverse to her policy. As she must at all events be a frontier, she may deem it most consistent with her safety to have her exposed side turned towards the weaker power of the Southern, rather than towards the stronger power of the Northern, Confederacy. This would give her the fairest chance to avoid being the Flanders of America. Whatever may be the determination of Pennsylvania, if the Northern Confederacy

includes New Jersey, there is no likelihood of more than one confederacy to the south of that State.

Nothing can be more evident than that the thirteen States will be able to support a national government better than one half, or one third, or any number less than the whole. This reflection must have great weight in obviating that objection to the proposed plan, which is founded on the principle of expense; an objection, however, which, when we come to take a nearer view of it, will appear in every light to stand on mistaken ground.

If, in addition to the consideration of a plurality of civil lists, we take into view the number of persons who must necessarily be employed to guard the inland communication between the different confederacies against illicit trade, and who in time will infallibly spring up out of the necessities of revenue; and if we also take into view the military establishments which it has been shown would unavoidably result from the jealousies and conflicts of the several nations into which the States would be divided, we shall clearly discover that a separation would be not less injurious to the economy, than to the tranquillity, commerce, revenue, and liberty of every part.

PUBLIUS

FEDERALIST No. 14. Objections to the Proposed Constitution From Extent of Territory Answered

From the New York Packet. Friday, November 30, 1787.

MADISON

To the People of the State of New York:

WE HAVE seen the necessity of the Union, as our bulwark against foreign danger, as the conservator of peace among ourselves, as the guardian of our commerce and other common interests, as the only substitute for those military establishments which have subverted the liberties of the Old World, and as the proper antidote for the diseases of faction, which have proved fatal to other popular governments, and of which alarming symptoms have been betrayed by our own. All that remains, within this branch of our inquiries, is to take notice of an objection that may be drawn from the great extent of country which the Union embraces. A few observations on this subject will be the more proper, as it is perceived that the adversaries of the new Constitution are availing themselves of the prevailing prejudice with regard to the practicable sphere of republican administration, in order to supply, by imaginary difficulties, the want of those solid objections which they endeavor in vain to find.

The error which limits republican government to a narrow district has been unfolded and refuted in preceding papers. I remark here only that it seems to owe its rise and prevalence chiefly to the confounding of a republic with a democracy, applying to the former reasonings drawn from the nature of the latter. The true distinction between these forms was also adverted to on a former occasion. It is, that in a democracy, the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents. A democracy, consequently, will be confined to a small spot. A republic may be extended over a large region.

To this accidental source of the error may be added the artifice of some celebrated authors, whose writings have had a great share in forming the

modern standard of political opinions. Being subjects either of an absolute or limited monarchy, they have endeavored to heighten the advantages, or palliate the evils of those forms, by placing in comparison the vices and defects of the republican, and by citing as specimens of the latter the turbulent democracies of ancient Greece and modern Italy. Under the confusion of names, it has been an easy task to transfer to a republic observations applicable to a democracy only; and among others, the observation that it can never be established but among a small number of people, living within a small compass of territory.

Such a fallacy may have been the less perceived, as most of the popular governments of antiquity were of the democratic species; and even in modern Europe, to which we owe the great principle of representation, no example is seen of a government wholly popular, and founded, at the same time, wholly on that principle. If Europe has the merit of discovering this great mechanical power in government, by the simple agency of which the will of the largest political body may be concentred, and its force directed to any object which the public good requires, America can claim the merit of making the discovery the basis of unmixed and extensive republics. It is only to be lamented that any of her citizens should wish to deprive her of the additional merit of displaying its full efficacy in the establishment of the comprehensive system now under her consideration.

As the natural limit of a democracy is that distance from the central point which will just permit the most remote citizens to assemble as often as their public functions demand, and will include no greater number than can join in those functions; so the natural limit of a republic is that distance from the centre which will barely allow the representatives to meet as often as may be necessary for the administration of public affairs. Can it be said that the limits of the United States exceed this distance? It will not be said by those who recollect that the Atlantic coast is the longest side of the Union, that during the term of thirteen years, the representatives of the States have been almost continually assembled, and that the members from the most distant States are not chargeable with greater intermissions of attendance than those from the States in the neighborhood of Congress.

That we may form a juster estimate with regard to this interesting subject, let us resort to the actual dimensions of the Union. The limits, as fixed by the treaty of peace, are: on the east the Atlantic, on the south the latitude of

thirty-one degrees, on the west the Mississippi, and on the north an irregular line running in some instances beyond the forty-fifth degree, in others falling as low as the forty-second. The southern shore of Lake Erie lies below that latitude. Computing the distance between the thirty-first and forty-fifth degrees, it amounts to nine hundred and seventy-three common miles; computing it from thirty-one to forty-two degrees, to seven hundred and sixty-four miles and a half. Taking the mean for the distance, the amount will be eight hundred and sixty-eight miles and three-fourths. The mean distance from the Atlantic to the Mississippi does not probably exceed seven hundred and fifty miles. On a comparison of this extent with that of several countries in Europe, the practicability of rendering our system commensurate to it appears to be demonstrable. It is not a great deal larger than Germany, where a diet representing the whole empire is continually assembled; or than Poland before the late dismemberment, where another national diet was the depositary of the supreme power. Passing by France and Spain, we find that in Great Britain, inferior as it may be in size, the representatives of the northern extremity of the island have as far to travel to the national council as will be required of those of the most remote parts of the Union.

Favorable as this view of the subject may be, some observations remain which will place it in a light still more satisfactory.

In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their care to all those other subjects which can be separately provided for, will retain their due authority and activity. Were it proposed by the plan of the convention to abolish the governments of the particular States, its adversaries would have some ground for their objection; though it would not be difficult to show that if they were abolished the general government would be compelled, by the principle of self-preservation, to reinstate them in their proper jurisdiction.

A second observation to be made is that the immediate object of the federal Constitution is to secure the union of the thirteen primitive States, which we know to be practicable; and to add to them such other States as

may arise in their own bosoms, or in their neighborhoods, which we cannot doubt to be equally practicable. The arrangements that may be necessary for those angles and fractions of our territory which lie on our northwestern frontier, must be left to those whom further discoveries and experience will render more equal to the task.

Let it be remarked, in the third place, that the intercourse throughout the Union will be facilitated by new improvements. Roads will everywhere be shortened, and kept in better order; accommodations for travelers will be multiplied and meliorated; an interior navigation on our eastern side will be opened throughout, or nearly throughout, the whole extent of the thirteen States. The communication between the Western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete.

A fourth and still more important consideration is, that as almost every State will, on one side or other, be a frontier, and will thus find, in regard to its safety, an inducement to make some sacrifices for the sake of the general protection; so the States which lie at the greatest distance from the heart of the Union, and which, of course, may partake least of the ordinary circulation of its benefits, will be at the same time immediately contiguous to foreign nations, and will consequently stand, on particular occasions, in greatest need of its strength and resources. It may be inconvenient for Georgia, or the States forming our western or northeastern borders, to send their representatives to the seat of government; but they would find it more so to struggle alone against an invading enemy, or even to support alone the whole expense of those precautions which may be dictated by the neighborhood of continual danger. If they should derive less benefit, therefore, from the Union in some respects than the less distant States, they will derive greater benefit from it in other respects, and thus the proper equilibrium will be maintained throughout.

I submit to you, my fellow-citizens, these considerations, in full confidence that the good sense which has so often marked your decisions will allow them their due weight and effect; and that you will never suffer difficulties, however formidable in appearance, or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scene into which the advocates for disunion would conduct you.

Hearken not to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow citizens of one great, respectable, and flourishing empire. Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys; the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defense of their sacred rights, consecrate their Union, and excite horror at the idea of their becoming aliens, rivals, enemies. And if novelties are to be shunned, believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rendering us in pieces, in order to preserve our liberties and promote our happiness. But why is the experiment of an extended republic to be rejected, merely because it may comprise what is new? Is it not the glory of the people of America, that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit, posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theatre, in favor of private rights and public happiness. Had no important step been taken by the leaders of the Revolution for which a precedent could not be discovered, no government established of which an exact model did not present itself, the people of the United States might, at this moment have been numbered among the melancholy victims of misguided councils, must at best have been laboring under the weight of some of those forms which have crushed the liberties of the rest of mankind. Happily for America, happily, we trust, for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe. They formed the design of a great Confederacy, which it is

incumbent on their successors to improve and perpetuate. If their works betray imperfections, we wonder at the fewness of them. If they erred most in the structure of the Union, this was the work most difficult to be executed; this is the work which has been new modelled by the act of your convention, and it is that act on which you are now to deliberate and to decide.

PUBLIUS

FEDERALIST No. 15. The Insufficiency of the Present Confederation to Preserve the Union

For the Independent Journal. Saturday, December 1, 1787

HAMILTON

To the People of the State of New York.

IN THE course of the preceding papers, I have endeavored, my fellow citizens, to place before you, in a clear and convincing light, the importance of Union to your political safety and happiness. I have unfolded to you a complication of dangers to which you would be exposed, should you permit that sacred knot which binds the people of America together be severed or dissolved by ambition or by avarice, by jealousy or by misrepresentation. In the sequel of the inquiry through which I propose to accompany you, the truths intended to be inculcated will receive further confirmation from facts and arguments hitherto unnoticed. If the road over which you will still have to pass should in some places appear to you tedious or irksome, you will recollect that you are in quest of information on a subject the most momentous which can engage the attention of a free people, that the field through which you have to travel is in itself spacious, and that the difficulties of the journey have been unnecessarily increased by the mazes with which sophistry has beset the way. It will be my aim to remove the obstacles from your progress in as compendious a manner as it can be done, without sacrificing utility to despatch.

In pursuance of the plan which I have laid down for the discussion of the subject, the point next in order to be examined is the "insufficiency of the present Confederation to the preservation of the Union." It may perhaps be asked what need there is of reasoning or proof to illustrate a position which is not either controverted or doubted, to which the understandings and feelings of all classes of men assent, and which in substance is admitted by the opponents as well as by the friends of the new Constitution. It must in truth be acknowledged that, however these may differ in other respects, they in general appear to harmonize in this sentiment, at least, that there are

material imperfections in our national system, and that something is necessary to be done to rescue us from impending anarchy. The facts that support this opinion are no longer objects of speculation. They have forced themselves upon the sensibility of the people at large, and have at length extorted from those, whose mistaken policy has had the principal share in precipitating the extremity at which we are arrived, a reluctant confession of the reality of those defects in the scheme of our federal government, which have been long pointed out and regretted by the intelligent friends of the Union.

We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience. Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners and to our own citizens contracted in a time of imminent peril for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. Have we valuable territories and important posts in the possession of a foreign power which, by express stipulations, ought long since to have been surrendered? These are still retained, to the prejudice of our interests, not less than of our rights. Are we in a condition to resent or to repel the aggression? We have neither troops, nor treasury, nor government.(1) Are we even in a condition to remonstrate with dignity? The just imputations on our own faith, in respect to the same treaty, ought first to be removed. Are we entitled by nature and compact to a free participation in the navigation of the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us. Our ambassadors abroad are the mere pageants of mimic sovereignty. Is a violent and unnatural decrease in the value of land a symptom of national distress? The price of improved land in most parts of the country is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of private and public confidence, which are so alarmingly prevalent

among all ranks, and which have a direct tendency to depreciate property of every kind. Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending is reduced within the narrowest limits, and this still more from an opinion of insecurity than from the scarcity of money. To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national disorder, poverty, and insignificance that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?

This is the melancholy situation to which we have been brought by those very maxims and councils which would now deter us from adopting the proposed Constitution; and which, not content with having conducted us to the brink of a precipice, seem resolved to plunge us into the abyss that awaits us below. Here, my countrymen, impelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquillity, our dignity, our reputation. Let us at last break the fatal charm which has too long seduced us from the paths of felicity and prosperity.

It is true, as has been before observed that facts, too stubborn to be resisted, have produced a species of general assent to the abstract proposition that there exist material defects in our national system; but the usefulness of the concession, on the part of the old adversaries of federal measures, is destroyed by a strenuous opposition to a remedy, upon the only principles that can give it a chance of success. While they admit that the government of the United States is destitute of energy, they contend against conferring upon it those powers which are requisite to supply that energy. They seem still to aim at things repugnant and irreconcilable; at an augmentation of federal authority, without a diminution of State authority; at sovereignty in the Union, and complete independence in the members. They still, in fine, seem to cherish with blind devotion the political monster of an imperium in imperio. This renders a full display of the principal defects of the Confederation necessary, in order to show that the evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building, which cannot be amended otherwise than by an alteration in the first principles and main pillars of the fabric.

The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of which they consist. Though this principle does not run through all the powers delegated to the Union, yet it pervades and governs those on which the efficacy of the rest depends. Except as to the rule of appointment, the United States has an indefinite discretion to make requisitions for men and money; but they have no authority to raise either, by regulations extending to the individual citizens of America. The consequence of this is, that though in theory their resolutions concerning those objects are laws, constitutionally binding on the members of the Union, yet in practice they are mere recommendations which the States observe or disregard at their option.

It is a singular instance of the capriciousness of the human mind, that after all the admonitions we have had from experience on this head, there should still be found men who object to the new Constitution, for deviating from a principle which has been found the bane of the old, and which is in itself evidently incompatible with the idea of GOVERNMENT; a principle, in short, which, if it is to be executed at all, must substitute the violent and sanguinary agency of the sword to the mild influence of the magistracy.

There is nothing absurd or impracticable in the idea of a league or alliance between independent nations for certain defined purposes precisely stated in a treaty regulating all the details of time, place, circumstance, and quantity; leaving nothing to future discretion; and depending for its execution on the good faith of the parties. Compacts of this kind exist among all civilized nations, subject to the usual vicissitudes of peace and war, of observance and non-observance, as the interests or passions of the contracting powers dictate. In the early part of the present century there was an epidemical rage in Europe for this species of compacts, from which the politicians of the times fondly hoped for benefits which were never realized. With a view to establishing the equilibrium of power and the peace of that part of the world, all the resources of negotiation were exhausted, and triple and quadruple alliances were formed; but they were scarcely formed before they were broken, giving an instructive but afflicting lesson to mankind, how little dependence is to be placed on treaties which have no other sanction than the obligations of good faith, and which oppose general

considerations of peace and justice to the impulse of any immediate interest or passion.

If the particular States in this country are disposed to stand in a similar relation to each other, and to drop the project of a general DISCRETIONARY SUPERINTENDENCE, the scheme would indeed be pernicious, and would entail upon us all the mischiefs which have been enumerated under the first head; but it would have the merit of being, at least, consistent and practicable Abandoning all views towards a confederate government, this would bring us to a simple alliance offensive and defensive; and would place us in a situation to be alternate friends and enemies of each other, as our mutual jealousies and rivalships, nourished by the intrigues of foreign nations, should prescribe to us.

But if we are unwilling to be placed in this perilous situation; if we still will adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the Union to the persons of the citizens,—the only proper objects of government.

Government implies the power of making laws. It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation. This penalty, whatever it may be, can only be inflicted in two ways: by the agency of the courts and ministers of justice, or by military force; by the COERCION of the magistracy, or by the COERCION of arms. The first kind can evidently apply only to men; the last kind must of necessity, be employed against bodies politic, or communities, or States. It is evident that there is no process of a court by which the observance of the laws can, in the last resort, be enforced. Sentences may be denounced against them for violations of their duty; but these sentences can only be carried into execution by the sword. In an association where the general authority is confined to the collective bodies of the communities, that compose it, every breach of the laws must involve a state of war; and military execution must become the only instrument of civil obedience. Such a state of things can

certainly not deserve the name of government, nor would any prudent man choose to commit his happiness to it.

There was a time when we were told that breaches, by the States, of the regulations of the federal authority were not to be expected; that a sense of common interest would preside over the conduct of the respective members, and would beget a full compliance with all the constitutional requisitions of the Union. This language, at the present day, would appear as wild as a great part of what we now hear from the same quarter will be thought, when we shall have received further lessons from that best oracle of wisdom, experience. It at all times betrayed an ignorance of the true springs by which human conduct is actuated, and belied the original inducements to the establishment of civil power. Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint. Has it been found that bodies of men act with more rectitude or greater disinterestedness than individuals? The contrary of this has been inferred by all accurate observers of the conduct of mankind; and the inference is founded upon obvious reasons. Regard to reputation has a less active influence, when the infamy of a bad action is to be divided among a number than when it is to fall singly upon one. A spirit of faction, which is apt to mingle its poison in the deliberations of all bodies of men, will often hurry the persons of whom they are composed into improprieties and excesses, for which they would blush in a private capacity.

In addition to all this, there is, in the nature of sovereign power, an impatience of control, that disposes those who are invested with the exercise of it, to look with an evil eye upon all external attempts to restrain or direct its operations. From this spirit it happens, that in every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties, there will be found a kind of eccentric tendency in the subordinate or inferior orbs, by the operation of which there will be a perpetual effort in each to fly off from the common centre. This tendency is not difficult to be accounted for. It has its origin in the love of power. Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged. This simple proposition will teach us how little reason there is to expect, that the persons intrusted with the administration of the affairs of the particular members of a confederacy will at all times be ready, with perfect good-

humor, and an unbiased regard to the public weal, to execute the resolutions or decrees of the general authority. The reverse of this results from the constitution of human nature.

If, therefore, the measures of the Confederacy cannot be executed without the intervention of the particular administrations, there will be little prospect of their being executed at all. The rulers of the respective members, whether they have a constitutional right to do it or not, will undertake to judge of the propriety of the measures themselves. They will consider the conformity of the thing proposed or required to their immediate interests or aims; the momentary conveniences or inconveniences that would attend its adoption. All this will be done; and in a spirit of interested and suspicious scrutiny, without that knowledge of national circumstances and reasons of state, which is essential to a right judgment, and with that strong predilection in favor of local objects, which can hardly fail to mislead the decision. The same process must be repeated in every member of which the body is constituted; and the execution of the plans, framed by the councils of the whole, will always fluctuate on the discretion of the ill-informed and prejudiced opinion of every part. Those who have been conversant in the proceedings of popular assemblies; who have seen how difficult it often is, where there is no exterior pressure of circumstances, to bring them to harmonious resolutions on important points, will readily conceive how impossible it must be to induce a number of such assemblies, deliberating at a distance from each other, at different times, and under different impressions, long to co-operate in the same views and pursuits.

In our case, the concurrence of thirteen distinct sovereign wills is requisite, under the Confederation, to the complete execution of every important measure that proceeds from the Union. It has happened as was to have been foreseen. The measures of the Union have not been executed; the delinquencies of the States have, step by step, matured themselves to an extreme, which has, at length, arrested all the wheels of the national government, and brought them to an awful stand. Congress at this time scarcely possess the means of keeping up the forms of administration, till the States can have time to agree upon a more substantial substitute for the present shadow of a federal government. Things did not come to this desperate extremity at once. The causes which have been specified produced at first only unequal and disproportionate degrees of compliance

with the requisitions of the Union. The greater deficiencies of some States furnished the pretext of example and the temptation of interest to the complying, or to the least delinquent States. Why should we do more in proportion than those who are embarked with us in the same political voyage? Why should we consent to bear more than our proper share of the common burden? These were suggestions which human selfishness could not withstand, and which even speculative men, who looked forward to remote consequences, could not, without hesitation, combat. Each State, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads, and to crush us beneath its ruins.

PUBLIUS

1. "I mean for the Union."

FEDERALIST No. 16. The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union)

From the New York Packet. Tuesday, December 4, 1787.

HAMILTON

To the People of the State of New York:

THE tendency of the principle of legislation for States, or communities, in their political capacities, as it has been exemplified by the experiment we have made of it, is equally attested by the events which have befallen all other governments of the confederate kind, of which we have any account, in exact proportion to its prevalence in those systems. The confirmations of this fact will be worthy of a distinct and particular examination. I shall content myself with barely observing here, that of all the confederacies of antiquity, which history has handed down to us, the Lycian and Achaean leagues, as far as there remain vestiges of them, appear to have been most free from the fetters of that mistaken principle, and were accordingly those which have best deserved, and have most liberally received, the applauding suffrages of political writers.

This exceptionable principle may, as truly as emphatically, be styled the parent of anarchy: It has been seen that delinquencies in the members of the Union are its natural and necessary offspring; and that whenever they happen, the only constitutional remedy is force, and the immediate effect of the use of it, civil war.

It remains to inquire how far so odious an engine of government, in its application to us, would even be capable of answering its end. If there should not be a large army constantly at the disposal of the national government it would either not be able to employ force at all, or, when this could be done, it would amount to a war between parts of the Confederacy concerning the infractions of a league, in which the strongest combination would be most likely to prevail, whether it consisted of those who

supported or of those who resisted the general authority. It would rarely happen that the delinquency to be redressed would be confined to a single member, and if there were more than one who had neglected their duty, similarity of situation would induce them to unite for common defense. Independent of this motive of sympathy, if a large and influential State should happen to be the aggressing member, it would commonly have weight enough with its neighbors to win over some of them as associates to its cause. Specious arguments of danger to the common liberty could easily be contrived; plausible excuses for the deficiencies of the party could, without difficulty, be invented to alarm the apprehensions, inflame the passions, and conciliate the good-will, even of those States which were not chargeable with any violation or omission of duty. This would be the more likely to take place, as the delinquencies of the larger members might be expected sometimes to proceed from an ambitious premeditation in their rulers, with a view to getting rid of all external control upon their designs of personal aggrandizement; the better to effect which it is presumable they would tamper beforehand with leading individuals in the adjacent States. If associates could not be found at home, recourse would be had to the aid of foreign powers, who would seldom be disinclined to encouraging the dissensions of a Confederacy, from the firm union of which they had so much to fear. When the sword is once drawn, the passions of men observe no bounds of moderation. The suggestions of wounded pride, the instigations of irritated resentment, would be apt to carry the States against which the arms of the Union were exerted, to any extremes necessary to avenge the affront or to avoid the disgrace of submission. The first war of this kind would probably terminate in a dissolution of the Union.

This may be considered as the violent death of the Confederacy. Its more natural death is what we now seem to be on the point of experiencing, if the federal system be not speedily renovated in a more substantial form. It is not probable, considering the genius of this country, that the complying States would often be inclined to support the authority of the Union by engaging in a war against the non-complying States. They would always be more ready to pursue the milder course of putting themselves upon an equal footing with the delinquent members by an imitation of their example. And the guilt of all would thus become the security of all. Our past experience has exhibited the operation of this spirit in its full light. There would, in fact, be an insuperable difficulty in ascertaining when force could with

propriety be employed. In the article of pecuniary contribution, which would be the most usual source of delinquency, it would often be impossible to decide whether it had proceeded from disinclination or inability. The pretense of the latter would always be at hand. And the case must be very flagrant in which its fallacy could be detected with sufficient certainty to justify the harsh expedient of compulsion. It is easy to see that this problem alone, as often as it should occur, would open a wide field for the exercise of factious views, of partiality, and of oppression, in the majority that happened to prevail in the national council.

It seems to require no pains to prove that the States ought not to prefer a national Constitution which could only be kept in motion by the instrumentality of a large army continually on foot to execute the ordinary requisitions or decrees of the government. And yet this is the plain alternative involved by those who wish to deny it the power of extending its operations to individuals. Such a scheme, if practicable at all, would instantly degenerate into a military despotism; but it will be found in every light impracticable. The resources of the Union would not be equal to the maintenance of an army considerable enough to confine the larger States within the limits of their duty; nor would the means ever be furnished of forming such an army in the first instance. Whoever considers the populousness and strength of several of these States singly at the present juncture, and looks forward to what they will become, even at the distance of half a century, will at once dismiss as idle and visionary any scheme which aims at regulating their movements by laws to operate upon them in their collective capacities, and to be executed by a coercion applicable to them in the same capacities. A project of this kind is little less romantic than the monster-taming spirit which is attributed to the fabulous heroes and demi-gods of antiquity.

Even in those confederacies which have been composed of members smaller than many of our counties, the principle of legislation for sovereign States, supported by military coercion, has never been found effectual. It has rarely been attempted to be employed, but against the weaker members; and in most instances attempts to coerce the refractory and disobedient have been the signals of bloody wars, in which one half of the confederacy has displayed its banners against the other half.

The result of these observations to an intelligent mind must be clearly this, that if it be possible at any rate to construct a federal government capable of regulating the common concerns and preserving the general tranquillity, it must be founded, as to the objects committed to its care, upon the reverse of the principle contended for by the opponents of the proposed Constitution. It must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations; but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence upon the human heart. It must, in short, possess all the means, and have aright to resort to all the methods, of executing the powers with which it is intrusted, that are possessed and exercised by the government of the particular States.

To this reasoning it may perhaps be objected, that if any State should be disaffected to the authority of the Union, it could at any time obstruct the execution of its laws, and bring the matter to the same issue of force, with the necessity of which the opposite scheme is reproached.

The plausibility of this objection will vanish the moment we advert to the essential difference between a mere NON-COMPLIANCE and a DIRECT and ACTIVE RESISTANCE. If the interposition of the State legislatures be necessary to give effect to a measure of the Union, they have only NOT TO ACT, or TO ACT EVASIVELY, and the measure is defeated. This neglect of duty may be disguised under affected but unsubstantial provisions, so as not to appear, and of course not to excite any alarm in the people for the safety of the Constitution. The State leaders may even make a merit of their surreptitious invasions of it on the ground of some temporary convenience, exemption, or advantage.

But if the execution of the laws of the national government should not require the intervention of the State legislatures, if they were to pass into immediate operation upon the citizens themselves, the particular governments could not interrupt their progress without an open and violent exertion of an unconstitutional power. No omissions nor evasions would answer the end. They would be obliged to act, and in such a manner as

would leave no doubt that they had encroached on the national rights. An experiment of this nature would always be hazardous in the face of a constitution in any degree competent to its own defense, and of a people enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority. The success of it would require not merely a factious majority in the legislature, but the concurrence of the courts of justice and of the body of the people. If the judges were not embarked in a conspiracy with the legislature, they would pronounce the resolutions of such a majority to be contrary to the supreme law of the land, unconstitutional, and void. If the people were not tainted with the spirit of their State representatives, they, as the natural guardians of the Constitution, would throw their weight into the national scale and give it a decided preponderancy in the contest. Attempts of this kind would not often be made with levity or rashness, because they could seldom be made without danger to the authors, unless in cases of a tyrannical exercise of the federal authority.

If opposition to the national government should arise from the disorderly conduct of refractory or seditious individuals, it could be overcome by the same means which are daily employed against the same evil under the State governments. The magistracy, being equally the ministers of the law of the land, from whatever source it might emanate, would doubtless be as ready to guard the national as the local regulations from the inroads of private licentiousness. As to those partial commotions and insurrections, which sometimes disquiet society, from the intrigues of an inconsiderable faction, or from sudden or occasional illhumors that do not infect the great body of the community the general government could command more extensive resources for the suppression of disturbances of that kind than would be in the power of any single member. And as to those mortal feuds which, in certain conjunctures, spread a conflagration through a whole nation, or through a very large proportion of it, proceeding either from weighty causes of discontent given by the government or from the contagion of some violent popular paroxysm, they do not fall within any ordinary rules of calculation. When they happen, they commonly amount to revolutions and dismemberments of empire. No form of government can always either avoid or control them. It is in vain to hope to guard against events too mighty for human foresight or precaution, and it would be idle to object to a government because it could not perform impossibilities.

PUBLIUS

FEDERALIST No. 17. The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union)

For the Independent Journal. Wednesday, December 5, 1787

HAMILTON

To the People of the State of New York:

AN OBJECTION, of a nature different from that which has been stated and answered, in my last address, may perhaps be likewise urged against the principle of legislation for the individual citizens of America. It may be said that it would tend to render the government of the Union too powerful, and to enable it to absorb those residuary authorities, which it might be judged proper to leave with the States for local purposes. Allowing the utmost latitude to the love of power which any reasonable man can require, I confess I am at a loss to discover what temptation the persons intrusted with the administration of the general government could ever feel to divest the States of the authorities of that description. The regulation of the mere domestic police of a State appears to me to hold out slender allurements to ambition. Commerce, finance, negotiation, and war seem to comprehend all the objects which have charms for minds governed by that passion; and all the powers necessary to those objects ought, in the first instance, to be lodged in the national depository. The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction. It is therefore improbable that there should exist a disposition in the federal councils to usurp the powers with which they are connected; because the attempt to exercise those powers would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government.

But let it be admitted, for argument's sake, that mere wantonness and lust of domination would be sufficient to beget that disposition; still it may be safely affirmed, that the sense of the constituent body of the national representatives, or, in other words, the people of the several States, would control the indulgence of so extravagant an appetite. It will always be far more easy for the State governments to encroach upon the national authorities than for the national government to encroach upon the State authorities. The proof of this proposition turns upon the greater degree of influence which the State governments if they administer their affairs with uprightness and prudence, will generally possess over the people; a circumstance which at the same time teaches us that there is an inherent and intrinsic weakness in all federal constitutions; and that too much pains cannot be taken in their organization, to give them all the force which is compatible with the principles of liberty.

The superiority of influence in favor of the particular governments would result partly from the diffusive construction of the national government, but chiefly from the nature of the objects to which the attention of the State administrations would be directed.

It is a known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the same principle that a man is more attached to his family than to his neighborhood, to his neighborhood than to the community at large, the people of each State would be apt to feel a stronger bias towards their local governments than towards the government of the Union; unless the force of that principle should be destroyed by a much better administration of the latter.

This strong propensity of the human heart would find powerful auxiliaries in the objects of State regulation.

The variety of more minute interests, which will necessarily fall under the superintendence of the local administrations, and which will form so many rivulets of influence, running through every part of the society, cannot be particularized, without involving a detail too tedious and uninteresting to compensate for the instruction it might afford.

There is one transcendant advantage belonging to the province of the State governments, which alone suffices to place the matter in a clear and satisfactory light,—I mean the ordinary administration of criminal and civil

justice. This, of all others, is the most powerful, most universal, and most attractive source of popular obedience and attachment. It is that which, being the immediate and visible guardian of life and property, having its benefits and its terrors in constant activity before the public eye, regulating all those personal interests and familiar concerns to which the sensibility of individuals is more immediately awake, contributes, more than any other circumstance, to impressing upon the minds of the people, affection, esteem, and reverence towards the government. This great cement of society, which will diffuse itself almost wholly through the channels of the particular governments, independent of all other causes of influence, would insure them so decided an empire over their respective citizens as to render them at all times a complete counterpoise, and, not unfrequently, dangerous rivals to the power of the Union.

The operations of the national government, on the other hand, falling less immediately under the observation of the mass of the citizens, the benefits derived from it will chiefly be perceived and attended to by speculative men. Relating to more general interests, they will be less apt to come home to the feelings of the people; and, in proportion, less likely to inspire an habitual sense of obligation, and an active sentiment of attachment.

The reasoning on this head has been abundantly exemplified by the experience of all federal constitutions with which we are acquainted, and of all others which have borne the least analogy to them.

Though the ancient feudal systems were not, strictly speaking, confederacies, yet they partook of the nature of that species of association. There was a common head, chieftain, or sovereign, whose authority extended over the whole nation; and a number of subordinate vassals, or feudatories, who had large portions of land allotted to them, and numerous trains of INFERIOR vassals or retainers, who occupied and cultivated that land upon the tenure of fealty or obedience, to the persons of whom they held it. Each principal vassal was a kind of sovereign, within his particular demesnes. The consequences of this situation were a continual opposition to authority of the sovereign, and frequent wars between the great barons or chief feudatories themselves. The power of the head of the nation was commonly too weak, either to preserve the public peace, or to protect the people against the oppressions of their immediate lords. This period of

European affairs is emphatically styled by historians, the times of feudal anarchy.

When the sovereign happened to be a man of vigorous and warlike temper and of superior abilities, he would acquire a personal weight and influence, which answered, for the time, the purpose of a more regular authority. But in general, the power of the barons triumphed over that of the prince; and in many instances his dominion was entirely thrown off, and the great fiefs were erected into independent principalities or States. In those instances in which the monarch finally prevailed over his vassals, his success was chiefly owing to the tyranny of those vassals over their dependents. The barons, or nobles, equally the enemies of the sovereign and the oppressors of the common people, were dreaded and detested by both; till mutual danger and mutual interest effected a union between them fatal to the power of the aristocracy. Had the nobles, by a conduct of clemency and justice, preserved the fidelity and devotion of their retainers and followers, the contests between them and the prince must almost always have ended in their favor, and in the abridgment or subversion of the royal authority.

This is not an assertion founded merely in speculation or conjecture. Among other illustrations of its truth which might be cited, Scotland will furnish a cogent example. The spirit of clanship which was, at an early day, introduced into that kingdom, uniting the nobles and their dependants by ties equivalent to those of kindred, rendered the aristocracy a constant overmatch for the power of the monarch, till the incorporation with England subdued its fierce and ungovernable spirit, and reduced it within those rules of subordination which a more rational and more energetic system of civil polity had previously established in the latter kingdom.

The separate governments in a confederacy may aptly be compared with the feudal baronies; with this advantage in their favor, that from the reasons already explained, they will generally possess the confidence and good-will of the people, and with so important a support, will be able effectually to oppose all encroachments of the national government. It will be well if they are not able to counteract its legitimate and necessary authority. The points of similitude consist in the rivalship of power, applicable to both, and in the CONCENTRATION of large portions of the strength of the community into

particular DEPOSITORIES, in one case at the disposal of individuals, in the other case at the disposal of political bodies.

A concise review of the events that have attended confederate governments will further illustrate this important doctrine; an inattention to which has been the great source of our political mistakes, and has given our jealousy a direction to the wrong side. This review shall form the subject of some ensuing papers.

PUBLIUS

FEDERALIST No. 18. The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union)

For the New York Packet. Friday, December 7, 1787

MADISON, with HAMILTON

To the People of the State of New York:

AMONG the confederacies of antiquity, the most considerable was that of the Grecian republics, associated under the Amphictyonic council. From the best accounts transmitted of this celebrated institution, it bore a very instructive analogy to the present Confederation of the American States.

The members retained the character of independent and sovereign states, and had equal votes in the federal council. This council had a general authority to propose and resolve whatever it judged necessary for the common welfare of Greece; to declare and carry on war; to decide, in the last resort, all controversies between the members; to fine the aggressing party; to employ the whole force of the confederacy against the disobedient; to admit new members. The Amphictyons were the guardians of religion, and of the immense riches belonging to the temple of Delphos, where they had the right of jurisdiction in controversies between the inhabitants and those who came to consult the oracle. As a further provision for the efficacy of the federal powers, they took an oath mutually to defend and protect the united cities, to punish the violators of this oath, and to inflict vengeance on sacrilegious despoilers of the temple.

In theory, and upon paper, this apparatus of powers seems amply sufficient for all general purposes. In several material instances, they exceed the powers enumerated in the articles of confederation. The Amphictyons had in their hands the superstition of the times, one of the principal engines by which government was then maintained; they had a declared authority to use coercion against refractory cities, and were bound by oath to exert this authority on the necessary occasions.

Very different, nevertheless, was the experiment from the theory. The powers, like those of the present Congress, were administered by deputies appointed wholly by the cities in their political capacities; and exercised over them in the same capacities. Hence the weakness, the disorders, and finally the destruction of the confederacy. The more powerful members, instead of being kept in awe and subordination, tyrannized successively over all the rest. Athens, as we learn from Demosthenes, was the arbiter of Greece seventy-three years. The Lacedaemonians next governed it twenty-nine years; at a subsequent period, after the battle of Leuctra, the Thebans had their turn of domination.

It happened but too often, according to Plutarch, that the deputies of the strongest cities awed and corrupted those of the weaker; and that judgment went in favor of the most powerful party.

Even in the midst of defensive and dangerous wars with Persia and Macedon, the members never acted in concert, and were, more or fewer of them, eternally the dupes or the hirelings of the common enemy. The intervals of foreign war were filled up by domestic vicissitudes convulsions, and carnage.

After the conclusion of the war with Xerxes, it appears that the Lacedaemonians required that a number of the cities should be turned out of the confederacy for the unfaithful part they had acted. The Athenians, finding that the Lacedaemonians would lose fewer partisans by such a measure than themselves, and would become masters of the public deliberations, vigorously opposed and defeated the attempt. This piece of history proves at once the inefficiency of the union, the ambition and jealousy of its most powerful members, and the dependent and degraded condition of the rest. The smaller members, though entitled by the theory of their system to revolve in equal pride and majesty around the common center, had become, in fact, satellites of the orbs of primary magnitude.

Had the Greeks, says the Abbe Milot, been as wise as they were courageous, they would have been admonished by experience of the necessity of a closer union, and would have availed themselves of the peace which followed their success against the Persian arms, to establish such a reformation. Instead of this obvious policy, Athens and Sparta, inflated with the victories and the glory they had acquired, became first rivals and then enemies; and did each other infinitely more mischief than they had suffered

from Xerxes. Their mutual jealousies, fears, hatreds, and injuries ended in the celebrated Peloponnesian war; which itself ended in the ruin and slavery of the Athenians who had begun it.

As a weak government, when not at war, is ever agitated by internal dissentions, so these never fail to bring on fresh calamities from abroad. The Phocians having ploughed up some consecrated ground belonging to the temple of Apollo, the Amphictyonic council, according to the superstition of the age, imposed a fine on the sacrilegious offenders. The Phocians, being abetted by Athens and Sparta, refused to submit to the decree. The Thebans, with others of the cities, undertook to maintain the authority of the Amphictyons, and to avenge the violated god. The latter, being the weaker party, invited the assistance of Philip of Macedon, who had secretly fostered the contest. Philip gladly seized the opportunity of executing the designs he had long planned against the liberties of Greece. By his intrigues and bribes he won over to his interests the popular leaders of several cities; by their influence and votes, gained admission into the Amphictyonic council; and by his arts and his arms, made himself master of the confederacy.

Such were the consequences of the fallacious principle on which this interesting establishment was founded. Had Greece, says a judicious observer on her fate, been united by a stricter confederation, and persevered in her union, she would never have worn the chains of Macedon; and might have proved a barrier to the vast projects of Rome.

The Achaean league, as it is called, was another society of Grecian republics, which supplies us with valuable instruction.

The Union here was far more intimate, and its organization much wiser, than in the preceding instance. It will accordingly appear, that though not exempt from a similar catastrophe, it by no means equally deserved it.

The cities composing this league retained their municipal jurisdiction, appointed their own officers, and enjoyed a perfect equality. The senate, in which they were represented, had the sole and exclusive right of peace and war; of sending and receiving ambassadors; of entering into treaties and alliances; of appointing a chief magistrate or praetor, as he was called, who commanded their armies, and who, with the advice and consent of ten of the senators, not only administered the government in the recess of the senate, but had a great share in its deliberations, when assembled. According to the

primitive constitution, there were two praetors associated in the administration; but on trial a single one was preferred.

It appears that the cities had all the same laws and customs, the same weights and measures, and the same money. But how far this effect proceeded from the authority of the federal council is left in uncertainty. It is said only that the cities were in a manner compelled to receive the same laws and usages. When Lacedaemon was brought into the league by Philopoemen, it was attended with an abolition of the institutions and laws of Lycurgus, and an adoption of those of the Achaeans. The Amphictyonic confederacy, of which she had been a member, left her in the full exercise of her government and her legislation. This circumstance alone proves a very material difference in the genius of the two systems.

It is much to be regretted that such imperfect monuments remain of this curious political fabric. Could its interior structure and regular operation be ascertained, it is probable that more light would be thrown by it on the science of federal government, than by any of the like experiments with which we are acquainted.

One important fact seems to be witnessed by all the historians who take notice of Achaean affairs. It is, that as well after the renovation of the league by Aratus, as before its dissolution by the arts of Macedon, there was infinitely more of moderation and justice in the administration of its government, and less of violence and sedition in the people, than were to be found in any of the cities exercising SINGLY all the prerogatives of sovereignty. The Abbe Mably, in his observations on Greece, says that the popular government, which was so tempestuous elsewhere, caused no disorders in the members of the Achaean republic, BECAUSE IT WAS THERE TEMPERED BY THE GENERAL AUTHORITY AND LAWS OF THE CONFEDERACY.

We are not to conclude too hastily, however, that faction did not, in a certain degree, agitate the particular cities; much less that a due subordination and harmony reigned in the general system. The contrary is sufficiently displayed in the vicissitudes and fate of the republic.

Whilst the Amphictyonic confederacy remained, that of the Achaeans, which comprehended the less important cities only, made little figure on the theatre of Greece. When the former became a victim to Macedon, the latter was spared by the policy of Philip and Alexander. Under the successors of

these princes, however, a different policy prevailed. The arts of division were practiced among the Achaeans. Each city was seduced into a separate interest; the union was dissolved. Some of the cities fell under the tyranny of Macedonian garrisons; others under that of usurpers springing out of their own confusions. Shame and oppression erelong awaken their love of liberty. A few cities reunited. Their example was followed by others, as opportunities were found of cutting off their tyrants. The league soon embraced almost the whole Peloponnesus. Macedon saw its progress; but was hindered by internal dissensions from stopping it. All Greece caught the enthusiasm and seemed ready to unite in one confederacy, when the jealousy and envy in Sparta and Athens, of the rising glory of the Achaeans, threw a fatal damp on the enterprise. The dread of the Macedonian power induced the league to court the alliance of the Kings of Egypt and Syria, who, as successors of Alexander, were rivals of the king of Macedon. This policy was defeated by Cleomenes, king of Sparta, who was led by his ambition to make an unprovoked attack on his neighbors, the Achaeans, and who, as an enemy to Macedon, had interest enough with the Egyptian and Syrian princes to effect a breach of their engagements with the league.

The Achaeans were now reduced to the dilemma of submitting to Cleomenes, or of supplicating the aid of Macedon, its former oppressor. The latter expedient was adopted. The contests of the Greeks always afforded a pleasing opportunity to that powerful neighbor of intermeddling in their affairs. A Macedonian army quickly appeared. Cleomenes was vanquished. The Achaeans soon experienced, as often happens, that a victorious and powerful ally is but another name for a master. All that their most abject compliances could obtain from him was a toleration of the exercise of their laws. Philip, who was now on the throne of Macedon, soon provoked by his tyrannies, fresh combinations among the Greeks. The Achaeans, though weakened by internal dissensions and by the revolt of Messene, one of its members, being joined by the AEtolians and Athenians, erected the standard of opposition. Finding themselves, though thus supported, unequal to the undertaking, they once more had recourse to the dangerous expedient of introducing the succor of foreign arms. The Romans, to whom the invitation was made, eagerly embraced it. Philip was conquered; Macedon subdued. A new crisis ensued to the league. Dissensions broke out among it members. These the Romans fostered. Callicrates and other popular leaders became mercenary instruments for

inveigling their countrymen. The more effectually to nourish discord and disorder the Romans had, to the astonishment of those who confided in their sincerity, already proclaimed universal liberty(1) throughout Greece. With the same insidious views, they now seduced the members from the league, by representing to their pride the violation it committed on their sovereignty. By these arts this union, the last hope of Greece, the last hope of ancient liberty, was torn into pieces; and such imbecility and distraction introduced, that the arms of Rome found little difficulty in completing the ruin which their arts had commenced. The Achaeans were cut to pieces, and Achaia loaded with chains, under which it is groaning at this hour.

I have thought it not superfluous to give the outlines of this important portion of history; both because it teaches more than one lesson, and because, as a supplement to the outlines of the Achaean constitution, it emphatically illustrates the tendency of federal bodies rather to anarchy among the members, than to tyranny in the head.

PUBLIUS

1. This was but another name more specious for the independence of the members on the federal head.

FEDERALIST No. 19. The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union)

For the Independent Journal. Saturday, December 8, 1787

MADISON, with HAMILTON

To the People of the State of New York:

THE examples of ancient confederacies, cited in my last paper, have not exhausted the source of experimental instruction on this subject. There are existing institutions, founded on a similar principle, which merit particular consideration. The first which presents itself is the Germanic body.

In the early ages of Christianity, Germany was occupied by seven distinct nations, who had no common chief. The Franks, one of the number, having conquered the Gauls, established the kingdom which has taken its name from them. In the ninth century Charlemagne, its warlike monarch, carried his victorious arms in every direction; and Germany became a part of his vast dominions. On the dismemberment, which took place under his sons, this part was erected into a separate and independent empire. Charlemagne and his immediate descendants possessed the reality, as well as the ensigns and dignity of imperial power. But the principal vassals, whose fiefs had become hereditary, and who composed the national diets which Charlemagne had not abolished, gradually threw off the yoke and advanced to sovereign jurisdiction and independence. The force of imperial sovereignty was insufficient to restrain such powerful dependants; or to preserve the unity and tranquillity of the empire. The most furious private wars, accompanied with every species of calamity, were carried on between the different princes and states. The imperial authority, unable to maintain the public order, declined by degrees till it was almost extinct in the anarchy, which agitated the long interval between the death of the last emperor of the Suabian, and the accession of the first emperor of the Austrian lines. In the eleventh century the emperors enjoyed full

sovereignty: In the fifteenth they had little more than the symbols and decorations of power.

Out of this feudal system, which has itself many of the important features of a confederacy, has grown the federal system which constitutes the Germanic empire. Its powers are vested in a diet representing the component members of the confederacy; in the emperor, who is the executive magistrate, with a negative on the decrees of the diet; and in the imperial chamber and the aulic council, two judiciary tribunals having supreme jurisdiction in controversies which concern the empire, or which happen among its members.

The diet possesses the general power of legislating for the empire; of making war and peace; contracting alliances; assessing quotas of troops and money; constructing fortresses; regulating coin; admitting new members; and subjecting disobedient members to the ban of the empire, by which the party is degraded from his sovereign rights and his possessions forfeited. The members of the confederacy are expressly restricted from entering into compacts prejudicial to the empire; from imposing tolls and duties on their mutual intercourse, without the consent of the emperor and diet; from altering the value of money; from doing injustice to one another; or from affording assistance or retreat to disturbers of the public peace. And the ban is denounced against such as shall violate any of these restrictions. The members of the diet, as such, are subject in all cases to be judged by the emperor and diet, and in their private capacities by the aulic council and imperial chamber.

The prerogatives of the emperor are numerous. The most important of them are: his exclusive right to make propositions to the diet; to negative its resolutions; to name ambassadors; to confer dignities and titles; to fill vacant electorates; to found universities; to grant privileges not injurious to the states of the empire; to receive and apply the public revenues; and generally to watch over the public safety. In certain cases, the electors form a council to him. In quality of emperor, he possesses no territory within the empire, nor receives any revenue for his support. But his revenue and dominions, in other qualities, constitute him one of the most powerful princes in Europe.

From such a parade of constitutional powers, in the representatives and head of this confederacy, the natural supposition would be, that it must form

an exception to the general character which belongs to its kindred systems. Nothing would be further from the reality. The fundamental principle on which it rests, that the empire is a community of sovereigns, that the diet is a representation of sovereigns and that the laws are addressed to sovereigns, renders the empire a nerveless body, incapable of regulating its own members, insecure against external dangers, and agitated with unceasing fermentations in its own bowels.

The history of Germany is a history of wars between the emperor and the princes and states; of wars among the princes and states themselves; of the licentiousness of the strong, and the oppression of the weak; of foreign intrusions, and foreign intrigues; of requisitions of men and money disregarded, or partially complied with; of attempts to enforce them, altogether abortive, or attended with slaughter and desolation, involving the innocent with the guilty; of general imbecility, confusion, and misery.

In the sixteenth century, the emperor, with one part of the empire on his side, was seen engaged against the other princes and states. In one of the conflicts, the emperor himself was put to flight, and very near being made prisoner by the elector of Saxony. The late king of Prussia was more than once pitted against his imperial sovereign; and commonly proved an overmatch for him. Controversies and wars among the members themselves have been so common, that the German annals are crowded with the bloody pages which describe them. Previous to the peace of Westphalia, Germany was desolated by a war of thirty years, in which the emperor, with one half of the empire, was on one side, and Sweden, with the other half, on the opposite side. Peace was at length negotiated, and dictated by foreign powers; and the articles of it, to which foreign powers are parties, made a fundamental part of the Germanic constitution.

If the nation happens, on any emergency, to be more united by the necessity of self-defense, its situation is still deplorable. Military preparations must be preceded by so many tedious discussions, arising from the jealousies, pride, separate views, and clashing pretensions of sovereign bodies, that before the diet can settle the arrangements, the enemy are in the field; and before the federal troops are ready to take it, are retiring into winter quarters.

The small body of national troops, which has been judged necessary in time of peace, is defectively kept up, badly paid, infected with local

prejudices, and supported by irregular and disproportionate contributions to the treasury.

The impossibility of maintaining order and dispensing justice among these sovereign subjects, produced the experiment of dividing the empire into nine or ten circles or districts; of giving them an interior organization, and of charging them with the military execution of the laws against delinquent and contumacious members. This experiment has only served to demonstrate more fully the radical vice of the constitution. Each circle is the miniature picture of the deformities of this political monster. They either fail to execute their commissions, or they do it with all the devastation and carnage of civil war. Sometimes whole circles are defaulters; and then they increase the mischief which they were instituted to remedy.

We may form some judgment of this scheme of military coercion from a sample given by Thuanus. In Donawerth, a free and imperial city of the circle of Suabia, the Abbe de St. Croix enjoyed certain immunities which had been reserved to him. In the exercise of these, on some public occasions, outrages were committed on him by the people of the city. The consequence was that the city was put under the ban of the empire, and the Duke of Bavaria, though director of another circle, obtained an appointment to enforce it. He soon appeared before the city with a corps of ten thousand troops, and finding it a fit occasion, as he had secretly intended from the beginning, to revive an antiquated claim, on the pretext that his ancestors had suffered the place to be dismembered from his territory,(1) he took possession of it in his own name, disarmed, and punished the inhabitants, and reannexed the city to his domains.

It may be asked, perhaps, what has so long kept this disjointed machine from falling entirely to pieces? The answer is obvious: The weakness of most of the members, who are unwilling to expose themselves to the mercy of foreign powers; the weakness of most of the principal members, compared with the formidable powers all around them; the vast weight and influence which the emperor derives from his separate and hereditary dominions; and the interest he feels in preserving a system with which his family pride is connected, and which constitutes him the first prince in Europe;—these causes support a feeble and precarious Union; whilst the repellant quality, incident to the nature of sovereignty, and which time continually strengthens, prevents any reform whatever, founded on a proper

consolidation. Nor is it to be imagined, if this obstacle could be surmounted, that the neighboring powers would suffer a revolution to take place which would give to the empire the force and preeminence to which it is entitled. Foreign nations have long considered themselves as interested in the changes made by events in this constitution; and have, on various occasions, betrayed their policy of perpetuating its anarchy and weakness.

If more direct examples were wanting, Poland, as a government over local sovereigns, might not improperly be taken notice of. Nor could any proof more striking be given of the calamities flowing from such institutions. Equally unfit for self-government and self-defense, it has long been at the mercy of its powerful neighbors; who have lately had the mercy to disburden it of one third of its people and territories.

The connection among the Swiss cantons scarcely amounts to a confederacy; though it is sometimes cited as an instance of the stability of such institutions.

They have no common treasury; no common troops even in war; no common coin; no common judicatory; nor any other common mark of sovereignty.

They are kept together by the peculiarity of their topographical position; by their individual weakness and insignificancy; by the fear of powerful neighbors, to one of which they were formerly subject; by the few sources of contention among a people of such simple and homogeneous manners; by their joint interest in their dependent possessions; by the mutual aid they stand in need of, for suppressing insurrections and rebellions, an aid expressly stipulated and often required and afforded; and by the necessity of some regular and permanent provision for accommodating disputes among the cantons. The provision is, that the parties at variance shall each choose four judges out of the neutral cantons, who, in case of disagreement, choose an umpire. This tribunal, under an oath of impartiality, pronounces definitive sentence, which all the cantons are bound to enforce. The competency of this regulation may be estimated by a clause in their treaty of 1683, with Victor Amadeus of Savoy; in which he obliges himself to interpose as mediator in disputes between the cantons, and to employ force, if necessary, against the contumacious party.

So far as the peculiarity of their case will admit of comparison with that of the United States, it serves to confirm the principle intended to be

established. Whatever efficacy the union may have had in ordinary cases, it appears that the moment a cause of difference sprang up, capable of trying its strength, it failed. The controversies on the subject of religion, which in three instances have kindled violent and bloody contests, may be said, in fact, to have severed the league. The Protestant and Catholic cantons have since had their separate diets, where all the most important concerns are adjusted, and which have left the general diet little other business than to take care of the common bailages.

That separation had another consequence, which merits attention. It produced opposite alliances with foreign powers: of Berne, at the head of the Protestant association, with the United Provinces; and of Luzerne, at the head of the Catholic association, with France.

PUBLIUS

1. Pfeffel, "Nouvel Abrég. Chronol. de l'Hist., etc., d'Allemagne," says the pretext was to indemnify himself for the expense of the expedition.

FEDERALIST No. 20. The Same Subject Continued (The Insufficiency of the Present Confederation to Preserve the Union)

From the New York Packet. Tuesday, December 11, 1787.

MADISON, with HAMILTON

To the People of the State of New York:

THE United Netherlands are a confederacy of republics, or rather of aristocracies of a very remarkable texture, yet confirming all the lessons derived from those which we have already reviewed.

The union is composed of seven coequal and sovereign states, and each state or province is a composition of equal and independent cities. In all important cases, not only the provinces but the cities must be unanimous.

The sovereignty of the Union is represented by the States-General, consisting usually of about fifty deputies appointed by the provinces. They hold their seats, some for life, some for six, three, and one years; from two provinces they continue in appointment during pleasure.

The States-General have authority to enter into treaties and alliances; to make war and peace; to raise armies and equip fleets; to ascertain quotas and demand contributions. In all these cases, however, unanimity and the sanction of their constituents are requisite. They have authority to appoint and receive ambassadors; to execute treaties and alliances already formed; to provide for the collection of duties on imports and exports; to regulate the mint, with a saving to the provincial rights; to govern as sovereigns the dependent territories. The provinces are restrained, unless with the general consent, from entering into foreign treaties; from establishing imposts injurious to others, or charging their neighbors with higher duties than their own subjects. A council of state, a chamber of accounts, with five colleges of admiralty, aid and fortify the federal administration.

The executive magistrate of the union is the stadtholder, who is now an hereditary prince. His principal weight and influence in the republic are

derived from this independent title; from his great patrimonial estates; from his family connections with some of the chief potentates of Europe; and, more than all, perhaps, from his being stadtholder in the several provinces, as well as for the union; in which provincial quality he has the appointment of town magistrates under certain regulations, executes provincial decrees, presides when he pleases in the provincial tribunals, and has throughout the power of pardon.

As stadtholder of the union, he has, however, considerable prerogatives.

In his political capacity he has authority to settle disputes between the provinces, when other methods fail; to assist at the deliberations of the States-General, and at their particular conferences; to give audiences to foreign ambassadors, and to keep agents for his particular affairs at foreign courts.

In his military capacity he commands the federal troops, provides for garrisons, and in general regulates military affairs; disposes of all appointments, from colonels to ensigns, and of the governments and posts of fortified towns.

In his marine capacity he is admiral-general, and superintends and directs every thing relative to naval forces and other naval affairs; presides in the admiralties in person or by proxy; appoints lieutenant-admirals and other officers; and establishes councils of war, whose sentences are not executed till he approves them.

His revenue, exclusive of his private income, amounts to three hundred thousand florins. The standing army which he commands consists of about forty thousand men.

Such is the nature of the celebrated Belgic confederacy, as delineated on parchment. What are the characters which practice has stamped upon it? Imbecility in the government; discord among the provinces; foreign influence and indignities; a precarious existence in peace, and peculiar calamities from war.

It was long ago remarked by Grotius, that nothing but the hatred of his countrymen to the house of Austria kept them from being ruined by the vices of their constitution.

The union of Utrecht, says another respectable writer, reposes an authority in the States-General, seemingly sufficient to secure harmony, but

the jealousy in each province renders the practice very different from the theory.

The same instrument, says another, obliges each province to levy certain contributions; but this article never could, and probably never will, be executed; because the inland provinces, who have little commerce, cannot pay an equal quota.

In matters of contribution, it is the practice to waive the articles of the constitution. The danger of delay obliges the consenting provinces to furnish their quotas, without waiting for the others; and then to obtain reimbursement from the others, by deputations, which are frequent, or otherwise, as they can. The great wealth and influence of the province of Holland enable her to effect both these purposes.

It has more than once happened, that the deficiencies had to be ultimately collected at the point of the bayonet; a thing practicable, though dreadful, in a confederacy where one of the members exceeds in force all the rest, and where several of them are too small to meditate resistance; but utterly impracticable in one composed of members, several of which are equal to each other in strength and resources, and equal singly to a vigorous and persevering defense.

Foreign ministers, says Sir William Temple, who was himself a foreign minister, elude matters taken ad referendum, by tampering with the provinces and cities. In 1726, the treaty of Hanover was delayed by these means a whole year. Instances of a like nature are numerous and notorious.

In critical emergencies, the States-General are often compelled to overleap their constitutional bounds. In 1688, they concluded a treaty of themselves at the risk of their heads. The treaty of Westphalia, in 1648, by which their independence was formerly and finally recognized, was concluded without the consent of Zealand. Even as recently as the last treaty of peace with Great Britain, the constitutional principle of unanimity was departed from. A weak constitution must necessarily terminate in dissolution, for want of proper powers, or the usurpation of powers requisite for the public safety. Whether the usurpation, when once begun, will stop at the salutary point, or go forward to the dangerous extreme, must depend on the contingencies of the moment. Tyranny has perhaps oftener grown out of the assumptions of power, called for, on pressing exigencies, by a defective

constitution, than out of the full exercise of the largest constitutional authorities.

Notwithstanding the calamities produced by the stadtholdership, it has been supposed that without his influence in the individual provinces, the causes of anarchy manifest in the confederacy would long ago have dissolved it. "Under such a government," says the Abbe Mably, "the Union could never have subsisted, if the provinces had not a spring within themselves, capable of quickening their tardiness, and compelling them to the same way of thinking. This spring is the stadtholder." It is remarked by Sir William Temple, "that in the intermissions of the stadtholdership, Holland, by her riches and her authority, which drew the others into a sort of dependence, supplied the place."

These are not the only circumstances which have controlled the tendency to anarchy and dissolution. The surrounding powers impose an absolute necessity of union to a certain degree, at the same time that they nourish by their intrigues the constitutional vices which keep the republic in some degree always at their mercy.

The true patriots have long bewailed the fatal tendency of these vices, and have made no less than four regular experiments by EXTRAORDINARY ASSEMBLIES, convened for the special purpose, to apply a remedy. As many times has their laudable zeal found it impossible to UNITE THE PUBLIC COUNCILS in reforming the known, the acknowledged, the fatal evils of the existing constitution. Let us pause, my fellow-citizens, for one moment, over this melancholy and monitory lesson of history; and with the tear that drops for the calamities brought on mankind by their adverse opinions and selfish passions, let our gratitude mingle an ejaculation to Heaven, for the propitious concord which has distinguished the consultations for our political happiness.

A design was also conceived of establishing a general tax to be administered by the federal authority. This also had its adversaries and failed.

This unhappy people seem to be now suffering from popular convulsions, from dissensions among the states, and from the actual invasion of foreign arms, the crisis of their destiny. All nations have their eyes fixed on the awful spectacle. The first wish prompted by humanity is, that this severe trial may issue in such a revolution of their government as will establish

their union, and render it the parent of tranquillity, freedom and happiness: The next, that the asylum under which, we trust, the enjoyment of these blessings will speedily be secured in this country, may receive and console them for the catastrophe of their own.

I make no apology for having dwelt so long on the contemplation of these federal precedents. Experience is the oracle of truth; and where its responses are unequivocal, they ought to be conclusive and sacred. The important truth, which it unequivocally pronounces in the present case, is that a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity, by substituting VIOLENCE in place of LAW, or the destructive COERCION of the SWORD in place of the mild and salutary COERCION of the MAGISTRACY.

PUBLIUS

FEDERALIST No. 21. Other Defects of the Present Confederation

For the Independent Journal. Wednesday, December 12, 1787

HAMILTON

To the People of the State of New York:

HAVING in the three last numbers taken a summary review of the principal circumstances and events which have depicted the genius and fate of other confederate governments, I shall now proceed in the enumeration of the most important of those defects which have hitherto disappointed our hopes from the system established among ourselves. To form a safe and satisfactory judgment of the proper remedy, it is absolutely necessary that we should be well acquainted with the extent and malignity of the disease.

The next most palpable defect of the subsisting Confederation, is the total want of a SANCTION to its laws. The United States, as now composed, have no powers to exact obedience, or punish disobedience to their resolutions, either by pecuniary mulcts, by a suspension or divestiture of privileges, or by any other constitutional mode. There is no express delegation of authority to them to use force against delinquent members; and if such a right should be ascribed to the federal head, as resulting from the nature of the social compact between the States, it must be by inference and construction, in the face of that part of the second article, by which it is declared, "that each State shall retain every power, jurisdiction, and right, not EXPRESSLY delegated to the United States in Congress assembled." There is, doubtless, a striking absurdity in supposing that a right of this kind does not exist, but we are reduced to the dilemma either of embracing that supposition, preposterous as it may seem, or of contravening or explaining away a provision, which has been of late a repeated theme of the eulogies of those who oppose the new Constitution; and the want of which, in that plan, has been the subject of much plausible animadversion, and severe criticism. If we are unwilling to impair the force of this applauded provision, we shall be obliged to conclude, that the United States afford the extraordinary

spectacle of a government destitute even of the shadow of constitutional power to enforce the execution of its own laws. It will appear, from the specimens which have been cited, that the American Confederacy, in this particular, stands discriminated from every other institution of a similar kind, and exhibits a new and unexampled phenomenon in the political world.

The want of a mutual guaranty of the State governments is another capital imperfection in the federal plan. There is nothing of this kind declared in the articles that compose it; and to imply a tacit guaranty from considerations of utility, would be a still more flagrant departure from the clause which has been mentioned, than to imply a tacit power of coercion from the like considerations. The want of a guaranty, though it might in its consequences endanger the Union, does not so immediately attack its existence as the want of a constitutional sanction to its laws.

Without a guaranty the assistance to be derived from the Union in repelling those domestic dangers which may sometimes threaten the existence of the State constitutions, must be renounced. Usurpation may rear its crest in each State, and trample upon the liberties of the people, while the national government could legally do nothing more than behold its encroachments with indignation and regret. A successful faction may erect a tyranny on the ruins of order and law, while no succor could constitutionally be afforded by the Union to the friends and supporters of the government. The tempestuous situation from which Massachusetts has scarcely emerged, evinces that dangers of this kind are not merely speculative. Who can determine what might have been the issue of her late convulsions, if the malcontents had been headed by a Caesar or by a Cromwell? Who can predict what effect a despotism, established in Massachusetts, would have upon the liberties of New Hampshire or Rhode Island, of Connecticut or New York?

The inordinate pride of State importance has suggested to some minds an objection to the principle of a guaranty in the federal government, as involving an officious interference in the domestic concerns of the members. A scruple of this kind would deprive us of one of the principal advantages to be expected from union, and can only flow from a misapprehension of the nature of the provision itself. It could be no impediment to reforms of the State constitution by a majority of the people

in a legal and peaceable mode. This right would remain undiminished. The guaranty could only operate against changes to be effected by violence. Towards the preventions of calamities of this kind, too many checks cannot be provided. The peace of society and the stability of government depend absolutely on the efficacy of the precautions adopted on this head. Where the whole power of the government is in the hands of the people, there is the less pretense for the use of violent remedies in partial or occasional distempers of the State. The natural cure for an ill-administration, in a popular or representative constitution, is a change of men. A guaranty by the national authority would be as much levelled against the usurpations of rulers as against the ferments and outrages of faction and sedition in the community.

The principle of regulating the contributions of the States to the common treasury by QUOTAS is another fundamental error in the Confederation. Its repugnancy to an adequate supply of the national exigencies has been already pointed out, and has sufficiently appeared from the trial which has been made of it. I speak of it now solely with a view to equality among the States. Those who have been accustomed to contemplate the circumstances which produce and constitute national wealth, must be satisfied that there is no common standard or barometer by which the degrees of it can be ascertained. Neither the value of lands, nor the numbers of the people, which have been successively proposed as the rule of State contributions, has any pretension to being a just representative. If we compare the wealth of the United Netherlands with that of Russia or Germany, or even of France, and if we at the same time compare the total value of the lands and the aggregate population of that contracted district with the total value of the lands and the aggregate population of the immense regions of either of the three last-mentioned countries, we shall at once discover that there is no comparison between the proportion of either of these two objects and that of the relative wealth of those nations. If the like parallel were to be run between several of the American States, it would furnish a like result. Let Virginia be contrasted with North Carolina, Pennsylvania with Connecticut, or Maryland with New Jersey, and we shall be convinced that the respective abilities of those States, in relation to revenue, bear little or no analogy to their comparative stock in lands or to their comparative population. The position may be equally illustrated by a similar process between the counties of the same State. No man who is acquainted with the State of

New York will doubt that the active wealth of King's County bears a much greater proportion to that of Montgomery than it would appear to be if we should take either the total value of the lands or the total number of the people as a criterion!

The wealth of nations depends upon an infinite variety of causes. Situation, soil, climate, the nature of the productions, the nature of the government, the genius of the citizens, the degree of information they possess, the state of commerce, of arts, of industry, these circumstances and many more, too complex, minute, or adventitious to admit of a particular specification, occasion differences hardly conceivable in the relative opulence and riches of different countries. The consequence clearly is that there can be no common measure of national wealth, and, of course, no general or stationary rule by which the ability of a state to pay taxes can be determined. The attempt, therefore, to regulate the contributions of the members of a confederacy by any such rule, cannot fail to be productive of glaring inequality and extreme oppression.

This inequality would of itself be sufficient in America to work the eventual destruction of the Union, if any mode of enforcing a compliance with its requisitions could be devised. The suffering States would not long consent to remain associated upon a principle which distributes the public burdens with so unequal a hand, and which was calculated to impoverish and oppress the citizens of some States, while those of others would scarcely be conscious of the small proportion of the weight they were required to sustain. This, however, is an evil inseparable from the principle of quotas and requisitions.

There is no method of steering clear of this inconvenience, but by authorizing the national government to raise its own revenues in its own way. Imposts, excises, and, in general, all duties upon articles of consumption, may be compared to a fluid, which will, in time, find its level with the means of paying them. The amount to be contributed by each citizen will in a degree be at his own option, and can be regulated by an attention to his resources. The rich may be extravagant, the poor can be frugal; and private oppression may always be avoided by a judicious selection of objects proper for such impositions. If inequalities should arise in some States from duties on particular objects, these will, in all probability, be counterbalanced by proportional inequalities in other States,

from the duties on other objects. In the course of time and things, an equilibrium, as far as it is attainable in so complicated a subject, will be established everywhere. Or, if inequalities should still exist, they would neither be so great in their degree, so uniform in their operation, nor so odious in their appearance, as those which would necessarily spring from quotas, upon any scale that can possibly be devised.

It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed, that is, an extension of the revenue. When applied to this object, the saying is as just as it is witty, that, "in political arithmetic, two and two do not always make four." If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power of imposing them.

Impositions of this kind usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country. Those of the direct kind, which principally relate to land and buildings, may admit of a rule of apportionment. Either the value of land, or the number of the people, may serve as a standard. The state of agriculture and the populousness of a country have been considered as nearly connected with each other. And, as a rule, for the purpose intended, numbers, in the view of simplicity and certainty, are entitled to a preference. In every country it is a herculean task to obtain a valuation of the land; in a country imperfectly settled and progressive in improvement, the difficulties are increased almost to impracticability. The expense of an accurate valuation is, in all situations, a formidable objection. In a branch of taxation where no limits to the discretion of the government are to be found in the nature of things, the establishment of a fixed rule, not incompatible with the end, may be attended with fewer inconveniences than to leave that discretion altogether at large.

PUBLIUS

FEDERALIST No. 22. The Same Subject Continued (Other Defects of the Present Confederation)

From the New York Packet. Friday, December 14, 1787.

HAMILTON

To the People of the State of New York:

IN ADDITION to the defects already enumerated in the existing federal system, there are others of not less importance, which concur in rendering it altogether unfit for the administration of the affairs of the Union.

The want of a power to regulate commerce is by all parties allowed to be of the number. The utility of such a power has been anticipated under the first head of our inquiries; and for this reason, as well as from the universal conviction entertained upon the subject, little need be added in this place. It is indeed evident, on the most superficial view, that there is no object, either as it respects the interests of trade or finance, that more strongly demands a federal superintendence. The want of it has already operated as a bar to the formation of beneficial treaties with foreign powers, and has given occasions of dissatisfaction between the States. No nation acquainted with the nature of our political association would be unwise enough to enter into stipulations with the United States, by which they conceded privileges of any importance to them, while they were apprised that the engagements on the part of the Union might at any moment be violated by its members, and while they found from experience that they might enjoy every advantage they desired in our markets, without granting us any return but such as their momentary convenience might suggest. It is not, therefore, to be wondered at that Mr. Jenkinson, in ushering into the House of Commons a bill for regulating the temporary intercourse between the two countries, should preface its introduction by a declaration that similar provisions in former bills had been found to answer every purpose to the commerce of Great Britain, and that it would be prudent to persist in the plan until it should

appear whether the American government was likely or not to acquire greater consistency.(1)

Several States have endeavored, by separate prohibitions, restrictions, and exclusions, to influence the conduct of that kingdom in this particular, but the want of concert, arising from the want of a general authority and from clashing and dissimilar views in the State, has hitherto frustrated every experiment of the kind, and will continue to do so as long as the same obstacles to a uniformity of measures continue to exist.

The interfering and unneighborly regulations of some States, contrary to the true spirit of the Union, have, in different instances, given just cause of umbrage and complaint to others, and it is to be feared that examples of this nature, if not restrained by a national control, would be multiplied and extended till they became not less serious sources of animosity and discord than injurious impediments to the intercourse between the different parts of the Confederacy. "The commerce of the German empire(2) is in continual trammels from the multiplicity of the duties which the several princes and states exact upon the merchandises passing through their territories, by means of which the fine streams and navigable rivers with which Germany is so happily watered are rendered almost useless." Though the genius of the people of this country might never permit this description to be strictly applicable to us, yet we may reasonably expect, from the gradual conflicts of State regulations, that the citizens of each would at length come to be considered and treated by the others in no better light than that of foreigners and aliens.

The power of raising armies, by the most obvious construction of the articles of the Confederation, is merely a power of making requisitions upon the States for quotas of men. This practice in the course of the late war, was found replete with obstructions to a vigorous and to an economical system of defense. It gave birth to a competition between the States which created a kind of auction for men. In order to furnish the quotas required of them, they outbid each other till bounties grew to an enormous and insupportable size. The hope of a still further increase afforded an inducement to those who were disposed to serve to procrastinate their enlistment, and disinclined them from engaging for any considerable periods. Hence, slow and scanty levies of men, in the most critical emergencies of our affairs; short enlistments at an unparalleled expense;

continual fluctuations in the troops, ruinous to their discipline and subjecting the public safety frequently to the perilous crisis of a disbanded army. Hence, also, those oppressive expedients for raising men which were upon several occasions practiced, and which nothing but the enthusiasm of liberty would have induced the people to endure.

This method of raising troops is not more unfriendly to economy and vigor than it is to an equal distribution of the burden. The States near the seat of war, influenced by motives of self-preservation, made efforts to furnish their quotas, which even exceeded their abilities; while those at a distance from danger were, for the most part, as remiss as the others were diligent, in their exertions. The immediate pressure of this inequality was not in this case, as in that of the contributions of money, alleviated by the hope of a final liquidation. The States which did not pay their proportions of money might at least be charged with their deficiencies; but no account could be formed of the deficiencies in the supplies of men. We shall not, however, see much reason to regret the want of this hope, when we consider how little prospect there is, that the most delinquent States will ever be able to make compensation for their pecuniary failures. The system of quotas and requisitions, whether it be applied to men or money, is, in every view, a system of imbecility in the Union, and of inequality and injustice among the members.

The right of equal suffrage among the States is another exceptionable part of the Confederation. Every idea of proportion and every rule of fair representation conspire to condemn a principle, which gives to Rhode Island an equal weight in the scale of power with Massachusetts, or Connecticut, or New York; and to Delaware an equal voice in the national deliberations with Pennsylvania, or Virginia, or North Carolina. Its operation contradicts the fundamental maxim of republican government, which requires that the sense of the majority should prevail. Sophistry may reply, that sovereigns are equal, and that a majority of the votes of the States will be a majority of confederated America. But this kind of logical legerdemain will never counteract the plain suggestions of justice and common-sense. It may happen that this majority of States is a small minority of the people of America;(3) and two thirds of the people of America could not long be persuaded, upon the credit of artificial distinctions and syllogistic subtleties, to submit their interests to the management and disposal of one third. The larger States would after a while

revolt from the idea of receiving the law from the smaller. To acquiesce in such a privation of their due importance in the political scale, would be not merely to be insensible to the love of power, but even to sacrifice the desire of equality. It is neither rational to expect the first, nor just to require the last. The smaller States, considering how peculiarly their safety and welfare depend on union, ought readily to renounce a pretension which, if not relinquished, would prove fatal to its duration.

It may be objected to this, that not seven but nine States, or two thirds of the whole number, must consent to the most important resolutions; and it may be thence inferred that nine States would always comprehend a majority of the Union. But this does not obviate the impropriety of an equal vote between States of the most unequal dimensions and populousness; nor is the inference accurate in point of fact; for we can enumerate nine States which contain less than a majority of the people;(4) and it is constitutionally possible that these nine may give the vote. Besides, there are matters of considerable moment determinable by a bare majority; and there are others, concerning which doubts have been entertained, which, if interpreted in favor of the sufficiency of a vote of seven States, would extend its operation to interests of the first magnitude. In addition to this, it is to be observed that there is a probability of an increase in the number of States, and no provision for a proportional augmentation of the ratio of votes.

But this is not all: what at first sight may seem a remedy, is, in reality, a poison. To give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision), is, in its tendency, to subject the sense of the greater number to that of the lesser. Congress, from the nonattendance of a few States, have been frequently in the situation of a Polish diet, where a single VOTE has been sufficient to put a stop to all their movements. A sixtieth part of the Union, which is about the proportion of Delaware and Rhode Island, has several times been able to oppose an entire bar to its operations. This is one of those refinements which, in practice, has an effect the reverse of what is expected from it in theory. The necessity of unanimity in public bodies, or of something approaching towards it, has been founded upon a supposition that it would contribute to security. But its real operation is to embarrass the administration, to destroy the energy of the government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto, to the regular deliberations and decisions of a respectable majority. In

those emergencies of a nation, in which the goodness or badness, the weakness or strength of its government, is of the greatest importance, there is commonly a necessity for action. The public business must, in some way or other, go forward. If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater, and give a tone to the national proceedings. Hence, tedious delays; continual negotiation and intrigue; contemptible compromises of the public good. And yet, in such a system, it is even happy when such compromises can take place: for upon some occasions things will not admit of accommodation; and then the measures of government must be injuriously suspended, or fatally defeated. It is often, by the impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savor of weakness, sometimes border upon anarchy.

It is not difficult to discover, that a principle of this kind gives greater scope to foreign corruption, as well as to domestic faction, than that which permits the sense of the majority to decide; though the contrary of this has been presumed. The mistake has proceeded from not attending with due care to the mischiefs that may be occasioned by obstructing the progress of government at certain critical seasons. When the concurrence of a large number is required by the Constitution to the doing of any national act, we are apt to rest satisfied that all is safe, because nothing improper will be likely TO BE DONE, but we forget how much good may be prevented, and how much ill may be produced, by the power of hindering the doing what may be necessary, and of keeping affairs in the same unfavorable posture in which they may happen to stand at particular periods.

Suppose, for instance, we were engaged in a war, in conjunction with one foreign nation, against another. Suppose the necessity of our situation demanded peace, and the interest or ambition of our ally led him to seek the prosecution of the war, with views that might justify us in making separate terms. In such a state of things, this ally of ours would evidently find it much easier, by his bribes and intrigues, to tie up the hands of government from making peace, where two thirds of all the votes were requisite to that object, than where a simple majority would suffice. In the first case, he would have to corrupt a smaller number; in the last, a greater number. Upon

the same principle, it would be much easier for a foreign power with which we were at war to perplex our councils and embarrass our exertions. And, in a commercial view, we may be subjected to similar inconveniences. A nation, with which we might have a treaty of commerce, could with much greater facility prevent our forming a connection with her competitor in trade, though such a connection should be ever so beneficial to ourselves.

Evils of this description ought not to be regarded as imaginary. One of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption. An hereditary monarch, though often disposed to sacrifice his subjects to his ambition, has so great a personal interest in the government and in the external glory of the nation, that it is not easy for a foreign power to give him an equivalent for what he would sacrifice by treachery to the state. The world has accordingly been witness to few examples of this species of royal prostitution, though there have been abundant specimens of every other kind.

In republics, persons elevated from the mass of the community, by the suffrages of their fellow-citizens, to stations of great pre-eminence and power, may find compensations for betraying their trust, which, to any but minds animated and guided by superior virtue, may appear to exceed the proportion of interest they have in the common stock, and to overbalance the obligations of duty. Hence it is that history furnishes us with so many mortifying examples of the prevalency of foreign corruption in republican governments. How much this contributed to the ruin of the ancient commonwealths has been already delineated. It is well known that the deputies of the United Provinces have, in various instances, been purchased by the emissaries of the neighboring kingdoms. The Earl of Chesterfield (if my memory serves me right), in a letter to his court, intimates that his success in an important negotiation must depend on his obtaining a major's commission for one of those deputies. And in Sweden the parties were alternately bought by France and England in so barefaced and notorious a manner that it excited universal disgust in the nation, and was a principal cause that the most limited monarch in Europe, in a single day, without tumult, violence, or opposition, became one of the most absolute and uncontrolled.

A circumstance which crowns the defects of the Confederation remains yet to be mentioned, the want of a judiciary power. Laws are a dead letter

without courts to expound and define their true meaning and operation. The treaties of the United States, to have any force at all, must be considered as part of the law of the land. Their true import, as far as respects individuals, must, like all other laws, be ascertained by judicial determinations. To produce uniformity in these determinations, they ought to be submitted, in the last resort, to one SUPREME TRIBUNAL. And this tribunal ought to be instituted under the same authority which forms the treaties themselves. These ingredients are both indispensable. If there is in each State a court of final jurisdiction, there may be as many different final determinations on the same point as there are courts. There are endless diversities in the opinions of men. We often see not only different courts but the judges of the came court differing from each other. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatories, all nations have found it necessary to establish one court paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort a uniform rule of civil justice.

This is the more necessary where the frame of the government is so compounded that the laws of the whole are in danger of being contravened by the laws of the parts. In this case, if the particular tribunals are invested with a right of ultimate jurisdiction, besides the contradictions to be expected from difference of opinion, there will be much to fear from the bias of local views and prejudices, and from the interference of local regulations. As often as such an interference was to happen, there would be reason to apprehend that the provisions of the particular laws might be preferred to those of the general laws; for nothing is more natural to men in office than to look with peculiar deference towards that authority to which they owe their official existence.

The treaties of the United States, under the present Constitution, are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures. The faith, the reputation, the peace of the whole Union, are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which it is composed. Is it possible that foreign nations can either respect or confide in such a government? Is it possible that the people of America will longer consent to trust their honor, their happiness, their safety, on so precarious a foundation?

In this review of the Confederation, I have confined myself to the exhibition of its most material defects; passing over those imperfections in its details by which even a great part of the power intended to be conferred upon it has been in a great measure rendered abortive. It must be by this time evident to all men of reflection, who can divest themselves of the prepossessions of preconceived opinions, that it is a system so radically vicious and unsound, as to admit not of amendment but by an entire change in its leading features and characters.

The organization of Congress is itself utterly improper for the exercise of those powers which are necessary to be deposited in the Union. A single assembly may be a proper receptacle of those slender, or rather fettered, authorities, which have been heretofore delegated to the federal head; but it would be inconsistent with all the principles of good government, to intrust it with those additional powers which, even the moderate and more rational adversaries of the proposed Constitution admit, ought to reside in the United States. If that plan should not be adopted, and if the necessity of the Union should be able to withstand the ambitious aims of those men who may indulge magnificent schemes of personal aggrandizement from its dissolution, the probability would be, that we should run into the project of conferring supplementary powers upon Congress, as they are now constituted; and either the machine, from the intrinsic feebleness of its structure, will moulder into pieces, in spite of our ill-judged efforts to prop it; or, by successive augmentations of its force an energy, as necessity might prompt, we shall finally accumulate, in a single body, all the most important prerogatives of sovereignty, and thus entail upon our posterity one of the most execrable forms of government that human infatuation ever contrived. Thus, we should create in reality that very tyranny which the adversaries of the new Constitution either are, or affect to be, solicitous to avert.

It has not a little contributed to the infirmities of the existing federal system, that it never had a ratification by the PEOPLE. Resting on no better foundation than the consent of the several legislatures, it has been exposed to frequent and intricate questions concerning the validity of its powers, and has, in some instances, given birth to the enormous doctrine of a right of legislative repeal. Owing its ratification to the law of a State, it has been contended that the same authority might repeal the law by which it was ratified. However gross a heresy it may be to maintain that a PARTY to a COMPACT has a right to revoke that COMPACT, the doctrine itself has

had respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority.

PUBLIUS

1. This, as nearly as I can recollect, was the sense of his speech on introducing the last bill.

2. Encyclopedia, article "Empire."

3. New Hampshire, Rhode Island, New Jersey, Delaware, Georgia, South Carolina, and Maryland are a majority of the whole number of the States, but they do not contain one third of the people.

4. Add New York and Connecticut to the foregoing seven, and they will be less than a majority.

FEDERALIST No. 23. The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union

From the New York Packet. Tuesday, December 18, 1787.

HAMILTON

To the People of the State of New York:

THE necessity of a Constitution, at least equally energetic with the one proposed, to the preservation of the Union, is the point at the examination of which we are now arrived.

This inquiry will naturally divide itself into three branches—the objects to be provided for by the federal government, the quantity of power necessary to the accomplishment of those objects, the persons upon whom that power ought to operate. Its distribution and organization will more properly claim our attention under the succeeding head.

The principal purposes to be answered by union are these—the common defense of the members; the preservation of the public peace as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, BECAUSE IT IS IMPOSSIBLE TO FORESEE OR DEFINE THE EXTENT AND VARIETY OF NATIONAL EXIGENCIES, OR THE CORRESPONDENT EXTENT AND VARIETY OF THE MEANS WHICH MAY BE NECESSARY TO SATISFY THEM. The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be

under the direction of the same councils which are appointed to preside over the common defense.

This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms as simple as they are universal; the MEANS ought to be proportioned to the END; the persons, from whose agency the attainment of any END is expected, ought to possess the MEANS by which it is to be attained.

Whether there ought to be a federal government intrusted with the care of the common defense, is a question in the first instance, open for discussion; but the moment it is decided in the affirmative, it will follow, that that government ought to be clothed with all the powers requisite to complete execution of its trust. And unless it can be shown that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted, as a necessary consequence, that there can be no limitation of that authority which is to provide for the defense and protection of the community, in any matter essential to its efficacy that is, in any matter essential to the FORMATION, DIRECTION, or SUPPORT of the NATIONAL FORCES.

Defective as the present Confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the States, who are in fact under the most solemn obligations to furnish the supplies required of them, the intention evidently was that the United States should command whatever resources were by them judged requisite to the "common defense and general welfare." It was presumed that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members to the federal head.

The experiment has, however, demonstrated that this expectation was ill-founded and illusory; and the observations, made under the last head, will, I imagine, have sufficed to convince the impartial and discerning, that there is an absolute necessity for an entire change in the first principles of the

system; that if we are in earnest about giving the Union energy and duration, we must abandon the vain project of legislating upon the States in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions, as equally impracticable and unjust. The result from all this is that the Union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy, in the customary and ordinary modes practiced in other governments.

If the circumstances of our country are such as to demand a compound instead of a simple, a confederate instead of a sole, government, the essential point which will remain to be adjusted will be to discriminate the OBJECTS, as far as it can be done, which shall appertain to the different provinces or departments of power; allowing to each the most ample authority for fulfilling the objects committed to its charge. Shall the Union be constituted the guardian of the common safety? Are fleets and armies and revenues necessary to this purpose? The government of the Union must be empowered to pass all laws, and to make all regulations which have relation to them. The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the administration of justice between the citizens of the same State the proper department of the local governments? These must possess all the authorities which are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power commensurate to the end, would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigor and success.

Who is likely to make suitable provisions for the public defense, as that body to which the guardianship of the public safety is confided; which, as the centre of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the WHOLE, will feel itself most deeply interested in the preservation of every part; which, from the responsibility implied in the duty assigned to it, will be most sensibly impressed with the necessity of proper exertions; and which, by the extension of its authority throughout the States, can alone establish uniformity and concert in the plans and measures by which the common

safety is to be secured? Is there not a manifest inconsistency in devolving upon the federal government the care of the general defense, and leaving in the State governments the EFFECTIVE powers by which it is to be provided for? Is not a want of co-operation the infallible consequence of such a system? And will not weakness, disorder, an undue distribution of the burdens and calamities of war, an unnecessary and intolerable increase of expense, be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the course of the revolution which we have just accomplished?

Every view we may take of the subject, as candid inquirers after truth, will serve to convince us, that it is both unwise and dangerous to deny the federal government an unconfined authority, as to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modeled in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration, should not, upon a dispassionate inspection, be found to answer this description, it ought to be rejected. A government, the constitution of which renders it unfit to be trusted with all the powers which a free people ought to delegate to any government, would be an unsafe and improper depositary of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the coincident powers may safely accompany them. This is the true result of all just reasoning upon the subject. And the adversaries of the plan promulgated by the convention ought to have confined themselves to showing, that the internal structure of the proposed government was such as to render it unworthy of the confidence of the people. They ought not to have wandered into inflammatory declamations and unmeaning cavils about the extent of the powers. The POWERS are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate confederacies, which will move within more practicable spheres. For the absurdity must continually

stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust it to the authorities which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a rational alternative.

I trust, however, that the impracticability of one general system cannot be shown. I am greatly mistaken, if any thing of weight has yet been advanced of this tendency; and I flatter myself, that the observations which have been made in the course of these papers have served to place the reverse of that position in as clear a light as any matter still in the womb of time and experience can be susceptible of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the strongest argument in favor of an energetic government; for any other can certainly never preserve the Union of so large an empire. If we embrace the tenets of those who oppose the adoption of the proposed Constitution, as the standard of our political creed, we cannot fail to verify the gloomy doctrines which predict the impracticability of a national system pervading entire limits of the present Confederacy.

PUBLIUS

FEDERALIST No. 24. The Powers Necessary to the Common Defense Further Considered

For the Independent Journal. Wednesday, December 19, 1787

HAMILTON

To the People of the State of New York:

TO THE powers proposed to be conferred upon the federal government, in respect to the creation and direction of the national forces, I have met with but one specific objection, which, if I understand it right, is this, that proper provision has not been made against the existence of standing armies in time of peace; an objection which, I shall now endeavor to show, rests on weak and unsubstantial foundations.

It has indeed been brought forward in the most vague and general form, supported only by bold assertions, without the appearance of argument; without even the sanction of theoretical opinions; in contradiction to the practice of other free nations, and to the general sense of America, as expressed in most of the existing constitutions. The proprietary of this remark will appear, the moment it is recollected that the objection under consideration turns upon a supposed necessity of restraining the LEGISLATIVE authority of the nation, in the article of military establishments; a principle unheard of, except in one or two of our State constitutions, and rejected in all the rest.

A stranger to our politics, who was to read our newspapers at the present juncture, without having previously inspected the plan reported by the convention, would be naturally led to one of two conclusions: either that it contained a positive injunction, that standing armies should be kept up in time of peace; or that it vested in the EXECUTIVE the whole power of levying troops, without subjecting his discretion, in any shape, to the control of the legislature.

If he came afterwards to peruse the plan itself, he would be surprised to discover, that neither the one nor the other was the case; that the whole power of raising armies was lodged in the LEGISLATURE, not in the

EXECUTIVE; that this legislature was to be a popular body, consisting of the representatives of the people periodically elected; and that instead of the provision he had supposed in favor of standing armies, there was to be found, in respect to this object, an important qualification even of the legislative discretion, in that clause which forbids the appropriation of money for the support of an army for any longer period than two years a precaution which, upon a nearer view of it, will appear to be a great and real security against the keeping up of troops without evident necessity.

Disappointed in his first surmise, the person I have supposed would be apt to pursue his conjectures a little further. He would naturally say to himself, it is impossible that all this vehement and pathetic declamation can be without some colorable pretext. It must needs be that this people, so jealous of their liberties, have, in all the preceding models of the constitutions which they have established, inserted the most precise and rigid precautions on this point, the omission of which, in the new plan, has given birth to all this apprehension and clamor.

If, under this impression, he proceeded to pass in review the several State constitutions, how great would be his disappointment to find that TWO ONLY of them(1) contained an interdiction of standing armies in time of peace; that the other eleven had either observed a profound silence on the subject, or had in express terms admitted the right of the Legislature to authorize their existence.

Still, however he would be persuaded that there must be some plausible foundation for the cry raised on this head. He would never be able to imagine, while any source of information remained unexplored, that it was nothing more than an experiment upon the public credulity, dictated either by a deliberate intention to deceive, or by the overflowings of a zeal too intemperate to be ingenuous. It would probably occur to him, that he would be likely to find the precautions he was in search of in the primitive compact between the States. Here, at length, he would expect to meet with a solution of the enigma. No doubt, he would observe to himself, the existing Confederation must contain the most explicit provisions against military establishments in time of peace; and a departure from this model, in a favorite point, has occasioned the discontent which appears to influence these political champions.

If he should now apply himself to a careful and critical survey of the articles of Confederation, his astonishment would not only be increased, but would acquire a mixture of indignation, at the unexpected discovery, that these articles, instead of containing the prohibition he looked for, and though they had, with jealous circumspection, restricted the authority of the State legislatures in this particular, had not imposed a single restraint on that of the United States. If he happened to be a man of quick sensibility, or ardent temper, he could now no longer refrain from regarding these clamors as the dishonest artifices of a sinister and unprincipled opposition to a plan which ought at least to receive a fair and candid examination from all sincere lovers of their country! How else, he would say, could the authors of them have been tempted to vent such loud censures upon that plan, about a point in which it seems to have conformed itself to the general sense of America as declared in its different forms of government, and in which it has even superadded a new and powerful guard unknown to any of them? If, on the contrary, he happened to be a man of calm and dispassionate feelings, he would indulge a sigh for the frailty of human nature, and would lament, that in a matter so interesting to the happiness of millions, the true merits of the question should be perplexed and entangled by expedients so unfriendly to an impartial and right determination. Even such a man could hardly forbear remarking, that a conduct of this kind has too much the appearance of an intention to mislead the people by alarming their passions, rather than to convince them by arguments addressed to their understandings.

But however little this objection may be countenanced, even by precedents among ourselves, it may be satisfactory to take a nearer view of its intrinsic merits. From a close examination it will appear that restraints upon the discretion of the legislature in respect to military establishments in time of peace, would be improper to be imposed, and if imposed, from the necessities of society, would be unlikely to be observed.

Though a wide ocean separates the United States from Europe, yet there are various considerations that warn us against an excess of confidence or security. On one side of us, and stretching far into our rear, are growing settlements subject to the dominion of Britain. On the other side, and extending to meet the British settlements, are colonies and establishments subject to the dominion of Spain. This situation and the vicinity of the West India Islands, belonging to these two powers create between them, in

respect to their American possessions and in relation to us, a common interest. The savage tribes on our Western frontier ought to be regarded as our natural enemies, their natural allies, because they have most to fear from us, and most to hope from them. The improvements in the art of navigation have, as to the facility of communication, rendered distant nations, in a great measure, neighbors. Britain and Spain are among the principal maritime powers of Europe. A future concert of views between these nations ought not to be regarded as improbable. The increasing remoteness of consanguinity is every day diminishing the force of the family compact between France and Spain. And politicians have ever with great reason considered the ties of blood as feeble and precarious links of political connection. These circumstances combined, admonish us not to be too sanguine in considering ourselves as entirely out of the reach of danger.

Previous to the Revolution, and ever since the peace, there has been a constant necessity for keeping small garrisons on our Western frontier. No person can doubt that these will continue to be indispensable, if it should only be against the ravages and depredations of the Indians. These garrisons must either be furnished by occasional detachments from the militia, or by permanent corps in the pay of the government. The first is impracticable; and if practicable, would be pernicious. The militia would not long, if at all, submit to be dragged from their occupations and families to perform that most disagreeable duty in times of profound peace. And if they could be prevailed upon or compelled to do it, the increased expense of a frequent rotation of service, and the loss of labor and disconcertion of the industrious pursuits of individuals, would form conclusive objections to the scheme. It would be as burdensome and injurious to the public as ruinous to private citizens. The latter resource of permanent corps in the pay of the government amounts to a standing army in time of peace; a small one, indeed, but not the less real for being small. Here is a simple view of the subject, that shows us at once the impropriety of a constitutional interdiction of such establishments, and the necessity of leaving the matter to the discretion and prudence of the legislature.

In proportion to our increase in strength, it is probable, nay, it may be said certain, that Britain and Spain would augment their military establishments in our neighborhood. If we should not be willing to be exposed, in a naked and defenseless condition, to their insults and encroachments, we should find it expedient to increase our frontier

garrisons in some ratio to the force by which our Western settlements might be annoyed. There are, and will be, particular posts, the possession of which will include the command of large districts of territory, and facilitate future invasions of the remainder. It may be added that some of those posts will be keys to the trade with the Indian nations. Can any man think it would be wise to leave such posts in a situation to be at any instant seized by one or the other of two neighboring and formidable powers? To act this part would be to desert all the usual maxims of prudence and policy.

If we mean to be a commercial people, or even to be secure on our Atlantic side, we must endeavor, as soon as possible, to have a navy. To this purpose there must be dock-yards and arsenals; and for the defense of these, fortifications, and probably garrisons. When a nation has become so powerful by sea that it can protect its dock-yards by its fleets, this supersedes the necessity of garrisons for that purpose; but where naval establishments are in their infancy, moderate garrisons will, in all likelihood, be found an indispensable security against descents for the destruction of the arsenals and dock-yards, and sometimes of the fleet itself.

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1 This statement of the matter is taken from the printed collection of State constitutions. Pennsylvania and North Carolina are the two which contain the interdiction in these words: "As standing armies in time of peace are dangerous to liberty, THEY OUGHT NOT to be kept up." This is, in truth, rather a CAUTION than a PROHIBITION. New Hampshire, Massachusetts, Delaware, and Maryland have, in each of their bills of rights, a clause to this effect: "Standing armies are dangerous to liberty, and ought not to be raised or kept up WITHOUT THE CONSENT OF THE LEGISLATURE"; which is a formal admission of the authority of the Legislature. New York has no bills of rights, and her constitution says not a word about the matter. No bills of rights appear annexed to the constitutions of the other States, except the foregoing, and their constitutions are equally silent. I am told, however that one or two States have bills of rights which do not appear in this collection; but that those also recognize the right of the legislative authority in this respect.

FEDERALIST No. 25. The Same Subject Continued (The Powers Necessary to the Common Defense Further Considered)

From the New York Packet. Friday, December 21, 1787.

HAMILTON

To the People of the State of New York:

IT MAY perhaps be urged that the objects enumerated in the preceding number ought to be provided for by the State governments, under the direction of the Union. But this would be, in reality, an inversion of the primary principle of our political association, as it would in practice transfer the care of the common defense from the federal head to the individual members: a project oppressive to some States, dangerous to all, and baneful to the Confederacy.

The territories of Britain, Spain, and of the Indian nations in our neighborhood do not border on particular States, but encircle the Union from Maine to Georgia. The danger, though in different degrees, is therefore common. And the means of guarding against it ought, in like manner, to be the objects of common councils and of a common treasury. It happens that some States, from local situation, are more directly exposed. New York is of this class. Upon the plan of separate provisions, New York would have to sustain the whole weight of the establishments requisite to her immediate safety, and to the mediate or ultimate protection of her neighbors. This would neither be equitable as it respected New York nor safe as it respected the other States. Various inconveniences would attend such a system. The States, to whose lot it might fall to support the necessary establishments, would be as little able as willing, for a considerable time to come, to bear the burden of competent provisions. The security of all would thus be subjected to the parsimony, improvidence, or inability of a part. If the resources of such part becoming more abundant and extensive, its provisions should be proportionally enlarged, the other States would quickly take the alarm at seeing the whole military force of the Union in the

hands of two or three of its members, and those probably amongst the most powerful. They would each choose to have some counterpoise, and pretenses could easily be contrived. In this situation, military establishments, nourished by mutual jealousy, would be apt to swell beyond their natural or proper size; and being at the separate disposal of the members, they would be engines for the abridgment or demolition of the national authority.

Reasons have been already given to induce a supposition that the State governments will too naturally be prone to a rivalship with that of the Union, the foundation of which will be the love of power; and that in any contest between the federal head and one of its members the people will be most apt to unite with their local government. If, in addition to this immense advantage, the ambition of the members should be stimulated by the separate and independent possession of military forces, it would afford too strong a temptation and too great a facility to them to make enterprises upon, and finally to subvert, the constitutional authority of the Union. On the other hand, the liberty of the people would be less safe in this state of things than in that which left the national forces in the hands of the national government. As far as an army may be considered as a dangerous weapon of power, it had better be in those hands of which the people are most likely to be jealous than in those of which they are least likely to be jealous. For it is a truth, which the experience of ages has attested, that the people are always most in danger when the means of injuring their rights are in the possession of those of whom they entertain the least suspicion.

The framers of the existing Confederation, fully aware of the danger to the Union from the separate possession of military forces by the States, have, in express terms, prohibited them from having either ships or troops, unless with the consent of Congress. The truth is, that the existence of a federal government and military establishments under State authority are not less at variance with each other than a due supply of the federal treasury and the system of quotas and requisitions.

There are other lights besides those already taken notice of, in which the impropriety of restraints on the discretion of the national legislature will be equally manifest. The design of the objection, which has been mentioned, is to preclude standing armies in time of peace, though we have never been informed how far it is designed the prohibition should extend; whether to

raising armies as well as to KEEPING THEM UP in a season of tranquillity or not. If it be confined to the latter it will have no precise signification, and it will be ineffectual for the purpose intended. When armies are once raised what shall be denominated "keeping them up," contrary to the sense of the Constitution? What time shall be requisite to ascertain the violation? Shall it be a week, a month, a year? Or shall we say they may be continued as long as the danger which occasioned their being raised continues? This would be to admit that they might be kept up IN TIME OF PEACE, against threatening or impending danger, which would be at once to deviate from the literal meaning of the prohibition, and to introduce an extensive latitude of construction. Who shall judge of the continuance of the danger? This must undoubtedly be submitted to the national government, and the matter would then be brought to this issue, that the national government, to provide against apprehended danger, might in the first instance raise troops, and might afterwards keep them on foot as long as they supposed the peace or safety of the community was in any degree of jeopardy. It is easy to perceive that a discretion so latitudinary as this would afford ample room for eluding the force of the provision.

The supposed utility of a provision of this kind can only be founded on the supposed probability, or at least possibility, of a combination between the executive and the legislative, in some scheme of usurpation. Should this at any time happen, how easy would it be to fabricate pretenses of approaching danger! Indian hostilities, instigated by Spain or Britain, would always be at hand. Provocations to produce the desired appearances might even be given to some foreign power, and appeased again by timely concessions. If we can reasonably presume such a combination to have been formed, and that the enterprise is warranted by a sufficient prospect of success, the army, when once raised, from whatever cause, or on whatever pretext, may be applied to the execution of the project.

If, to obviate this consequence, it should be resolved to extend the prohibition to the RAISING of armies in time of peace, the United States would then exhibit the most extraordinary spectacle which the world has yet seen, that of a nation incapacitated by its Constitution to prepare for defense, before it was actually invaded. As the ceremony of a formal denunciation of war has of late fallen into disuse, the presence of an enemy within our territories must be waited for, as the legal warrant to the government to begin its levies of men for the protection of the State. We

must receive the blow, before we could even prepare to return it. All that kind of policy by which nations anticipate distant danger, and meet the gathering storm, must be abstained from, as contrary to the genuine maxims of a free government. We must expose our property and liberty to the mercy of foreign invaders, and invite them by our weakness to seize the naked and defenseless prey, because we are afraid that rulers, created by our choice, dependent on our will, might endanger that liberty, by an abuse of the means necessary to its preservation.

Here I expect we shall be told that the militia of the country is its natural bulwark, and would be at all times equal to the national defense. This doctrine, in substance, had like to have lost us our independence. It cost millions to the United States that might have been saved. The facts which, from our own experience, forbid a reliance of this kind, are too recent to permit us to be the dupes of such a suggestion. The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind. Considerations of economy, not less than of stability and vigor, confirm this position. The American militia, in the course of the late war, have, by their valor on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know that the liberty of their country could not have been established by their efforts alone, however great and valuable they were. War, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice.

All violent policy, as it is contrary to the natural and experienced course of human affairs, defeats itself. Pennsylvania, at this instant, affords an example of the truth of this remark. The Bill of Rights of that State declares that standing armies are dangerous to liberty, and ought not to be kept up in time of peace. Pennsylvania, nevertheless, in a time of profound peace, from the existence of partial disorders in one or two of her counties, has resolved to raise a body of troops; and in all probability will keep them up as long as there is any appearance of danger to the public peace. The conduct of Massachusetts affords a lesson on the same subject, though on different ground. That State (without waiting for the sanction of Congress, as the articles of the Confederation require) was compelled to raise troops to quell a domestic insurrection, and still keeps a corps in pay to prevent a revival of the spirit of revolt. The particular constitution of Massachusetts opposed no obstacle to the measure; but the instance is still of use to

instruct us that cases are likely to occur under our government, as well as under those of other nations, which will sometimes render a military force in time of peace essential to the security of the society, and that it is therefore improper in this respect to control the legislative discretion. It also teaches us, in its application to the United States, how little the rights of a feeble government are likely to be respected, even by its own constituents. And it teaches us, in addition to the rest, how unequal parchment provisions are to a struggle with public necessity.

It was a fundamental maxim of the Lacedaemonian commonwealth, that the post of admiral should not be conferred twice on the same person. The Peloponnesian confederates, having suffered a severe defeat at sea from the Athenians, demanded Lysander, who had before served with success in that capacity, to command the combined fleets. The Lacedaemonians, to gratify their allies, and yet preserve the semblance of an adherence to their ancient institutions, had recourse to the flimsy subterfuge of investing Lysander with the real power of admiral, under the nominal title of vice-admiral. This instance is selected from among a multitude that might be cited to confirm the truth already advanced and illustrated by domestic examples; which is, that nations pay little regard to rules and maxims calculated in their very nature to run counter to the necessities of society. Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable.

PUBLIUS

FEDERALIST No. 26. The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered.

For the Independent Journal. Saturday, December 22, 1788

HAMILTON

To the People of the State of New York:

IT WAS a thing hardly to be expected that in a popular revolution the minds of men should stop at that happy mean which marks the salutary boundary between POWER and PRIVILEGE, and combines the energy of government with the security of private rights. A failure in this delicate and important point is the great source of the inconveniences we experience, and if we are not cautious to avoid a repetition of the error, in our future attempts to rectify and ameliorate our system, we may travel from one chimerical project to another; we may try change after change; but we shall never be likely to make any material change for the better.

The idea of restraining the legislative authority, in the means of providing for the national defense, is one of those refinements which owe their origin to a zeal for liberty more ardent than enlightened. We have seen, however, that it has not had thus far an extensive prevalency; that even in this country, where it made its first appearance, Pennsylvania and North Carolina are the only two States by which it has been in any degree patronized; and that all the others have refused to give it the least countenance; wisely judging that confidence must be placed somewhere; that the necessity of doing it, is implied in the very act of delegating power; and that it is better to hazard the abuse of that confidence than to embarrass the government and endanger the public safety by impolitic restrictions on the legislative authority. The opponents of the proposed Constitution combat, in this respect, the general decision of America; and instead of being taught by experience the propriety of correcting any extremes into which we may have heretofore run, they appear disposed to conduct us into others still more dangerous, and more extravagant. As if the tone of

government had been found too high, or too rigid, the doctrines they teach are calculated to induce us to depress or to relax it, by expedients which, upon other occasions, have been condemned or forborne. It may be affirmed without the imputation of invective, that if the principles they inculcate, on various points, could so far obtain as to become the popular creed, they would utterly unfit the people of this country for any species of government whatever. But a danger of this kind is not to be apprehended. The citizens of America have too much discernment to be argued into anarchy. And I am much mistaken, if experience has not wrought a deep and solemn conviction in the public mind, that greater energy of government is essential to the welfare and prosperity of the community.

It may not be amiss in this place concisely to remark the origin and progress of the idea, which aims at the exclusion of military establishments in time of peace. Though in speculative minds it may arise from a contemplation of the nature and tendency of such institutions, fortified by the events that have happened in other ages and countries, yet as a national sentiment, it must be traced to those habits of thinking which we derive from the nation from whom the inhabitants of these States have in general sprung.

In England, for a long time after the Norman Conquest, the authority of the monarch was almost unlimited. Inroads were gradually made upon the prerogative, in favor of liberty, first by the barons, and afterwards by the people, till the greatest part of its most formidable pretensions became extinct. But it was not till the revolution in 1688, which elevated the Prince of Orange to the throne of Great Britain, that English liberty was completely triumphant. As incident to the undefined power of making war, an acknowledged prerogative of the crown, Charles II. had, by his own authority, kept on foot in time of peace a body of 5,000 regular troops. And this number James II. increased to 30,000; who were paid out of his civil list. At the revolution, to abolish the exercise of so dangerous an authority, it became an article of the Bill of Rights then framed, that "the raising or keeping a standing army within the kingdom in time of peace, UNLESS WITH THE CONSENT OF PARLIAMENT, was against law."

In that kingdom, when the pulse of liberty was at its highest pitch, no security against the danger of standing armies was thought requisite, beyond a prohibition of their being raised or kept up by the mere authority

of the executive magistrate. The patriots, who effected that memorable revolution, were too temperate, too wellinformed, to think of any restraint on the legislative discretion. They were aware that a certain number of troops for guards and garrisons were indispensable; that no precise bounds could be set to the national exigencies; that a power equal to every possible contingency must exist somewhere in the government: and that when they referred the exercise of that power to the judgment of the legislature, they had arrived at the ultimate point of precaution which was reconcilable with the safety of the community.

From the same source, the people of America may be said to have derived an hereditary impression of danger to liberty, from standing armies in time of peace. The circumstances of a revolution quickened the public sensibility on every point connected with the security of popular rights, and in some instances raise the warmth of our zeal beyond the degree which consisted with the due temperature of the body politic. The attempts of two of the States to restrict the authority of the legislature in the article of military establishments, are of the number of these instances. The principles which had taught us to be jealous of the power of an hereditary monarch were by an injudicious excess extended to the representatives of the people in their popular assemblies. Even in some of the States, where this error was not adopted, we find unnecessary declarations that standing armies ought not to be kept up, in time of peace, WITHOUT THE CONSENT OF THE LEGISLATURE. I call them unnecessary, because the reason which had introduced a similar provision into the English Bill of Rights is not applicable to any of the State constitutions. The power of raising armies at all, under those constitutions, can by no construction be deemed to reside anywhere else, than in the legislatures themselves; and it was superfluous, if not absurd, to declare that a matter should not be done without the consent of a body, which alone had the power of doing it. Accordingly, in some of these constitutions, and among others, in that of this State of New York, which has been justly celebrated, both in Europe and America, as one of the best of the forms of government established in this country, there is a total silence upon the subject.

It is remarkable, that even in the two States which seem to have meditated an interdiction of military establishments in time of peace, the mode of expression made use of is rather cautionary than prohibitory. It is not said, that standing armies SHALL NOT BE kept up, but that they

OUGHT NOT to be kept up, in time of peace. This ambiguity of terms appears to have been the result of a conflict between jealousy and conviction; between the desire of excluding such establishments at all events, and the persuasion that an absolute exclusion would be unwise and unsafe.

Can it be doubted that such a provision, whenever the situation of public affairs was understood to require a departure from it, would be interpreted by the legislature into a mere admonition, and would be made to yield to the necessities or supposed necessities of the State? Let the fact already mentioned, with respect to Pennsylvania, decide. What then (it may be asked) is the use of such a provision, if it cease to operate the moment there is an inclination to disregard it?

Let us examine whether there be any comparison, in point of efficacy, between the provision alluded to and that which is contained in the new Constitution, for restraining the appropriations of money for military purposes to the period of two years. The former, by aiming at too much, is calculated to effect nothing; the latter, by steering clear of an imprudent extreme, and by being perfectly compatible with a proper provision for the exigencies of the nation, will have a salutary and powerful operation.

The legislature of the United States will be OBLIGED, by this provision, once at least in every two years, to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point; and to declare their sense of the matter, by a formal vote in the face of their constituents. They are not AT LIBERTY to vest in the executive department permanent funds for the support of an army, if they were even incautious enough to be willing to repose in it so improper a confidence. As the spirit of party, in different degrees, must be expected to infect all political bodies, there will be, no doubt, persons in the national legislature willing enough to arraign the measures and criminate the views of the majority. The provision for the support of a military force will always be a favorable topic for declamation. As often as the question comes forward, the public attention will be roused and attracted to the subject, by the party in opposition; and if the majority should be really disposed to exceed the proper limits, the community will be warned of the danger, and will have an opportunity of taking measures to guard against it. Independent of parties in the national legislature itself, as often as the period of discussion arrived, the State

legislatures, who will always be not only vigilant but suspicious and jealous guardians of the rights of the citizens against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if any thing improper appears, to sound the alarm to the people, and not only to be the VOICE, but, if necessary, the ARM of their discontent.

Schemes to subvert the liberties of a great community REQUIRE TIME to mature them for execution. An army, so large as seriously to menace those liberties, could only be formed by progressive augmentations; which would suppose, not merely a temporary combination between the legislature and executive, but a continued conspiracy for a series of time. Is it probable that such a combination would exist at all? Is it probable that it would be persevered in, and transmitted along through all the successive variations in a representative body, which biennial elections would naturally produce in both houses? Is it presumable, that every man, the instant he took his seat in the national Senate or House of Representatives, would commence a traitor to his constituents and to his country? Can it be supposed that there would not be found one man, discerning enough to detect so atrocious a conspiracy, or bold or honest enough to apprise his constituents of their danger? If such presumptions can fairly be made, there ought at once to be an end of all delegated authority. The people should resolve to recall all the powers they have heretofore parted with out of their own hands, and to divide themselves into as many States as there are counties, in order that they may be able to manage their own concerns in person.

If such suppositions could even be reasonably made, still the concealment of the design, for any duration, would be impracticable. It would be announced, by the very circumstance of augmenting the army to so great an extent in time of profound peace. What colorable reason could be assigned, in a country so situated, for such vast augmentations of the military force? It is impossible that the people could be long deceived; and the destruction of the project, and of the projectors, would quickly follow the discovery.

It has been said that the provision which limits the appropriation of money for the support of an army to the period of two years would be unavailing, because the Executive, when once possessed of a force large

enough to awe the people into submission, would find resources in that very force sufficient to enable him to dispense with supplies from the acts of the legislature. But the question again recurs, upon what pretense could he be put in possession of a force of that magnitude in time of peace? If we suppose it to have been created in consequence of some domestic insurrection or foreign war, then it becomes a case not within the principles of the objection; for this is levelled against the power of keeping up troops in time of peace. Few persons will be so visionary as seriously to contend that military forces ought not to be raised to quell a rebellion or resist an invasion; and if the defense of the community under such circumstances should make it necessary to have an army so numerous as to hazard its liberty, this is one of those calamities for which there is neither preventative nor cure. It cannot be provided against by any possible form of government; it might even result from a simple league offensive and defensive, if it should ever be necessary for the confederates or allies to form an army for common defense.

But it is an evil infinitely less likely to attend us in a united than in a disunited state; nay, it may be safely asserted that it is an evil altogether unlikely to attend us in the latter situation. It is not easy to conceive a possibility that dangers so formidable can assail the whole Union, as to demand a force considerable enough to place our liberties in the least jeopardy, especially if we take into our view the aid to be derived from the militia, which ought always to be counted upon as a valuable and powerful auxiliary. But in a state of disunion (as has been fully shown in another place), the contrary of this supposition would become not only probable, but almost unavoidable.

PUBLIUS

FEDERALIST No. 27. The Same Subject Continued (The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered)

From the New York Packet. Tuesday, December 25, 1787.

HAMILTON

To the People of the State of New York:

IT HAS been urged, in different shapes, that a Constitution of the kind proposed by the convention cannot operate without the aid of a military force to execute its laws. This, however, like most other things that have been alleged on that side, rests on mere general assertion, unsupported by any precise or intelligible designation of the reasons upon which it is founded. As far as I have been able to divine the latent meaning of the objectors, it seems to originate in a presupposition that the people will be disinclined to the exercise of federal authority in any matter of an internal nature. Waiving any exception that might be taken to the inaccuracy or inexplicitness of the distinction between internal and external, let us inquire what ground there is to presuppose that disinclination in the people. Unless we presume at the same time that the powers of the general government will be worse administered than those of the State government, there seems to be no room for the presumption of ill-will, disaffection, or opposition in the people. I believe it may be laid down as a general rule that their confidence in and obedience to a government will commonly be proportioned to the goodness or badness of its administration. It must be admitted that there are exceptions to this rule; but these exceptions depend so entirely on accidental causes, that they cannot be considered as having any relation to the intrinsic merits or demerits of a constitution. These can only be judged of by general principles and maxims.

Various reasons have been suggested, in the course of these papers, to induce a probability that the general government will be better administered

than the particular governments; the principal of which reasons are that the extension of the spheres of election will present a greater option, or latitude of choice, to the people; that through the medium of the State legislatures which are select bodies of men, and which are to appoint the members of the national Senate there is reason to expect that this branch will generally be composed with peculiar care and judgment; that these circumstances promise greater knowledge and more extensive information in the national councils, and that they will be less apt to be tainted by the spirit of faction, and more out of the reach of those occasional ill-humors, or temporary prejudices and propensities, which, in smaller societies, frequently contaminate the public councils, beget injustice and oppression of a part of the community, and engender schemes which, though they gratify a momentary inclination or desire, terminate in general distress, dissatisfaction, and disgust. Several additional reasons of considerable force, to fortify that probability, will occur when we come to survey, with a more critical eye, the interior structure of the edifice which we are invited to erect. It will be sufficient here to remark, that until satisfactory reasons can be assigned to justify an opinion, that the federal government is likely to be administered in such a manner as to render it odious or contemptible to the people, there can be no reasonable foundation for the supposition that the laws of the Union will meet with any greater obstruction from them, or will stand in need of any other methods to enforce their execution, than the laws of the particular members.

The hope of impunity is a strong incitement to sedition; the dread of punishment, a proportionably strong discouragement to it. Will not the government of the Union, which, if possessed of a due degree of power, can call to its aid the collective resources of the whole Confederacy, be more likely to repress the FORMER sentiment and to inspire the LATTER, than that of a single State, which can only command the resources within itself? A turbulent faction in a State may easily suppose itself able to contend with the friends to the government in that State; but it can hardly be so infatuated as to imagine itself a match for the combined efforts of the Union. If this reflection be just, there is less danger of resistance from irregular combinations of individuals to the authority of the Confederacy than to that of a single member.

I will, in this place, hazard an observation, which will not be the less just because to some it may appear new; which is, that the more the operations

of the national authority are intermingled in the ordinary exercise of government, the more the citizens are accustomed to meet with it in the common occurrences of their political life, the more it is familiarized to their sight and to their feelings, the further it enters into those objects which touch the most sensible chords and put in motion the most active springs of the human heart, the greater will be the probability that it will conciliate the respect and attachment of the community. Man is very much a creature of habit. A thing that rarely strikes his senses will generally have but little influence upon his mind. A government continually at a distance and out of sight can hardly be expected to interest the sensations of the people. The inference is, that the authority of the Union, and the affections of the citizens towards it, will be strengthened, rather than weakened, by its extension to what are called matters of internal concern; and will have less occasion to recur to force, in proportion to the familiarity and comprehensiveness of its agency. The more it circulates through those channels and currents in which the passions of mankind naturally flow, the less will it require the aid of the violent and perilous expedients of compulsion.

One thing, at all events, must be evident, that a government like the one proposed would bid much fairer to avoid the necessity of using force, than that species of league contend for by most of its opponents; the authority of which should only operate upon the States in their political or collective capacities. It has been shown that in such a Confederacy there can be no sanction for the laws but force; that frequent delinquencies in the members are the natural offspring of the very frame of the government; and that as often as these happen, they can only be redressed, if at all, by war and violence.

The plan reported by the convention, by extending the authority of the federal head to the individual citizens of the several States, will enable the government to employ the ordinary magistracy of each, in the execution of its laws. It is easy to perceive that this will tend to destroy, in the common apprehension, all distinction between the sources from which they might proceed; and will give the federal government the same advantage for securing a due obedience to its authority which is enjoyed by the government of each State, in addition to the influence on public opinion which will result from the important consideration of its having power to call to its assistance and support the resources of the whole Union. It merits

particular attention in this place, that the laws of the Confederacy, as to the ENUMERATED and LEGITIMATE objects of its jurisdiction, will become the SUPREME LAW of the land; to the observance of which all officers, legislative, executive, and judicial, in each State, will be bound by the sanctity of an oath. Thus the legislatures, courts, and magistrates, of the respective members, will be incorporated into the operations of the national government AS FAR AS ITS JUST AND CONSTITUTIONAL AUTHORITY EXTENDS; and will be rendered auxiliary to the enforcement of its laws.(1) Any man who will pursue, by his own reflections, the consequences of this situation, will perceive that there is good ground to calculate upon a regular and peaceable execution of the laws of the Union, if its powers are administered with a common share of prudence. If we will arbitrarily suppose the contrary, we may deduce any inferences we please from the supposition; for it is certainly possible, by an injudicious exercise of the authorities of the best government that ever was, or ever can be instituted, to provoke and precipitate the people into the wildest excesses. But though the adversaries of the proposed Constitution should presume that the national rulers would be insensible to the motives of public good, or to the obligations of duty, I would still ask them how the interests of ambition, or the views of encroachment, can be promoted by such a conduct?

PUBLIUS

1. The sophistry which has been employed to show that this will tend to the destruction of the State governments, will, in its will, in its proper place, be fully detected.

FEDERALIST No. 28. The Same Subject Continued (The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered)

For the Independent Journal. Wednesday, December 26, 1787

HAMILTON

To the People of the State of New York:

THAT there may happen cases in which the national government may be necessitated to resort to force, cannot be denied. Our own experience has corroborated the lessons taught by the examples of other nations; that emergencies of this sort will sometimes arise in all societies, however constituted; that seditions and insurrections are, unhappily, maladies as inseparable from the body politic as tumors and eruptions from the natural body; that the idea of governing at all times by the simple force of law (which we have been told is the only admissible principle of republican government), has no place but in the reveries of those political doctors whose sagacity disdains the admonitions of experimental instruction.

Should such emergencies at any time happen under the national government, there could be no remedy but force. The means to be employed must be proportioned to the extent of the mischief. If it should be a slight commotion in a small part of a State, the militia of the residue would be adequate to its suppression; and the national presumption is that they would be ready to do their duty. An insurrection, whatever may be its immediate cause, eventually endangers all government. Regard to the public peace, if not to the rights of the Union, would engage the citizens to whom the contagion had not communicated itself to oppose the insurgents; and if the general government should be found in practice conducive to the prosperity and felicity of the people, it were irrational to believe that they would be disinclined to its support.

If, on the contrary, the insurrection should pervade a whole State, or a principal part of it, the employment of a different kind of force might become unavoidable. It appears that Massachusetts found it necessary to raise troops for repressing the disorders within that State; that Pennsylvania, from the mere apprehension of commotions among a part of her citizens, has thought proper to have recourse to the same measure. Suppose the State of New York had been inclined to re-establish her lost jurisdiction over the inhabitants of Vermont, could she have hoped for success in such an enterprise from the efforts of the militia alone? Would she not have been compelled to raise and to maintain a more regular force for the execution of her design? If it must then be admitted that the necessity of recurring to a force different from the militia, in cases of this extraordinary nature, is applicable to the State governments themselves, why should the possibility, that the national government might be under a like necessity, in similar extremities, be made an objection to its existence? Is it not surprising that men who declare an attachment to the Union in the abstract, should urge as an objection to the proposed Constitution what applies with tenfold weight to the plan for which they contend; and what, as far as it has any foundation in truth, is an inevitable consequence of civil society upon an enlarged scale? Who would not prefer that possibility to the unceasing agitations and frequent revolutions which are the continual scourges of petty republics?

Let us pursue this examination in another light. Suppose, in lieu of one general system, two, or three, or even four Confederacies were to be formed, would not the same difficulty oppose itself to the operations of either of these Confederacies? Would not each of them be exposed to the same casualties; and when these happened, be obliged to have recourse to the same expedients for upholding its authority which are objected to in a government for all the States? Would the militia, in this supposition, be more ready or more able to support the federal authority than in the case of a general union? All candid and intelligent men must, upon due consideration, acknowledge that the principle of the objection is equally applicable to either of the two cases; and that whether we have one government for all the States, or different governments for different parcels of them, or even if there should be an entire separation of the States, there might sometimes be a necessity to make use of a force constituted differently from the militia, to preserve the peace of the community and to

maintain the just authority of the laws against those violent invasions of them which amount to insurrections and rebellions.

Independent of all other reasonings upon the subject, it is a full answer to those who require a more peremptory provision against military establishments in time of peace, to say that the whole power of the proposed government is to be in the hands of the representatives of the people. This is the essential, and, after all, only efficacious security for the rights and privileges of the people, which is attainable in civil society.(1)

If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defense which is paramount to all positive forms of government, and which against the usurpations of the national rulers, may be exerted with infinitely better prospect of success than against those of the rulers of an individual state. In a single state, if the persons intrusted with supreme power become usurpers, the different parcels, subdivisions, or districts of which it consists, having no distinct government in each, can take no regular measures for defense. The citizens must rush tumultuously to arms, without concert, without system, without resource; except in their courage and despair. The usurpers, clothed with the forms of legal authority, can too often crush the opposition in embryo. The smaller the extent of the territory, the more difficult will it be for the people to form a regular or systematic plan of opposition, and the more easy will it be to defeat their early efforts. Intelligence can be more speedily obtained of their preparations and movements, and the military force in the possession of the usurpers can be more rapidly directed against the part where the opposition has begun. In this situation there must be a peculiar coincidence of circumstances to insure success to the popular resistance.

The obstacles to usurpation and the facilities of resistance increase with the increased extent of the state, provided the citizens understand their rights and are disposed to defend them. The natural strength of the people in a large community, in proportion to the artificial strength of the government, is greater than in a small, and of course more competent to a struggle with the attempts of the government to establish a tyranny. But in a confederacy the people, without exaggeration, may be said to be entirely the masters of their own fate. Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of

the state governments, and these will have the same disposition towards the general government. The people, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of the other as the instrument of redress. How wise will it be in them by cherishing the union to preserve to themselves an advantage which can never be too highly prized!

It may safely be received as an axiom in our political system, that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority. Projects of usurpation cannot be masked under pretenses so likely to escape the penetration of select bodies of men, as of the people at large. The legislatures will have better means of information. They can discover the danger at a distance; and possessing all the organs of civil power, and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can combine all the resources of the community. They can readily communicate with each other in the different States, and unite their common forces for the protection of their common liberty.

The great extent of the country is a further security. We have already experienced its utility against the attacks of a foreign power. And it would have precisely the same effect against the enterprises of ambitious rulers in the national councils. If the federal army should be able to quell the resistance of one State, the distant States would have it in their power to make head with fresh forces. The advantages obtained in one place must be abandoned to subdue the opposition in others; and the moment the part which had been reduced to submission was left to itself, its efforts would be renewed, and its resistance revive.

We should recollect that the extent of the military force must, at all events, be regulated by the resources of the country. For a long time to come, it will not be possible to maintain a large army; and as the means of doing this increase, the population and natural strength of the community will proportionably increase. When will the time arrive that the federal government can raise and maintain an army capable of erecting a despotism over the great body of the people of an immense empire, who are in a situation, through the medium of their State governments, to take measures for their own defense, with all the celerity, regularity, and system of independent nations? The apprehension may be considered as a disease, for

which there can be found no cure in the resources of argument and reasoning.

PUBLIUS

1. Its full efficacy will be examined hereafter.

FEDERALIST No. 29. Concerning the Militia

From the New York Packet. Wednesday, January 9, 1788

HAMILTON

To the People of the State of New York:

THE power of regulating the militia, and of commanding its services in times of insurrection and invasion are natural incidents to the duties of superintending the common defense, and of watching over the internal peace of the Confederacy.

It requires no skill in the science of war to discern that uniformity in the organization and discipline of the militia would be attended with the most beneficial effects, whenever they were called into service for the public defense. It would enable them to discharge the duties of the camp and of the field with mutual intelligence and concert an advantage of peculiar moment in the operations of an army; and it would fit them much sooner to acquire the degree of proficiency in military functions which would be essential to their usefulness. This desirable uniformity can only be accomplished by confiding the regulation of the militia to the direction of the national authority. It is, therefore, with the most evident propriety, that the plan of the convention proposes to empower the Union "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, RESERVING TO THE STATES RESPECTIVELY THE APPOINTMENT OF THE OFFICERS, AND THE AUTHORITY OF TRAINING THE MILITIA ACCORDING TO THE DISCIPLINE PRESCRIBED BY CONGRESS."

Of the different grounds which have been taken in opposition to the plan of the convention, there is none that was so little to have been expected, or is so untenable in itself, as the one from which this particular provision has been attacked. If a well-regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security. If standing armies are dangerous to liberty, an efficacious power over the

militia, in the body to whose care the protection of the State is committed, ought, as far as possible, to take away the inducement and the pretext to such unfriendly institutions. If the federal government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can the better dispense with the employment of a different kind of force. If it cannot avail itself of the former, it will be obliged to recur to the latter. To render an army unnecessary, will be a more certain method of preventing its existence than a thousand prohibitions upon paper.

In order to cast an odium upon the power of calling forth the militia to execute the laws of the Union, it has been remarked that there is nowhere any provision in the proposed Constitution for calling out the POSSE COMITATUS, to assist the magistrate in the execution of his duty, whence it has been inferred, that military force was intended to be his only auxiliary. There is a striking incoherence in the objections which have appeared, and sometimes even from the same quarter, not much calculated to inspire a very favorable opinion of the sincerity or fair dealing of their authors. The same persons who tell us in one breath, that the powers of the federal government will be despotic and unlimited, inform us in the next, that it has not authority sufficient even to call out the POSSE COMITATUS. The latter, fortunately, is as much short of the truth as the former exceeds it. It would be as absurd to doubt, that a right to pass all laws NECESSARY AND PROPER to execute its declared powers, would include that of requiring the assistance of the citizens to the officers who may be intrusted with the execution of those laws, as it would be to believe, that a right to enact laws necessary and proper for the imposition and collection of taxes would involve that of varying the rules of descent and of the alienation of landed property, or of abolishing the trial by jury in cases relating to it. It being therefore evident that the supposition of a want of power to require the aid of the POSSE COMITATUS is entirely destitute of color, it will follow, that the conclusion which has been drawn from it, in its application to the authority of the federal government over the militia, is as uncandid as it is illogical. What reason could there be to infer, that force was intended to be the sole instrument of authority, merely because there is a power to make use of it when necessary? What shall we think of the motives which could induce men of sense to reason in this manner? How shall we prevent a conflict between charity and conviction?

By a curious refinement upon the spirit of republican jealousy, we are even taught to apprehend danger from the militia itself, in the hands of the federal government. It is observed that select corps may be formed, composed of the young and ardent, who may be rendered subservient to the views of arbitrary power. What plan for the regulation of the militia may be pursued by the national government, is impossible to be foreseen. But so far from viewing the matter in the same light with those who object to select corps as dangerous, were the Constitution ratified, and were I to deliver my sentiments to a member of the federal legislature from this State on the subject of a militia establishment, I should hold to him, in substance, the following discourse:

"The project of disciplining all the militia of the United States is as futile as it would be injurious, if it were capable of being carried into execution. A tolerable expertness in military movements is a business that requires time and practice. It is not a day, or even a week, that will suffice for the attainment of it. To oblige the great body of the yeomanry, and of the other classes of the citizens, to be under arms for the purpose of going through military exercises and evolutions, as often as might be necessary to acquire the degree of perfection which would entitle them to the character of a well-regulated militia, would be a real grievance to the people, and a serious public inconvenience and loss. It would form an annual deduction from the productive labor of the country, to an amount which, calculating upon the present numbers of the people, would not fall far short of the whole expense of the civil establishments of all the States. To attempt a thing which would abridge the mass of labor and industry to so considerable an extent, would be unwise: and the experiment, if made, could not succeed, because it would not long be endured. Little more can reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped; and in order to see that this be not neglected, it will be necessary to assemble them once or twice in the course of a year.

"But though the scheme of disciplining the whole nation must be abandoned as mischievous or impracticable; yet it is a matter of the utmost importance that a well-digested plan should, as soon as possible, be adopted for the proper establishment of the militia. The attention of the government ought particularly to be directed to the formation of a select corps of moderate extent, upon such principles as will really fit them for service in case of need. By thus circumscribing the plan, it will be possible to have an

excellent body of well-trained militia, ready to take the field whenever the defense of the State shall require it. This will not only lessen the call for military establishments, but if circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little, if at all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens. This appears to me the only substitute that can be devised for a standing army, and the best possible security against it, if it should exist."

Thus differently from the adversaries of the proposed Constitution should I reason on the same subject, deducing arguments of safety from the very sources which they represent as fraught with danger and perdition. But how the national legislature may reason on the point, is a thing which neither they nor I can foresee.

There is something so far-fetched and so extravagant in the idea of danger to liberty from the militia, that one is at a loss whether to treat it with gravity or with raillery; whether to consider it as a mere trial of skill, like the paradoxes of rhetoricians; as a disingenuous artifice to instil prejudices at any price; or as the serious offspring of political fanaticism. Where in the name of common-sense, are our fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What shadow of danger can there be from men who are daily mingling with the rest of their countrymen and who participate with them in the same feelings, sentiments, habits and interests? What reasonable cause of apprehension can be inferred from a power in the Union to prescribe regulations for the militia, and to command its services when necessary, while the particular States are to have the SOLE AND EXCLUSIVE APPOINTMENT OF THE OFFICERS? If it were possible seriously to indulge a jealousy of the militia upon any conceivable establishment under the federal government, the circumstance of the officers being in the appointment of the States ought at once to extinguish it. There can be no doubt that this circumstance will always secure to them a preponderating influence over the militia.

In reading many of the publications against the Constitution, a man is apt to imagine that he is perusing some ill-written tale or romance, which instead of natural and agreeable images, exhibits to the mind nothing but frightful and distorted shapes—

"Gorgons, hydras, and chimeras dire";

discoloring and disfiguring whatever it represents, and transforming everything it touches into a monster.

A sample of this is to be observed in the exaggerated and improbable suggestions which have taken place respecting the power of calling for the services of the militia. That of New Hampshire is to be marched to Georgia, of Georgia to New Hampshire, of New York to Kentucky, and of Kentucky to Lake Champlain. Nay, the debts due to the French and Dutch are to be paid in militiamen instead of louis d'ors and ducats. At one moment there is to be a large army to lay prostrate the liberties of the people; at another moment the militia of Virginia are to be dragged from their homes five or six hundred miles, to tame the republican contumacy of Massachusetts; and that of Massachusetts is to be transported an equal distance to subdue the refractory haughtiness of the aristocratic Virginians. Do the persons who rave at this rate imagine that their art or their eloquence can impose any conceits or absurdities upon the people of America for infallible truths?

If there should be an army to be made use of as the engine of despotism, what need of the militia? If there should be no army, whither would the militia, irritated by being called upon to undertake a distant and hopeless expedition, for the purpose of riveting the chains of slavery upon a part of their countrymen, direct their course, but to the seat of the tyrants, who had meditated so foolish as well as so wicked a project, to crush them in their imagined intrenchments of power, and to make them an example of the just vengeance of an abused and incensed people? Is this the way in which usurpers stride to dominion over a numerous and enlightened nation? Do they begin by exciting the detestation of the very instruments of their intended usurpations? Do they usually commence their career by wanton and disgustful acts of power, calculated to answer no end, but to draw upon themselves universal hatred and execration? Are suppositions of this sort the sober admonitions of discerning patriots to a discerning people? Or are they the inflammatory ravings of incendiaries or distempered enthusiasts? If we were even to suppose the national rulers actuated by the most ungovernable ambition, it is impossible to believe that they would employ such preposterous means to accomplish their designs.

In times of insurrection, or invasion, it would be natural and proper that the militia of a neighboring State should be marched into another, to resist a common enemy, or to guard the republic against the violence of faction or

sedition. This was frequently the case, in respect to the first object, in the course of the late war; and this mutual succor is, indeed, a principal end of our political association. If the power of affording it be placed under the direction of the Union, there will be no danger of a supine and listless inattention to the dangers of a neighbor, till its near approach had superadded the incitements of self-preservation to the too feeble impulses of duty and sympathy.

PUBLIUS

FEDERALIST No. 30. Concerning the General Power of Taxation

From the New York Packet. Friday, December 28, 1787.

HAMILTON

To the People of the State of New York:

IT HAS been already observed that the federal government ought to possess the power of providing for the support of the national forces; in which proposition was intended to be included the expense of raising troops, of building and equipping fleets, and all other expenses in any wise connected with military arrangements and operations. But these are not the only objects to which the jurisdiction of the Union, in respect to revenue, must necessarily be empowered to extend. It must embrace a provision for the support of the national civil list; for the payment of the national debts contracted, or that may be contracted; and, in general, for all those matters which will call for disbursements out of the national treasury. The conclusion is, that there must be interwoven, in the frame of the government, a general power of taxation, in one shape or another.

Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions. A complete power, therefore, to procure a regular and adequate supply of it, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution. From a deficiency in this particular, one of two evils must ensue; either the people must be subjected to continual plunder, as a substitute for a more eligible mode of supplying the public wants, or the government must sink into a fatal atrophy, and, in a short course of time, perish.

In the Ottoman or Turkish empire, the sovereign, though in other respects absolute master of the lives and fortunes of his subjects, has no right to impose a new tax. The consequence is that he permits the bashaws or governors of provinces to pillage the people without mercy; and, in turn,

squeezes out of them the sums of which he stands in need, to satisfy his own exigencies and those of the state. In America, from a like cause, the government of the Union has gradually dwindled into a state of decay, approaching nearly to annihilation. Who can doubt, that the happiness of the people in both countries would be promoted by competent authorities in the proper hands, to provide the revenues which the necessities of the public might require?

The present Confederation, feeble as it is intended to repose in the United States, an unlimited power of providing for the pecuniary wants of the Union. But proceeding upon an erroneous principle, it has been done in such a manner as entirely to have frustrated the intention. Congress, by the articles which compose that compact (as has already been stated), are authorized to ascertain and call for any sums of money necessary, in their judgment, to the service of the United States; and their requisitions, if conformable to the rule of apportionment, are in every constitutional sense obligatory upon the States. These have no right to question the propriety of the demand; no discretion beyond that of devising the ways and means of furnishing the sums demanded. But though this be strictly and truly the case; though the assumption of such a right would be an infringement of the articles of Union; though it may seldom or never have been avowedly claimed, yet in practice it has been constantly exercised, and would continue to be so, as long as the revenues of the Confederacy should remain dependent on the intermediate agency of its members. What the consequences of this system have been, is within the knowledge of every man the least conversant in our public affairs, and has been amply unfolded in different parts of these inquiries. It is this which has chiefly contributed to reduce us to a situation, which affords ample cause both of mortification to ourselves, and of triumph to our enemies.

What remedy can there be for this situation, but in a change of the system which has produced it in a change of the fallacious and delusive system of quotas and requisitions? What substitute can there be imagined for this ignis fatuus in finance, but that of permitting the national government to raise its own revenues by the ordinary methods of taxation authorized in every well-ordered constitution of civil government? Ingenious men may declaim with plausibility on any subject; but no human ingenuity can point out any other expedient to rescue us from the inconveniences and embarrassments naturally resulting from defective supplies of the public treasury.

The more intelligent adversaries of the new Constitution admit the force of this reasoning; but they qualify their admission by a distinction between what they call INTERNAL and EXTERNAL taxation. The former they would reserve to the State governments; the latter, which they explain into commercial imposts, or rather duties on imported articles, they declare themselves willing to concede to the federal head. This distinction, however, would violate the maxim of good sense and sound policy, which dictates that every POWER ought to be in proportion to its OBJECT; and would still leave the general government in a kind of tutelage to the State governments, inconsistent with every idea of vigor or efficiency. Who can pretend that commercial imposts are, or would be, alone equal to the present and future exigencies of the Union? Taking into the account the existing debt, foreign and domestic, upon any plan of extinguishment which a man moderately impressed with the importance of public justice and public credit could approve, in addition to the establishments which all parties will acknowledge to be necessary, we could not reasonably flatter ourselves, that this resource alone, upon the most improved scale, would even suffice for its present necessities. Its future necessities admit not of calculation or limitation; and upon the principle, more than once adverted to, the power of making provision for them as they arise ought to be equally unconfined. I believe it may be regarded as a position warranted by the history of mankind, that, IN THE USUAL PROGRESS OF THINGS, THE NECESSITIES OF A NATION, IN EVERY STAGE OF ITS EXISTENCE, WILL BE FOUND AT LEAST EQUAL TO ITS RESOURCES.

To say that deficiencies may be provided for by requisitions upon the States, is on the one hand to acknowledge that this system cannot be depended upon, and on the other hand to depend upon it for every thing beyond a certain limit. Those who have carefully attended to its vices and deformities as they have been exhibited by experience or delineated in the course of these papers, must feel invincible repugnancy to trusting the national interests in any degree to its operation. Its inevitable tendency, whenever it is brought into activity, must be to enfeeble the Union, and sow the seeds of discord and contention between the federal head and its members, and between the members themselves. Can it be expected that the deficiencies would be better supplied in this mode than the total wants of the Union have heretofore been supplied in the same mode? It ought to be recollected that if less will be required from the States, they will have

proportionably less means to answer the demand. If the opinions of those who contend for the distinction which has been mentioned were to be received as evidence of truth, one would be led to conclude that there was some known point in the economy of national affairs at which it would be safe to stop and to say: Thus far the ends of public happiness will be promoted by supplying the wants of government, and all beyond this is unworthy of our care or anxiety. How is it possible that a government half supplied and always necessitous, can fulfill the purposes of its institution, can provide for the security, advance the prosperity, or support the reputation of the commonwealth? How can it ever possess either energy or stability, dignity or credit, confidence at home or respectability abroad? How can its administration be any thing else than a succession of expedients temporizing, impotent, disgraceful? How will it be able to avoid a frequent sacrifice of its engagements to immediate necessity? How can it undertake or execute any liberal or enlarged plans of public good?

Let us attend to what would be the effects of this situation in the very first war in which we should happen to be engaged. We will presume, for argument's sake, that the revenue arising from the impost duties answers the purposes of a provision for the public debt and of a peace establishment for the Union. Thus circumstanced, a war breaks out. What would be the probable conduct of the government in such an emergency? Taught by experience that proper dependence could not be placed on the success of requisitions, unable by its own authority to lay hold of fresh resources, and urged by considerations of national danger, would it not be driven to the expedient of diverting the funds already appropriated from their proper objects to the defense of the State? It is not easy to see how a step of this kind could be avoided; and if it should be taken, it is evident that it would prove the destruction of public credit at the very moment that it was becoming essential to the public safety. To imagine that at such a crisis credit might be dispensed with, would be the extreme of infatuation. In the modern system of war, nations the most wealthy are obliged to have recourse to large loans. A country so little opulent as ours must feel this necessity in a much stronger degree. But who would lend to a government that prefaced its overtures for borrowing by an act which demonstrated that no reliance could be placed on the steadiness of its measures for paying? The loans it might be able to procure would be as limited in their extent as burdensome in their conditions. They would be made upon the same

principles that usurers commonly lend to bankrupt and fraudulent debtors, with a sparing hand and at enormous premiums.

It may perhaps be imagined that, from the scantiness of the resources of the country, the necessity of diverting the established funds in the case supposed would exist, though the national government should possess an unrestrained power of taxation. But two considerations will serve to quiet all apprehension on this head: one is, that we are sure the resources of the community, in their full extent, will be brought into activity for the benefit of the Union; the other is, that whatever deficiences there may be, can without difficulty be supplied by loans.

The power of creating new funds upon new objects of taxation, by its own authority, would enable the national government to borrow as far as its necessities might require. Foreigners, as well as the citizens of America, could then reasonably repose confidence in its engagements; but to depend upon a government that must itself depend upon thirteen other governments for the means of fulfilling its contracts, when once its situation is clearly understood, would require a degree of credulity not often to be met with in the pecuniary transactions of mankind, and little reconcilable with the usual sharp-sightedness of avarice.

Reflections of this kind may have trifling weight with men who hope to see realized in America the halcyon scenes of the poetic or fabulous age; but to those who believe we are likely to experience a common portion of the vicissitudes and calamities which have fallen to the lot of other nations, they must appear entitled to serious attention. Such men must behold the actual situation of their country with painful solicitude, and deprecate the evils which ambition or revenge might, with too much facility, inflict upon it.

PUBLIUS

FEDERALIST No. 31. The Same Subject Continued (Concerning the General Power of Taxation)

From the New York Packet. Tuesday, January 1, 1788.

HAMILTON

To the People of the State of New York:

IN DISQUISITIONS of every kind, there are certain primary truths, or first principles, upon which all subsequent reasonings must depend. These contain an internal evidence which, antecedent to all reflection or combination, commands the assent of the mind. Where it produces not this effect, it must proceed either from some defect or disorder in the organs of perception, or from the influence of some strong interest, or passion, or prejudice. Of this nature are the maxims in geometry, that "the whole is greater than its part; things equal to the same are equal to one another; two straight lines cannot enclose a space; and all right angles are equal to each other." Of the same nature are these other maxims in ethics and politics, that there cannot be an effect without a cause; that the means ought to be proportioned to the end; that every power ought to be commensurate with its object; that there ought to be no limitation of a power destined to effect a purpose which is itself incapable of limitation. And there are other truths in the two latter sciences which, if they cannot pretend to rank in the class of axioms, are yet such direct inferences from them, and so obvious in themselves, and so agreeable to the natural and unsophisticated dictates of common-sense, that they challenge the assent of a sound and unbiased mind, with a degree of force and conviction almost equally irresistible.

The objects of geometrical inquiry are so entirely abstracted from those pursuits which stir up and put in motion the unruly passions of the human heart, that mankind, without difficulty, adopt not only the more simple theorems of the science, but even those abstruse paradoxes which, however they may appear susceptible of demonstration, are at variance with the natural conceptions which the mind, without the aid of philosophy, would

be led to entertain upon the subject. The INFINITE DIVISIBILITY of matter, or, in other words, the INFINITE divisibility of a FINITE thing, extending even to the minutest atom, is a point agreed among geometricians, though not less incomprehensible to common-sense than any of those mysteries in religion, against which the batteries of infidelity have been so industriously leveled.

But in the sciences of morals and politics, men are found far less tractable. To a certain degree, it is right and useful that this should be the case. Caution and investigation are a necessary armor against error and imposition. But this untractableness may be carried too far, and may degenerate into obstinacy, perverseness, or disingenuity. Though it cannot be pretended that the principles of moral and political knowledge have, in general, the same degree of certainty with those of the mathematics, yet they have much better claims in this respect than, to judge from the conduct of men in particular situations, we should be disposed to allow them. The obscurity is much oftener in the passions and prejudices of the reasoner than in the subject. Men, upon too many occasions, do not give their own understandings fair play; but, yielding to some untoward bias, they entangle themselves in words and confound themselves in subtleties.

How else could it happen (if we admit the objectors to be sincere in their opposition), that positions so clear as those which manifest the necessity of a general power of taxation in the government of the Union, should have to encounter any adversaries among men of discernment? Though these positions have been elsewhere fully stated, they will perhaps not be improperly recapitulated in this place, as introductory to an examination of what may have been offered by way of objection to them. They are in substance as follows:

A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good and to the sense of the people.

As the duties of superintending the national defense and of securing the public peace against foreign or domestic violence involve a provision for casualties and dangers to which no possible limits can be assigned, the power of making that provision ought to know no other bounds than the exigencies of the nation and the resources of the community.

As revenue is the essential engine by which the means of answering the national exigencies must be procured, the power of procuring that article in its full extent must necessarily be comprehended in that of providing for those exigencies.

As theory and practice conspire to prove that the power of procuring revenue is unavailing when exercised over the States in their collective capacities, the federal government must of necessity be invested with an unqualified power of taxation in the ordinary modes.

Did not experience evince the contrary, it would be natural to conclude that the propriety of a general power of taxation in the national government might safely be permitted to rest on the evidence of these propositions, unassisted by any additional arguments or illustrations. But we find, in fact, that the antagonists of the proposed Constitution, so far from acquiescing in their justness or truth, seem to make their principal and most zealous effort against this part of the plan. It may therefore be satisfactory to analyze the arguments with which they combat it.

Those of them which have been most labored with that view, seem in substance to amount to this: "It is not true, because the exigencies of the Union may not be susceptible of limitation, that its power of laying taxes ought to be unconfined. Revenue is as requisite to the purposes of the local administrations as to those of the Union; and the former are at least of equal importance with the latter to the happiness of the people. It is, therefore, as necessary that the State governments should be able to command the means of supplying their wants, as that the national government should possess the like faculty in respect to the wants of the Union. But an indefinite power of taxation in the LATTER might, and probably would in time, deprive the FORMER of the means of providing for their own necessities; and would subject them entirely to the mercy of the national legislature. As the laws of the Union are to become the supreme law of the land, as it is to have power to pass all laws that may be NECESSARY for carrying into execution the authorities with which it is proposed to vest it, the national government might at any time abolish the taxes imposed for State objects upon the pretense of an interference with its own. It might allege a necessity of doing this in order to give efficacy to the national revenues. And thus all the resources of taxation might by degrees become the subjects of federal

monopoly, to the entire exclusion and destruction of the State governments."

This mode of reasoning appears sometimes to turn upon the supposition of usurpation in the national government; at other times it seems to be designed only as a deduction from the constitutional operation of its intended powers. It is only in the latter light that it can be admitted to have any pretensions to fairness. The moment we launch into conjectures about the usurpations of the federal government, we get into an unfathomable abyss, and fairly put ourselves out of the reach of all reasoning. Imagination may range at pleasure till it gets bewildered amidst the labyrinths of an enchanted castle, and knows not on which side to turn to extricate itself from the perplexities into which it has so rashly adventured. Whatever may be the limits or modifications of the powers of the Union, it is easy to imagine an endless train of possible dangers; and by indulging an excess of jealousy and timidity, we may bring ourselves to a state of absolute scepticism and irresolution. I repeat here what I have observed in substance in another place, that all observations founded upon the danger of usurpation ought to be referred to the composition and structure of the government, not to the nature or extent of its powers. The State governments, by their original constitutions, are invested with complete sovereignty. In what does our security consist against usurpation from that quarter? Doubtless in the manner of their formation, and in a due dependence of those who are to administer them upon the people. If the proposed construction of the federal government be found, upon an impartial examination of it, to be such as to afford, to a proper extent, the same species of security, all apprehensions on the score of usurpation ought to be discarded.

It should not be forgotten that a disposition in the State governments to encroach upon the rights of the Union is quite as probable as a disposition in the Union to encroach upon the rights of the State governments. What side would be likely to prevail in such a conflict, must depend on the means which the contending parties could employ toward insuring success. As in republics strength is always on the side of the people, and as there are weighty reasons to induce a belief that the State governments will commonly possess most influence over them, the natural conclusion is that such contests will be most apt to end to the disadvantage of the Union; and that there is greater probability of encroachments by the members upon the

federal head, than by the federal head upon the members. But it is evident that all conjectures of this kind must be extremely vague and fallible: and that it is by far the safest course to lay them altogether aside, and to confine our attention wholly to the nature and extent of the powers as they are delineated in the Constitution. Every thing beyond this must be left to the prudence and firmness of the people; who, as they will hold the scales in their own hands, it is to be hoped, will always take care to preserve the constitutional equilibrium between the general and the State governments. Upon this ground, which is evidently the true one, it will not be difficult to obviate the objections which have been made to an indefinite power of taxation in the United States.

PUBLIUS

FEDERALIST No. 32. The Same Subject Continued (Concerning the General Power of Taxation)

From The Independent Journal. Wednesday, January 2, 1788.

HAMILTON

To the People of the State of New York:

ALTHOUGH I am of opinion that there would be no real danger of the consequences which seem to be apprehended to the State governments from a power in the Union to control them in the levies of money, because I am persuaded that the sense of the people, the extreme hazard of provoking the resentments of the State governments, and a conviction of the utility and necessity of local administrations for local purposes, would be a complete barrier against the oppressive use of such a power; yet I am willing here to allow, in its full extent, the justness of the reasoning which requires that the individual States should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants. And making this concession, I affirm that (with the sole exception of duties on imports and exports) they would, under the plan of the convention, retain that authority in the most absolute and unqualified sense; and that an attempt on the part of the national government to abridge them in the exercise of it, would be a violent assumption of power, unwarranted by any article or clause of its Constitution.

An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, EXCLUSIVELY delegated to the United States. This exclusive delegation, or rather this alienation, of State sovereignty, would only exist in three cases: where the Constitution in express terms granted an exclusive

authority to the Union; where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally CONTRADICTORY and REPUGNANT. I use these terms to distinguish this last case from another which might appear to resemble it, but which would, in fact, be essentially different; I mean where the exercise of a concurrent jurisdiction might be productive of occasional interferences in the POLICY of any branch of administration, but would not imply any direct contradiction or repugnancy in point of constitutional authority. These three cases of exclusive jurisdiction in the federal government may be exemplified by the following instances: The last clause but one in the eighth section of the first article provides expressly that Congress shall exercise "EXCLUSIVE LEGISLATION" over the district to be appropriated as the seat of government. This answers to the first case. The first clause of the same section empowers Congress "to lay and collect taxes, duties, imposts and excises"; and the second clause of the tenth section of the same article declares that, "NO STATE SHALL, without the consent of Congress, lay any imposts or duties on imports or exports, except for the purpose of executing its inspection laws." Hence would result an exclusive power in the Union to lay duties on imports and exports, with the particular exception mentioned; but this power is abridged by another clause, which declares that no tax or duty shall be laid on articles exported from any State; in consequence of which qualification, it now only extends to the DUTIES ON IMPORTS. This answers to the second case. The third will be found in that clause which declares that Congress shall have power "to establish an UNIFORM RULE of naturalization throughout the United States." This must necessarily be exclusive; because if each State had power to prescribe a DISTINCT RULE, there could not be a UNIFORM RULE.

A case which may perhaps be thought to resemble the latter, but which is in fact widely different, affects the question immediately under consideration. I mean the power of imposing taxes on all articles other than exports and imports. This, I contend, is manifestly a concurrent and coequal authority in the United States and in the individual States. There is plainly no expression in the granting clause which makes that power EXCLUSIVE in the Union. There is no independent clause or sentence which prohibits the States from exercising it. So far is this from being the case, that a plain

and conclusive argument to the contrary is to be deduced from the restraint laid upon the States in relation to duties on imports and exports. This restriction implies an admission that, if it were not inserted, the States would possess the power it excludes; and it implies a further admission, that as to all other taxes, the authority of the States remains undiminished. In any other view it would be both unnecessary and dangerous; it would be unnecessary, because if the grant to the Union of the power of laying such duties implied the exclusion of the States, or even their subordination in this particular, there could be no need of such a restriction; it would be dangerous, because the introduction of it leads directly to the conclusion which has been mentioned, and which, if the reasoning of the objectors be just, could not have been intended; I mean that the States, in all cases to which the restriction did not apply, would have a concurrent power of taxation with the Union. The restriction in question amounts to what lawyers call a NEGATIVE PREGNANT that is, a NEGATION of one thing, and an AFFIRMANCE of another; a negation of the authority of the States to impose taxes on imports and exports, and an affirmance of their authority to impose them on all other articles. It would be mere sophistry to argue that it was meant to exclude them ABSOLUTELY from the imposition of taxes of the former kind, and to leave them at liberty to lay others SUBJECT TO THE CONTROL of the national legislature. The restraining or prohibitory clause only says, that they shall not, WITHOUT THE CONSENT OF CONGRESS, lay such duties; and if we are to understand this in the sense last mentioned, the Constitution would then be made to introduce a formal provision for the sake of a very absurd conclusion; which is, that the States, WITH THE CONSENT of the national legislature, might tax imports and exports; and that they might tax every other article, UNLESS CONTROLLED by the same body. If this was the intention, why not leave it, in the first instance, to what is alleged to be the natural operation of the original clause, conferring a general power of taxation upon the Union? It is evident that this could not have been the intention, and that it will not bear a construction of the kind.

As to a supposition of repugnancy between the power of taxation in the States and in the Union, it cannot be supported in that sense which would be requisite to work an exclusion of the States. It is, indeed, possible that a tax might be laid on a particular article by a State which might render it INEXPEDIENT that thus a further tax should be laid on the same article by

the Union; but it would not imply a constitutional inability to impose a further tax. The quantity of the imposition, the expediency or inexpediency of an increase on either side, would be mutually questions of prudence; but there would be involved no direct contradiction of power. The particular policy of the national and of the State systems of finance might now and then not exactly coincide, and might require reciprocal forbearances. It is not, however a mere possibility of inconvenience in the exercise of powers, but an immediate constitutional repugnancy that can by implication alienate and extinguish a pre-existing right of sovereignty.

The necessity of a concurrent jurisdiction in certain cases results from the division of the sovereign power; and the rule that all authorities, of which the States are not explicitly divested in favor of the Union, remain with them in full vigor, is not a theoretical consequence of that division, but is clearly admitted by the whole tenor of the instrument which contains the articles of the proposed Constitution. We there find that, notwithstanding the affirmative grants of general authorities, there has been the most pointed care in those cases where it was deemed improper that the like authorities should reside in the States, to insert negative clauses prohibiting the exercise of them by the States. The tenth section of the first article consists altogether of such provisions. This circumstance is a clear indication of the sense of the convention, and furnishes a rule of interpretation out of the body of the act, which justifies the position I have advanced and refutes every hypothesis to the contrary.

PUBLIUS

FEDERALIST No. 33. The Same Subject Continued (Concerning the General Power of Taxation)

From The Independent Journal. Wednesday, January 2, 1788.

HAMILTON

To the People of the State of New York:

THE residue of the argument against the provisions of the Constitution in respect to taxation is ingrafted upon the following clause. The last clause of the eighth section of the first article of the plan under consideration authorizes the national legislature "to make all laws which shall be NECESSARY and PROPER for carrying into execution THE POWERS by that Constitution vested in the government of the United States, or in any department or officer thereof"; and the second clause of the sixth article declares, "that the Constitution and the laws of the United States made IN PURSUANCE THEREOF, and the treaties made by their authority shall be the SUPREME LAW of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."

These two clauses have been the source of much virulent invective and petulant declamation against the proposed Constitution. They have been held up to the people in all the exaggerated colors of misrepresentation as the pernicious engines by which their local governments were to be destroyed and their liberties exterminated; as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane; and yet, strange as it may appear, after all this clamor, to those who may not have happened to contemplate them in the same light, it may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers. This is so clear a

proposition, that moderation itself can scarcely listen to the railings which have been so copiously vented against this part of the plan, without emotions that disturb its equanimity.

What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the power of employing the MEANS necessary to its execution? What is a LEGISLATIVE power, but a power of making LAWS? What are the MEANS to execute a LEGISLATIVE power but LAWS? What is the power of laying and collecting taxes, but a LEGISLATIVE POWER, or a power of MAKING LAWS, to lay and collect taxes? What are the proper means of executing such a power, but NECESSARY and PROPER laws?

This simple train of inquiry furnishes us at once with a test by which to judge of the true nature of the clause complained of. It conducts us to this palpable truth, that a power to lay and collect taxes must be a power to pass all laws NECESSARY and PROPER for the execution of that power; and what does the unfortunate and calumniated provision in question do more than declare the same truth, to wit, that the national legislature, to whom the power of laying and collecting taxes had been previously given, might, in the execution of that power, pass all laws NECESSARY and PROPER to carry it into effect? I have applied these observations thus particularly to the power of taxation, because it is the immediate subject under consideration, and because it is the most important of the authorities proposed to be conferred upon the Union. But the same process will lead to the same result, in relation to all other powers declared in the Constitution. And it is EXPRESSLY to execute these powers that the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all NECESSARY and PROPER laws. If there is any thing exceptionable, it must be sought for in the specific powers upon which this general declaration is predicated. The declaration itself, though it may be chargeable with tautology or redundancy, is at least perfectly harmless.

But SUSPICION may ask, Why then was it introduced? The answer is, that it could only have been done for greater caution, and to guard against all cavilling refinements in those who might hereafter feel a disposition to curtail and evade the legitimate authorities of the Union. The Convention probably foresaw, what it has been a principal aim of these papers to inculcate, that the danger which most threatens our political welfare is that

the State governments will finally sap the foundations of the Union; and might therefore think it necessary, in so cardinal a point, to leave nothing to construction. Whatever may have been the inducement to it, the wisdom of the precaution is evident from the cry which has been raised against it; as that very cry betrays a disposition to question the great and essential truth which it is manifestly the object of that provision to declare.

But it may be again asked, Who is to judge of the NECESSITY and PROPRIETY of the laws to be passed for executing the powers of the Union? I answer, first, that this question arises as well and as fully upon the simple grant of those powers as upon the declaratory clause; and I answer, in the second place, that the national government, like every other, must judge, in the first instance, of the proper exercise of its powers, and its constituents in the last. If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify. The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded. Suppose, by some forced constructions of its authority (which, indeed, cannot easily be imagined), the Federal legislature should attempt to vary the law of descent in any State, would it not be evident that, in making such an attempt, it had exceeded its jurisdiction, and infringed upon that of the State? Suppose, again, that upon the pretense of an interference with its revenues, it should undertake to abrogate a landtax imposed by the authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which its Constitution plainly supposes to exist in the State governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who, in the imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths.

But it is said that the laws of the Union are to be the SUPREME LAW of the land. But what inference can be drawn from this, or what would they amount to, if they were not to be supreme? It is evident they would amount to nothing. A LAW, by the very meaning of the term, includes supremacy. It is a rule which those to whom it is prescribed are bound to observe. This results from every political association. If individuals enter into a state of

society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted to it by its constitution, must necessarily be supreme over those societies, and the individuals of whom they are composed. It would otherwise be a mere treaty, dependent on the good faith of the parties, and not a government, which is only another word for POLITICAL POWER AND SUPREMACY. But it will not follow from this doctrine that acts of the large society which are NOT PURSUANT to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. Hence we perceive that the clause which declares the supremacy of the laws of the Union, like the one we have just before considered, only declares a truth, which flows immediately and necessarily from the institution of a federal government. It will not, I presume, have escaped observation, that it EXPRESSLY confines this supremacy to laws made PURSUANT TO THE CONSTITUTION; which I mention merely as an instance of caution in the convention; since that limitation would have been to be understood, though it had not been expressed.

Though a law, therefore, laying a tax for the use of the United States would be supreme in its nature, and could not legally be opposed or controlled, yet a law for abrogating or preventing the collection of a tax laid by the authority of the State, (unless upon imports and exports), would not be the supreme law of the land, but a usurpation of power not granted by the Constitution. As far as an improper accumulation of taxes on the same object might tend to render the collection difficult or precarious, this would be a mutual inconvenience, not arising from a superiority or defect of power on either side, but from an injudicious exercise of power by one or the other, in a manner equally disadvantageous to both. It is to be hoped and presumed, however, that mutual interest would dictate a concert in this respect which would avoid any material inconvenience. The inference from the whole is, that the individual States would, under the proposed Constitution, retain an independent and uncontrollable authority to raise revenue to any extent of which they may stand in need, by every kind of taxation, except duties on imports and exports. It will be shown in the next paper that this CONCURRENT JURISDICTION in the article of taxation

was the only admissible substitute for an entire subordination, in respect to this branch of power, of the State authority to that of the Union.

PUBLIUS

FEDERALIST No. 34. The Same Subject Continued (Concerning the General Power of Taxation)

From The Independent Journal. Saturday, January 5, 1788.

HAMILTON

To the People of the State of New York:

I FLATTER myself it has been clearly shown in my last number that the particular States, under the proposed Constitution, would have COEQUAL authority with the Union in the article of revenue, except as to duties on imports. As this leaves open to the States far the greatest part of the resources of the community, there can be no color for the assertion that they would not possess means as abundant as could be desired for the supply of their own wants, independent of all external control. That the field is sufficiently wide will more fully appear when we come to advert to the inconsiderable share of the public expenses for which it will fall to the lot of the State governments to provide.

To argue upon abstract principles that this co-ordinate authority cannot exist, is to set up supposition and theory against fact and reality. However proper such reasonings might be to show that a thing OUGHT NOT TO EXIST, they are wholly to be rejected when they are made use of to prove that it does not exist contrary to the evidence of the fact itself. It is well known that in the Roman republic the legislative authority, in the last resort, resided for ages in two different political bodies not as branches of the same legislature, but as distinct and independent legislatures, in each of which an opposite interest prevailed: in one the patrician; in the other, the plebian. Many arguments might have been adduced to prove the unfitness of two such seemingly contradictory authorities, each having power to ANNUL or REPEAL the acts of the other. But a man would have been regarded as frantic who should have attempted at Rome to disprove their existence. It will be readily understood that I allude to the COMITIA CENTURIATA and the COMITIA TRIBUTA. The former, in which the people voted by

centuries, was so arranged as to give a superiority to the patrician interest; in the latter, in which numbers prevailed, the plebian interest had an entire predominancy. And yet these two legislatures coexisted for ages, and the Roman republic attained to the utmost height of human greatness.

In the case particularly under consideration, there is no such contradiction as appears in the example cited; there is no power on either side to annul the acts of the other. And in practice there is little reason to apprehend any inconvenience; because, in a short course of time, the wants of the States will naturally reduce themselves within A VERY NARROW COMPASS; and in the interim, the United States will, in all probability, find it convenient to abstain wholly from those objects to which the particular States would be inclined to resort.

To form a more precise judgment of the true merits of this question, it will be well to advert to the proportion between the objects that will require a federal provision in respect to revenue, and those which will require a State provision. We shall discover that the former are altogether unlimited, and that the latter are circumscribed within very moderate bounds. In pursuing this inquiry, we must bear in mind that we are not to confine our view to the present period, but to look forward to remote futurity. Constitutions of civil government are not to be framed upon a calculation of existing exigencies, but upon a combination of these with the probable exigencies of ages, according to the natural and tried course of human affairs. Nothing, therefore, can be more fallacious than to infer the extent of any power, proper to be lodged in the national government, from an estimate of its immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, it is impossible safely to limit that capacity. It is true, perhaps, that a computation might be made with sufficient accuracy to answer the purpose of the quantity of revenue requisite to discharge the subsisting engagements of the Union, and to maintain those establishments which, for some time to come, would suffice in time of peace. But would it be wise, or would it not rather be the extreme of folly, to stop at this point, and to leave the government intrusted with the care of the national defense in a state of absolute incapacity to provide for the protection of the community against future invasions of the public peace, by foreign war or domestic convulsions? If, on the contrary, we ought to exceed this point, where can we stop, short of an indefinite power of providing for

emergencies as they may arise? Though it is easy to assert, in general terms, the possibility of forming a rational judgment of a due provision against probable dangers, yet we may safely challenge those who make the assertion to bring forward their data, and may affirm that they would be found as vague and uncertain as any that could be produced to establish the probable duration of the world. Observations confined to the mere prospects of internal attacks can deserve no weight; though even these will admit of no satisfactory calculation: but if we mean to be a commercial people, it must form a part of our policy to be able one day to defend that commerce. The support of a navy and of naval wars would involve contingencies that must baffle all the efforts of political arithmetic.

Admitting that we ought to try the novel and absurd experiment in politics of tying up the hands of government from offensive war founded upon reasons of state, yet certainly we ought not to disable it from guarding the community against the ambition or enmity of other nations. A cloud has been for some time hanging over the European world. If it should break forth into a storm, who can insure us that in its progress a part of its fury would not be spent upon us? No reasonable man would hastily pronounce that we are entirely out of its reach. Or if the combustible materials that now seem to be collecting should be dissipated without coming to maturity, or if a flame should be kindled without extending to us, what security can we have that our tranquillity will long remain undisturbed from some other cause or from some other quarter? Let us recollect that peace or war will not always be left to our option; that however moderate or unambitious we may be, we cannot count upon the moderation, or hope to extinguish the ambition of others. Who could have imagined at the conclusion of the last war that France and Britain, wearied and exhausted as they both were, would so soon have looked with so hostile an aspect upon each other? To judge from the history of mankind, we shall be compelled to conclude that the fiery and destructive passions of war reign in the human breast with much more powerful sway than the mild and beneficent sentiments of peace; and that to model our political systems upon speculations of lasting tranquillity, is to calculate on the weaker springs of the human character.

What are the chief sources of expense in every government? What has occasioned that enormous accumulation of debts with which several of the European nations are oppressed? The answers plainly is, wars and rebellions; the support of those institutions which are necessary to guard the

body politic against these two most mortal diseases of society. The expenses arising from those institutions which are relative to the mere domestic police of a state, to the support of its legislative, executive, and judicial departments, with their different appendages, and to the encouragement of agriculture and manufactures (which will comprehend almost all the objects of state expenditure), are insignificant in comparison with those which relate to the national defense.

In the kingdom of Great Britain, where all the ostentatious apparatus of monarchy is to be provided for, not above a fifteenth part of the annual income of the nation is appropriated to the class of expenses last mentioned; the other fourteen fifteenths are absorbed in the payment of the interest of debts contracted for carrying on the wars in which that country has been engaged, and in the maintenance of fleets and armies. If, on the one hand, it should be observed that the expenses incurred in the prosecution of the ambitious enterprises and vainglorious pursuits of a monarchy are not a proper standard by which to judge of those which might be necessary in a republic, it ought, on the other hand, to be remarked that there should be as great a disproportion between the profusion and extravagance of a wealthy kingdom in its domestic administration, and the frugality and economy which in that particular become the modest simplicity of republican government. If we balance a proper deduction from one side against that which it is supposed ought to be made from the other, the proportion may still be considered as holding good.

But let us advert to the large debt which we have ourselves contracted in a single war, and let us only calculate on a common share of the events which disturb the peace of nations, and we shall instantly perceive, without the aid of any elaborate illustration, that there must always be an immense disproportion between the objects of federal and state expenditures. It is true that several of the States, separately, are encumbered with considerable debts, which are an excrescence of the late war. But this cannot happen again, if the proposed system be adopted; and when these debts are discharged, the only call for revenue of any consequence, which the State governments will continue to experience, will be for the mere support of their respective civil list; to which, if we add all contingencies, the total amount in every State ought to fall considerably short of two hundred thousand pounds.

In framing a government for posterity as well as ourselves, we ought, in those provisions which are designed to be permanent, to calculate, not on temporary, but on permanent causes of expense. If this principle be a just one our attention would be directed to a provision in favor of the State governments for an annual sum of about two hundred thousand pounds; while the exigencies of the Union could be susceptible of no limits, even in imagination. In this view of the subject, by what logic can it be maintained that the local governments ought to command, in perpetuity, an EXCLUSIVE source of revenue for any sum beyond the extent of two hundred thousand pounds? To extend its power further, in EXCLUSION of the authority of the Union, would be to take the resources of the community out of those hands which stood in need of them for the public welfare, in order to put them into other hands which could have no just or proper occasion for them.

Suppose, then, the convention had been inclined to proceed upon the principle of a repartition of the objects of revenue, between the Union and its members, in PROPORTION to their comparative necessities; what particular fund could have been selected for the use of the States, that would not either have been too much or too little too little for their present, too much for their future wants? As to the line of separation between external and internal taxes, this would leave to the States, at a rough computation, the command of two thirds of the resources of the community to defray from a tenth to a twentieth part of its expenses; and to the Union, one third of the resources of the community, to defray from nine tenths to nineteen twentieths of its expenses. If we desert this boundary and content ourselves with leaving to the States an exclusive power of taxing houses and lands, there would still be a great disproportion between the MEANS and the END; the possession of one third of the resources of the community to supply, at most, one tenth of its wants. If any fund could have been selected and appropriated, equal to and not greater than the object, it would have been inadequate to the discharge of the existing debts of the particular States, and would have left them dependent on the Union for a provision for this purpose.

The preceding train of observation will justify the position which has been elsewhere laid down, that "A CONCURRENT JURISDICTION in the article of taxation was the only admissible substitute for an entire subordination, in respect to this branch of power, of State authority to that

of the Union." Any separation of the objects of revenue that could have been fallen upon, would have amounted to a sacrifice of the great INTERESTS of the Union to the POWER of the individual States. The convention thought the concurrent jurisdiction preferable to that subordination; and it is evident that it has at least the merit of reconciling an indefinite constitutional power of taxation in the Federal government with an adequate and independent power in the States to provide for their own necessities. There remain a few other lights, in which this important subject of taxation will claim a further consideration.

PUBLIUS

FEDERALIST No. 35. The Same Subject Continued (Concerning the General Power of Taxation)

For the Independent Journal. Saturday, January 5, 1788

HAMILTON

To the People of the State of New York:

BEFORE we proceed to examine any other objections to an indefinite power of taxation in the Union, I shall make one general remark; which is, that if the jurisdiction of the national government, in the article of revenue, should be restricted to particular objects, it would naturally occasion an undue proportion of the public burdens to fall upon those objects. Two evils would spring from this source: the oppression of particular branches of industry; and an unequal distribution of the taxes, as well among the several States as among the citizens of the same State.

Suppose, as has been contended for, the federal power of taxation were to be confined to duties on imports, it is evident that the government, for want of being able to command other resources, would frequently be tempted to extend these duties to an injurious excess. There are persons who imagine that they can never be carried to too great a length; since the higher they are, the more it is alleged they will tend to discourage an extravagant consumption, to produce a favorable balance of trade, and to promote domestic manufactures. But all extremes are pernicious in various ways. Exorbitant duties on imported articles would beget a general spirit of smuggling; which is always prejudicial to the fair trader, and eventually to the revenue itself: they tend to render other classes of the community tributary, in an improper degree, to the manufacturing classes, to whom they give a premature monopoly of the markets; they sometimes force industry out of its more natural channels into others in which it flows with less advantage; and in the last place, they oppress the merchant, who is often obliged to pay them himself without any retribution from the consumer. When the demand is equal to the quantity of goods at market, the

consumer generally pays the duty; but when the markets happen to be overstocked, a great proportion falls upon the merchant, and sometimes not only exhausts his profits, but breaks in upon his capital. I am apt to think that a division of the duty, between the seller and the buyer, more often happens than is commonly imagined. It is not always possible to raise the price of a commodity in exact proportion to every additional imposition laid upon it. The merchant, especially in a country of small commercial capital, is often under a necessity of keeping prices down in order to a more expeditious sale.

The maxim that the consumer is the payer, is so much oftener true than the reverse of the proposition, that it is far more equitable that the duties on imports should go into a common stock, than that they should redound to the exclusive benefit of the importing States. But it is not so generally true as to render it equitable, that those duties should form the only national fund. When they are paid by the merchant they operate as an additional tax upon the importing State, whose citizens pay their proportion of them in the character of consumers. In this view they are productive of inequality among the States; which inequality would be increased with the increased extent of the duties. The confinement of the national revenues to this species of imposts would be attended with inequality, from a different cause, between the manufacturing and the non-manufacturing States. The States which can go farthest towards the supply of their own wants, by their own manufactures, will not, according to their numbers or wealth, consume so great a proportion of imported articles as those States which are not in the same favorable situation. They would not, therefore, in this mode alone contribute to the public treasury in a ratio to their abilities. To make them do this it is necessary that recourse be had to excises, the proper objects of which are particular kinds of manufactures. New York is more deeply interested in these considerations than such of her citizens as contend for limiting the power of the Union to external taxation may be aware of. New York is an importing State, and is not likely speedily to be, to any great extent, a manufacturing State. She would, of course, suffer in a double light from restraining the jurisdiction of the Union to commercial imposts.

So far as these observations tend to inculcate a danger of the import duties being extended to an injurious extreme it may be observed, conformably to a remark made in another part of these papers, that the interest of the revenue itself would be a sufficient guard against such an

extreme. I readily admit that this would be the case, as long as other resources were open; but if the avenues to them were closed, HOPE, stimulated by necessity, would beget experiments, fortified by rigorous precautions and additional penalties, which, for a time, would have the intended effect, till there had been leisure to contrive expedients to elude these new precautions. The first success would be apt to inspire false opinions, which it might require a long course of subsequent experience to correct. Necessity, especially in politics, often occasions false hopes, false reasonings, and a system of measures correspondingly erroneous. But even if this supposed excess should not be a consequence of the limitation of the federal power of taxation, the inequalities spoken of would still ensue, though not in the same degree, from the other causes that have been noticed. Let us now return to the examination of objections.

One which, if we may judge from the frequency of its repetition, seems most to be relied on, is, that the House of Representatives is not sufficiently numerous for the reception of all the different classes of citizens, in order to combine the interests and feelings of every part of the community, and to produce a due sympathy between the representative body and its constituents. This argument presents itself under a very specious and seducing form; and is well calculated to lay hold of the prejudices of those to whom it is addressed. But when we come to dissect it with attention, it will appear to be made up of nothing but fair-sounding words. The object it seems to aim at is, in the first place, impracticable, and in the sense in which it is contended for, is unnecessary. I reserve for another place the discussion of the question which relates to the sufficiency of the representative body in respect to numbers, and shall content myself with examining here the particular use which has been made of a contrary supposition, in reference to the immediate subject of our inquiries.

The idea of an actual representation of all classes of the people, by persons of each class, is altogether visionary. Unless it were expressly provided in the Constitution, that each different occupation should send one or more members, the thing would never take place in practice. Mechanics and manufacturers will always be inclined, with few exceptions, to give their votes to merchants, in preference to persons of their own professions or trades. Those discerning citizens are well aware that the mechanic and manufacturing arts furnish the materials of mercantile enterprise and industry. Many of them, indeed, are immediately connected with the

operations of commerce. They know that the merchant is their natural patron and friend; and they are aware, that however great the confidence they may justly feel in their own good sense, their interests can be more effectually promoted by the merchant than by themselves. They are sensible that their habits in life have not been such as to give them those acquired endowments, without which, in a deliberative assembly, the greatest natural abilities are for the most part useless; and that the influence and weight, and superior acquirements of the merchants render them more equal to a contest with any spirit which might happen to infuse itself into the public councils, unfriendly to the manufacturing and trading interests. These considerations, and many others that might be mentioned prove, and experience confirms it, that artisans and manufacturers will commonly be disposed to bestow their votes upon merchants and those whom they recommend. We must therefore consider merchants as the natural representatives of all these classes of the community.

With regard to the learned professions, little need be observed; they truly form no distinct interest in society, and according to their situation and talents, will be indiscriminately the objects of the confidence and choice of each other, and of other parts of the community.

Nothing remains but the landed interest; and this, in a political view, and particularly in relation to taxes, I take to be perfectly united, from the wealthiest landlord down to the poorest tenant. No tax can be laid on land which will not affect the proprietor of millions of acres as well as the proprietor of a single acre. Every landholder will therefore have a common interest to keep the taxes on land as low as possible; and common interest may always be reckoned upon as the surest bond of sympathy. But if we even could suppose a distinction of interest between the opulent landholder and the middling farmer, what reason is there to conclude, that the first would stand a better chance of being deputed to the national legislature than the last? If we take fact as our guide, and look into our own senate and assembly, we shall find that moderate proprietors of land prevail in both; nor is this less the case in the senate, which consists of a smaller number, than in the assembly, which is composed of a greater number. Where the qualifications of the electors are the same, whether they have to choose a small or a large number, their votes will fall upon those in whom they have most confidence; whether these happen to be men of large fortunes, or of moderate property, or of no property at all.

It is said to be necessary, that all classes of citizens should have some of their own number in the representative body, in order that their feelings and interests may be the better understood and attended to. But we have seen that this will never happen under any arrangement that leaves the votes of the people free. Where this is the case, the representative body, with too few exceptions to have any influence on the spirit of the government, will be composed of landholders, merchants, and men of the learned professions. But where is the danger that the interests and feelings of the different classes of citizens will not be understood or attended to by these three descriptions of men? Will not the landholder know and feel whatever will promote or insure the interest of landed property? And will he not, from his own interest in that species of property, be sufficiently prone to resist every attempt to prejudice or encumber it? Will not the merchant understand and be disposed to cultivate, as far as may be proper, the interests of the mechanic and manufacturing arts, to which his commerce is so nearly allied? Will not the man of the learned profession, who will feel a neutrality to the rivalships between the different branches of industry, be likely to prove an impartial arbiter between them, ready to promote either, so far as it shall appear to him conducive to the general interests of the society?

If we take into the account the momentary humors or dispositions which may happen to prevail in particular parts of the society, and to which a wise administration will never be inattentive, is the man whose situation leads to extensive inquiry and information less likely to be a competent judge of their nature, extent, and foundation than one whose observation does not travel beyond the circle of his neighbors and acquaintances? Is it not natural that a man who is a candidate for the favor of the people, and who is dependent on the suffrages of his fellow-citizens for the continuance of his public honors, should take care to inform himself of their dispositions and inclinations, and should be willing to allow them their proper degree of influence upon his conduct? This dependence, and the necessity of being bound himself, and his posterity, by the laws to which he gives his assent, are the true, and they are the strong chords of sympathy between the representative and the constituent.

There is no part of the administration of government that requires extensive information and a thorough knowledge of the principles of political economy, so much as the business of taxation. The man who understands those principles best will be least likely to resort to oppressive

expedients, or sacrifice any particular class of citizens to the procurement of revenue. It might be demonstrated that the most productive system of finance will always be the least burdensome. There can be no doubt that in order to a judicious exercise of the power of taxation, it is necessary that the person in whose hands it should be acquainted with the general genius, habits, and modes of thinking of the people at large, and with the resources of the country. And this is all that can be reasonably meant by a knowledge of the interests and feelings of the people. In any other sense the proposition has either no meaning, or an absurd one. And in that sense let every considerate citizen judge for himself where the requisite qualification is most likely to be found.

PUBLIUS

FEDERALIST No. 36. The Same Subject Continued (Concerning the General Power of Taxation)

From the New York Packet. Tuesday, January 8, 1788.

HAMILTON

To the People of the State of New York:

WE HAVE seen that the result of the observations, to which the foregoing number has been principally devoted, is, that from the natural operation of the different interests and views of the various classes of the community, whether the representation of the people be more or less numerous, it will consist almost entirely of proprietors of land, of merchants, and of members of the learned professions, who will truly represent all those different interests and views. If it should be objected that we have seen other descriptions of men in the local legislatures, I answer that it is admitted there are exceptions to the rule, but not in sufficient number to influence the general complexion or character of the government. There are strong minds in every walk of life that will rise superior to the disadvantages of situation, and will command the tribute due to their merit, not only from the classes to which they particularly belong, but from the society in general. The door ought to be equally open to all; and I trust, for the credit of human nature, that we shall see examples of such vigorous plants flourishing in the soil of federal as well as of State legislation; but occasional instances of this sort will not render the reasoning founded upon the general course of things, less conclusive.

The subject might be placed in several other lights that would all lead to the same result; and in particular it might be asked, What greater affinity or relation of interest can be conceived between the carpenter and blacksmith, and the linen manufacturer or stocking weaver, than between the merchant and either of them? It is notorious that there are often as great rivalships between different branches of the mechanic or manufacturing arts as there are between any of the departments of labor and industry; so that, unless the

representative body were to be far more numerous than would be consistent with any idea of regularity or wisdom in its deliberations, it is impossible that what seems to be the spirit of the objection we have been considering should ever be realized in practice. But I forbear to dwell any longer on a matter which has hitherto worn too loose a garb to admit even of an accurate inspection of its real shape or tendency.

There is another objection of a somewhat more precise nature that claims our attention. It has been asserted that a power of internal taxation in the national legislature could never be exercised with advantage, as well from the want of a sufficient knowledge of local circumstances, as from an interference between the revenue laws of the Union and of the particular States. The supposition of a want of proper knowledge seems to be entirely destitute of foundation. If any question is depending in a State legislature respecting one of the counties, which demands a knowledge of local details, how is it acquired? No doubt from the information of the members of the county. Cannot the like knowledge be obtained in the national legislature from the representatives of each State? And is it not to be presumed that the men who will generally be sent there will be possessed of the necessary degree of intelligence to be able to communicate that information? Is the knowledge of local circumstances, as applied to taxation, a minute topographical acquaintance with all the mountains, rivers, streams, highways, and bypaths in each State; or is it a general acquaintance with its situation and resources, with the state of its agriculture, commerce, manufactures, with the nature of its products and consumptions, with the different degrees and kinds of its wealth, property, and industry?

Nations in general, even under governments of the more popular kind, usually commit the administration of their finances to single men or to boards composed of a few individuals, who digest and prepare, in the first instance, the plans of taxation, which are afterwards passed into laws by the authority of the sovereign or legislature.

Inquisitive and enlightened statesmen are deemed everywhere best qualified to make a judicious selection of the objects proper for revenue; which is a clear indication, as far as the sense of mankind can have weight in the question, of the species of knowledge of local circumstances requisite to the purposes of taxation.

The taxes intended to be comprised under the general denomination of internal taxes may be subdivided into those of the DIRECT and those of the INDIRECT kind. Though the objection be made to both, yet the reasoning upon it seems to be confined to the former branch. And indeed, as to the latter, by which must be understood duties and excises on articles of consumption, one is at a loss to conceive what can be the nature of the difficulties apprehended. The knowledge relating to them must evidently be of a kind that will either be suggested by the nature of the article itself, or can easily be procured from any well-informed man, especially of the mercantile class. The circumstances that may distinguish its situation in one State from its situation in another must be few, simple, and easy to be comprehended. The principal thing to be attended to, would be to avoid those articles which had been previously appropriated to the use of a particular State; and there could be no difficulty in ascertaining the revenue system of each. This could always be known from the respective codes of laws, as well as from the information of the members from the several States.

The objection, when applied to real property or to houses and lands, appears to have, at first sight, more foundation, but even in this view it will not bear a close examination. Land taxes are commonly laid in one of two modes, either by ACTUAL valuations, permanent or periodical, or by OCCASIONAL assessments, at the discretion, or according to the best judgment, of certain officers whose duty it is to make them. In either case, the EXECUTION of the business, which alone requires the knowledge of local details, must be devolved upon discreet persons in the character of commissioners or assessors, elected by the people or appointed by the government for the purpose. All that the law can do must be to name the persons or to prescribe the manner of their election or appointment, to fix their numbers and qualifications and to draw the general outlines of their powers and duties. And what is there in all this that cannot as well be performed by the national legislature as by a State legislature? The attention of either can only reach to general principles; local details, as already observed, must be referred to those who are to execute the plan.

But there is a simple point of view in which this matter may be placed that must be altogether satisfactory. The national legislature can make use of the SYSTEM OF EACH STATE WITHIN THAT STATE. The method of

laying and collecting this species of taxes in each State can, in all its parts, be adopted and employed by the federal government.

Let it be recollected that the proportion of these taxes is not to be left to the discretion of the national legislature, but is to be determined by the numbers of each State, as described in the second section of the first article. An actual census or enumeration of the people must furnish the rule, a circumstance which effectually shuts the door to partiality or oppression. The abuse of this power of taxation seems to have been provided against with guarded circumspection. In addition to the precaution just mentioned, there is a provision that "all duties, imposts, and excises shall be UNIFORM throughout the United States."

It has been very properly observed by different speakers and writers on the side of the Constitution, that if the exercise of the power of internal taxation by the Union should be discovered on experiment to be really inconvenient, the federal government may then forbear the use of it, and have recourse to requisitions in its stead. By way of answer to this, it has been triumphantly asked, Why not in the first instance omit that ambiguous power, and rely upon the latter resource? Two solid answers may be given. The first is, that the exercise of that power, if convenient, will be preferable, because it will be more effectual; and it is impossible to prove in theory, or otherwise than by the experiment, that it cannot be advantageously exercised. The contrary, indeed, appears most probable. The second answer is, that the existence of such a power in the Constitution will have a strong influence in giving efficacy to requisitions. When the States know that the Union can apply itself without their agency, it will be a powerful motive for exertion on their part.

As to the interference of the revenue laws of the Union, and of its members, we have already seen that there can be no clashing or repugnancy of authority. The laws cannot, therefore, in a legal sense, interfere with each other; and it is far from impossible to avoid an interference even in the policy of their different systems. An effectual expedient for this purpose will be, mutually, to abstain from those objects which either side may have first had recourse to. As neither can CONTROL the other, each will have an obvious and sensible interest in this reciprocal forbearance. And where there is an IMMEDIATE common interest, we may safely count upon its operation. When the particular debts of the States are done away, and their

expenses come to be limited within their natural compass, the possibility almost of interference will vanish. A small land tax will answer the purpose of the States, and will be their most simple and most fit resource.

Many spectres have been raised out of this power of internal taxation, to excite the apprehensions of the people: double sets of revenue officers, a duplication of their burdens by double taxations, and the frightful forms of odious and oppressive poll-taxes, have been played off with all the ingenious dexterity of political legerdemain.

As to the first point, there are two cases in which there can be no room for double sets of officers: one, where the right of imposing the tax is exclusively vested in the Union, which applies to the duties on imports; the other, where the object has not fallen under any State regulation or provision, which may be applicable to a variety of objects. In other cases, the probability is that the United States will either wholly abstain from the objects preoccupied for local purposes, or will make use of the State officers and State regulations for collecting the additional imposition. This will best answer the views of revenue, because it will save expense in the collection, and will best avoid any occasion of disgust to the State governments and to the people. At all events, here is a practicable expedient for avoiding such an inconvenience; and nothing more can be required than to show that evils predicted to not necessarily result from the plan.

As to any argument derived from a supposed system of influence, it is a sufficient answer to say that it ought not to be presumed; but the supposition is susceptible of a more precise answer. If such a spirit should infest the councils of the Union, the most certain road to the accomplishment of its aim would be to employ the State officers as much as possible, and to attach them to the Union by an accumulation of their emoluments. This would serve to turn the tide of State influence into the channels of the national government, instead of making federal influence flow in an opposite and adverse current. But all suppositions of this kind are invidious, and ought to be banished from the consideration of the great question before the people. They can answer no other end than to cast a mist over the truth.

As to the suggestion of double taxation, the answer is plain. The wants of the Union are to be supplied in one way or another; if to be done by the authority of the federal government, it will not be to be done by that of the

State government. The quantity of taxes to be paid by the community must be the same in either case; with this advantage, if the provision is to be made by the Union that the capital resource of commercial imposts, which is the most convenient branch of revenue, can be prudently improved to a much greater extent under federal than under State regulation, and of course will render it less necessary to recur to more inconvenient methods; and with this further advantage, that as far as there may be any real difficulty in the exercise of the power of internal taxation, it will impose a disposition to greater care in the choice and arrangement of the means; and must naturally tend to make it a fixed point of policy in the national administration to go as far as may be practicable in making the luxury of the rich tributary to the public treasury, in order to diminish the necessity of those impositions which might create dissatisfaction in the poorer and most numerous classes of the society. Happy it is when the interest which the government has in the preservation of its own power, coincides with a proper distribution of the public burdens, and tends to guard the least wealthy part of the community from oppression!

As to poll taxes, I, without scruple, confess my disapprobation of them; and though they have prevailed from an early period in those States(1) which have uniformly been the most tenacious of their rights, I should lament to see them introduced into practice under the national government. But does it follow because there is a power to lay them that they will actually be laid? Every State in the Union has power to impose taxes of this kind; and yet in several of them they are unknown in practice. Are the State governments to be stigmatized as tyrannies, because they possess this power? If they are not, with what propriety can the like power justify such a charge against the national government, or even be urged as an obstacle to its adoption? As little friendly as I am to the species of imposition, I still feel a thorough conviction that the power of having recourse to it ought to exist in the federal government. There are certain emergencies of nations, in which expedients, that in the ordinary state of things ought to be forborne, become essential to the public weal. And the government, from the possibility of such emergencies, ought ever to have the option of making use of them. The real scarcity of objects in this country, which may be considered as productive sources of revenue, is a reason peculiar to itself, for not abridging the discretion of the national councils in this respect. There may exist certain critical and tempestuous conjunctures of the State,

in which a poll tax may become an inestimable resource. And as I know nothing to exempt this portion of the globe from the common calamities that have befallen other parts of it, I acknowledge my aversion to every project that is calculated to disarm the government of a single weapon, which in any possible contingency might be usefully employed for the general defense and security.

(I have now gone through the examination of such of the powers proposed to be vested in the United States, which may be considered as having an immediate relation to the energy of the government; and have endeavored to answer the principal objections which have been made to them. I have passed over in silence those minor authorities, which are either too inconsiderable to have been thought worthy of the hostilities of the opponents of the Constitution, or of too manifest propriety to admit of controversy. The mass of judiciary power, however, might have claimed an investigation under this head, had it not been for the consideration that its organization and its extent may be more advantageously considered in connection. This has determined me to refer it to the branch of our inquiries upon which we shall next enter.)(E1)

(I have now gone through the examination of those powers proposed to be conferred upon the federal government which relate more peculiarly to its energy, and to its efficiency for answering the great and primary objects of union. There are others which, though omitted here, will, in order to render the view of the subject more complete, be taken notice of under the next head of our inquiries. I flatter myself the progress already made will have sufficed to satisfy the candid and judicious part of the community that some of the objections which have been most strenuously urged against the Constitution, and which were most formidable in their first appearance, are not only destitute of substance, but if they had operated in the formation of the plan, would have rendered it incompetent to the great ends of public happiness and national prosperity. I equally flatter myself that a further and more critical investigation of the system will serve to recommend it still more to every sincere and disinterested advocate for good government and will leave no doubt with men of this character of the propriety and expediency of adopting it. Happy will it be for ourselves, and more honorable for human nature, if we have wisdom and virtue enough to set so glorious an example to mankind!)(E1)

PUBLIUS

1. The New England States.

E1. Two versions of this paragraph appear in different editions.

FEDERALIST No. 37. Concerning the Difficulties of the Convention in Devising a Proper Form of Government.

From the Daily Advertiser. Friday, January 11, 1788.

MADISON

To the People of the State of New York:

IN REVIEWING the defects of the existing Confederation, and showing that they cannot be supplied by a government of less energy than that before the public, several of the most important principles of the latter fell of course under consideration. But as the ultimate object of these papers is to determine clearly and fully the merits of this Constitution, and the expediency of adopting it, our plan cannot be complete without taking a more critical and thorough survey of the work of the convention, without examining it on all its sides, comparing it in all its parts, and calculating its probable effects. That this remaining task may be executed under impressions conducive to a just and fair result, some reflections must in this place be indulged, which candor previously suggests.

It is a misfortune, inseparable from human affairs, that public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public good; and that this spirit is more apt to be diminished than promoted, by those occasions which require an unusual exercise of it. To those who have been led by experience to attend to this consideration, it could not appear surprising, that the act of the convention, which recommends so many important changes and innovations, which may be viewed in so many lights and relations, and which touches the springs of so many passions and interests, should find or excite dispositions unfriendly, both on one side and on the other, to a fair discussion and accurate judgment of its merits. In some, it has been too evident from their own publications, that they have scanned the proposed Constitution, not only with a predisposition to censure, but with a predetermination to condemn; as the language held by

others betrays an opposite predetermination or bias, which must render their opinions also of little moment in the question. In placing, however, these different characters on a level, with respect to the weight of their opinions, I wish not to insinuate that there may not be a material difference in the purity of their intentions. It is but just to remark in favor of the latter description, that as our situation is universally admitted to be peculiarly critical, and to require indispensably that something should be done for our relief, the predetermined patron of what has been actually done may have taken his bias from the weight of these considerations, as well as from considerations of a sinister nature. The predetermined adversary, on the other hand, can have been governed by no venial motive whatever. The intentions of the first may be upright, as they may on the contrary be culpable. The views of the last cannot be upright, and must be culpable. But the truth is, that these papers are not addressed to persons falling under either of these characters. They solicit the attention of those only, who add to a sincere zeal for the happiness of their country, a temper favorable to a just estimate of the means of promoting it.

Persons of this character will proceed to an examination of the plan submitted by the convention, not only without a disposition to find or to magnify faults; but will see the propriety of reflecting, that a faultless plan was not to be expected. Nor will they barely make allowances for the errors which may be chargeable on the fallibility to which the convention, as a body of men, were liable; but will keep in mind, that they themselves also are but men, and ought not to assume an infallibility in rejudging the fallible opinions of others.

With equal readiness will it be perceived, that besides these inducements to candor, many allowances ought to be made for the difficulties inherent in the very nature of the undertaking referred to the convention.

The novelty of the undertaking immediately strikes us. It has been shown in the course of these papers, that the existing Confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it the superstructure resting upon it. It has been shown, that the other confederacies which could be consulted as precedents have been vitiated by the same erroneous principles, and can therefore furnish no other light than that of beacons, which give warning of the course to be shunned, without pointing out that which ought to be pursued. The most

that the convention could do in such a situation, was to avoid the errors suggested by the past experience of other countries, as well as of our own; and to provide a convenient mode of rectifying their own errors, as future experiences may unfold them.

Among the difficulties encountered by the convention, a very important one must have lain in combining the requisite stability and energy in government, with the inviolable attention due to liberty and to the republican form. Without substantially accomplishing this part of their undertaking, they would have very imperfectly fulfilled the object of their appointment, or the expectation of the public; yet that it could not be easily accomplished, will be denied by no one who is unwilling to betray his ignorance of the subject. Energy in government is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws which enter into the very definition of good government. Stability in government is essential to national character and to the advantages annexed to it, as well as to that repose and confidence in the minds of the people, which are among the chief blessings of civil society. An irregular and mutable legislation is not more an evil in itself than it is odious to the people; and it may be pronounced with assurance that the people of this country, enlightened as they are with regard to the nature, and interested, as the great body of them are, in the effects of good government, will never be satisfied till some remedy be applied to the vicissitudes and uncertainties which characterize the State administrations. On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once the difficulty of mingling them together in their due proportions. The genius of republican liberty seems to demand on one side, not only that all power should be derived from the people, but that those intrusted with it should be kept in independence on the people, by a short duration of their appointments; and that even during this short period the trust should be placed not in a few, but a number of hands. Stability, on the contrary, requires that the hands in which power is lodged should continue for a length of time the same. A frequent change of men will result from a frequent return of elections; and a frequent change of measures from a frequent change of men: whilst energy in government requires not only a certain duration of power, but the execution of it by a single hand.

How far the convention may have succeeded in this part of their work, will better appear on a more accurate view of it. From the cursory view here

taken, it must clearly appear to have been an arduous part.

Not less arduous must have been the task of marking the proper line of partition between the authority of the general and that of the State governments. Every man will be sensible of this difficulty, in proportion as he has been accustomed to contemplate and discriminate objects extensive and complicated in their nature. The faculties of the mind itself have never yet been distinguished and defined, with satisfactory precision, by all the efforts of the most acute and metaphysical philosophers. Sense, perception, judgment, desire, volition, memory, imagination, are found to be separated by such delicate shades and minute gradations that their boundaries have eluded the most subtle investigations, and remain a pregnant source of ingenious disquisition and controversy. The boundaries between the great kingdom of nature, and, still more, between the various provinces, and lesser portions, into which they are subdivided, afford another illustration of the same important truth. The most sagacious and laborious naturalists have never yet succeeded in tracing with certainty the line which separates the district of vegetable life from the neighboring region of unorganized matter, or which marks the termination of the former and the commencement of the animal empire. A still greater obscurity lies in the distinctive characters by which the objects in each of these great departments of nature have been arranged and assorted.

When we pass from the works of nature, in which all the delineations are perfectly accurate, and appear to be otherwise only from the imperfection of the eye which surveys them, to the institutions of man, in which the obscurity arises as well from the object itself as from the organ by which it is contemplated, we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity. Experience has instructed us that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces the legislative, executive, and judiciary; or even the privileges and powers of the different legislative branches. Questions daily occur in the course of practice, which prove the obscurity which reins in these subjects, and which puzzle the greatest adepts in political science.

The experience of ages, with the continued and combined labors of the most enlightened legislatures and jurists, has been equally unsuccessful in delineating the several objects and limits of different codes of laws and

different tribunals of justice. The precise extent of the common law, and the statute law, the maritime law, the ecclesiastical law, the law of corporations, and other local laws and customs, remains still to be clearly and finally established in Great Britain, where accuracy in such subjects has been more industriously pursued than in any other part of the world. The jurisdiction of her several courts, general and local, of law, of equity, of admiralty, etc., is not less a source of frequent and intricate discussions, sufficiently denoting the indeterminate limits by which they are respectively circumscribed. All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications. Besides the obscurity arising from the complexity of objects, and the imperfection of the human faculties, the medium through which the conceptions of men are conveyed to each other adds a fresh embarrassment. The use of words is to express ideas. Perspicuity, therefore, requires not only that the ideas should be distinctly formed, but that they should be expressed by words distinctly and exclusively appropriate to them. But no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence it must happen that however accurately objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition of them may be rendered inaccurate by the inaccuracy of the terms in which it is delivered. And this unavoidable inaccuracy must be greater or less, according to the complexity and novelty of the objects defined. When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful by the cloudy medium through which it is communicated.

Here, then, are three sources of vague and incorrect definitions: indistinctness of the object, imperfection of the organ of conception, inadequateness of the vehicle of ideas. Any one of these must produce a certain degree of obscurity. The convention, in delineating the boundary between the federal and State jurisdictions, must have experienced the full effect of them all.

To the difficulties already mentioned may be added the interfering pretensions of the larger and smaller States. We cannot err in supposing that the former would contend for a participation in the government, fully

proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them. We may well suppose that neither side would entirely yield to the other, and consequently that the struggle could be terminated only by compromise. It is extremely probable, also, that after the ratio of representation had been adjusted, this very compromise must have produced a fresh struggle between the same parties, to give such a turn to the organization of the government, and to the distribution of its powers, as would increase the importance of the branches, in forming which they had respectively obtained the greatest share of influence. There are features in the Constitution which warrant each of these suppositions; and as far as either of them is well founded, it shows that the convention must have been compelled to sacrifice theoretical propriety to the force of extraneous considerations.

Nor could it have been the large and small States only, which would marshal themselves in opposition to each other on various points. Other combinations, resulting from a difference of local position and policy, must have created additional difficulties. As every State may be divided into different districts, and its citizens into different classes, which give birth to contending interests and local jealousies, so the different parts of the United States are distinguished from each other by a variety of circumstances, which produce a like effect on a larger scale. And although this variety of interests, for reasons sufficiently explained in a former paper, may have a salutary influence on the administration of the government when formed, yet every one must be sensible of the contrary influence, which must have been experienced in the task of forming it.

Would it be wonderful if, under the pressure of all these difficulties, the convention should have been forced into some deviations from that artificial structure and regular symmetry which an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his imagination? The real wonder is that so many difficulties should have been surmounted, and surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is impossible for any man of candor to reflect on this circumstance without partaking of the astonishment. It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution.

We had occasion, in a former paper, to take notice of the repeated trials which have been unsuccessfully made in the United Netherlands for reforming the baneful and notorious vices of their constitution. The history of almost all the great councils and consultations held among mankind for reconciling their discordant opinions, assuaging their mutual jealousies, and adjusting their respective interests, is a history of factions, contentions, and disappointments, and may be classed among the most dark and degraded pictures which display the infirmities and depravities of the human character. If, in a few scattered instances, a brighter aspect is presented, they serve only as exceptions to admonish us of the general truth; and by their lustre to darken the gloom of the adverse prospect to which they are contrasted. In revolving the causes from which these exceptions result, and applying them to the particular instances before us, we are necessarily led to two important conclusions. The first is, that the convention must have enjoyed, in a very singular degree, an exemption from the pestilential influence of party animosities the disease most incident to deliberative bodies, and most apt to contaminate their proceedings. The second conclusion is that all the deputations composing the convention were satisfactorily accommodated by the final act, or were induced to accede to it by a deep conviction of the necessity of sacrificing private opinions and partial interests to the public good, and by a despair of seeing this necessity diminished by delays or by new experiments.

FEDERALIST No. 38. The Same Subject Continued, and the Incoherence of the Objections to the New Plan Exposed.

From The Independent Journal. Saturday, January 12, 1788.

MADISON

To the People of the State of New York:

IT IS not a little remarkable that in every case reported by ancient history, in which government has been established with deliberation and consent, the task of framing it has not been committed to an assembly of men, but has been performed by some individual citizen of preeminent wisdom and approved integrity.

Minos, we learn, was the primitive founder of the government of Crete, as Zaleucus was of that of the Locrians. Theseus first, and after him Draco and Solon, instituted the government of Athens. Lycurgus was the lawgiver of Sparta. The foundation of the original government of Rome was laid by Romulus, and the work completed by two of his elective successors, Numa and Tullius Hostilius. On the abolition of royalty the consular administration was substituted by Brutus, who stepped forward with a project for such a reform, which, he alleged, had been prepared by Tullius Hostilius, and to which his address obtained the assent and ratification of the senate and people. This remark is applicable to confederate governments also. Amphictyon, we are told, was the author of that which bore his name. The Achaean league received its first birth from Achaeus, and its second from Aratus.

What degree of agency these reputed lawgivers might have in their respective establishments, or how far they might be clothed with the legitimate authority of the people, cannot in every instance be ascertained. In some, however, the proceeding was strictly regular. Draco appears to have been intrusted by the people of Athens with indefinite powers to reform its government and laws. And Solon, according to Plutarch, was in a

manner compelled, by the universal suffrage of his fellow-citizens, to take upon him the sole and absolute power of new-modeling the constitution. The proceedings under Lycurgus were less regular; but as far as the advocates for a regular reform could prevail, they all turned their eyes towards the single efforts of that celebrated patriot and sage, instead of seeking to bring about a revolution by the intervention of a deliberative body of citizens.

Whence could it have proceeded, that a people, jealous as the Greeks were of their liberty, should so far abandon the rules of caution as to place their destiny in the hands of a single citizen? Whence could it have proceeded, that the Athenians, a people who would not suffer an army to be commanded by fewer than ten generals, and who required no other proof of danger to their liberties than the illustrious merit of a fellow-citizen, should consider one illustrious citizen as a more eligible depositary of the fortunes of themselves and their posterity, than a select body of citizens, from whose common deliberations more wisdom, as well as more safety, might have been expected? These questions cannot be fully answered, without supposing that the fears of discord and disunion among a number of counsellors exceeded the apprehension of treachery or incapacity in a single individual. History informs us, likewise, of the difficulties with which these celebrated reformers had to contend, as well as the expedients which they were obliged to employ in order to carry their reforms into effect. Solon, who seems to have indulged a more temporizing policy, confessed that he had not given to his countrymen the government best suited to their happiness, but most tolerable to their prejudices. And Lycurgus, more true to his object, was under the necessity of mixing a portion of violence with the authority of superstition, and of securing his final success by a voluntary renunciation, first of his country, and then of his life. If these lessons teach us, on one hand, to admire the improvement made by America on the ancient mode of preparing and establishing regular plans of government, they serve not less, on the other, to admonish us of the hazards and difficulties incident to such experiments, and of the great imprudence of unnecessarily multiplying them.

Is it an unreasonable conjecture, that the errors which may be contained in the plan of the convention are such as have resulted rather from the defect of antecedent experience on this complicated and difficult subject, than from a want of accuracy or care in the investigation of it; and,

consequently such as will not be ascertained until an actual trial shall have pointed them out? This conjecture is rendered probable, not only by many considerations of a general nature, but by the particular case of the Articles of Confederation. It is observable that among the numerous objections and amendments suggested by the several States, when these articles were submitted for their ratification, not one is found which alludes to the great and radical error which on actual trial has discovered itself. And if we except the observations which New Jersey was led to make, rather by her local situation, than by her peculiar foresight, it may be questioned whether a single suggestion was of sufficient moment to justify a revision of the system. There is abundant reason, nevertheless, to suppose that immaterial as these objections were, they would have been adhered to with a very dangerous inflexibility, in some States, had not a zeal for their opinions and supposed interests been stifled by the more powerful sentiment of self-preservation. One State, we may remember, persisted for several years in refusing her concurrence, although the enemy remained the whole period at our gates, or rather in the very bowels of our country. Nor was her pliancy in the end effected by a less motive, than the fear of being chargeable with protracting the public calamities, and endangering the event of the contest. Every candid reader will make the proper reflections on these important facts.

A patient who finds his disorder daily growing worse, and that an efficacious remedy can no longer be delayed without extreme danger, after coolly revolving his situation, and the characters of different physicians, selects and calls in such of them as he judges most capable of administering relief, and best entitled to his confidence. The physicians attend; the case of the patient is carefully examined; a consultation is held; they are unanimously agreed that the symptoms are critical, but that the case, with proper and timely relief, is so far from being desperate, that it may be made to issue in an improvement of his constitution. They are equally unanimous in prescribing the remedy, by which this happy effect is to be produced. The prescription is no sooner made known, however, than a number of persons interpose, and, without denying the reality or danger of the disorder, assure the patient that the prescription will be poison to his constitution, and forbid him, under pain of certain death, to make use of it. Might not the patient reasonably demand, before he ventured to follow this advice, that the authors of it should at least agree among themselves on some other remedy

to be substituted? And if he found them differing as much from one another as from his first counsellors, would he not act prudently in trying the experiment unanimously recommended by the latter, rather than be hearkening to those who could neither deny the necessity of a speedy remedy, nor agree in proposing one?

Such a patient and in such a situation is America at this moment. She has been sensible of her malady. She has obtained a regular and unanimous advice from men of her own deliberate choice. And she is warned by others against following this advice under pain of the most fatal consequences. Do the monitors deny the reality of her danger? No. Do they deny the necessity of some speedy and powerful remedy? No. Are they agreed, are any two of them agreed, in their objections to the remedy proposed, or in the proper one to be substituted? Let them speak for themselves. This one tells us that the proposed Constitution ought to be rejected, because it is not a confederation of the States, but a government over individuals. Another admits that it ought to be a government over individuals to a certain extent, but by no means to the extent proposed. A third does not object to the government over individuals, or to the extent proposed, but to the want of a bill of rights. A fourth concurs in the absolute necessity of a bill of rights, but contends that it ought to be declaratory, not of the personal rights of individuals, but of the rights reserved to the States in their political capacity. A fifth is of opinion that a bill of rights of any sort would be superfluous and misplaced, and that the plan would be unexceptionable but for the fatal power of regulating the times and places of election. An objector in a large State exclaims loudly against the unreasonable equality of representation in the Senate. An objector in a small State is equally loud against the dangerous inequality in the House of Representatives. From this quarter, we are alarmed with the amazing expense, from the number of persons who are to administer the new government. From another quarter, and sometimes from the same quarter, on another occasion, the cry is that the Congress will be but a shadow of a representation, and that the government would be far less objectionable if the number and the expense were doubled. A patriot in a State that does not import or export, discerns insuperable objections against the power of direct taxation. The patriotic adversary in a State of great exports and imports, is not less dissatisfied that the whole burden of taxes may be thrown on consumption. This politician discovers in the Constitution a direct and irresistible tendency to monarchy; that is equally

sure it will end in aristocracy. Another is puzzled to say which of these shapes it will ultimately assume, but sees clearly it must be one or other of them; whilst a fourth is not wanting, who with no less confidence affirms that the Constitution is so far from having a bias towards either of these dangers, that the weight on that side will not be sufficient to keep it upright and firm against its opposite propensities. With another class of adversaries to the Constitution the language is that the legislative, executive, and judiciary departments are intermixed in such a manner as to contradict all the ideas of regular government and all the requisite precautions in favor of liberty. Whilst this objection circulates in vague and general expressions, there are but a few who lend their sanction to it. Let each one come forward with his particular explanation, and scarce any two are exactly agreed upon the subject. In the eyes of one the junction of the Senate with the President in the responsible function of appointing to offices, instead of vesting this executive power in the Executive alone, is the vicious part of the organization. To another, the exclusion of the House of Representatives, whose numbers alone could be a due security against corruption and partiality in the exercise of such a power, is equally obnoxious. With another, the admission of the President into any share of a power which ever must be a dangerous engine in the hands of the executive magistrate, is an unpardonable violation of the maxims of republican jealousy. No part of the arrangement, according to some, is more inadmissible than the trial of impeachments by the Senate, which is alternately a member both of the legislative and executive departments, when this power so evidently belonged to the judiciary department. "We concur fully," reply others, "in the objection to this part of the plan, but we can never agree that a reference of impeachments to the judiciary authority would be an amendment of the error. Our principal dislike to the organization arises from the extensive powers already lodged in that department." Even among the zealous patrons of a council of state the most irreconcilable variance is discovered concerning the mode in which it ought to be constituted. The demand of one gentleman is, that the council should consist of a small number to be appointed by the most numerous branch of the legislature. Another would prefer a larger number, and considers it as a fundamental condition that the appointment should be made by the President himself.

As it can give no umbrage to the writers against the plan of the federal Constitution, let us suppose, that as they are the most zealous, so they are

also the most sagacious, of those who think the late convention were unequal to the task assigned them, and that a wiser and better plan might and ought to be substituted. Let us further suppose that their country should concur, both in this favorable opinion of their merits, and in their unfavorable opinion of the convention; and should accordingly proceed to form them into a second convention, with full powers, and for the express purpose of revising and remoulding the work of the first. Were the experiment to be seriously made, though it required some effort to view it seriously even in fiction, I leave it to be decided by the sample of opinions just exhibited, whether, with all their enmity to their predecessors, they would, in any one point, depart so widely from their example, as in the discord and ferment that would mark their own deliberations; and whether the Constitution, now before the public, would not stand as fair a chance for immortality, as Lycurgus gave to that of Sparta, by making its change to depend on his own return from exile and death, if it were to be immediately adopted, and were to continue in force, not until a BETTER, but until ANOTHER should be agreed upon by this new assembly of lawgivers.

It is a matter both of wonder and regret, that those who raise so many objections against the new Constitution should never call to mind the defects of that which is to be exchanged for it. It is not necessary that the former should be perfect; it is sufficient that the latter is more imperfect. No man would refuse to give brass for silver or gold, because the latter had some alloy in it. No man would refuse to quit a shattered and tottering habitation for a firm and commodious building, because the latter had not a porch to it, or because some of the rooms might be a little larger or smaller, or the ceilings a little higher or lower than his fancy would have planned them. But waiving illustrations of this sort, is it not manifest that most of the capital objections urged against the new system lie with tenfold weight against the existing Confederation? Is an indefinite power to raise money dangerous in the hands of the federal government? The present Congress can make requisitions to any amount they please, and the States are constitutionally bound to furnish them; they can emit bills of credit as long as they will pay for the paper; they can borrow, both abroad and at home, as long as a shilling will be lent. Is an indefinite power to raise troops dangerous? The Confederation gives to Congress that power also; and they have already begun to make use of it. Is it improper and unsafe to intermix the different powers of government in the same body of men? Congress, a

single body of men, are the sole depositary of all the federal powers. Is it particularly dangerous to give the keys of the treasury, and the command of the army, into the same hands? The Confederation places them both in the hands of Congress. Is a bill of rights essential to liberty? The Confederation has no bill of rights. Is it an objection against the new Constitution, that it empowers the Senate, with the concurrence of the Executive, to make treaties which are to be the laws of the land? The existing Congress, without any such control, can make treaties which they themselves have declared, and most of the States have recognized, to be the supreme law of the land. Is the importation of slaves permitted by the new Constitution for twenty years? By the old it is permitted forever.

I shall be told, that however dangerous this mixture of powers may be in theory, it is rendered harmless by the dependence of Congress on the State for the means of carrying them into practice; that however large the mass of powers may be, it is in fact a lifeless mass. Then, say I, in the first place, that the Confederation is chargeable with the still greater folly of declaring certain powers in the federal government to be absolutely necessary, and at the same time rendering them absolutely nugatory; and, in the next place, that if the Union is to continue, and no better government be substituted, effective powers must either be granted to, or assumed by, the existing Congress; in either of which events, the contrast just stated will hold good. But this is not all. Out of this lifeless mass has already grown an excrescent power, which tends to realize all the dangers that can be apprehended from a defective construction of the supreme government of the Union. It is now no longer a point of speculation and hope, that the Western territory is a mine of vast wealth to the United States; and although it is not of such a nature as to extricate them from their present distresses, or for some time to come, to yield any regular supplies for the public expenses, yet must it hereafter be able, under proper management, both to effect a gradual discharge of the domestic debt, and to furnish, for a certain period, liberal tributes to the federal treasury. A very large proportion of this fund has been already surrendered by individual States; and it may with reason be expected that the remaining States will not persist in withholding similar proofs of their equity and generosity. We may calculate, therefore, that a rich and fertile country, of an area equal to the inhabited extent of the United States, will soon become a national stock. Congress have assumed the administration of this stock. They have begun to render it productive.

Congress have undertaken to do more: they have proceeded to form new States, to erect temporary governments, to appoint officers for them, and to prescribe the conditions on which such States shall be admitted into the Confederacy. All this has been done; and done without the least color of constitutional authority. Yet no blame has been whispered; no alarm has been sounded. A GREAT and INDEPENDENT fund of revenue is passing into the hands of a SINGLE BODY of men, who can RAISE TROOPS to an INDEFINITE NUMBER, and appropriate money to their support for an INDEFINITE PERIOD OF TIME. And yet there are men, who have not only been silent spectators of this prospect, but who are advocates for the system which exhibits it; and, at the same time, urge against the new system the objections which we have heard. Would they not act with more consistency, in urging the establishment of the latter, as no less necessary to guard the Union against the future powers and resources of a body constructed like the existing Congress, than to save it from the dangers threatened by the present impotency of that Assembly?

I mean not, by any thing here said, to throw censure on the measures which have been pursued by Congress. I am sensible they could not have done otherwise. The public interest, the necessity of the case, imposed upon them the task of overleaping their constitutional limits. But is not the fact an alarming proof of the danger resulting from a government which does not possess regular powers commensurate to its objects? A dissolution or usurpation is the dreadful dilemma to which it is continually exposed.

PUBLIUS

FEDERALIST No. 39. The Conformity of the Plan to Republican Principles

For the Independent Journal. Wednesday, January 16, 1788

MADISON

To the People of the State of New York:

THE last paper having concluded the observations which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking.

The first question that offers itself is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What, then, are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitution of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine

republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is ESSENTIAL to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic. It is SUFFICIENT for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceive at once that it is, in the most rigid sense, conformable to it. The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people, according to the example in most of the States. Even the judges, with all other officers of the

Union, will, as in the several States, be the choice, though a remote choice, of the people themselves, the duration of the appointments is equally conformable to the republican standard, and to the model of State constitutions The House of Representatives is periodically elective, as in all the States; and for the period of two years, as in the State of South Carolina. The Senate is elective, for the period of six years; which is but one year more than the period of the Senate of Maryland, and but two more than that of the Senates of New York and Virginia. The President is to continue in office for the period of four years; as in New York and Delaware, the chief magistrate is elected for three years, and in South Carolina for two years. In the other States the election is annual. In several of the States, however, no constitutional provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out of office. The President of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be, that of good behavior. The tenure of the ministerial offices generally, will be a subject of legal regulation, conformably to the reason of the case and the example of the State constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter.

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They ought, with equal care, to have preserved the FEDERAL form, which regards the Union as a CONFEDERACY of sovereign states; instead of which, they have framed a NATIONAL government, which regards the Union as a CONSOLIDATION of the States." And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a

government; and thirdly, how far the duty they owed to their country could supply any defect of regular authority.

First. In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a NATIONAL, but a FEDERAL act.

That it will be a federal and not a national act, as these terms are understood by the objectors; the act of the people, as forming so many independent States, not as forming one aggregate nation, is obvious from this single consideration, that it is to result neither from the decision of a MAJORITY of the people of the Union, nor from that of a MAJORITY of the States. It must result from the UNANIMOUS assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. Neither of these rules have been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a FEDERAL, and not a NATIONAL constitution.

The next relation is, to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. So far the government is NATIONAL, not FEDERAL. The Senate, on the other hand, will derive its powers from the States, as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is FEDERAL, not NATIONAL. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act they are to be thrown into the form of individual delegations, from so many distinct and coequal bodies politic. From this aspect of the government it appears to be of a mixed character, presenting at least as many FEDERAL as NATIONAL features.

The difference between a federal and national government, as it relates to the OPERATION OF THE GOVERNMENT, is supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy, in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. On trying the Constitution by this criterion, it falls under the NATIONAL, not the FEDERAL character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. So far the national countenance of the government on this side seems to be disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of the government on the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the whole, designate it, in this relation, a NATIONAL government.

But if the government be national with regard to the OPERATION of its powers, it changes its aspect again when we contemplate it in relation to the EXTENT of its powers. The idea of a national government involves in it,

not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them, within its own sphere. In this relation, then, the proposed government cannot be deemed a NATIONAL one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither wholly NATIONAL nor wholly FEDERAL. Were it wholly national, the supreme and ultimate authority would reside in the MAJORITY of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and principles. In requiring more than a majority, and particularly in computing the proportion by STATES, not by CITIZENS, it departs from the NATIONAL and advances towards the FEDERAL character; in rendering the concurrence of

less than the whole number of States sufficient, it loses again the FEDERAL and partakes of the NATIONAL character.

The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

PUBLIUS

FEDERALIST No. 40. On the Powers of the Convention to Form a Mixed Government Examined and Sustained.

For the New York Packet. Friday, January 18, 1788.

MADISON

To the People of the State of New York:

THE SECOND point to be examined is, whether the convention were authorized to frame and propose this mixed Constitution.

The powers of the convention ought, in strictness, to be determined by an inspection of the commissions given to the members by their respective constituents. As all of these, however, had reference, either to the recommendation from the meeting at Annapolis, in September, 1786, or to that from Congress, in February, 1787, it will be sufficient to recur to these particular acts.

The act from Annapolis recommends the "appointment of commissioners to take into consideration the situation of the United States; to devise SUCH FURTHER PROVISIONS as shall appear to them necessary to render the Constitution of the federal government ADEQUATE TO THE EXIGENCIES OF THE UNION; and to report such an act for that purpose, to the United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the legislature of every State, will effectually provide for the same."

The recommendatory act of Congress is in the words following: "WHEREAS, There is provision in the articles of Confederation and perpetual Union, for making alterations therein, by the assent of a Congress of the United States, and of the legislatures of the several States; and whereas experience hath evinced, that there are defects in the present Confederation; as a mean to remedy which, several of the States, and PARTICULARLY THE STATE OF NEW YORK, by express instructions to their delegates in Congress, have suggested a convention for the purposes

expressed in the following resolution; and such convention appearing to be the most probable mean of establishing in these States A FIRM NATIONAL GOVERNMENT:

"Resolved, That in the opinion of Congress it is expedient, that on the second Monday of May next a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose OF REVISING THE ARTICLES OF CONFEDERATION, and reporting to Congress and the several legislatures such ALTERATIONS AND PROVISIONS THEREIN, as shall, when agreed to in Congress, and confirmed by the States, render the federal Constitution ADEQUATE TO THE EXIGENCIES OF GOVERNMENT AND THE PRESERVATION OF THE UNION."

From these two acts, it appears, 1st, that the object of the convention was to establish, in these States, A FIRM NATIONAL GOVERNMENT; 2d, that this government was to be such as would be ADEQUATE TO THE EXIGENCIES OF GOVERNMENT and THE PRESERVATION OF THE UNION; 3d, that these purposes were to be effected by ALTERATIONS AND PROVISIONS IN THE ARTICLES OF CONFEDERATION, as it is expressed in the act of Congress, or by SUCH FURTHER PROVISIONS AS SHOULD APPEAR NECESSARY, as it stands in the recommendatory act from Annapolis; 4th, that the alterations and provisions were to be reported to Congress, and to the States, in order to be agreed to by the former and confirmed by the latter.

From a comparison and fair construction of these several modes of expression, is to be deduced the authority under which the convention acted. They were to frame a NATIONAL GOVERNMENT, adequate to the EXIGENCIES OF GOVERNMENT, and OF THE UNION; and to reduce the articles of Confederation into such form as to accomplish these purposes.

There are two rules of construction, dictated by plain reason, as well as founded on legal axioms. The one is, that every part of the expression ought, if possible, to be allowed some meaning, and be made to conspire to some common end. The other is, that where the several parts cannot be made to coincide, the less important should give way to the more important part; the means should be sacrificed to the end, rather than the end to the means.

Suppose, then, that the expressions defining the authority of the convention were irreconcilably at variance with each other; that a NATIONAL and ADEQUATE GOVERNMENT could not possibly, in the judgment of the convention, be affected by ALTERATIONS and PROVISIONS in the ARTICLES OF CONFEDERATION; which part of the definition ought to have been embraced, and which rejected? Which was the more important, which the less important part? Which the end; which the means? Let the most scrupulous expositors of delegated powers; let the most inveterate objectors against those exercised by the convention, answer these questions. Let them declare, whether it was of most importance to the happiness of the people of America, that the articles of Confederation should be disregarded, and an adequate government be provided, and the Union preserved; or that an adequate government should be omitted, and the articles of Confederation preserved. Let them declare, whether the preservation of these articles was the end, for securing which a reform of the government was to be introduced as the means; or whether the establishment of a government, adequate to the national happiness, was the end at which these articles themselves originally aimed, and to which they ought, as insufficient means, to have been sacrificed.

But is it necessary to suppose that these expressions are absolutely irreconcilable to each other; that no ALTERATIONS or PROVISIONS in the articles of the confederation could possibly mould them into a national and adequate government; into such a government as has been proposed by the convention?

No stress, it is presumed, will, in this case, be laid on the TITLE; a change of that could never be deemed an exercise of ungranted power. ALTERATIONS in the body of the instrument are expressly authorized. NEW PROVISIONS therein are also expressly authorized. Here then is a power to change the title; to insert new articles; to alter old ones. Must it of necessity be admitted that this power is infringed, so long as a part of the old articles remain? Those who maintain the affirmative ought at least to mark the boundary between authorized and usurped innovations; between that degree of change which lies within the compass of ALTERATIONS AND FURTHER PROVISIONS, and that which amounts to a TRANSMUTATION of the government. Will it be said that the alterations ought not to have touched the substance of the Confederation? The States would never have appointed a convention with so much solemnity, nor

described its objects with so much latitude, if some SUBSTANTIAL reform had not been in contemplation. Will it be said that the FUNDAMENTAL PRINCIPLES of the Confederation were not within the purview of the convention, and ought not to have been varied? I ask, What are these principles? Do they require that, in the establishment of the Constitution, the States should be regarded as distinct and independent sovereigns? They are so regarded by the Constitution proposed. Do they require that the members of the government should derive their appointment from the legislatures, not from the people of the States? One branch of the new government is to be appointed by these legislatures; and under the Confederation, the delegates to Congress MAY ALL be appointed immediately by the people, and in two States(1) are actually so appointed. Do they require that the powers of the government should act on the States, and not immediately on individuals? In some instances, as has been shown, the powers of the new government will act on the States in their collective characters. In some instances, also, those of the existing government act immediately on individuals. In cases of capture; of piracy; of the post office; of coins, weights, and measures; of trade with the Indians; of claims under grants of land by different States; and, above all, in the case of trials by courts-marshal in the army and navy, by which death may be inflicted without the intervention of a jury, or even of a civil magistrate; in all these cases the powers of the Confederation operate immediately on the persons and interests of individual citizens. Do these fundamental principles require, particularly, that no tax should be levied without the intermediate agency of the States? The Confederation itself authorizes a direct tax, to a certain extent, on the post office. The power of coinage has been so construed by Congress as to levy a tribute immediately from that source also. But pretermitting these instances, was it not an acknowledged object of the convention and the universal expectation of the people, that the regulation of trade should be submitted to the general government in such a form as would render it an immediate source of general revenue? Had not Congress repeatedly recommended this measure as not inconsistent with the fundamental principles of the Confederation? Had not every State but one; had not New York herself, so far complied with the plan of Congress as to recognize the PRINCIPLE of the innovation? Do these principles, in fine, require that the powers of the general government should be limited, and that, beyond this limit, the States should be left in possession of their

sovereignty and independence? We have seen that in the new government, as in the old, the general powers are limited; and that the States, in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction.

The truth is, that the great principles of the Constitution proposed by the convention may be considered less as absolutely new, than as the expansion of principles which are found in the articles of Confederation. The misfortune under the latter system has been, that these principles are so feeble and confined as to justify all the charges of inefficiency which have been urged against it, and to require a degree of enlargement which gives to the new system the aspect of an entire transformation of the old.

In one particular it is admitted that the convention have departed from the tenor of their commission. Instead of reporting a plan requiring the confirmation OF THE LEGISLATURES OF ALL THE STATES, they have reported a plan which is to be confirmed by the PEOPLE, and may be carried into effect by NINE STATES ONLY. It is worthy of remark that this objection, though the most plausible, has been the least urged in the publications which have swarmed against the convention. The forbearance can only have proceeded from an irresistible conviction of the absurdity of subjecting the fate of twelve States to the perverseness or corruption of a thirteenth; from the example of inflexible opposition given by a MAJORITY of one sixtieth of the people of America to a measure approved and called for by the voice of twelve States, comprising fifty-nine sixtieths of the people an example still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country. As this objection, therefore, has been in a manner waived by those who have criticised the powers of the convention, I dismiss it without further observation.

The THIRD point to be inquired into is, how far considerations of duty arising out of the case itself could have supplied any defect of regular authority.

In the preceding inquiries the powers of the convention have been analyzed and tried with the same rigor, and by the same rules, as if they had been real and final powers for the establishment of a Constitution for the United States. We have seen in what manner they have borne the trial even on that supposition. It is time now to recollect that the powers were merely

advisory and recommendatory; that they were so meant by the States, and so understood by the convention; and that the latter have accordingly planned and proposed a Constitution which is to be of no more consequence than the paper on which it is written, unless it be stamped with the approbation of those to whom it is addressed. This reflection places the subject in a point of view altogether different, and will enable us to judge with propriety of the course taken by the convention.

Let us view the ground on which the convention stood. It may be collected from their proceedings, that they were deeply and unanimously impressed with the crisis, which had led their country almost with one voice to make so singular and solemn an experiment for correcting the errors of a system by which this crisis had been produced; that they were no less deeply and unanimously convinced that such a reform as they have proposed was absolutely necessary to effect the purposes of their appointment. It could not be unknown to them that the hopes and expectations of the great body of citizens, throughout this great empire, were turned with the keenest anxiety to the event of their deliberations. They had every reason to believe that the contrary sentiments agitated the minds and bosoms of every external and internal foe to the liberty and prosperity of the United States. They had seen in the origin and progress of the experiment, the alacrity with which the PROPOSITION, made by a single State (Virginia), towards a partial amendment of the Confederation, had been attended to and promoted. They had seen the LIBERTY ASSUMED by a VERY FEW deputies from a VERY FEW States, convened at Annapolis, of recommending a great and critical object, wholly foreign to their commission, not only justified by the public opinion, but actually carried into effect by twelve out of the thirteen States. They had seen, in a variety of instances, assumptions by Congress, not only of recommendatory, but of operative, powers, warranted, in the public estimation, by occasions and objects infinitely less urgent than those by which their conduct was to be governed. They must have reflected, that in all great changes of established governments, forms ought to give way to substance; that a rigid adherence in such cases to the former, would render nominal and nugatory the transcendent and precious right of the people to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness,"(2) since it is impossible for the people spontaneously and universally to move in concert towards their object; and

it is therefore essential that such changes be instituted by some INFORMAL AND UNAUTHORIZED PROPOSITIONS, made by some patriotic and respectable citizen or number of citizens. They must have recollected that it was by this irregular and assumed privilege of proposing to the people plans for their safety and happiness, that the States were first united against the danger with which they were threatened by their ancient government; that committees and congresses were formed for concentrating their efforts and defending their rights; and that CONVENTIONS were ELECTED in THE SEVERAL STATES for establishing the constitutions under which they are now governed; nor could it have been forgotten that no little ill-timed scruples, no zeal for adhering to ordinary forms, were anywhere seen, except in those who wished to indulge, under these masks, their secret enmity to the substance contended for. They must have borne in mind, that as the plan to be framed and proposed was to be submitted TO THE PEOPLE THEMSELVES, the disapprobation of this supreme authority would destroy it forever; its approbation blot out antecedent errors and irregularities. It might even have occurred to them, that where a disposition to cavil prevailed, their neglect to execute the degree of power vested in them, and still more their recommendation of any measure whatever, not warranted by their commission, would not less excite animadversion, than a recommendation at once of a measure fully commensurate to the national exigencies.

Had the convention, under all these impressions, and in the midst of all these considerations, instead of exercising a manly confidence in their country, by whose confidence they had been so peculiarly distinguished, and of pointing out a system capable, in their judgment, of securing its happiness, taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing substance to forms, of committing the dearest interests of their country to the uncertainties of delay and the hazard of events, let me ask the man who can raise his mind to one elevated conception, who can awaken in his bosom one patriotic emotion, what judgment ought to have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on the conduct and character of this assembly? Or if there be a man whose propensity to condemn is susceptible of no control, let me then ask what sentence he has in reserve for the twelve States who USURPED THE POWER of sending deputies to the convention, a body utterly unknown to their constitutions; for Congress, who recommended the

appointment of this body, equally unknown to the Confederation; and for the State of New York, in particular, which first urged and then complied with this unauthorized interposition?

But that the objectors may be disarmed of every pretext, it shall be granted for a moment that the convention were neither authorized by their commission, nor justified by circumstances in proposing a Constitution for their country: does it follow that the Constitution ought, for that reason alone, to be rejected? If, according to the noble precept, it be lawful to accept good advice even from an enemy, shall we set the ignoble example of refusing such advice even when it is offered by our friends? The prudent inquiry, in all cases, ought surely to be, not so much FROM WHOM the advice comes, as whether the advice be GOOD.

The sum of what has been here advanced and proved is, that the charge against the convention of exceeding their powers, except in one instance little urged by the objectors, has no foundation to support it; that if they had exceeded their powers, they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty which they assume; and that finally, if they had violated both their powers and their obligations, in proposing a Constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people of America. How far this character is due to the Constitution, is the subject under investigation.

PUBLIUS

1. Connecticut and Rhode Island.

2. Declaration of Independence.

FEDERALIST No. 41. General View of the Powers Conferred by The Constitution

For the Independent Journal. Saturday, January 19, 1788

MADISON

To the People of the State of New York:

THE Constitution proposed by the convention may be considered under two general points of view. The FIRST relates to the sum or quantity of power which it vests in the government, including the restraints imposed on the States. The SECOND, to the particular structure of the government, and the distribution of this power among its several branches.

Under the FIRST view of the subject, two important questions arise: 1. Whether any part of the powers transferred to the general government be unnecessary or improper? 2. Whether the entire mass of them be dangerous to the portion of jurisdiction left in the several States?

Is the aggregate power of the general government greater than ought to have been vested in it? This is the FIRST question.

It cannot have escaped those who have attended with candor to the arguments employed against the extensive powers of the government, that the authors of them have very little considered how far these powers were necessary means of attaining a necessary end. They have chosen rather to dwell on the inconveniences which must be unavoidably blended with all political advantages; and on the possible abuses which must be incident to every power or trust, of which a beneficial use can be made. This method of handling the subject cannot impose on the good sense of the people of America. It may display the subtlety of the writer; it may open a boundless field for rhetoric and declamation; it may inflame the passions of the unthinking, and may confirm the prejudices of the misthinking: but cool and candid people will at once reflect, that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT, good; and that in every political institution, a power to advance the public

happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is, whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.

That we may form a correct judgment on this subject, it will be proper to review the several powers conferred on the government of the Union; and that this may be the more conveniently done they may be reduced into different classes as they relate to the following different objects: 1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3. Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due efficacy to all these powers.

The powers falling within the FIRST class are those of declaring war and granting letters of marque; of providing armies and fleets; of regulating and calling forth the militia; of levying and borrowing money.

Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils.

Is the power of declaring war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof of the affirmative. The existing Confederation establishes this power in the most ample form.

Is the power of raising armies and equipping fleets necessary? This is involved in the foregoing power. It is involved in the power of self-defense.

But was it necessary to give an INDEFINITE POWER of raising TROOPS, as well as providing fleets; and of maintaining both in PEACE, as well as in WAR?

The answer to these questions has been too far anticipated in another place to admit an extensive discussion of them in this place. The answer indeed seems to be so obvious and conclusive as scarcely to justify such a discussion in any place. With what color of propriety could the force necessary for defense be limited by those who cannot limit the force of offense? If a federal Constitution could chain the ambition or set bounds to

the exertions of all other nations, then indeed might it prudently chain the discretion of its own government, and set bounds to the exertions for its own safety.

How could a readiness for war in time of peace be safely prohibited, unless we could prohibit, in like manner, the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack. They will, in fact, be ever determined by these rules, and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions. If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions. The fifteenth century was the unhappy epoch of military establishments in the time of peace. They were introduced by Charles VII. of France. All Europe has followed, or been forced into, the example. Had the example not been followed by other nations, all Europe must long ago have worn the chains of a universal monarch. Were every nation except France now to disband its peace establishments, the same event might follow. The veteran legions of Rome were an overmatch for the undisciplined valor of all other nations and rendered her the mistress of the world.

Not the less true is it, that the liberties of Rome proved the final victim to her military triumphs; and that the liberties of Europe, as far as they ever existed, have, with few exceptions, been the price of her military establishments. A standing force, therefore, is a dangerous, at the same time that it may be a necessary, provision. On the smallest scale it has its inconveniences. On an extensive scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.

The clearest marks of this prudence are stamped on the proposed Constitution. The Union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America

united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat. It was remarked, on a former occasion, that the want of this pretext had saved the liberties of one nation in Europe. Being rendered by her insular situation and her maritime resources impregnable to the armies of her neighbors, the rulers of Great Britain have never been able, by real or artificial dangers, to cheat the public into an extensive peace establishment. The distance of the United States from the powerful nations of the world gives them the same happy security. A dangerous establishment can never be necessary or plausible, so long as they continue a united people. But let it never, for a moment, be forgotten that they are indebted for this advantage to the Union alone. The moment of its dissolution will be the date of a new order of things. The fears of the weaker, or the ambition of the stronger States, or Confederacies, will set the same example in the New, as Charles VII. did in the Old World. The example will be followed here from the same motives which produced universal imitation there. Instead of deriving from our situation the precious advantage which Great Britain has derived from hers, the face of America will be but a copy of that of the continent of Europe. It will present liberty everywhere crushed between standing armies and perpetual taxes. The fortunes of disunited America will be even more disastrous than those of Europe. The sources of evil in the latter are confined to her own limits. No superior powers of another quarter of the globe intrigue among her rival nations, inflame their mutual animosities, and render them the instruments of foreign ambition, jealousy, and revenge. In America the miseries springing from her internal jealousies, contentions, and wars, would form a part only of her lot. A plentiful addition of evils would have their source in that relation in which Europe stands to this quarter of the earth, and which no other quarter of the earth bears to Europe.

This picture of the consequences of disunion cannot be too highly colored, or too often exhibited. Every man who loves peace, every man who loves his country, every man who loves liberty, ought to have it ever before his eyes, that he may cherish in his heart a due attachment to the Union of America, and be able to set a due value on the means of preserving it.

Next to the effectual establishment of the Union, the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the

Constitution has prudently added. I will not repeat here the observations which I flatter myself have placed this subject in a just and satisfactory light. But it may not be improper to take notice of an argument against this part of the Constitution, which has been drawn from the policy and practice of Great Britain. It is said that the continuance of an army in that kingdom requires an annual vote of the legislature; whereas the American Constitution has lengthened this critical period to two years. This is the form in which the comparison is usually stated to the public: but is it a just form? Is it a fair comparison? Does the British Constitution restrain the parliamentary discretion to one year? Does the American impose on the Congress appropriations for two years? On the contrary, it cannot be unknown to the authors of the fallacy themselves, that the British Constitution fixes no limit whatever to the discretion of the legislature, and that the American ties down the legislature to two years, as the longest admissible term.

Had the argument from the British example been truly stated, it would have stood thus: The term for which supplies may be appropriated to the army establishment, though unlimited by the British Constitution, has nevertheless, in practice, been limited by parliamentary discretion to a single year. Now, if in Great Britain, where the House of Commons is elected for seven years; where so great a proportion of the members are elected by so small a proportion of the people; where the electors are so corrupted by the representatives, and the representatives so corrupted by the Crown, the representative body can possess a power to make appropriations to the army for an indefinite term, without desiring, or without daring, to extend the term beyond a single year, ought not suspicion herself to blush, in pretending that the representatives of the United States, elected FREELY by the WHOLE BODY of the people, every SECOND YEAR, cannot be safely intrusted with the discretion over such appropriations, expressly limited to the short period of TWO YEARS?

A bad cause seldom fails to betray itself. Of this truth, the management of the opposition to the federal government is an unvaried exemplification. But among all the blunders which have been committed, none is more striking than the attempt to enlist on that side the prudent jealousy entertained by the people, of standing armies. The attempt has awakened fully the public attention to that important subject; and has led to investigations which must terminate in a thorough and universal conviction,

not only that the constitution has provided the most effectual guards against danger from that quarter, but that nothing short of a Constitution fully adequate to the national defense and the preservation of the Union, can save America from as many standing armies as it may be split into States or Confederacies, and from such a progressive augmentation, of these establishments in each, as will render them as burdensome to the properties and ominous to the liberties of the people, as any establishment that can become necessary, under a united and efficient government, must be tolerable to the former and safe to the latter.

The palpable necessity of the power to provide and maintain a navy has protected that part of the Constitution against a spirit of censure, which has spared few other parts. It must, indeed, be numbered among the greatest blessings of America, that as her Union will be the only source of her maritime strength, so this will be a principal source of her security against danger from abroad. In this respect our situation bears another likeness to the insular advantage of Great Britain. The batteries most capable of repelling foreign enterprises on our safety, are happily such as can never be turned by a perfidious government against our liberties.

The inhabitants of the Atlantic frontier are all of them deeply interested in this provision for naval protection, and if they have hitherto been suffered to sleep quietly in their beds; if their property has remained safe against the predatory spirit of licentious adventurers; if their maritime towns have not yet been compelled to ransom themselves from the terrors of a conflagration, by yielding to the exactions of daring and sudden invaders, these instances of good fortune are not to be ascribed to the capacity of the existing government for the protection of those from whom it claims allegiance, but to causes that are fugitive and fallacious. If we except perhaps Virginia and Maryland, which are peculiarly vulnerable on their eastern frontiers, no part of the Union ought to feel more anxiety on this subject than New York. Her seacoast is extensive. A very important district of the State is an island. The State itself is penetrated by a large navigable river for more than fifty leagues. The great emporium of its commerce, the great reservoir of its wealth, lies every moment at the mercy of events, and may almost be regarded as a hostage for ignominious compliances with the dictates of a foreign enemy, or even with the rapacious demands of pirates and barbarians. Should a war be the result of the precarious situation of European affairs, and all the unruly passions

attending it be let loose on the ocean, our escape from insults and depredations, not only on that element, but every part of the other bordering on it, will be truly miraculous. In the present condition of America, the States more immediately exposed to these calamities have nothing to hope from the phantom of a general government which now exists; and if their single resources were equal to the task of fortifying themselves against the danger, the object to be protected would be almost consumed by the means of protecting them.

The power of regulating and calling forth the militia has been already sufficiently vindicated and explained.

The power of levying and borrowing money, being the sinew of that which is to be exerted in the national defense, is properly thrown into the same class with it. This power, also, has been examined already with much attention, and has, I trust, been clearly shown to be necessary, both in the extent and form given to it by the Constitution. I will address one additional reflection only to those who contend that the power ought to have been restrained to external—taxation by which they mean, taxes on articles imported from other countries. It cannot be doubted that this will always be a valuable source of revenue; that for a considerable time it must be a principal source; that at this moment it is an essential one. But we may form very mistaken ideas on this subject, if we do not call to mind in our calculations, that the extent of revenue drawn from foreign commerce must vary with the variations, both in the extent and the kind of imports; and that these variations do not correspond with the progress of population, which must be the general measure of the public wants. As long as agriculture continues the sole field of labor, the importation of manufactures must increase as the consumers multiply. As soon as domestic manufactures are begun by the hands not called for by agriculture, the imported manufactures will decrease as the numbers of people increase. In a more remote stage, the imports may consist in a considerable part of raw materials, which will be wrought into articles for exportation, and will, therefore, require rather the encouragement of bounties, than to be loaded with discouraging duties. A system of government, meant for duration, ought to contemplate these revolutions, and be able to accommodate itself to them.

Some, who have not denied the necessity of the power of taxation, have grounded a very fierce attack against the Constitution, on the language in

which it is defined. It has been urged and echoed, that the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States," amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction.

Had no other enumeration or definition of the powers of the Congress been found in the Constitution, than the general expressions just cited, the authors of the objection might have had some color for it; though it would have been difficult to find a reason for so awkward a form of describing an authority to legislate in all possible cases. A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of conveyances, must be very singularly expressed by the terms "to raise money for the general welfare."

But what color can the objection have, when a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon? If the different parts of the same instrument ought to be so expounded, as to give meaning to every part which will bear it, shall one part of the same sentence be excluded altogether from a share in the meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the clear and precise expressions be denied any signification whatsoever? For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead, is an absurdity, which, as we are reduced to the dilemma of charging either on the authors of the objection or on the authors of the Constitution, we must take the liberty of supposing, had not its origin with the latter.

The objection here is the more extraordinary, as it appears that the language used by the convention is a copy from the articles of Confederation. The objects of the Union among the States, as described in article third, are "their common defense, security of their liberties, and

mutual and general welfare." The terms of article eighth are still more identical: "All charges of war and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress, shall be defrayed out of a common treasury," etc. A similar language again occurs in article ninth. Construe either of these articles by the rules which would justify the construction put on the new Constitution, and they vest in the existing Congress a power to legislate in all cases whatsoever. But what would have been thought of that assembly, if, attaching themselves to these general expressions, and disregarding the specifications which ascertain and limit their import, they had exercised an unlimited power of providing for the common defense and general welfare? I appeal to the objectors themselves, whether they would in that case have employed the same reasoning in justification of Congress as they now make use of against the convention. How difficult it is for error to escape its own condemnation!

PUBLIUS

FEDERALIST No. 42. The Powers Conferred by the Constitution Further Considered

From the New York Packet. Tuesday, January 22, 1788.

MADISON

To the People of the State of New York:

THE SECOND class of powers, lodged in the general government, consists of those which regulate the intercourse with foreign nations, to wit: to make treaties; to send and receive ambassadors, other public ministers, and consuls; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to regulate foreign commerce, including a power to prohibit, after the year 1808, the importation of slaves, and to lay an intermediate duty of ten dollars per head, as a discouragement to such importations.

This class of powers forms an obvious and essential branch of the federal administration. If we are to be one nation in any respect, it clearly ought to be in respect to other nations.

The powers to make treaties and to send and receive ambassadors, speak their own propriety. Both of them are comprised in the articles of Confederation, with this difference only, that the former is disembarrassed, by the plan of the convention, of an exception, under which treaties might be substantially frustrated by regulations of the States; and that a power of appointing and receiving "other public ministers and consuls," is expressly and very properly added to the former provision concerning ambassadors. The term ambassador, if taken strictly, as seems to be required by the second of the articles of Confederation, comprehends the highest grade only of public ministers, and excludes the grades which the United States will be most likely to prefer, where foreign embassies may be necessary. And under no latitude of construction will the term comprehend consuls. Yet it has been found expedient, and has been the practice of Congress, to employ the inferior grades of public ministers, and to send and receive consuls.

It is true, that where treaties of commerce stipulate for the mutual appointment of consuls, whose functions are connected with commerce, the admission of foreign consuls may fall within the power of making commercial treaties; and that where no such treaties exist, the mission of American consuls into foreign countries may PERHAPS be covered under the authority, given by the ninth article of the Confederation, to appoint all such civil officers as may be necessary for managing the general affairs of the United States. But the admission of consuls into the United States, where no previous treaty has stipulated it, seems to have been nowhere provided for. A supply of the omission is one of the lesser instances in which the convention have improved on the model before them. But the most minute provisions become important when they tend to obviate the necessity or the pretext for gradual and unobserved usurpations of power. A list of the cases in which Congress have been betrayed, or forced by the defects of the Confederation, into violations of their chartered authorities, would not a little surprise those who have paid no attention to the subject; and would be no inconsiderable argument in favor of the new Constitution, which seems to have provided no less studiously for the lesser, than the more obvious and striking defects of the old.

The power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations, belongs with equal propriety to the general government, and is a still greater improvement on the articles of Confederation. These articles contain no provision for the case of offenses against the law of nations; and consequently leave it in the power of any indiscreet member to embroil the Confederacy with foreign nations. The provision of the federal articles on the subject of piracies and felonies extends no further than to the establishment of courts for the trial of these offenses. The definition of piracies might, perhaps, without inconveniency, be left to the law of nations; though a legislative definition of them is found in most municipal codes. A definition of felonies on the high seas is evidently requisite. Felony is a term of loose signification, even in the common law of England; and of various import in the statute law of that kingdom. But neither the common nor the statute law of that, or of any other nation, ought to be a standard for the proceedings of this, unless previously made its own by legislative adoption. The meaning of the term, as defined in the codes of the several States, would be as impracticable as the former would be a dishonorable and illegitimate guide. It is not

precisely the same in any two of the States; and varies in each with every revision of its criminal laws. For the sake of certainty and uniformity, therefore, the power of defining felonies in this case was in every respect necessary and proper.

The regulation of foreign commerce, having fallen within several views which have been taken of this subject, has been too fully discussed to need additional proofs here of its being properly submitted to the federal administration.

It were doubtless to be wished, that the power of prohibiting the importation of slaves had not been postponed until the year 1808, or rather that it had been suffered to have immediate operation. But it is not difficult to account, either for this restriction on the general government, or for the manner in which the whole clause is expressed. It ought to be considered as a great point gained in favor of humanity, that a period of twenty years may terminate forever, within these States, a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period, it will receive a considerable discouragement from the federal government, and may be totally abolished, by a concurrence of the few States which continue the unnatural traffic, in the prohibitory example which has been given by so great a majority of the Union. Happy would it be for the unfortunate Africans, if an equal prospect lay before them of being redeemed from the oppressions of their European brethren!

Attempts have been made to pervert this clause into an objection against the Constitution, by representing it on one side as a criminal toleration of an illicit practice, and on another as calculated to prevent voluntary and beneficial emigrations from Europe to America. I mention these misconstructions, not with a view to give them an answer, for they deserve none, but as specimens of the manner and spirit in which some have thought fit to conduct their opposition to the proposed government.

The powers included in the THIRD class are those which provide for the harmony and proper intercourse among the States.

Under this head might be included the particular restraints imposed on the authority of the States, and certain powers of the judicial department; but the former are reserved for a distinct class, and the latter will be particularly examined when we arrive at the structure and organization of the government. I shall confine myself to a cursory review of the remaining

powers comprehended under this third description, to wit: to regulate commerce among the several States and the Indian tribes; to coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of counterfeiting the current coin and securities of the United States; to fix the standard of weights and measures; to establish a uniform rule of naturalization, and uniform laws of bankruptcy, to prescribe the manner in which the public acts, records, and judicial proceedings of each State shall be proved, and the effect they shall have in other States; and to establish post offices and post roads.

The defect of power in the existing Confederacy to regulate the commerce between its several members, is in the number of those which have been clearly pointed out by experience. To the proofs and remarks which former papers have brought into view on this subject, it may be added that without this supplemental provision, the great and essential power of regulating foreign commerce would have been incomplete and ineffectual. A very material object of this power was the relief of the States which import and export through other States, from the improper contributions levied on them by the latter. Were these at liberty to regulate the trade between State and State, it must be foreseen that ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former. We may be assured by past experience, that such a practice would be introduced by future contrivances; and both by that and a common knowledge of human affairs, that it would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquillity. To those who do not view the question through the medium of passion or of interest, the desire of the commercial States to collect, in any form, an indirect revenue from their uncommercial neighbors, must appear not less impolitic than it is unfair; since it would stimulate the injured party, by resentment as well as interest, to resort to less convenient channels for their foreign trade. But the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned, before public bodies as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gain.

The necessity of a superintending authority over the reciprocal trade of confederated States, has been illustrated by other examples as well as our own. In Switzerland, where the Union is so very slight, each canton is

obliged to allow to merchandises a passage through its jurisdiction into other cantons, without an augmentation of the tolls. In Germany it is a law of the empire, that the princes and states shall not lay tolls or customs on bridges, rivers, or passages, without the consent of the emperor and the diet; though it appears from a quotation in an antecedent paper, that the practice in this, as in many other instances in that confederacy, has not followed the law, and has produced there the mischiefs which have been foreseen here. Among the restraints imposed by the Union of the Netherlands on its members, one is, that they shall not establish imposts disadvantageous to their neighbors, without the general permission.

The regulation of commerce with the Indian tribes is very properly unfettered from two limitations in the articles of Confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the States, and is not to violate or infringe the legislative right of any State within its own limits. What description of Indians are to be deemed members of a State, is not yet settled, and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which the articles of Confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with complete sovereignty in the States; to subvert a mathematical axiom, by taking away a part, and letting the whole remain.

All that need be remarked on the power to coin money, regulate the value thereof, and of foreign coin, is, that by providing for this last case, the Constitution has supplied a material omission in the articles of Confederation. The authority of the existing Congress is restrained to the regulation of coin STRUCK by their own authority, or that of the respective States. It must be seen at once that the proposed uniformity in the VALUE of the current coin might be destroyed by subjecting that of foreign coin to the different regulations of the different States.

The punishment of counterfeiting the public securities, as well as the current coin, is submitted of course to that authority which is to secure the value of both.

The regulation of weights and measures is transferred from the articles of Confederation, and is founded on like considerations with the preceding power of regulating coin.

The dissimilarity in the rules of naturalization has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions. In the fourth article of the Confederation, it is declared "that the FREE INHABITANTS of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all privileges and immunities of FREE CITIZENS in the several States; and THE PEOPLE of each State shall, in every other, enjoy all the privileges of trade and commerce," etc. There is a confusion of language here, which is remarkable. Why the terms FREE INHABITANTS are used in one part of the article, FREE CITIZENS in another, and PEOPLE in another; or what was meant by superadding to "all privileges and immunities of free citizens," "all the privileges of trade and commerce," cannot easily be determined. It seems to be a construction scarcely avoidable, however, that those who come under the denomination of FREE INHABITANTS of a State, although not citizens of such State, are entitled, in every other State, to all the privileges of FREE CITIZENS of the latter; that is, to greater privileges than they may be entitled to in their own State: so that it may be in the power of a particular State, or rather every State is laid under a necessity, not only to confer the rights of citizenship in other States upon any whom it may admit to such rights within itself, but upon any whom it may allow to become inhabitants within its jurisdiction. But were an exposition of the term "inhabitants" to be admitted which would confine the stipulated privileges to citizens alone, the difficulty is diminished only, not removed. The very improper power would still be retained by each State, of naturalizing aliens in every other State. In one State, residence for a short term confirms all the rights of citizenship: in another, qualifications of greater importance are required. An alien, therefore, legally incapacitated for certain rights in the latter, may, by previous residence only in the former, elude his incapacity; and thus the law of one State be preposterously rendered paramount to the law of another, within the jurisdiction of the other. We owe it to mere casualty, that very serious embarrassments on this subject have been hitherto escaped. By the laws of several States, certain descriptions of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent not only with the rights of citizenship but with

the privilege of residence. What would have been the consequence, if such persons, by residence or otherwise, had acquired the character of citizens under the laws of another State, and then asserted their rights as such, both to residence and citizenship, within the State proscribing them? Whatever the legal consequences might have been, other consequences would probably have resulted, of too serious a nature not to be provided against. The new Constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the Confederation on this head, by authorizing the general government to establish a uniform rule of naturalization throughout the United States.

The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question.

The power of prescribing by general laws, the manner in which the public acts, records and judicial proceedings of each State shall be proved, and the effect they shall have in other States, is an evident and valuable improvement on the clause relating to this subject in the articles of Confederation. The meaning of the latter is extremely indeterminate, and can be of little importance under any interpretation which it will bear. The power here established may be rendered a very convenient instrument of justice, and be particularly beneficial on the borders of contiguous States, where the effects liable to justice may be suddenly and secretly translated, in any stage of the process, within a foreign jurisdiction.

The power of establishing post roads must, in every view, be a harmless power, and may, perhaps, by judicious management, become productive of great public conveniency. Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care.

PUBLIUS

FEDERALIST No. 43. The Same Subject Continued (The Powers Conferred by the Constitution Further Considered)

For the Independent Journal. Wednesday, January 23, 1788

MADISON

To the People of the State of New York:

THE FOURTH class comprises the following miscellaneous powers:

1. A power "to promote the progress of science and useful arts, by securing, for a limited time, to authors and inventors, the exclusive right to their respective writings and discoveries."

The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals. The States cannot separately make effectual provisions for either of the cases, and most of them have anticipated the decision of this point, by laws passed at the instance of Congress.

2. "To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislatures of the States in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. It is a power exercised by every legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the State comprehending the

seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight, as the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to a removal of the government, as still further to abridge its necessary independence. The extent of this federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature. And as it is to be appropriated to this use with the consent of the State ceding it; as the State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession, will be derived from the whole people of the State in their adoption of the Constitution, every imaginable objection seems to be obviated.

The necessity of a like authority over forts, magazines, etc., established by the general government, is not less evident. The public money expended on such places, and the public property deposited in them, requires that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend, to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated, by requiring the concurrence of the States concerned, in every such establishment.

3. "To declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained."

As treason may be committed against the United States, the authority of the United States ought to be enabled to punish it. But as new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed

a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for conviction of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt beyond the person of its author.

4. "To admit new States into the Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress."

In the articles of Confederation, no provision is found on this important subject. Canada was to be admitted of right, on her joining in the measures of the United States; and the other COLONIES, by which were evidently meant the other British colonies, at the discretion of nine States. The eventual establishment of NEW STATES seems to have been overlooked by the compilers of that instrument. We have seen the inconvenience of this omission, and the assumption of power into which Congress have been led by it. With great propriety, therefore, has the new system supplied the defect. The general precaution, that no new States shall be formed, without the concurrence of the federal authority, and that of the States concerned, is consonant to the principles which ought to govern such transactions. The particular precaution against the erection of new States, by the partition of a State without its consent, quiets the jealousy of the larger States; as that of the smaller is quieted by a like precaution, against a junction of States without their consent.

5. "To dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," with a proviso, that "nothing in the Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

This is a power of very great importance, and required by considerations similar to those which show the propriety of the former. The proviso annexed is proper in itself, and was probably rendered absolutely necessary by jealousies and questions concerning the Western territory sufficiently known to the public.

6. "To guarantee to every State in the Union a republican form of government; to protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence."

In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchial innovations. The more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other; and the greater right to insist that the forms of government under which the compact was entered into should be SUBSTANTIALLY maintained. But a right implies a remedy; and where else could the remedy be deposited, than where it is deposited by the Constitution? Governments of dissimilar principles and forms have been found less adapted to a federal coalition of any sort, than those of a kindred nature. "As the confederate republic of Germany," says Montesquieu, "consists of free cities and petty states, subject to different princes, experience shows us that it is more imperfect than that of Holland and Switzerland." "Greece was undone," he adds, "as soon as the king of Macedon obtained a seat among the Amphictyons." In the latter case, no doubt, the disproportionate force, as well as the monarchical form, of the new confederate, had its share of influence on the events. It may possibly be asked, what need there could be of such a precaution, and whether it may not become a pretext for alterations in the State governments, without the concurrence of the States themselves. These questions admit of ready answers. If the interposition of the general government should not be needed, the provision for such an event will be a harmless superfluity only in the Constitution. But who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers? To the second question it may be answered, that if the general government should interpose by virtue of this constitutional authority, it will be, of course, bound to pursue the authority. But the authority extends no further than to a GUARANTY of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the States, they are guaranteed by the federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter. The only restriction imposed on them is, that they shall not exchange republican for antirepublican Constitutions; a restriction which, it is presumed, will hardly be considered as a grievance.

A protection against invasion is due from every society to the parts composing it. The latitude of the expression here used seems to secure each State, not only against foreign hostility, but against ambitious or vindictive enterprises of its more powerful neighbors. The history, both of ancient and modern confederacies, proves that the weaker members of the union ought not to be insensible to the policy of this article.

Protection against domestic violence is added with equal propriety. It has been remarked, that even among the Swiss cantons, which, properly speaking, are not under one government, provision is made for this object; and the history of that league informs us that mutual aid is frequently claimed and afforded; and as well by the most democratic, as the other cantons. A recent and well-known event among ourselves has warned us to be prepared for emergencies of a like nature.

At first view, it might seem not to square with the republican theory, to suppose, either that a majority have not the right, or that a minority will have the force, to subvert a government; and consequently, that the federal interposition can never be required, but when it would be improper. But theoretic reasoning, in this as in most other cases, must be qualified by the lessons of practice. Why may not illicit combinations, for purposes of violence, be formed as well by a majority of a State, especially a small State as by a majority of a county, or a district of the same State; and if the authority of the State ought, in the latter case, to protect the local magistracy, ought not the federal authority, in the former, to support the State authority? Besides, there are certain parts of the State constitutions which are so interwoven with the federal Constitution, that a violent blow cannot be given to the one without communicating the wound to the other. Insurrections in a State will rarely induce a federal interposition, unless the number concerned in them bear some proportion to the friends of government. It will be much better that the violence in such cases should be repressed by the superintending power, than that the majority should be left to maintain their cause by a bloody and obstinate contest. The existence of a right to interpose, will generally prevent the necessity of exerting it.

Is it true that force and right are necessarily on the same side in republican governments? May not the minor party possess such a superiority of pecuniary resources, of military talents and experience, or of secret succors from foreign powers, as will render it superior also in an

appeal to the sword? May not a more compact and advantageous position turn the scale on the same side, against a superior number so situated as to be less capable of a prompt and collected exertion of its strength? Nothing can be more chimerical than to imagine that in a trial of actual force, victory may be calculated by the rules which prevail in a census of the inhabitants, or which determine the event of an election! May it not happen, in fine, that the minority of CITIZENS may become a majority of PERSONS, by the accession of alien residents, of a casual concourse of adventurers, or of those whom the constitution of the State has not admitted to the rights of suffrage? I take no notice of an unhappy species of population abounding in some of the States, who, during the calm of regular government, are sunk below the level of men; but who, in the tempestuous scenes of civil violence, may emerge into the human character, and give a superiority of strength to any party with which they may associate themselves.

In cases where it may be doubtful on which side justice lies, what better umpires could be desired by two violent factions, flying to arms, and tearing a State to pieces, than the representatives of confederate States, not heated by the local flame? To the impartiality of judges, they would unite the affection of friends. Happy would it be if such a remedy for its infirmities could be enjoyed by all free governments; if a project equally effectual could be established for the universal peace of mankind!

Should it be asked, what is to be the redress for an insurrection pervading all the States, and comprising a superiority of the entire force, though not a constitutional right? the answer must be, that such a case, as it would be without the compass of human remedies, so it is fortunately not within the compass of human probability; and that it is a sufficient recommendation of the federal Constitution, that it diminishes the risk of a calamity for which no possible constitution can provide a cure.

Among the advantages of a confederate republic enumerated by Montesquieu, an important one is, "that should a popular insurrection happen in one of the States, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound."

7. "To consider all debts contracted, and engagements entered into, before the adoption of this Constitution, as being no less valid against the United States, under this Constitution, than under the Confederation."

This can only be considered as a declaratory proposition; and may have been inserted, among other reasons, for the satisfaction of the foreign creditors of the United States, who cannot be strangers to the pretended doctrine, that a change in the political form of civil society has the magical effect of dissolving its moral obligations.

Among the lesser criticisms which have been exercised on the Constitution, it has been remarked that the validity of engagements ought to have been asserted in favor of the United States, as well as against them; and in the spirit which usually characterizes little critics, the omission has been transformed and magnified into a plot against the national rights. The authors of this discovery may be told, what few others need to be informed of, that as engagements are in their nature reciprocal, an assertion of their validity on one side, necessarily involves a validity on the other side; and that as the article is merely declaratory, the establishment of the principle in one case is sufficient for every case. They may be further told, that every constitution must limit its precautions to dangers that are not altogether imaginary; and that no real danger can exist that the government would DARE, with, or even without, this constitutional declaration before it, to remit the debts justly due to the public, on the pretext here condemned.

8. "To provide for amendments to be ratified by three fourths of the States under two exceptions only."

That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other. The exception in favor of the equality of suffrage in the Senate, was probably meant as a palladium to the residuary sovereignty of the States, implied and secured by that principle of representation in one branch of the legislature; and was probably insisted on by the States particularly attached to that equality. The other exception must have been admitted on the same considerations which produced the privilege defended by it.

9. "The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States, ratifying the same."

This article speaks for itself. The express authority of the people alone could give due validity to the Constitution. To have required the unanimous ratification of the thirteen States, would have subjected the essential interests of the whole to the caprice or corruption of a single member. It would have marked a want of foresight in the convention, which our own experience would have rendered inexcusable.

Two questions of a very delicate nature present themselves on this occasion: 1. On what principle the Confederation, which stands in the solemn form of a compact among the States, can be superseded without the unanimous consent of the parties to it? 2. What relation is to subsist between the nine or more States ratifying the Constitution, and the remaining few who do not become parties to it?

The first question is answered at once by recurring to the absolute necessity of the case; to the great principle of self-preservation; to the transcendent law of nature and of nature's God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed. PERHAPS, also, an answer may be found without searching beyond the principles of the compact itself. It has been heretofore noted among the defects of the Confederation, that in many of the States it had received no higher sanction than a mere legislative ratification. The principle of reciprocality seems to require that its obligation on the other States should be reduced to the same standard. A compact between independent sovereigns, founded on ordinary acts of legislative authority, can pretend to no higher validity than a league or treaty between the parties. It is an established doctrine on the subject of treaties, that all the articles are mutually conditions of each other; that a breach of any one article is a breach of the whole treaty; and that a breach, committed by either of the parties, absolves the others, and authorizes them, if they please, to pronounce the compact violated and void. Should it unhappily be necessary to appeal to these delicate truths for a justification for dispensing with the consent of particular States to a dissolution of the federal pact, will not the complaining parties find it a difficult task to answer the MULTIPLIED and

IMPORTANT infractions with which they may be confronted? The time has been when it was incumbent on us all to veil the ideas which this paragraph exhibits. The scene is now changed, and with it the part which the same motives dictate.

The second question is not less delicate; and the flattering prospect of its being merely hypothetical forbids an overcurious discussion of it. It is one of those cases which must be left to provide for itself. In general, it may be observed, that although no political relation can subsist between the assenting and dissenting States, yet the moral relations will remain uncancelled. The claims of justice, both on one side and on the other, will be in force, and must be fulfilled; the rights of humanity must in all cases be duly and mutually respected; whilst considerations of a common interest, and, above all, the remembrance of the endearing scenes which are past, and the anticipation of a speedy triumph over the obstacles to reunion, will, it is hoped, not urge in vain MODERATION on one side, and PRUDENCE on the other.

PUBLIUS

FEDERALIST No. 44. Restrictions on the Authority of the Several States

From the New York Packet. Friday, January 25, 1788.

MADISON

To the People of the State of New York:

A FIFTH class of provisions in favor of the federal authority consists of the following restrictions on the authority of the several States:

1. "No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver a legal tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility."

The prohibition against treaties, alliances, and confederations makes a part of the existing articles of Union; and for reasons which need no explanation, is copied into the new Constitution. The prohibition of letters of marque is another part of the old system, but is somewhat extended in the new. According to the former, letters of marque could be granted by the States after a declaration of war; according to the latter, these licenses must be obtained, as well during war as previous to its declaration, from the government of the United States. This alteration is fully justified by the advantage of uniformity in all points which relate to foreign powers; and of immediate responsibility to the nation in all those for whose conduct the nation itself is to be responsible.

The right of coining money, which is here taken from the States, was left in their hands by the Confederation, as a concurrent right with that of Congress, under an exception in favor of the exclusive right of Congress to regulate the alloy and value. In this instance, also, the new provision is an improvement on the old. Whilst the alloy and value depended on the general authority, a right of coinage in the particular States could have no other effect than to multiply expensive mints and diversify the forms and weights of the circulating pieces. The latter inconveniency defeats one

purpose for which the power was originally submitted to the federal head; and as far as the former might prevent an inconvenient remittance of gold and silver to the central mint for recoinage, the end can be as well attained by local mints established under the general authority.

The extension of the prohibition to bills of credit must give pleasure to every citizen, in proportion to his love of justice and his knowledge of the true springs of public prosperity. The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man, on the necessary confidence in the public councils, on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the States chargeable with this unadvised measure, which must long remain unsatisfied; or rather an accumulation of guilt, which can be expiated no otherwise than by a voluntary sacrifice on the altar of justice, of the power which has been the instrument of it. In addition to these persuasive considerations, it may be observed, that the same reasons which show the necessity of denying to the States the power of regulating coin, prove with equal force that they ought not to be at liberty to substitute a paper medium in the place of coin. Had every State a right to regulate the value of its coin, there might be as many different currencies as States, and thus the intercourse among them would be impeded; retrospective alterations in its value might be made, and thus the citizens of other States be injured, and animosities be kindled among the States themselves. The subjects of foreign powers might suffer from the same cause, and hence the Union be discredited and embroiled by the indiscretion of a single member. No one of these mischiefs is less incident to a power in the States to emit paper money, than to coin gold or silver. The power to make any thing but gold and silver a tender in payment of debts, is withdrawn from the States, on the same principle with that of issuing a paper currency.

Bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of

personal security and private rights; and I am much deceived if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society. The prohibition with respect to titles of nobility is copied from the articles of Confederation and needs no comment.

2. "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay."

The restraint on the power of the States over imports and exports is enforced by all the arguments which prove the necessity of submitting the regulation of trade to the federal councils. It is needless, therefore, to remark further on this head, than that the manner in which the restraint is qualified seems well calculated at once to secure to the States a reasonable discretion in providing for the conveniency of their imports and exports, and to the United States a reasonable check against the abuse of this discretion. The remaining particulars of this clause fall within reasonings which are either so obvious, or have been so fully developed, that they may be passed over without remark.

The SIXTH and last class consists of the several powers and provisions by which efficacy is given to all the rest.

1. Of these the first is, the "power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Few parts of the Constitution have been assailed with more intemperance than this; yet on a fair investigation of it, no part can appear more completely invulnerable. Without the SUBSTANCE of this power, the whole Constitution would be a dead letter. Those who object to the article, therefore, as a part of the Constitution, can only mean that the FORM of the provision is improper. But have they considered whether a better form could have been substituted?

There are four other possible methods which the Constitution might have taken on this subject. They might have copied the second article of the existing Confederation, which would have prohibited the exercise of any power not EXPRESSLY delegated; they might have attempted a positive enumeration of the powers comprehended under the general terms "necessary and proper"; they might have attempted a negative enumeration of them, by specifying the powers excepted from the general definition; they might have been altogether silent on the subject, leaving these necessary and proper powers to construction and inference.

Had the convention taken the first method of adopting the second article of Confederation, it is evident that the new Congress would be continually exposed, as their predecessors have been, to the alternative of construing the term "EXPRESSLY" with so much rigor, as to disarm the government of all real authority whatever, or with so much latitude as to destroy altogether the force of the restriction. It would be easy to show, if it were necessary, that no important power, delegated by the articles of Confederation, has been or can be executed by Congress, without recurring more or less to the doctrine of CONSTRUCTION or IMPLICATION. As the powers delegated under the new system are more extensive, the government which is to administer it would find itself still more distressed with the alternative of betraying the public interests by doing nothing, or of violating the Constitution by exercising powers indispensably necessary and proper, but, at the same time, not EXPRESSLY granted.

Had the convention attempted a positive enumeration of the powers necessary and proper for carrying their other powers into effect, the attempt would have involved a complete digest of laws on every subject to which the Constitution relates; accommodated too, not only to the existing state of things, but to all the possible changes which futurity may produce; for in every new application of a general power, the PARTICULAR POWERS, which are the means of attaining the OBJECT of the general power, must always necessarily vary with that object, and be often properly varied whilst the object remains the same.

Had they attempted to enumerate the particular powers or means not necessary or proper for carrying the general powers into execution, the task would have been no less chimerical; and would have been liable to this further objection, that every defect in the enumeration would have been equivalent to a positive grant of authority. If, to avoid this consequence, they had attempted a partial enumeration of the exceptions, and described the residue by the general terms, NOT NECESSARY OR PROPER, it must have happened that the enumeration would comprehend a few of the excepted powers only; that these would be such as would be least likely to be assumed or tolerated, because the enumeration would of course select such as would be least necessary or proper; and that the unnecessary and improper powers included in the residuum, would be less forcibly excepted, than if no partial enumeration had been made.

Had the Constitution been silent on this head, there can be no doubt that all the particular powers requisite as means of executing the general powers would have resulted to the government, by unavoidable implication. No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included. Had this last method, therefore, been pursued by the convention, every objection now urged against their plan would remain in all its plausibility; and the real inconveniency would be incurred of not removing a pretext which may be seized on critical occasions for drawing into question the essential powers of the Union.

If it be asked what is to be the consequence, in case the Congress shall misconstrue this part of the Constitution, and exercise powers not warranted by its true meaning, I answer, the same as if they should misconstrue or

enlarge any other power vested in them; as if the general power had been reduced to particulars, and any one of these were to be violated; the same, in short, as if the State legislatures should violate the irrespective constitutional authorities. In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people who can, by the election of more faithful representatives, annul the acts of the usurpers. The truth is, that this ultimate redress may be more confided in against unconstitutional acts of the federal than of the State legislatures, for this plain reason, that as every such act of the former will be an invasion of the rights of the latter, these will be ever ready to mark the innovation, to sound the alarm to the people, and to exert their local influence in effecting a change of federal representatives. There being no such intermediate body between the State legislatures and the people interested in watching the conduct of the former, violations of the State constitutions are more likely to remain unnoticed and unredressed.

2. "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding."

The indiscreet zeal of the adversaries to the Constitution has betrayed them into an attack on this part of it also, without which it would have been evidently and radically defective. To be fully sensible of this, we need only suppose for a moment that the supremacy of the State constitutions had been left complete by a saving clause in their favor.

In the first place, as these constitutions invest the State legislatures with absolute sovereignty, in all cases not excepted by the existing articles of Confederation, all the authorities contained in the proposed Constitution, so far as they exceed those enumerated in the Confederation, would have been annulled, and the new Congress would have been reduced to the same impotent condition with their predecessors.

In the next place, as the constitutions of some of the States do not even expressly and fully recognize the existing powers of the Confederacy, an

express saving of the supremacy of the former would, in such States, have brought into question every power contained in the proposed Constitution.

In the third place, as the constitutions of the States differ much from each other, it might happen that a treaty or national law, of great and equal importance to the States, would interfere with some and not with other constitutions, and would consequently be valid in some of the States, at the same time that it would have no effect in others.

In fine, the world would have seen, for the first time, a system of government founded on an inversion of the fundamental principles of all government; it would have seen the authority of the whole society every where subordinate to the authority of the parts; it would have seen a monster, in which the head was under the direction of the members.

3. "The Senators and Representatives, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and the several States, shall be bound by oath or affirmation to support this Constitution."

It has been asked why it was thought necessary, that the State magistracy should be bound to support the federal Constitution, and unnecessary that a like oath should be imposed on the officers of the United States, in favor of the State constitutions.

Several reasons might be assigned for the distinction. I content myself with one, which is obvious and conclusive. The members of the federal government will have no agency in carrying the State constitutions into effect. The members and officers of the State governments, on the contrary, will have an essential agency in giving effect to the federal Constitution. The election of the President and Senate will depend, in all cases, on the legislatures of the several States. And the election of the House of Representatives will equally depend on the same authority in the first instance; and will, probably, forever be conducted by the officers, and according to the laws, of the States.

4. Among the provisions for giving efficacy to the federal powers might be added those which belong to the executive and judiciary departments: but as these are reserved for particular examination in another place, I pass them over in this.

We have now reviewed, in detail, all the articles composing the sum or quantity of power delegated by the proposed Constitution to the federal

government, and are brought to this undeniable conclusion, that no part of the power is unnecessary or improper for accomplishing the necessary objects of the Union. The question, therefore, whether this amount of power shall be granted or not, resolves itself into another question, whether or not a government commensurate to the exigencies of the Union shall be established; or, in other words, whether the Union itself shall be preserved.

PUBLIUS

FEDERALIST No. 45. The Alleged Danger From the Powers of the Union to the State Governments.

Considered For the Independent Journal. Saturday, January 26, 1788

MADISON

To the People of the State of New York:

HAVING shown that no one of the powers transferred to the federal government is unnecessary or improper, the next question to be considered is, whether the whole mass of them will be dangerous to the portion of authority left in the several States.

The adversaries to the plan of the convention, instead of considering in the first place what degree of power was absolutely necessary for the purposes of the federal government, have exhausted themselves in a secondary inquiry into the possible consequences of the proposed degree of power to the governments of the particular States. But if the Union, as has been shown, be essential to the security of the people of America against foreign danger; if it be essential to their security against contentions and wars among the different States; if it be essential to guard them against those violent and oppressive factions which embitter the blessings of liberty, and against those military establishments which must gradually poison its very fountain; if, in a word, the Union be essential to the happiness of the people of America, is it not preposterous, to urge as an objection to a government, without which the objects of the Union cannot be attained, that such a government may derogate from the importance of the governments of the individual States? Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States, that particular municipal establishments, might enjoy a certain extent of power, and be

arrayed with certain dignities and attributes of sovereignty? We have heard of the impious doctrine in the Old World, that the people were made for kings, not kings for the people. Is the same doctrine to be revived in the New, in another shape that the solid happiness of the people is to be sacrificed to the views of political institutions of a different form? It is too early for politicians to presume on our forgetting that the public good, the real welfare of the great body of the people, is the supreme object to be pursued; and that no form of government whatever has any other value than as it may be fitted for the attainment of this object. Were the plan of the convention adverse to the public happiness, my voice would be, Reject the plan. Were the Union itself inconsistent with the public happiness, it would be, Abolish the Union. In like manner, as far as the sovereignty of the States cannot be reconciled to the happiness of the people, the voice of every good citizen must be, Let the former be sacrificed to the latter. How far the sacrifice is necessary, has been shown. How far the unsacrificed residue will be endangered, is the question before us.

Several important considerations have been touched in the course of these papers, which discountenance the supposition that the operation of the federal government will by degrees prove fatal to the State governments. The more I revolve the subject, the more fully I am persuaded that the balance is much more likely to be disturbed by the preponderancy of the last than of the first scale.

We have seen, in all the examples of ancient and modern confederacies, the strongest tendency continually betraying itself in the members, to despoil the general government of its authorities, with a very ineffectual capacity in the latter to defend itself against the encroachments. Although, in most of these examples, the system has been so dissimilar from that under consideration as greatly to weaken any inference concerning the latter from the fate of the former, yet, as the States will retain, under the proposed Constitution, a very extensive portion of active sovereignty, the inference ought not to be wholly disregarded. In the Achaean league it is probable that the federal head had a degree and species of power, which gave it a considerable likeness to the government framed by the convention. The Lycian Confederacy, as far as its principles and form are transmitted, must have borne a still greater analogy to it. Yet history does not inform us that either of them ever degenerated, or tended to degenerate, into one consolidated government. On the contrary, we know that the ruin of one of

them proceeded from the incapacity of the federal authority to prevent the dissensions, and finally the disunion, of the subordinate authorities. These cases are the more worthy of our attention, as the external causes by which the component parts were pressed together were much more numerous and powerful than in our case; and consequently less powerful ligaments within would be sufficient to bind the members to the head, and to each other.

In the feudal system, we have seen a similar propensity exemplified. Notwithstanding the want of proper sympathy in every instance between the local sovereigns and the people, and the sympathy in some instances between the general sovereign and the latter, it usually happened that the local sovereigns prevailed in the rivalship for encroachments. Had no external dangers enforced internal harmony and subordination, and particularly, had the local sovereigns possessed the affections of the people, the great kingdoms in Europe would at this time consist of as many independent princes as there were formerly feudatory barons.

The State governments will have the advantage of the Federal government, whether we compare them in respect to the immediate dependence of the one on the other; to the weight of personal influence which each side will possess; to the powers respectively vested in them; to the predilection and probable support of the people; to the disposition and faculty of resisting and frustrating the measures of each other.

The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former. Without the intervention of the State legislatures, the President of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it. The Senate will be elected absolutely and exclusively by the State legislatures. Even the House of Representatives, though drawn immediately from the people, will be chosen very much under the influence of that class of men, whose influence over the people obtains for themselves an election into the State legislatures. Thus, each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence, which is much more likely to beget a disposition too obsequious than too overbearing towards them. On the other side, the component parts of the State governments will in no

instance be indebted for their appointment to the direct agency of the federal government, and very little, if at all, to the local influence of its members.

The number of individuals employed under the Constitution of the United States will be much smaller than the number employed under the particular States. There will consequently be less of personal influence on the side of the former than of the latter. The members of the legislative, executive, and judiciary departments of thirteen and more States, the justices of peace, officers of militia, ministerial officers of justice, with all the county, corporation, and town officers, for three millions and more of people, intermixed, and having particular acquaintance with every class and circle of people, must exceed, beyond all proportion, both in number and influence, those of every description who will be employed in the administration of the federal system. Compare the members of the three great departments of the thirteen States, excluding from the judiciary department the justices of peace, with the members of the corresponding departments of the single government of the Union; compare the militia officers of three millions of people with the military and marine officers of any establishment which is within the compass of probability, or, I may add, of possibility, and in this view alone, we may pronounce the advantage of the States to be decisive. If the federal government is to have collectors of revenue, the State governments will have theirs also. And as those of the former will be principally on the seacoast, and not very numerous, whilst those of the latter will be spread over the face of the country, and will be very numerous, the advantage in this view also lies on the same side. It is true, that the Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States; but it is probable that this power will not be resorted to, except for supplemental purposes of revenue; that an option will then be given to the States to supply their quotas by previous collections of their own; and that the eventual collection, under the immediate authority of the Union, will generally be made by the officers, and according to the rules, appointed by the several States. Indeed it is extremely probable, that in other instances, particularly in the organization of the judicial power, the officers of the States will be clothed with the correspondent authority of the Union. Should it happen, however, that separate collectors of internal revenue should be appointed under the federal government, the influence of the whole number

would not bear a comparison with that of the multitude of State officers in the opposite scale. Within every district to which a federal collector would be allotted, there would not be less than thirty or forty, or even more, officers of different descriptions, and many of them persons of character and weight, whose influence would lie on the side of the State.

The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government. The more adequate, indeed, the federal powers may be rendered to the national defense, the less frequent will be those scenes of danger which might favor their ascendancy over the governments of the particular States.

If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the articles of Confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them. The change relating to taxation may be regarded as the most important; and yet the present Congress have as complete authority to REQUIRE of the States indefinite supplies of money for the common defense and general welfare, as the future Congress will have to require them of individual citizens; and

the latter will be no more bound than the States themselves have been, to pay the quotas respectively taxed on them. Had the States complied punctually with the articles of Confederation, or could their compliance have been enforced by as peaceable means as may be used with success towards single persons, our past experience is very far from countenancing an opinion, that the State governments would have lost their constitutional powers, and have gradually undergone an entire consolidation. To maintain that such an event would have ensued, would be to say at once, that the existence of the State governments is incompatible with any system whatever that accomplishes the essential purposes of the Union.

PUBLIUS

FEDERALIST No. 46. The Influence of the State and Federal Governments Compared

From the New York Packet. Tuesday, January 29, 1788.

MADISON

To the People of the State of New York:

RESUMING the subject of the last paper, I proceed to inquire whether the federal government or the State governments will have the advantage with regard to the predilection and support of the people. Notwithstanding the different modes in which they are appointed, we must consider both of them as substantially dependent on the great body of the citizens of the United States. I assume this position here as it respects the first, reserving the proofs for another place. The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes. The adversaries of the Constitution seem to have lost sight of the people altogether in their reasonings on this subject; and to have viewed these different establishments, not only as mutual rivals and enemies, but as uncontrolled by any common superior in their efforts to usurp the authorities of each other. These gentlemen must here be reminded of their error. They must be told that the ultimate authority, wherever the derivative may be found, resides in the people alone, and that it will not depend merely on the comparative ambition or address of the different governments, whether either, or which of them, will be able to enlarge its sphere of jurisdiction at the expense of the other. Truth, no less than decency, requires that the event in every case should be supposed to depend on the sentiments and sanction of their common constituents.

Many considerations, besides those suggested on a former occasion, seem to place it beyond doubt that the first and most natural attachment of the people will be to the governments of their respective States. Into the administration of these a greater number of individuals will expect to rise. From the gift of these a greater number of offices and emoluments will

flow. By the superintending care of these, all the more domestic and personal interests of the people will be regulated and provided for. With the affairs of these, the people will be more familiarly and minutely conversant. And with the members of these, will a greater proportion of the people have the ties of personal acquaintance and friendship, and of family and party attachments; on the side of these, therefore, the popular bias may well be expected most strongly to incline.

Experience speaks the same language in this case. The federal administration, though hitherto very defective in comparison with what may be hoped under a better system, had, during the war, and particularly whilst the independent fund of paper emissions was in credit, an activity and importance as great as it can well have in any future circumstances whatever. It was engaged, too, in a course of measures which had for their object the protection of everything that was dear, and the acquisition of everything that could be desirable to the people at large. It was, nevertheless, invariably found, after the transient enthusiasm for the early Congresses was over, that the attention and attachment of the people were turned anew to their own particular governments; that the federal council was at no time the idol of popular favor; and that opposition to proposed enlargements of its powers and importance was the side usually taken by the men who wished to build their political consequence on the prepossessions of their fellow-citizens.

If, therefore, as has been elsewhere remarked, the people should in future become more partial to the federal than to the State governments, the change can only result from such manifest and irresistible proofs of a better administration, as will overcome all their antecedent propensities. And in that case, the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due; but even in that case the State governments could have little to apprehend, because it is only within a certain sphere that the federal power can, in the nature of things, be advantageously administered.

The remaining points on which I propose to compare the federal and State governments, are the disposition and the faculty they may respectively possess, to resist and frustrate the measures of each other.

It has been already proved that the members of the federal will be more dependent on the members of the State governments, than the latter will be

on the former. It has appeared also, that the prepossessions of the people, on whom both will depend, will be more on the side of the State governments, than of the federal government. So far as the disposition of each towards the other may be influenced by these causes, the State governments must clearly have the advantage. But in a distinct and very important point of view, the advantage will lie on the same side. The prepossessions, which the members themselves will carry into the federal government, will generally be favorable to the States; whilst it will rarely happen, that the members of the State governments will carry into the public councils a bias in favor of the general government. A local spirit will infallibly prevail much more in the members of Congress, than a national spirit will prevail in the legislatures of the particular States. Every one knows that a great proportion of the errors committed by the State legislatures proceeds from the disposition of the members to sacrifice the comprehensive and permanent interest of the State, to the particular and separate views of the counties or districts in which they reside. And if they do not sufficiently enlarge their policy to embrace the collective welfare of their particular State, how can it be imagined that they will make the aggregate prosperity of the Union, and the dignity and respectability of its government, the objects of their affections and consultations? For the same reason that the members of the State legislatures will be unlikely to attach themselves sufficiently to national objects, the members of the federal legislature will be likely to attach themselves too much to local objects. The States will be to the latter what counties and towns are to the former. Measures will too often be decided according to their probable effect, not on the national prosperity and happiness, but on the prejudices, interests, and pursuits of the governments and people of the individual States. What is the spirit that has in general characterized the proceedings of Congress? A perusal of their journals, as well as the candid acknowledgments of such as have had a seat in that assembly, will inform us, that the members have but too frequently displayed the character, rather of partisans of their respective States, than of impartial guardians of a common interest; that where on one occasion improper sacrifices have been made of local considerations, to the aggrandizement of the federal government, the great interests of the nation have suffered on a hundred, from an undue attention to the local prejudices, interests, and views of the particular States. I mean not by these reflections to insinuate, that the new federal government will not embrace a more

enlarged plan of policy than the existing government may have pursued; much less, that its views will be as confined as those of the State legislatures; but only that it will partake sufficiently of the spirit of both, to be disinclined to invade the rights of the individual States, or the prerogatives of their governments. The motives on the part of the State governments, to augment their prerogatives by defalcations from the federal government, will be overruled by no reciprocal predispositions in the members.

Were it admitted, however, that the Federal government may feel an equal disposition with the State governments to extend its power beyond the due limits, the latter would still have the advantage in the means of defeating such encroachments. If an act of a particular State, though unfriendly to the national government, be generally popular in that State and should not too grossly violate the oaths of the State officers, it is executed immediately and, of course, by means on the spot and depending on the State alone. The opposition of the federal government, or the interposition of federal officers, would but inflame the zeal of all parties on the side of the State, and the evil could not be prevented or repaired, if at all, without the employment of means which must always be resorted to with reluctance and difficulty. On the other hand, should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to co-operate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter.

But ambitious encroachments of the federal government, on the authority of the State governments, would not excite the opposition of a single State, or of a few States only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. The same combinations, in short, would result from

an apprehension of the federal, as was produced by the dread of a foreign, yoke; and unless the projected innovations should be voluntarily renounced, the same appeal to a trial of force would be made in the one case as was made in the other. But what degree of madness could ever drive the federal government to such an extremity. In the contest with Great Britain, one part of the empire was employed against the other. The more numerous part invaded the rights of the less numerous part. The attempt was unjust and unwise; but it was not in speculation absolutely chimerical. But what would be the contest in the case we are supposing? Who would be the parties? A few representatives of the people would be opposed to the people themselves; or rather one set of representatives would be contending against thirteen sets of representatives, with the whole body of their common constituents on the side of the latter.

The only refuge left for those who prophesy the downfall of the State governments is the visionary supposition that the federal government may previously accumulate a military force for the projects of ambition. The reasonings contained in these papers must have been employed to little purpose indeed, if it could be necessary now to disprove the reality of this danger. That the people and the States should, for a sufficient period of time, elect an uninterrupted succession of men ready to betray both; that the traitors should, throughout this period, uniformly and systematically pursue some fixed plan for the extension of the military establishment; that the governments and the people of the States should silently and patiently behold the gathering storm, and continue to supply the materials, until it should be prepared to burst on their own heads, must appear to every one more like the incoherent dreams of a delirious jealousy, or the misjudged exaggerations of a counterfeit zeal, than like the sober apprehensions of genuine patriotism. Extravagant as the supposition is, let it however be made. Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government; still it would not be going too far to say, that the State governments, with the people on their side, would be able to repel the danger. The highest number to which, according to the best computation, a standing army can be carried in any country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed a militia

amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence. It may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops. Those who are best acquainted with the last successful resistance of this country against the British arms, will be most inclined to deny the possibility of it. Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain, that with this aid alone they would not be able to shake off their yokes. But were the people to possess the additional advantages of local governments chosen by themselves, who could collect the national will and direct the national force, and of officers appointed out of the militia, by these governments, and attached both to them and to the militia, it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it. Let us not insult the free and gallant citizens of America with the suspicion, that they would be less able to defend the rights of which they would be in actual possession, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors. Let us rather no longer insult them with the supposition that they can ever reduce themselves to the necessity of making the experiment, by a blind and tame submission to the long train of insidious measures which must precede and produce it.

The argument under the present head may be put into a very concise form, which appears altogether conclusive. Either the mode in which the federal government is to be constructed will render it sufficiently dependent on the people, or it will not. On the first supposition, it will be restrained by that dependence from forming schemes obnoxious to their constituents. On the other supposition, it will not possess the confidence of the people, and

its schemes of usurpation will be easily defeated by the State governments, who will be supported by the people.

On summing up the considerations stated in this and the last paper, they seem to amount to the most convincing evidence, that the powers proposed to be lodged in the federal government are as little formidable to those reserved to the individual States, as they are indispensably necessary to accomplish the purposes of the Union; and that all those alarms which have been sounded, of a meditated and consequential annihilation of the State governments, must, on the most favorable interpretation, be ascribed to the chimerical fears of the authors of them.

PUBLIUS

FEDERALIST No. 47. The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts.

For the Independent Journal. Wednesday, January 30, 1788.

MADISON

To the People of the State of New York:

HAVING reviewed the general form of the proposed government and the general mass of power allotted to it, I proceed to examine the particular structure of this government, and the distribution of this mass of power among its constituent parts.

One of the principal objections inculcated by the more respectable adversaries to the Constitution, is its supposed violation of the political maxim, that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution in favor of liberty. The several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.

No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to every one, that the charge cannot be supported, and that the maxim on which it

relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct.

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point.

The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system. That we may be sure, then, not to mistake his meaning in this case, let us recur to the source from which the maxim was drawn.

On the slightest view of the British Constitution, we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other. The executive magistrate forms an integral part of the legislative authority. He alone has the prerogative of making treaties with foreign sovereigns, which, when made, have, under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him, can be removed by him on the address of the two Houses of Parliament, and form, when he pleases to consult them, one of his constitutional councils. One branch of the legislative department forms also a great constitutional council to the executive chief, as, on another hand, it is the sole depositary of judicial power in cases of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges, again, are so far connected with the legislative department as often to attend and participate in its deliberations, though not admitted to a legislative vote.

From these facts, by which Montesquieu was guided, it may clearly be inferred that, in saying "There can be no liberty where the legislative and

executive powers are united in the same person, or body of magistrates," or, "if the power of judging be not separated from the legislative and executive powers," he did not mean that these departments ought to have no PARTIAL AGENCY in, or no CONTROL over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the WHOLE power of one department is exercised by the same hands which possess the WHOLE power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had possessed also the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority. This, however, is not among the vices of that constitution. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department.

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest THE SAME monarch or senate should ENACT tyrannical laws to EXECUTE them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for THE JUDGE would then be THE LEGISLATOR. Were it joined to the executive power, THE JUDGE might behave with all the violence of AN OPPRESSOR." Some of these reasons are more fully explained in other

passages; but briefly stated as they are here, they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author.

If we look into the constitutions of the several States, we find that, notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and has qualified the doctrine by declaring "that the legislative, executive, and judiciary powers ought to be kept as separate from, and independent of, each other AS THE NATURE OF A FREE GOVERNMENT WILL ADMIT; OR AS IS CONSISTENT WITH THAT CHAIN OF CONNECTION THAT BINDS THE WHOLE FABRIC OF THE CONSTITUTION IN ONE INDISSOLUBLE BOND OF UNITY AND AMITY." Her constitution accordingly mixes these departments in several respects. The Senate, which is a branch of the legislative department, is also a judicial tribunal for the trial of impeachments. The President, who is the head of the executive department, is the presiding member also of the Senate; and, besides an equal vote in all cases, has a casting vote in case of a tie. The executive head is himself eventually elective every year by the legislative department, and his council is every year chosen by and from the members of the same department. Several of the officers of state are also appointed by the legislature. And the members of the judiciary department are appointed by the executive department.

The constitution of Massachusetts has observed a sufficient though less pointed caution, in expressing this fundamental article of liberty. It declares "that the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them." This declaration corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single point violated by the plan of the convention. It goes no farther than to prohibit any one of the entire departments from exercising the powers of another department. In the very Constitution to which it is prefixed, a partial mixture of powers has been

admitted. The executive magistrate has a qualified negative on the legislative body, and the Senate, which is a part of the legislature, is a court of impeachment for members both of the executive and judiciary departments. The members of the judiciary department, again, are appointable by the executive department, and removable by the same authority on the address of the two legislative branches. Lastly, a number of the officers of government are annually appointed by the legislative department. As the appointment to offices, particularly executive offices, is in its nature an executive function, the compilers of the Constitution have, in this last point at least, violated the rule established by themselves.

I pass over the constitutions of Rhode Island and Connecticut, because they were formed prior to the Revolution, and even before the principle under examination had become an object of political attention.

The constitution of New York contains no declaration on this subject; but appears very clearly to have been framed with an eye to the danger of improperly blending the different departments. It gives, nevertheless, to the executive magistrate, a partial control over the legislative department; and, what is more, gives a like control to the judiciary department; and even blends the executive and judiciary departments in the exercise of this control. In its council of appointment members of the legislative are associated with the executive authority, in the appointment of officers, both executive and judiciary. And its court for the trial of impeachments and correction of errors is to consist of one branch of the legislature and the principal members of the judiciary department.

The constitution of New Jersey has blended the different powers of government more than any of the preceding. The governor, who is the executive magistrate, is appointed by the legislature; is chancellor and ordinary, or surrogate of the State; is a member of the Supreme Court of Appeals, and president, with a casting vote, of one of the legislative branches. The same legislative branch acts again as executive council of the governor, and with him constitutes the Court of Appeals. The members of the judiciary department are appointed by the legislative department and removable by one branch of it, on the impeachment of the other.

According to the constitution of Pennsylvania, the president, who is the head of the executive department, is annually elected by a vote in which the legislative department predominates. In conjunction with an executive

council, he appoints the members of the judiciary department, and forms a court of impeachment for trial of all officers, judiciary as well as executive. The judges of the Supreme Court and justices of the peace seem also to be removable by the legislature; and the executive power of pardoning in certain cases, to be referred to the same department. The members of the executive council are made EX-OFFICIO justices of peace throughout the State.

In Delaware, the chief executive magistrate is annually elected by the legislative department. The speakers of the two legislative branches are vice-presidents in the executive department. The executive chief, with six others, appointed, three by each of the legislative branches constitutes the Supreme Court of Appeals; he is joined with the legislative department in the appointment of the other judges. Throughout the States, it appears that the members of the legislature may at the same time be justices of the peace; in this State, the members of one branch of it are EX-OFFICIO justices of the peace; as are also the members of the executive council. The principal officers of the executive department are appointed by the legislative; and one branch of the latter forms a court of impeachments. All officers may be removed on address of the legislature.

Maryland has adopted the maxim in the most unqualified terms; declaring that the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each other. Her constitution, notwithstanding, makes the executive magistrate appointable by the legislative department; and the members of the judiciary by the executive department.

The language of Virginia is still more pointed on this subject. Her constitution declares, "that the legislative, executive, and judiciary departments shall be separate and distinct; so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of county courts shall be eligible to either House of Assembly." Yet we find not only this express exception, with respect to the members of the inferior courts, but that the chief magistrate, with his executive council, are appointable by the legislature; that two members of the latter are triennially displaced at the pleasure of the legislature; and that all the principal offices, both executive and judiciary, are filled by the same department. The

executive prerogative of pardon, also, is in one case vested in the legislative department.

The constitution of North Carolina, which declares "that the legislative, executive, and supreme judicial powers of government ought to be forever separate and distinct from each other," refers, at the same time, to the legislative department, the appointment not only of the executive chief, but all the principal officers within both that and the judiciary department.

In South Carolina, the constitution makes the executive magistracy eligible by the legislative department. It gives to the latter, also, the appointment of the members of the judiciary department, including even justices of the peace and sheriffs; and the appointment of officers in the executive department, down to captains in the army and navy of the State.

In the constitution of Georgia, where it is declared "that the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other," we find that the executive department is to be filled by appointments of the legislature; and the executive prerogative of pardon to be finally exercised by the same authority. Even justices of the peace are to be appointed by the legislature.

In citing these cases, in which the legislative, executive, and judiciary departments have not been kept totally separate and distinct, I wish not to be regarded as an advocate for the particular organizations of the several State governments. I am fully aware that among the many excellent principles which they exemplify, they carry strong marks of the haste, and still stronger of the inexperience, under which they were framed. It is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation, of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper. What I have wished to evince is, that the charge brought against the proposed Constitution, of violating the sacred maxim of free government, is warranted neither by the real meaning annexed to that maxim by its author, nor by the sense in which it has hitherto been understood in America. This interesting subject will be resumed in the ensuing paper.

PUBLIUS

FEDERALIST No. 48. These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other.

From the New York Packet. Friday, February 1, 1788.

MADISON

To the People of the State of New York:

IT WAS shown in the last paper that the political apothegm there examined does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall undertake, in the next place, to show that unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.

It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more

adequate defense is indispensably necessary for the more feeble, against the more powerful, members of the government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.

The founders of our republics have so much merit for the wisdom which they have displayed, that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark, that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

In a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favorable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited; both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.

The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of

real nicety in legislative bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all: as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter, which gives still greater facility to encroachments of the former.

I have appealed to our own experience for the truth of what I advance on this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied without end. I might find a witness in every citizen who has shared in, or been attentive to, the course of public administrations. I might collect vouchers in abundance from the records and archives of every State in the Union. But as a more concise, and at the same time equally satisfactory, evidence, I will refer to the example of two States, attested by two unexceptionable authorities.

The first example is that of Virginia, a State which, as we have seen, has expressly declared in its constitution, that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson, who, besides his other advantages for remarking the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting Notes on the State of Virginia, p. 195. "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that they are chosen by ourselves. An ELECTIVE DESPOTISM was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal

limits, without being effectually checked and restrained by the others. For this reason, that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. BUT NO BARRIER WAS PROVIDED BETWEEN THESE SEVERAL POWERS. The judiciary and the executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because in that case they may put their proceedings into the form of acts of Assembly, which will render them obligatory on the other branches. They have accordingly, IN MANY instances, DECIDED RIGHTS which should have been left to JUDICIARY CONTROVERSY, and THE DIRECTION OF THE EXECUTIVE, DURING THE WHOLE TIME OF THEIR SESSION, IS BECOMING HABITUAL AND FAMILIAR."

The other State which I shall take for an example is Pennsylvania; and the other authority, the Council of Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the constitution, was "to inquire whether the constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the constitution." In the execution of this trust, the council were necessarily led to a comparison of both the legislative and executive proceedings, with the constitutional powers of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the constitution had been flagrantly violated by the legislature in a variety of important instances.

A great number of laws had been passed, violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of legislature.

The constitutional trial by jury had been violated, and powers assumed which had not been delegated by the constitution.

Executive powers had been usurped.

The salaries of the judges, which the constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department frequently drawn within legislative cognizance and determination.

Those who wish to see the several particulars falling under each of these heads, may consult the journals of the council, which are in print. Some of them, it will be found, may be imputable to peculiar circumstances connected with the war; but the greater part of them may be considered as the spontaneous shoots of an ill-constituted government.

It appears, also, that the executive department had not been innocent of frequent breaches of the constitution. There are three observations, however, which ought to be made on this head: FIRST, a great proportion of the instances were either immediately produced by the necessities of the war, or recommended by Congress or the commander-in-chief; SECOND, in most of the other instances, they conformed either to the declared or the known sentiments of the legislative department; THIRD, the executive department of Pennsylvania is distinguished from that of the other States by the number of members composing it. In this respect, it has as much affinity to a legislative assembly as to an executive council. And being at once exempt from the restraint of an individual responsibility for the acts of the body, and deriving confidence from mutual example and joint influence, unauthorized measures would, of course, be more freely hazarded, than where the executive department is administered by a single hand, or by a few hands.

The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

PUBLIUS

FEDERALIST No. 49. Method of Guarding Against the Encroachments of Any One Department of Government by Appealing to the People Through a Convention.

For the Independent Journal. Saturday, February 2, 1788.

MADISON

To the People of the State of New York:

THE author of the "Notes on the State of Virginia," quoted in the last paper, has subjoined to that valuable work the draught of a constitution, which had been prepared in order to be laid before a convention, expected to be called in 1783, by the legislature, for the establishment of a constitution for that commonwealth. The plan, like every thing from the same pen, marks a turn of thinking, original, comprehensive, and accurate; and is the more worthy of attention as it equally displays a fervent attachment to republican government and an enlightened view of the dangerous propensities against which it ought to be guarded. One of the precautions which he proposes, and on which he appears ultimately to rely as a palladium to the weaker departments of power against the invasions of the stronger, is perhaps altogether his own, and as it immediately relates to the subject of our present inquiry, ought not to be overlooked.

His proposition is, "that whenever any two of the three branches of government shall concur in opinion, each by the voices of two thirds of their whole number, that a convention is necessary for altering the constitution, or CORRECTING BREACHES OF IT, a convention shall be called for the purpose."

As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of the

government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others. The several departments being perfectly co-ordinate by the terms of their common commission, none of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers; and how are the encroachments of the stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people themselves, who, as the grantors of the commissions, can alone declare its true meaning, and enforce its observance?

There is certainly great force in this reasoning, and it must be allowed to prove that a constitutional road to the decision of the people ought to be marked out and kept open, for certain great and extraordinary occasions. But there appear to be insuperable objections against the proposed recurrence to the people, as a provision in all cases for keeping the several departments of power within their constitutional limits.

In the first place, the provision does not reach the case of a combination of two of the departments against the third. If the legislative authority, which possesses so many means of operating on the motives of the other departments, should be able to gain to its interest either of the others, or even one third of its members, the remaining department could derive no advantage from its remedial provision. I do not dwell, however, on this objection, because it may be thought to be rather against the modification of the principle, than against the principle itself.

In the next place, it may be considered as an objection inherent in the principle, that as every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in a great measure, deprive the government of that veneration which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability. If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when left alone, and acquires firmness and confidence in proportion to the number with which it is associated. When the examples which fortify opinion are ANCIENT as well as NUMEROUS, they are known to have a double effect. In a nation of philosophers, this

consideration ought to be disregarded. A reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato. And in every other nation, the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side.

The danger of disturbing the public tranquillity by interesting too strongly the public passions, is a still more serious objection against a frequent reference of constitutional questions to the decision of the whole society. Notwithstanding the success which has attended the revisions of our established forms of government, and which does so much honor to the virtue and intelligence of the people of America, it must be confessed that the experiments are of too ticklish a nature to be unnecessarily multiplied. We are to recollect that all the existing constitutions were formed in the midst of a danger which repressed the passions most unfriendly to order and concord; of an enthusiastic confidence of the people in their patriotic leaders, which stifled the ordinary diversity of opinions on great national questions; of a universal ardor for new and opposite forms, produced by a universal resentment and indignation against the ancient government; and whilst no spirit of party connected with the changes to be made, or the abuses to be reformed, could mingle its leaven in the operation. The future situations in which we must expect to be usually placed, do not present any equivalent security against the danger which is apprehended.

But the greatest objection of all is, that the decisions which would probably result from such appeals would not answer the purpose of maintaining the constitutional equilibrium of the government. We have seen that the tendency of republican governments is to an aggrandizement of the legislative at the expense of the other departments. The appeals to the people, therefore, would usually be made by the executive and judiciary departments. But whether made by one side or the other, would each side enjoy equal advantages on the trial? Let us view their different situations. The members of the executive and judiciary departments are few in number, and can be personally known to a small part only of the people. The latter, by the mode of their appointment, as well as by the nature and permanency of it, are too far removed from the people to share much in their prepossessions. The former are generally the objects of jealousy, and their administration is always liable to be discolored and rendered unpopular.

The members of the legislative department, on the other hand, are numerous. They are distributed and dwell among the people at large. Their connections of blood, of friendship, and of acquaintance embrace a great proportion of the most influential part of the society. The nature of their public trust implies a personal influence among the people, and that they are more immediately the confidential guardians of the rights and liberties of the people. With these advantages, it can hardly be supposed that the adverse party would have an equal chance for a favorable issue.

But the legislative party would not only be able to plead their cause most successfully with the people. They would probably be constituted themselves the judges. The same influence which had gained them an election into the legislature, would gain them a seat in the convention. If this should not be the case with all, it would probably be the case with many, and pretty certainly with those leading characters, on whom every thing depends in such bodies. The convention, in short, would be composed chiefly of men who had been, who actually were, or who expected to be, members of the department whose conduct was arraigned. They would consequently be parties to the very question to be decided by them.

It might, however, sometimes happen, that appeals would be made under circumstances less adverse to the executive and judiciary departments. The usurpations of the legislature might be so flagrant and so sudden, as to admit of no specious coloring. A strong party among themselves might take side with the other branches. The executive power might be in the hands of a peculiar favorite of the people. In such a posture of things, the public decision might be less swayed by prepossessions in favor of the legislative party. But still it could never be expected to turn on the true merits of the question. It would inevitably be connected with the spirit of pre-existing parties, or of parties springing out of the question itself. It would be connected with persons of distinguished character and extensive influence in the community. It would be pronounced by the very men who had been agents in, or opponents of, the measures to which the decision would relate. The PASSIONS, therefore, not the REASON, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government.

We found in the last paper, that mere declarations in the written constitution are not sufficient to restrain the several departments within their legal rights. It appears in this, that occasional appeals to the people would be neither a proper nor an effectual provision for that purpose. How far the provisions of a different nature contained in the plan above quoted might be adequate, I do not examine. Some of them are unquestionably founded on sound political principles, and all of them are framed with singular ingenuity and precision.

PUBLIUS

FEDERALIST No. 50. Periodical Appeals to the People Considered

From the New York Packet. Tuesday, February 5, 1788.

MADISON

To the People of the State of New York:

IT MAY be contended, perhaps, that instead of OCCASIONAL appeals to the people, which are liable to the objections urged against them, PERIODICAL appeals are the proper and adequate means of PREVENTING AND CORRECTING INFRACTIONS OF THE CONSTITUTION.

It will be attended to, that in the examination of these expedients, I confine myself to their aptitude for ENFORCING the Constitution, by keeping the several departments of power within their due bounds, without particularly considering them as provisions for ALTERING the Constitution itself. In the first view, appeals to the people at fixed periods appear to be nearly as ineligible as appeals on particular occasions as they emerge. If the periods be separated by short intervals, the measures to be reviewed and rectified will have been of recent date, and will be connected with all the circumstances which tend to vitiate and pervert the result of occasional revisions. If the periods be distant from each other, the same remark will be applicable to all recent measures; and in proportion as the remoteness of the others may favor a dispassionate review of them, this advantage is inseparable from inconveniences which seem to counterbalance it. In the first place, a distant prospect of public censure would be a very feeble restraint on power from those excesses to which it might be urged by the force of present motives. Is it to be imagined that a legislative assembly, consisting of a hundred or two hundred members, eagerly bent on some favorite object, and breaking through the restraints of the Constitution in pursuit of it, would be arrested in their career, by considerations drawn from a censorial revision of their conduct at the future distance of ten, fifteen, or twenty years? In the next place, the abuses would often have completed

their mischievous effects before the remedial provision would be applied. And in the last place, where this might not be the case, they would be of long standing, would have taken deep root, and would not easily be extirpated.

The scheme of revising the constitution, in order to correct recent breaches of it, as well as for other purposes, has been actually tried in one of the States. One of the objects of the Council of Censors which met in Pennsylvania in 1783 and 1784, was, as we have seen, to inquire, "whether the constitution had been violated, and whether the legislative and executive departments had encroached upon each other." This important and novel experiment in politics merits, in several points of view, very particular attention. In some of them it may, perhaps, as a single experiment, made under circumstances somewhat peculiar, be thought to be not absolutely conclusive. But as applied to the case under consideration, it involves some facts, which I venture to remark, as a complete and satisfactory illustration of the reasoning which I have employed.

First. It appears, from the names of the gentlemen who composed the council, that some, at least, of its most active members had also been active and leading characters in the parties which pre-existed in the State.

Second. It appears that the same active and leading members of the council had been active and influential members of the legislative and executive branches, within the period to be reviewed; and even patrons or opponents of the very measures to be thus brought to the test of the constitution. Two of the members had been vice-presidents of the State, and several other members of the executive council, within the seven preceding years. One of them had been speaker, and a number of others distinguished members, of the legislative assembly within the same period.

Third. Every page of their proceedings witnesses the effect of all these circumstances on the temper of their deliberations. Throughout the continuance of the council, it was split into two fixed and violent parties. The fact is acknowledged and lamented by themselves. Had this not been the case, the face of their proceedings exhibits a proof equally satisfactory. In all questions, however unimportant in themselves, or unconnected with each other, the same names stand invariably contrasted on the opposite columns. Every unbiased observer may infer, without danger of mistake, and at the same time without meaning to reflect on either party, or any

individuals of either party, that, unfortunately, PASSION, not REASON, must have presided over their decisions. When men exercise their reason coolly and freely on a variety of distinct questions, they inevitably fall into different opinions on some of them. When they are governed by a common passion, their opinions, if they are so to be called, will be the same.

Fourth. It is at least problematical, whether the decisions of this body do not, in several instances, misconstrue the limits prescribed for the legislative and executive departments, instead of reducing and limiting them within their constitutional places.

Fifth. I have never understood that the decisions of the council on constitutional questions, whether rightly or erroneously formed, have had any effect in varying the practice founded on legislative constructions. It even appears, if I mistake not, that in one instance the contemporary legislature denied the constructions of the council, and actually prevailed in the contest.

This censorial body, therefore, proves at the same time, by its researches, the existence of the disease, and by its example, the inefficacy of the remedy.

This conclusion cannot be invalidated by alleging that the State in which the experiment was made was at that crisis, and had been for a long time before, violently heated and distracted by the rage of party. Is it to be presumed, that at any future septennial epoch the same State will be free from parties? Is it to be presumed that any other State, at the same or any other given period, will be exempt from them? Such an event ought to be neither presumed nor desired; because an extinction of parties necessarily implies either a universal alarm for the public safety, or an absolute extinction of liberty.

Were the precaution taken of excluding from the assemblies elected by the people, to revise the preceding administration of the government, all persons who should have been concerned with the government within the given period, the difficulties would not be obviated. The important task would probably devolve on men, who, with inferior capacities, would in other respects be little better qualified. Although they might not have been personally concerned in the administration, and therefore not immediately agents in the measures to be examined, they would probably have been

involved in the parties connected with these measures, and have been elected under their auspices.

PUBLIUS

FEDERALIST No. 51. The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.

For the Independent Journal. Wednesday, February 6, 1788.

MADISON

To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the

judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other—that the private interest of every individual may be a sentinel

over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among

distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished: and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased. Justice is the end of government. It is the end of civil society. It ever has

been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the REPUBLICAN CAUSE, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the FEDERAL PRINCIPLE.

PUBLIUS

FEDERALIST No. 52. The House of Representatives

From the New York Packet. Friday, February 8, 1788.

MADISON

To the People of the State of New York:

FROM the more general inquiries pursued in the four last papers, I pass on to a more particular examination of the several parts of the government. I shall begin with the House of Representatives.

The first view to be taken of this part of the government relates to the qualifications of the electors and the elected. Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone. To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention. The provision made by the convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State, because it is conformable to the standard already established, or which may be established, by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the federal Constitution.

The qualifications of the elected, being less carefully and properly defined by the State constitutions, and being at the same time more susceptible of uniformity, have been very properly considered and regulated by the convention. A representative of the United States must be of the age of twenty-five years; must have been seven years a citizen of the United States; must, at the time of his election, be an inhabitant of the State he is to represent; and, during the time of his service, must be in no office under the United States. Under these reasonable limitations, the door of this part of the federal government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith.

The term for which the representatives are to be elected falls under a second view which may be taken of this branch. In order to decide on the propriety of this article, two questions must be considered: first, whether biennial elections will, in this case, be safe; secondly, whether they be necessary or useful.

First. As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured. But what particular degree of frequency may be absolutely necessary for the purpose, does not appear to be susceptible of any precise calculation, and must depend on a variety of circumstances with which it may be connected. Let us consult experience, the guide that ought always to be followed whenever it can be found.

The scheme of representation, as a substitute for a meeting of the citizens in person, being at most but very imperfectly known to ancient polity, it is in more modern times only that we are to expect instructive examples. And even here, in order to avoid a research too vague and diffusive, it will be proper to confine ourselves to the few examples which are best known, and which bear the greatest analogy to our particular case. The first to which this character ought to be applied, is the House of Commons in Great Britain. The history of this branch of the English Constitution, anterior to the date of Magna Charta, is too obscure to yield instruction. The very existence of it has been made a question among political antiquaries. The

earliest records of subsequent date prove that parliaments were to SIT only every year; not that they were to be ELECTED every year. And even these annual sessions were left so much at the discretion of the monarch, that, under various pretexts, very long and dangerous intermissions were often contrived by royal ambition. To remedy this grievance, it was provided by a statute in the reign of Charles II, that the intermissions should not be protracted beyond a period of three years. On the accession of William III, when a revolution took place in the government, the subject was still more seriously resumed, and it was declared to be among the fundamental rights of the people that parliaments ought to be held FREQUENTLY. By another statute, which passed a few years later in the same reign, the term "frequently," which had alluded to the triennial period settled in the time of Charles II, is reduced to a precise meaning, it being expressly enacted that a new parliament shall be called within three years after the termination of the former. The last change, from three to seven years, is well known to have been introduced pretty early in the present century, under an alarm for the Hanoverian succession. From these facts it appears that the greatest frequency of elections which has been deemed necessary in that kingdom, for binding the representatives to their constituents, does not exceed a triennial return of them. And if we may argue from the degree of liberty retained even under septennial elections, and all the other vicious ingredients in the parliamentary constitution, we cannot doubt that a reduction of the period from seven to three years, with the other necessary reforms, would so far extend the influence of the people over their representatives as to satisfy us that biennial elections, under the federal system, cannot possibly be dangerous to the requisite dependence of the House of Representatives on their constituents.

Elections in Ireland, till of late, were regulated entirely by the discretion of the crown, and were seldom repeated, except on the accession of a new prince, or some other contingent event. The parliament which commenced with George II. was continued throughout his whole reign, a period of about thirty-five years. The only dependence of the representatives on the people consisted in the right of the latter to supply occasional vacancies by the election of new members, and in the chance of some event which might produce a general new election. The ability also of the Irish parliament to maintain the rights of their constituents, so far as the disposition might exist, was extremely shackled by the control of the crown over the subjects

of their deliberation. Of late these shackles, if I mistake not, have been broken; and octennial parliaments have besides been established. What effect may be produced by this partial reform, must be left to further experience. The example of Ireland, from this view of it, can throw but little light on the subject. As far as we can draw any conclusion from it, it must be that if the people of that country have been able under all these disadvantages to retain any liberty whatever, the advantage of biennial elections would secure to them every degree of liberty, which might depend on a due connection between their representatives and themselves.

Let us bring our inquiries nearer home. The example of these States, when British colonies, claims particular attention, at the same time that it is so well known as to require little to be said on it. The principle of representation, in one branch of the legislature at least, was established in all of them. But the periods of election were different. They varied from one to seven years. Have we any reason to infer, from the spirit and conduct of the representatives of the people, prior to the Revolution, that biennial elections would have been dangerous to the public liberties? The spirit which everywhere displayed itself at the commencement of the struggle, and which vanquished the obstacles to independence, is the best of proofs that a sufficient portion of liberty had been everywhere enjoyed to inspire both a sense of its worth and a zeal for its proper enlargement This remark holds good, as well with regard to the then colonies whose elections were least frequent, as to those whose elections were most frequent Virginia was the colony which stood first in resisting the parliamentary usurpations of Great Britain; it was the first also in espousing, by public act, the resolution of independence. In Virginia, nevertheless, if I have not been misinformed, elections under the former government were septennial. This particular example is brought into view, not as a proof of any peculiar merit, for the priority in those instances was probably accidental; and still less of any advantage in SEPTENNIAL elections, for when compared with a greater frequency they are inadmissible; but merely as a proof, and I conceive it to be a very substantial proof, that the liberties of the people can be in no danger from BIENNIAL elections.

The conclusion resulting from these examples will be not a little strengthened by recollecting three circumstances. The first is, that the federal legislature will possess a part only of that supreme legislative authority which is vested completely in the British Parliament; and which,

with a few exceptions, was exercised by the colonial assemblies and the Irish legislature. It is a received and well-founded maxim, that where no other circumstances affect the case, the greater the power is, the shorter ought to be its duration; and, conversely, the smaller the power, the more safely may its duration be protracted. In the second place, it has, on another occasion, been shown that the federal legislature will not only be restrained by its dependence on its people, as other legislative bodies are, but that it will be, moreover, watched and controlled by the several collateral legislatures, which other legislative bodies are not. And in the third place, no comparison can be made between the means that will be possessed by the more permanent branches of the federal government for seducing, if they should be disposed to seduce, the House of Representatives from their duty to the people, and the means of influence over the popular branch possessed by the other branches of the government above cited. With less power, therefore, to abuse, the federal representatives can be less tempted on one side, and will be doubly watched on the other.

PUBLIUS

FEDERALIST No. 53. The Same Subject Continued (The House of Representatives)

For the Independent Journal. Saturday, February 9, 1788.

MADISON

To the People of the State of New York:

I SHALL here, perhaps, be reminded of a current observation, "that where annual elections end, tyranny begins." If it be true, as has often been remarked, that sayings which become proverbial are generally founded in reason, it is not less true, that when once established, they are often applied to cases to which the reason of them does not extend. I need not look for a proof beyond the case before us. What is the reason on which this proverbial observation is founded? No man will subject himself to the ridicule of pretending that any natural connection subsists between the sun or the seasons, and the period within which human virtue can bear the temptations of power. Happily for mankind, liberty is not, in this respect, confined to any single point of time; but lies within extremes, which afford sufficient latitude for all the variations which may be required by the various situations and circumstances of civil society. The election of magistrates might be, if it were found expedient, as in some instances it actually has been, daily, weekly, or monthly, as well as annual; and if circumstances may require a deviation from the rule on one side, why not also on the other side? Turning our attention to the periods established among ourselves, for the election of the most numerous branches of the State legislatures, we find them by no means coinciding any more in this instance, than in the elections of other civil magistrates. In Connecticut and Rhode Island, the periods are half-yearly. In the other States, South Carolina excepted, they are annual. In South Carolina they are biennial—as is proposed in the federal government. Here is a difference, as four to one, between the longest and shortest periods; and yet it would be not easy to show, that Connecticut or Rhode Island is better governed, or enjoys a greater share of rational liberty, than South Carolina; or that either the one

or the other of these States is distinguished in these respects, and by these causes, from the States whose elections are different from both.

In searching for the grounds of this doctrine, I can discover but one, and that is wholly inapplicable to our case. The important distinction so well understood in America, between a Constitution established by the people and unalterable by the government, and a law established by the government and alterable by the government, seems to have been little understood and less observed in any other country. Wherever the supreme power of legislation has resided, has been supposed to reside also a full power to change the form of the government. Even in Great Britain, where the principles of political and civil liberty have been most discussed, and where we hear most of the rights of the Constitution, it is maintained that the authority of the Parliament is transcendent and uncontrollable, as well with regard to the Constitution, as the ordinary objects of legislative provision. They have accordingly, in several instances, actually changed, by legislative acts, some of the most fundamental articles of the government. They have in particular, on several occasions, changed the period of election; and, on the last occasion, not only introduced septennial in place of triennial elections, but by the same act, continued themselves in place four years beyond the term for which they were elected by the people. An attention to these dangerous practices has produced a very natural alarm in the votaries of free government, of which frequency of elections is the corner-stone; and has led them to seek for some security to liberty, against the danger to which it is exposed. Where no Constitution, paramount to the government, either existed or could be obtained, no constitutional security, similar to that established in the United States, was to be attempted. Some other security, therefore, was to be sought for; and what better security would the case admit, than that of selecting and appealing to some simple and familiar portion of time, as a standard for measuring the danger of innovations, for fixing the national sentiment, and for uniting the patriotic exertions? The most simple and familiar portion of time, applicable to the subject was that of a year; and hence the doctrine has been inculcated by a laudable zeal, to erect some barrier against the gradual innovations of an unlimited government, that the advance towards tyranny was to be calculated by the distance of departure from the fixed point of annual elections. But what necessity can there be of applying this expedient to a government limited, as the federal government will be, by the authority of a

paramount Constitution? Or who will pretend that the liberties of the people of America will not be more secure under biennial elections, unalterably fixed by such a Constitution, than those of any other nation would be, where elections were annual, or even more frequent, but subject to alterations by the ordinary power of the government?

The second question stated is, whether biennial elections be necessary or useful. The propriety of answering this question in the affirmative will appear from several very obvious considerations.

No man can be a competent legislator who does not add to an upright intention and a sound judgment a certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be acquired by means of information which lie within the compass of men in private as well as public stations. Another part can only be attained, or at least thoroughly attained, by actual experience in the station which requires the use of it. The period of service, ought, therefore, in all such cases, to bear some proportion to the extent of practical knowledge requisite to the due performance of the service. The period of legislative service established in most of the States for the more numerous branch is, as we have seen, one year. The question then may be put into this simple form: does the period of two years bear no greater proportion to the knowledge requisite for federal legislation than one year does to the knowledge requisite for State legislation? The very statement of the question, in this form, suggests the answer that ought to be given to it.

In a single State, the requisite knowledge relates to the existing laws which are uniform throughout the State, and with which all the citizens are more or less conversant; and to the general affairs of the State, which lie within a small compass, are not very diversified, and occupy much of the attention and conversation of every class of people. The great theatre of the United States presents a very different scene. The laws are so far from being uniform, that they vary in every State; whilst the public affairs of the Union are spread throughout a very extensive region, and are extremely diversified by the local affairs connected with them, and can with difficulty be correctly learnt in any other place than in the central councils to which a knowledge of them will be brought by the representatives of every part of the empire. Yet some knowledge of the affairs, and even of the laws, of all the States, ought to be possessed by the members from each of the States.

How can foreign trade be properly regulated by uniform laws, without some acquaintance with the commerce, the ports, the usages, and the regulations of the different States? How can the trade between the different States be duly regulated, without some knowledge of their relative situations in these and other respects? How can taxes be judiciously imposed and effectually collected, if they be not accommodated to the different laws and local circumstances relating to these objects in the different States? How can uniform regulations for the militia be duly provided, without a similar knowledge of many internal circumstances by which the States are distinguished from each other? These are the principal objects of federal legislation, and suggest most forcibly the extensive information which the representatives ought to acquire. The other interior objects will require a proportional degree of information with regard to them.

It is true that all these difficulties will, by degrees, be very much diminished. The most laborious task will be the proper inauguration of the government and the primeval formation of a federal code. Improvements on the first draughts will every year become both easier and fewer. Past transactions of the government will be a ready and accurate source of information to new members. The affairs of the Union will become more and more objects of curiosity and conversation among the citizens at large. And the increased intercourse among those of different States will contribute not a little to diffuse a mutual knowledge of their affairs, as this again will contribute to a general assimilation of their manners and laws. But with all these abatements, the business of federal legislation must continue so far to exceed, both in novelty and difficulty, the legislative business of a single State, as to justify the longer period of service assigned to those who are to transact it.

A branch of knowledge which belongs to the acquirements of a federal representative, and which has not been mentioned is that of foreign affairs. In regulating our own commerce he ought to be not only acquainted with the treaties between the United States and other nations, but also with the commercial policy and laws of other nations. He ought not to be altogether ignorant of the law of nations; for that, as far as it is a proper object of municipal legislation, is submitted to the federal government. And although the House of Representatives is not immediately to participate in foreign negotiations and arrangements, yet from the necessary connection between the several branches of public affairs, those particular branches will

frequently deserve attention in the ordinary course of legislation, and will sometimes demand particular legislative sanction and co-operation. Some portion of this knowledge may, no doubt, be acquired in a man's closet; but some of it also can only be derived from the public sources of information; and all of it will be acquired to best effect by a practical attention to the subject during the period of actual service in the legislature.

There are other considerations, of less importance, perhaps, but which are not unworthy of notice. The distance which many of the representatives will be obliged to travel, and the arrangements rendered necessary by that circumstance, might be much more serious objections with fit men to this service, if limited to a single year, than if extended to two years. No argument can be drawn on this subject, from the case of the delegates to the existing Congress. They are elected annually, it is true; but their re-election is considered by the legislative assemblies almost as a matter of course. The election of the representatives by the people would not be governed by the same principle.

A few of the members, as happens in all such assemblies, will possess superior talents; will, by frequent reelections, become members of long standing; will be thoroughly masters of the public business, and perhaps not unwilling to avail themselves of those advantages. The greater the proportion of new members, and the less the information of the bulk of the members the more apt will they be to fall into the snares that may be laid for them. This remark is no less applicable to the relation which will subsist between the House of Representatives and the Senate.

It is an inconvenience mingled with the advantages of our frequent elections even in single States, where they are large, and hold but one legislative session in a year, that spurious elections cannot be investigated and annulled in time for the decision to have its due effect. If a return can be obtained, no matter by what unlawful means, the irregular member, who takes his seat of course, is sure of holding it a sufficient time to answer his purposes. Hence, a very pernicious encouragement is given to the use of unlawful means, for obtaining irregular returns. Were elections for the federal legislature to be annual, this practice might become a very serious abuse, particularly in the more distant States. Each house is, as it necessarily must be, the judge of the elections, qualifications, and returns of its members; and whatever improvements may be suggested by experience,

for simplifying and accelerating the process in disputed cases, so great a portion of a year would unavoidably elapse, before an illegitimate member could be dispossessed of his seat, that the prospect of such an event would be little check to unfair and illicit means of obtaining a seat.

All these considerations taken together warrant us in affirming, that biennial elections will be as useful to the affairs of the public as we have seen that they will be safe to the liberty of the people.

PUBLIUS

FEDERALIST No. 54. The Apportionment of Members Among the States

From the New York Packet. Tuesday, February 12, 1788.

MADISON

To the People of the State of New York:

THE next view which I shall take of the House of Representatives relates to the appointment of its members to the several States which is to be determined by the same rule with that of direct taxes.

It is not contended that the number of people in each State ought not to be the standard for regulating the proportion of those who are to represent the people of each State. The establishment of the same rule for the appointment of taxes, will probably be as little contested; though the rule itself in this case, is by no means founded on the same principle. In the former case, the rule is understood to refer to the personal rights of the people, with which it has a natural and universal connection. In the latter, it has reference to the proportion of wealth, of which it is in no case a precise measure, and in ordinary cases a very unfit one. But notwithstanding the imperfection of the rule as applied to the relative wealth and contributions of the States, it is evidently the least objectionable among the practicable rules, and had too recently obtained the general sanction of America, not to have found a ready preference with the convention.

All this is admitted, it will perhaps be said; but does it follow, from an admission of numbers for the measure of representation, or of slaves combined with free citizens as a ratio of taxation, that slaves ought to be included in the numerical rule of representation? Slaves are considered as property, not as persons. They ought therefore to be comprehended in estimates of taxation which are founded on property, and to be excluded from representation which is regulated by a census of persons. This is the objection, as I understand it, stated in its full force. I shall be equally candid in stating the reasoning which may be offered on the opposite side.

"We subscribe to the doctrine," might one of our Southern brethren observe, "that representation relates more immediately to persons, and taxation more immediately to property, and we join in the application of this distinction to the case of our slaves. But we must deny the fact, that slaves are considered merely as property, and in no respect whatever as persons. The true state of the case is, that they partake of both these qualities: being considered by our laws, in some respects, as persons, and in other respects as property. In being compelled to labor, not for himself, but for a master; in being vendible by one master to another master; and in being subject at all times to be restrained in his liberty and chastised in his body, by the capricious will of another—the slave may appear to be degraded from the human rank, and classed with those irrational animals which fall under the legal denomination of property. In being protected, on the other hand, in his life and in his limbs, against the violence of all others, even the master of his labor and his liberty; and in being punishable himself for all violence committed against others—the slave is no less evidently regarded by the law as a member of the society, not as a part of the irrational creation; as a moral person, not as a mere article of property. The federal Constitution, therefore, decides with great propriety on the case of our slaves, when it views them in the mixed character of persons and of property. This is in fact their true character. It is the character bestowed on them by the laws under which they live; and it will not be denied, that these are the proper criterion; because it is only under the pretext that the laws have transformed the negroes into subjects of property, that a place is disputed them in the computation of numbers; and it is admitted, that if the laws were to restore the rights which have been taken away, the negroes could no longer be refused an equal share of representation with the other inhabitants.

"This question may be placed in another light. It is agreed on all sides, that numbers are the best scale of wealth and taxation, as they are the only proper scale of representation. Would the convention have been impartial or consistent, if they had rejected the slaves from the list of inhabitants, when the shares of representation were to be calculated, and inserted them on the lists when the tariff of contributions was to be adjusted? Could it be reasonably expected, that the Southern States would concur in a system, which considered their slaves in some degree as men, when burdens were to be imposed, but refused to consider them in the same light, when advantages were to be conferred? Might not some surprise also be

expressed, that those who reproach the Southern States with the barbarous policy of considering as property a part of their human brethren, should themselves contend, that the government to which all the States are to be parties, ought to consider this unfortunate race more completely in the unnatural light of property, than the very laws of which they complain?

"It may be replied, perhaps, that slaves are not included in the estimate of representatives in any of the States possessing them. They neither vote themselves nor increase the votes of their masters. Upon what principle, then, ought they to be taken into the federal estimate of representation? In rejecting them altogether, the Constitution would, in this respect, have followed the very laws which have been appealed to as the proper guide.

"This objection is repelled by a single observation. It is a fundamental principle of the proposed Constitution, that as the aggregate number of representatives allotted to the several States is to be determined by a federal rule, founded on the aggregate number of inhabitants, so the right of choosing this allotted number in each State is to be exercised by such part of the inhabitants as the State itself may designate. The qualifications on which the right of suffrage depend are not, perhaps, the same in any two States. In some of the States the difference is very material. In every State, a certain proportion of inhabitants are deprived of this right by the constitution of the State, who will be included in the census by which the federal Constitution apportions the representatives. In this point of view the Southern States might retort the complaint, by insisting that the principle laid down by the convention required that no regard should be had to the policy of particular States towards their own inhabitants; and consequently, that the slaves, as inhabitants, should have been admitted into the census according to their full number, in like manner with other inhabitants, who, by the policy of other States, are not admitted to all the rights of citizens. A rigorous adherence, however, to this principle, is waived by those who would be gainers by it. All that they ask is that equal moderation be shown on the other side. Let the case of the slaves be considered, as it is in truth, a peculiar one. Let the compromising expedient of the Constitution be mutually adopted, which regards them as inhabitants, but as debased by servitude below the equal level of free inhabitants, which regards the SLAVE as divested of two fifths of the MAN.

"After all, may not another ground be taken on which this article of the Constitution will admit of a still more ready defense? We have hitherto proceeded on the idea that representation related to persons only, and not at all to property. But is it a just idea? Government is instituted no less for protection of the property, than of the persons, of individuals. The one as well as the other, therefore, may be considered as represented by those who are charged with the government. Upon this principle it is, that in several of the States, and particularly in the State of New York, one branch of the government is intended more especially to be the guardian of property, and is accordingly elected by that part of the society which is most interested in this object of government. In the federal Constitution, this policy does not prevail. The rights of property are committed into the same hands with the personal rights. Some attention ought, therefore, to be paid to property in the choice of those hands.

"For another reason, the votes allowed in the federal legislature to the people of each State, ought to bear some proportion to the comparative wealth of the States. States have not, like individuals, an influence over each other, arising from superior advantages of fortune. If the law allows an opulent citizen but a single vote in the choice of his representative, the respect and consequence which he derives from his fortunate situation very frequently guide the votes of others to the objects of his choice; and through this imperceptible channel the rights of property are conveyed into the public representation. A State possesses no such influence over other States. It is not probable that the richest State in the Confederacy will ever influence the choice of a single representative in any other State. Nor will the representatives of the larger and richer States possess any other advantage in the federal legislature, over the representatives of other States, than what may result from their superior number alone. As far, therefore, as their superior wealth and weight may justly entitle them to any advantage, it ought to be secured to them by a superior share of representation. The new Constitution is, in this respect, materially different from the existing Confederation, as well as from that of the United Netherlands, and other similar confederacies. In each of the latter, the efficacy of the federal resolutions depends on the subsequent and voluntary resolutions of the states composing the union. Hence the states, though possessing an equal vote in the public councils, have an unequal influence, corresponding with the unequal importance of these subsequent and voluntary resolutions.

Under the proposed Constitution, the federal acts will take effect without the necessary intervention of the individual States. They will depend merely on the majority of votes in the federal legislature, and consequently each vote, whether proceeding from a larger or smaller State, or a State more or less wealthy or powerful, will have an equal weight and efficacy: in the same manner as the votes individually given in a State legislature, by the representatives of unequal counties or other districts, have each a precise equality of value and effect; or if there be any difference in the case, it proceeds from the difference in the personal character of the individual representative, rather than from any regard to the extent of the district from which he comes."

Such is the reasoning which an advocate for the Southern interests might employ on this subject; and although it may appear to be a little strained in some points, yet, on the whole, I must confess that it fully reconciles me to the scale of representation which the convention have established.

In one respect, the establishment of a common measure for representation and taxation will have a very salutary effect. As the accuracy of the census to be obtained by the Congress will necessarily depend, in a considerable degree on the disposition, if not on the co-operation, of the States, it is of great importance that the States should feel as little bias as possible, to swell or to reduce the amount of their numbers. Were their share of representation alone to be governed by this rule, they would have an interest in exaggerating their inhabitants. Were the rule to decide their share of taxation alone, a contrary temptation would prevail. By extending the rule to both objects, the States will have opposite interests, which will control and balance each other, and produce the requisite impartiality.

PUBLIUS

FEDERALIST No. 55. The Total Number of the House of Representatives

For the Independent Journal. Wednesday, February 13, 1788.

MADISON

To the People of the State of New York:

THE number of which the House of Representatives is to consist, forms another and a very interesting point of view, under which this branch of the federal legislature may be contemplated. Scarce any article, indeed, in the whole Constitution seems to be rendered more worthy of attention, by the weight of character and the apparent force of argument with which it has been assailed. The charges exhibited against it are, first, that so small a number of representatives will be an unsafe depositary of the public interests; secondly, that they will not possess a proper knowledge of the local circumstances of their numerous constituents; thirdly, that they will be taken from that class of citizens which will sympathize least with the feelings of the mass of the people, and be most likely to aim at a permanent elevation of the few on the depression of the many; fourthly, that defective as the number will be in the first instance, it will be more and more disproportionate, by the increase of the people, and the obstacles which will prevent a correspondent increase of the representatives.

In general it may be remarked on this subject, that no political problem is less susceptible of a precise solution than that which relates to the number most convenient for a representative legislature; nor is there any point on which the policy of the several States is more at variance, whether we compare their legislative assemblies directly with each other, or consider the proportions which they respectively bear to the number of their constituents. Passing over the difference between the smallest and largest States, as Delaware, whose most numerous branch consists of twenty-one representatives, and Massachusetts, where it amounts to between three and four hundred, a very considerable difference is observable among States nearly equal in population. The number of representatives in Pennsylvania

is not more than one fifth of that in the State last mentioned. New York, whose population is to that of South Carolina as six to five, has little more than one third of the number of representatives. As great a disparity prevails between the States of Georgia and Delaware or Rhode Island. In Pennsylvania, the representatives do not bear a greater proportion to their constituents than of one for every four or five thousand. In Rhode Island, they bear a proportion of at least one for every thousand. And according to the constitution of Georgia, the proportion may be carried to one to every ten electors; and must unavoidably far exceed the proportion in any of the other States.

Another general remark to be made is, that the ratio between the representatives and the people ought not to be the same where the latter are very numerous as where they are very few. Were the representatives in Virginia to be regulated by the standard in Rhode Island, they would, at this time, amount to between four and five hundred; and twenty or thirty years hence, to a thousand. On the other hand, the ratio of Pennsylvania, if applied to the State of Delaware, would reduce the representative assembly of the latter to seven or eight members. Nothing can be more fallacious than to found our political calculations on arithmetical principles. Sixty or seventy men may be more properly trusted with a given degree of power than six or seven. But it does not follow that six or seven hundred would be proportionably a better depositary. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is, that in all cases a certain number at least seems to be necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes; as, on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever character composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.

It is necessary also to recollect here the observations which were applied to the case of biennial elections. For the same reason that the limited powers of the Congress, and the control of the State legislatures, justify less frequent elections than the public safely might otherwise require, the members of the Congress need be less numerous than if they possessed the

whole power of legislation, and were under no other than the ordinary restraints of other legislative bodies.

With these general ideas in our mind, let us weigh the objections which have been stated against the number of members proposed for the House of Representatives. It is said, in the first place, that so small a number cannot be safely trusted with so much power.

The number of which this branch of the legislature is to consist, at the outset of the government, will be sixty-five. Within three years a census is to be taken, when the number may be augmented to one for every thirty thousand inhabitants; and within every successive period of ten years the census is to be renewed, and augmentations may continue to be made under the above limitation. It will not be thought an extravagant conjecture that the first census will, at the rate of one for every thirty thousand, raise the number of representatives to at least one hundred. Estimating the negroes in the proportion of three fifths, it can scarcely be doubted that the population of the United States will by that time, if it does not already, amount to three millions. At the expiration of twenty-five years, according to the computed rate of increase, the number of representatives will amount to two hundred, and of fifty years, to four hundred. This is a number which, I presume, will put an end to all fears arising from the smallness of the body. I take for granted here what I shall, in answering the fourth objection, hereafter show, that the number of representatives will be augmented from time to time in the manner provided by the Constitution. On a contrary supposition, I should admit the objection to have very great weight indeed.

The true question to be decided then is, whether the smallness of the number, as a temporary regulation, be dangerous to the public liberty? Whether sixty-five members for a few years, and a hundred or two hundred for a few more, be a safe depositary for a limited and well-guarded power of legislating for the United States? I must own that I could not give a negative answer to this question, without first obliterating every impression which I have received with regard to the present genius of the people of America, the spirit which actuates the State legislatures, and the principles which are incorporated with the political character of every class of citizens I am unable to conceive that the people of America, in their present temper, or under any circumstances which can speedily happen, will choose, and every second year repeat the choice of, sixty-five or a hundred men who

would be disposed to form and pursue a scheme of tyranny or treachery. I am unable to conceive that the State legislatures, which must feel so many motives to watch, and which possess so many means of counteracting, the federal legislature, would fail either to detect or to defeat a conspiracy of the latter against the liberties of their common constituents. I am equally unable to conceive that there are at this time, or can be in any short time, in the United States, any sixty-five or a hundred men capable of recommending themselves to the choice of the people at large, who would either desire or dare, within the short space of two years, to betray the solemn trust committed to them. What change of circumstances, time, and a fuller population of our country may produce, requires a prophetic spirit to declare, which makes no part of my pretensions. But judging from the circumstances now before us, and from the probable state of them within a moderate period of time, I must pronounce that the liberties of America cannot be unsafe in the number of hands proposed by the federal Constitution.

From what quarter can the danger proceed? Are we afraid of foreign gold? If foreign gold could so easily corrupt our federal rulers and enable them to ensnare and betray their constituents, how has it happened that we are at this time a free and independent nation? The Congress which conducted us through the Revolution was a less numerous body than their successors will be; they were not chosen by, nor responsible to, their fellowcitizens at large; though appointed from year to year, and recallable at pleasure, they were generally continued for three years, and prior to the ratification of the federal articles, for a still longer term. They held their consultations always under the veil of secrecy; they had the sole transaction of our affairs with foreign nations; through the whole course of the war they had the fate of their country more in their hands than it is to be hoped will ever be the case with our future representatives; and from the greatness of the prize at stake, and the eagerness of the party which lost it, it may well be supposed that the use of other means than force would not have been scrupled. Yet we know by happy experience that the public trust was not betrayed; nor has the purity of our public councils in this particular ever suffered, even from the whispers of calumny.

Is the danger apprehended from the other branches of the federal government? But where are the means to be found by the President, or the Senate, or both? Their emoluments of office, it is to be presumed, will not,

and without a previous corruption of the House of Representatives cannot, more than suffice for very different purposes; their private fortunes, as they must all be American citizens, cannot possibly be sources of danger. The only means, then, which they can possess, will be in the dispensation of appointments. Is it here that suspicion rests her charge? Sometimes we are told that this fund of corruption is to be exhausted by the President in subduing the virtue of the Senate. Now, the fidelity of the other House is to be the victim. The improbability of such a mercenary and perfidious combination of the several members of government, standing on as different foundations as republican principles will well admit, and at the same time accountable to the society over which they are placed, ought alone to quiet this apprehension. But, fortunately, the Constitution has provided a still further safeguard. The members of the Congress are rendered ineligible to any civil offices that may be created, or of which the emoluments may be increased, during the term of their election. No offices therefore can be dealt out to the existing members but such as may become vacant by ordinary casualties: and to suppose that these would be sufficient to purchase the guardians of the people, selected by the people themselves, is to renounce every rule by which events ought to be calculated, and to substitute an indiscriminate and unbounded jealousy, with which all reasoning must be vain. The sincere friends of liberty, who give themselves up to the extravagancies of this passion, are not aware of the injury they do their own cause. As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us faithful likenesses of the human character, the inference would be, that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.

PUBLIUS

FEDERALIST No. 56. The Same Subject Continued (The Total Number of the House of Representatives)

For the Independent Journal. Saturday, February 16, 1788.

MADISON

To the People of the State of New York:

THE SECOND charge against the House of Representatives is, that it will be too small to possess a due knowledge of the interests of its constituents.

As this objection evidently proceeds from a comparison of the proposed number of representatives with the great extent of the United States, the number of their inhabitants, and the diversity of their interests, without taking into view at the same time the circumstances which will distinguish the Congress from other legislative bodies, the best answer that can be given to it will be a brief explanation of these peculiarities.

It is a sound and important principle that the representative ought to be acquainted with the interests and circumstances of his constituents. But this principle can extend no further than to those circumstances and interests to which the authority and care of the representative relate. An ignorance of a variety of minute and particular objects, which do not lie within the compass of legislation, is consistent with every attribute necessary to a due performance of the legislative trust. In determining the extent of information required in the exercise of a particular authority, recourse then must be had to the objects within the purview of that authority.

What are to be the objects of federal legislation? Those which are of most importance, and which seem most to require local knowledge, are commerce, taxation, and the militia.

A proper regulation of commerce requires much information, as has been elsewhere remarked; but as far as this information relates to the laws and

local situation of each individual State, a very few representatives would be very sufficient vehicles of it to the federal councils.

Taxation will consist, in a great measure, of duties which will be involved in the regulation of commerce. So far the preceding remark is applicable to this object. As far as it may consist of internal collections, a more diffusive knowledge of the circumstances of the State may be necessary. But will not this also be possessed in sufficient degree by a very few intelligent men, diffusively elected within the State? Divide the largest State into ten or twelve districts, and it will be found that there will be no peculiar local interests in either, which will not be within the knowledge of the representative of the district. Besides this source of information, the laws of the State, framed by representatives from every part of it, will be almost of themselves a sufficient guide. In every State there have been made, and must continue to be made, regulations on this subject which will, in many cases, leave little more to be done by the federal legislature, than to review the different laws, and reduce them in one general act. A skillful individual in his closet with all the local codes before him, might compile a law on some subjects of taxation for the whole union, without any aid from oral information, and it may be expected that whenever internal taxes may be necessary, and particularly in cases requiring uniformity throughout the States, the more simple objects will be preferred. To be fully sensible of the facility which will be given to this branch of federal legislation by the assistance of the State codes, we need only suppose for a moment that this or any other State were divided into a number of parts, each having and exercising within itself a power of local legislation. Is it not evident that a degree of local information and preparatory labor would be found in the several volumes of their proceedings, which would very much shorten the labors of the general legislature, and render a much smaller number of members sufficient for it? The federal councils will derive great advantage from another circumstance. The representatives of each State will not only bring with them a considerable knowledge of its laws, and a local knowledge of their respective districts, but will probably in all cases have been members, and may even at the very time be members, of the State legislature, where all the local information and interests of the State are assembled, and from whence they may easily be conveyed by a very few hands into the legislature of the United States.

(The observations made on the subject of taxation apply with greater force to the case of the militia. For however different the rules of discipline may be in different States, they are the same throughout each particular State; and depend on circumstances which can differ but little in different parts of the same State.)(E1)

(With regard to the regulation of the militia, there are scarcely any circumstances in reference to which local knowledge can be said to be necessary. The general face of the country, whether mountainous or level, most fit for the operations of infantry or cavalry, is almost the only consideration of this nature that can occur. The art of war teaches general principles of organization, movement, and discipline, which apply universally.)(E1)

The attentive reader will discern that the reasoning here used, to prove the sufficiency of a moderate number of representatives, does not in any respect contradict what was urged on another occasion with regard to the extensive information which the representatives ought to possess, and the time that might be necessary for acquiring it. This information, so far as it may relate to local objects, is rendered necessary and difficult, not by a difference of laws and local circumstances within a single State, but of those among different States. Taking each State by itself, its laws are the same, and its interests but little diversified. A few men, therefore, will possess all the knowledge requisite for a proper representation of them. Were the interests and affairs of each individual State perfectly simple and uniform, a knowledge of them in one part would involve a knowledge of them in every other, and the whole State might be competently represented by a single member taken from any part of it. On a comparison of the different States together, we find a great dissimilarity in their laws, and in many other circumstances connected with the objects of federal legislation, with all of which the federal representatives ought to have some acquaintance. Whilst a few representatives, therefore, from each State, may bring with them a due knowledge of their own State, every representative will have much information to acquire concerning all the other States. The changes of time, as was formerly remarked, on the comparative situation of the different States, will have an assimilating effect. The effect of time on the internal affairs of the States, taken singly, will be just the contrary. At present some of the States are little more than a society of husbandmen. Few of them have made much progress in those branches of industry which

give a variety and complexity to the affairs of a nation. These, however, will in all of them be the fruits of a more advanced population, and will require, on the part of each State, a fuller representation. The foresight of the convention has accordingly taken care that the progress of population may be accompanied with a proper increase of the representative branch of the government.

The experience of Great Britain, which presents to mankind so many political lessons, both of the monitory and exemplary kind, and which has been frequently consulted in the course of these inquiries, corroborates the result of the reflections which we have just made. The number of inhabitants in the two kingdoms of England and Scotland cannot be stated at less than eight millions. The representatives of these eight millions in the House of Commons amount to five hundred and fifty-eight. Of this number, one ninth are elected by three hundred and sixty-four persons, and one half, by five thousand seven hundred and twenty-three persons.(1) It cannot be supposed that the half thus elected, and who do not even reside among the people at large, can add any thing either to the security of the people against the government, or to the knowledge of their circumstances and interests in the legislative councils. On the contrary, it is notorious, that they are more frequently the representatives and instruments of the executive magistrate, than the guardians and advocates of the popular rights. They might therefore, with great propriety, be considered as something more than a mere deduction from the real representatives of the nation. We will, however, consider them in this light alone, and will not extend the deduction to a considerable number of others, who do not reside among their constitutents, are very faintly connected with them, and have very little particular knowledge of their affairs. With all these concessions, two hundred and seventy-nine persons only will be the depository of the safety, interest, and happiness of eight millions that is to say, there will be one representative only to maintain the rights and explain the situation of TWENTY-EIGHT THOUSAND SIX HUNDRED AND SEVENTY constitutents, in an assembly exposed to the whole force of executive influence, and extending its authority to every object of legislation within a nation whose affairs are in the highest degree diversified and complicated. Yet it is very certain, not only that a valuable portion of freedom has been preserved under all these circumstances, but that the defects in the British code are chargeable, in a very small proportion, on the ignorance of the

legislature concerning the circumstances of the people. Allowing to this case the weight which is due to it, and comparing it with that of the House of Representatives as above explained it seems to give the fullest assurance, that a representative for every THIRTY THOUSAND INHABITANTS will render the latter both a safe and competent guardian of the interests which will be confided to it.

PUBLIUS

1. Burgh's "Political Disquisitions."

E1. Two versions of this paragraph appear in different editions.

FEDERALIST No. 57. The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation.

From the New York Packet. Tuesday, February 19, 1788.

MADISON

To the People of the State of New York:

THE THIRD charge against the House of Representatives is, that it will be taken from that class of citizens which will have least sympathy with the mass of the people, and be most likely to aim at an ambitious sacrifice of the many to the aggrandizement of the few.

Of all the objections which have been framed against the federal Constitution, this is perhaps the most extraordinary. Whilst the objection itself is levelled against a pretended oligarchy, the principle of it strikes at the very root of republican government.

The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust. The elective mode of obtaining rulers is the characteristic policy of republican government. The means relied on in this form of government for preventing their degeneracy are numerous and various. The most effectual one, is such a limitation of the term of appointments as will maintain a proper responsibility to the people.

Let me now ask what circumstance there is in the constitution of the House of Representatives that violates the principles of republican government, or favors the elevation of the few on the ruins of the many? Let me ask whether every circumstance is not, on the contrary, strictly conformable to these principles, and scrupulously impartial to the rights and pretensions of every class and description of citizens?

Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State.

Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, of religious faith, or of civil profession is permitted to fetter the judgement or disappoint the inclination of the people.

If we consider the situation of the men on whom the free suffrages of their fellow-citizens may confer the representative trust, we shall find it involving every security which can be devised or desired for their fidelity to their constituents.

In the first place, as they will have been distinguished by the preference of their fellow-citizens, we are to presume that in general they will be somewhat distinguished also by those qualities which entitle them to it, and which promise a sincere and scrupulous regard to the nature of their engagements.

In the second place, they will enter into the public service under circumstances which cannot fail to produce a temporary affection at least to their constituents. There is in every breast a sensibility to marks of honor, of favor, of esteem, and of confidence, which, apart from all considerations of interest, is some pledge for grateful and benevolent returns. Ingratitude is a common topic of declamation against human nature; and it must be confessed that instances of it are but too frequent and flagrant, both in public and in private life. But the universal and extreme indignation which it inspires is itself a proof of the energy and prevalence of the contrary sentiment.

In the third place, those ties which bind the representative to his constituents are strengthened by motives of a more selfish nature. His pride and vanity attach him to a form of government which favors his pretensions and gives him a share in its honors and distinctions. Whatever hopes or projects might be entertained by a few aspiring characters, it must generally happen that a great proportion of the men deriving their advancement from their influence with the people, would have more to hope from a

preservation of the favor, than from innovations in the government subversive of the authority of the people.

All these securities, however, would be found very insufficient without the restraint of frequent elections. Hence, in the fourth place, the House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it.

I will add, as a fifth circumstance in the situation of the House of Representatives, restraining them from oppressive measures, that they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments, of which few governments have furnished examples; but without which every government degenerates into tyranny. If it be asked, what is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of the society? I answer: the genius of the whole system; the nature of just and constitutional laws; and above all, the vigilant and manly spirit which actuates the people of America—a spirit which nourishes freedom, and in return is nourished by it.

If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate any thing but liberty.

Such will be the relation between the House of Representatives and their constituents. Duty, gratitude, interest, ambition itself, are the chords by which they will be bound to fidelity and sympathy with the great mass of the people. It is possible that these may all be insufficient to control the caprice and wickedness of man. But are they not all that government will admit, and that human prudence can devise? Are they not the genuine and the characteristic means by which republican government provides for the

liberty and happiness of the people? Are they not the identical means on which every State government in the Union relies for the attainment of these important ends? What then are we to understand by the objection which this paper has combated? What are we to say to the men who profess the most flaming zeal for republican government, yet boldly impeach the fundamental principle of it; who pretend to be champions for the right and the capacity of the people to choose their own rulers, yet maintain that they will prefer those only who will immediately and infallibly betray the trust committed to them?

Were the objection to be read by one who had not seen the mode prescribed by the Constitution for the choice of representatives, he could suppose nothing less than that some unreasonable qualification of property was annexed to the right of suffrage; or that the right of eligibility was limited to persons of particular families or fortunes; or at least that the mode prescribed by the State constitutions was in some respect or other, very grossly departed from. We have seen how far such a supposition would err, as to the two first points. Nor would it, in fact, be less erroneous as to the last. The only difference discoverable between the two cases is, that each representative of the United States will be elected by five or six thousand citizens; whilst in the individual States, the election of a representative is left to about as many hundreds. Will it be pretended that this difference is sufficient to justify an attachment to the State governments, and an abhorrence to the federal government? If this be the point on which the objection turns, it deserves to be examined.

Is it supported by REASON? This cannot be said, without maintaining that five or six thousand citizens are less capable of choosing a fit representative, or more liable to be corrupted by an unfit one, than five or six hundred. Reason, on the contrary, assures us, that as in so great a number a fit representative would be most likely to be found, so the choice would be less likely to be diverted from him by the intrigues of the ambitious or the ambitious or the bribes of the rich.

Is the CONSEQUENCE from this doctrine admissible? If we say that five or six hundred citizens are as many as can jointly exercise their right of suffrage, must we not deprive the people of the immediate choice of their public servants, in every instance where the administration of the

government does not require as many of them as will amount to one for that number of citizens?

Is the doctrine warranted by FACTS? It was shown in the last paper, that the real representation in the British House of Commons very little exceeds the proportion of one for every thirty thousand inhabitants. Besides a variety of powerful causes not existing here, and which favor in that country the pretensions of rank and wealth, no person is eligible as a representative of a county, unless he possess real estate of the clear value of six hundred pounds sterling per year; nor of a city or borough, unless he possess a like estate of half that annual value. To this qualification on the part of the county representatives is added another on the part of the county electors, which restrains the right of suffrage to persons having a freehold estate of the annual value of more than twenty pounds sterling, according to the present rate of money. Notwithstanding these unfavorable circumstances, and notwithstanding some very unequal laws in the British code, it cannot be said that the representatives of the nation have elevated the few on the ruins of the many.

But we need not resort to foreign experience on this subject. Our own is explicit and decisive. The districts in New Hampshire in which the senators are chosen immediately by the people, are nearly as large as will be necessary for her representatives in the Congress. Those of Massachusetts are larger than will be necessary for that purpose; and those of New York still more so. In the last State the members of Assembly for the cities and counties of New York and Albany are elected by very nearly as many voters as will be entitled to a representative in the Congress, calculating on the number of sixty-five representatives only. It makes no difference that in these senatorial districts and counties a number of representatives are voted for by each elector at the same time. If the same electors at the same time are capable of choosing four or five representatives, they cannot be incapable of choosing one. Pennsylvania is an additional example. Some of her counties, which elect her State representatives, are almost as large as her districts will be by which her federal representatives will be elected. The city of Philadelphia is supposed to contain between fifty and sixty thousand souls. It will therefore form nearly two districts for the choice of federal representatives. It forms, however, but one county, in which every elector votes for each of its representatives in the State legislature. And what may appear to be still more directly to our purpose, the whole city actually elects

a SINGLE MEMBER for the executive council. This is the case in all the other counties of the State.

Are not these facts the most satisfactory proofs of the fallacy which has been employed against the branch of the federal government under consideration? Has it appeared on trial that the senators of New Hampshire, Massachusetts, and New York, or the executive council of Pennsylvania, or the members of the Assembly in the two last States, have betrayed any peculiar disposition to sacrifice the many to the few, or are in any respect less worthy of their places than the representatives and magistrates appointed in other States by very small divisions of the people?

But there are cases of a stronger complexion than any which I have yet quoted. One branch of the legislature of Connecticut is so constituted that each member of it is elected by the whole State. So is the governor of that State, of Massachusetts, and of this State, and the president of New Hampshire. I leave every man to decide whether the result of any one of these experiments can be said to countenance a suspicion, that a diffusive mode of choosing representatives of the people tends to elevate traitors and to undermine the public liberty.

PUBLIUS

FEDERALIST No. 58. Objection That The Number of Members Will Not Be Augmented as the Progress of Population Demands.

Considered For the Independent Journal Wednesday, February 20, 1788.

MADISON

To the People of the State of New York:

THE remaining charge against the House of Representatives, which I am to examine, is grounded on a supposition that the number of members will not be augmented from time to time, as the progress of population may demand.

It has been admitted, that this objection, if well supported, would have great weight. The following observations will show that, like most other objections against the Constitution, it can only proceed from a partial view of the subject, or from a jealousy which discolors and disfigures every object which is beheld.

1. Those who urge the objection seem not to have recollected that the federal Constitution will not suffer by a comparison with the State constitutions, in the security provided for a gradual augmentation of the number of representatives. The number which is to prevail in the first instance is declared to be temporary. Its duration is limited to the short term of three years.

Within every successive term of ten years a census of inhabitants is to be repeated. The unequivocal objects of these regulations are, first, to readjust, from time to time, the apportionment of representatives to the number of inhabitants, under the single exception that each State shall have one representative at least; secondly, to augment the number of representatives at the same periods, under the sole limitation that the whole number shall not exceed one for every thirty thousand inhabitants. If we review the constitutions of the several States, we shall find that some of them contain

no determinate regulations on this subject, that others correspond pretty much on this point with the federal Constitution, and that the most effectual security in any of them is resolvable into a mere directory provision.

2. As far as experience has taken place on this subject, a gradual increase of representatives under the State constitutions has at least kept pace with that of the constituents, and it appears that the former have been as ready to concur in such measures as the latter have been to call for them.

3. There is a peculiarity in the federal Constitution which insures a watchful attention in a majority both of the people and of their representatives to a constitutional augmentation of the latter. The peculiarity lies in this, that one branch of the legislature is a representation of citizens, the other of the States: in the former, consequently, the larger States will have most weight; in the latter, the advantage will be in favor of the smaller States. From this circumstance it may with certainty be inferred that the larger States will be strenuous advocates for increasing the number and weight of that part of the legislature in which their influence predominates. And it so happens that four only of the largest will have a majority of the whole votes in the House of Representatives. Should the representatives or people, therefore, of the smaller States oppose at any time a reasonable addition of members, a coalition of a very few States will be sufficient to overrule the opposition; a coalition which, notwithstanding the rivalship and local prejudices which might prevent it on ordinary occasions, would not fail to take place, when not merely prompted by common interest, but justified by equity and the principles of the Constitution.

It may be alleged, perhaps, that the Senate would be prompted by like motives to an adverse coalition; and as their concurrence would be indispensable, the just and constitutional views of the other branch might be defeated. This is the difficulty which has probably created the most serious apprehensions in the jealous friends of a numerous representation. Fortunately it is among the difficulties which, existing only in appearance, vanish on a close and accurate inspection. The following reflections will, if I mistake not, be admitted to be conclusive and satisfactory on this point.

Notwithstanding the equal authority which will subsist between the two houses on all legislative subjects, except the originating of money bills, it cannot be doubted that the House, composed of the greater number of members, when supported by the more powerful States, and speaking the

known and determined sense of a majority of the people, will have no small advantage in a question depending on the comparative firmness of the two houses.

This advantage must be increased by the consciousness, felt by the same side of being supported in its demands by right, by reason, and by the Constitution; and the consciousness, on the opposite side, of contending against the force of all these solemn considerations.

It is farther to be considered, that in the gradation between the smallest and largest States, there are several, which, though most likely in general to arrange themselves among the former are too little removed in extent and population from the latter, to second an opposition to their just and legitimate pretensions. Hence it is by no means certain that a majority of votes, even in the Senate, would be unfriendly to proper augmentations in the number of representatives.

It will not be looking too far to add, that the senators from all the new States may be gained over to the just views of the House of Representatives, by an expedient too obvious to be overlooked. As these States will, for a great length of time, advance in population with peculiar rapidity, they will be interested in frequent reapportionments of the representatives to the number of inhabitants. The large States, therefore, who will prevail in the House of Representatives, will have nothing to do but to make reapportionments and augmentations mutually conditions of each other; and the senators from all the most growing States will be bound to contend for the latter, by the interest which their States will feel in the former.

These considerations seem to afford ample security on this subject, and ought alone to satisfy all the doubts and fears which have been indulged with regard to it. Admitting, however, that they should all be insufficient to subdue the unjust policy of the smaller States, or their predominant influence in the councils of the Senate, a constitutional and infallible resource still remains with the larger States, by which they will be able at all times to accomplish their just purposes. The House of Representatives cannot only refuse, but they alone can propose, the supplies requisite for the support of government. They, in a word, hold the purse—that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the

sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the government. This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

But will not the House of Representatives be as much interested as the Senate in maintaining the government in its proper functions, and will they not therefore be unwilling to stake its existence or its reputation on the pliancy of the Senate? Or, if such a trial of firmness between the two branches were hazarded, would not the one be as likely first to yield as the other? These questions will create no difficulty with those who reflect that in all cases the smaller the number, and the more permanent and conspicuous the station, of men in power, the stronger must be the interest which they will individually feel in whatever concerns the government. Those who represent the dignity of their country in the eyes of other nations, will be particularly sensible to every prospect of public danger, or of dishonorable stagnation in public affairs. To those causes we are to ascribe the continual triumph of the British House of Commons over the other branches of the government, whenever the engine of a money bill has been employed. An absolute inflexibility on the side of the latter, although it could not have failed to involve every department of the state in the general confusion, has neither been apprehended nor experienced. The utmost degree of firmness that can be displayed by the federal Senate or President, will not be more than equal to a resistance in which they will be supported by constitutional and patriotic principles.

In this review of the Constitution of the House of Representatives, I have passed over the circumstances of economy, which, in the present state of affairs, might have had some effect in lessening the temporary number of representatives, and a disregard of which would probably have been as rich a theme of declamation against the Constitution as has been shown by the smallness of the number proposed. I omit also any remarks on the difficulty which might be found, under present circumstances, in engaging in the federal service a large number of such characters as the people will probably elect. One observation, however, I must be permitted to add on this subject as claiming, in my judgment, a very serious attention. It is, that in all legislative assemblies the greater the number composing them may

be, the fewer will be the men who will in fact direct their proceedings. In the first place, the more numerous an assembly may be, of whatever characters composed, the greater is known to be the ascendency of passion over reason. In the next place, the larger the number, the greater will be the proportion of members of limited information and of weak capacities. Now, it is precisely on characters of this description that the eloquence and address of the few are known to act with all their force. In the ancient republics, where the whole body of the people assembled in person, a single orator, or an artful statesman, was generally seen to rule with as complete a sway as if a sceptre had been placed in his single hand. On the same principle, the more multitudinous a representative assembly may be rendered, the more it will partake of the infirmities incident to collective meetings of the people. Ignorance will be the dupe of cunning, and passion the slave of sophistry and declamation. The people can never err more than in supposing that by multiplying their representatives beyond a certain limit, they strengthen the barrier against the government of a few. Experience will forever admonish them that, on the contrary, AFTER SECURING A SUFFICIENT NUMBER FOR THE PURPOSES OF SAFETY, OF LOCAL INFORMATION, AND OF DIFFUSIVE SYMPATHY WITH THE WHOLE SOCIETY, they will counteract their own views by every addition to their representatives. The countenance of the government may become more democratic, but the soul that animates it will be more oligarchic. The machine will be enlarged, but the fewer, and often the more secret, will be the springs by which its motions are directed.

As connected with the objection against the number of representatives, may properly be here noticed, that which has been suggested against the number made competent for legislative business. It has been said that more than a majority ought to have been required for a quorum; and in particular cases, if not in all, more than a majority of a quorum for a decision. That some advantages might have resulted from such a precaution, cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty and partial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the

defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences. Lastly, it would facilitate and foster the baneful practice of secessions; a practice which has shown itself even in States where a majority only is required; a practice subversive of all the principles of order and regular government; a practice which leads more directly to public convulsions, and the ruin of popular governments, than any other which has yet been displayed among us.

PUBLIUS

FEDERALIST No. 59. Concerning the Power of Congress to Regulate the Election of Members

From the New York Packet. Friday, February 22, 1788.

HAMILTON

To the People of the State of New York:

THE natural order of the subject leads us to consider, in this place, that provision of the Constitution which authorizes the national legislature to regulate, in the last resort, the election of its own members. It is in these words: "The TIMES, PLACES, and MANNER of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter SUCH REGULATIONS, except as to the PLACES of choosing senators." (1) This provision has not only been declaimed against by those who condemn the Constitution in the gross, but it has been censured by those who have objected with less latitude and greater moderation; and, in one instance it has been thought exceptionable by a gentleman who has declared himself the advocate of every other part of the system.

I am greatly mistaken, notwithstanding, if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that EVERY GOVERNMENT OUGHT TO CONTAIN IN ITSELF THE MEANS OF ITS OWN PRESERVATION. Every just reasoner will, at first sight, approve an adherence to this rule, in the work of the convention; and will disapprove every deviation from it which may not appear to have been dictated by the necessity of incorporating into the work some particular ingredient, with which a rigid conformity to the rule was incompatible. Even in this case, though he may acquiesce in the necessity, yet he will not cease to regard and to regret a departure from so fundamental a principle, as a portion of imperfection in the system which may prove the seed of future weakness, and perhaps anarchy.

It will not be alleged, that an election law could have been framed and inserted in the Constitution, which would have been always applicable to every probable change in the situation of the country; and it will therefore not be denied, that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded, that there were only three ways in which this power could have been reasonably modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the convention. They have submitted the regulation of elections for the federal government, in the first instance, to the local administrations; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

Nothing can be more evident, than that an exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say, that a neglect or omission of this kind would not be likely to take place. The constitutional possibility of the thing, without an equivalent for the risk, is an unanswerable objection. Nor has any satisfactory reason been yet assigned for incurring that risk. The extravagant surmises of a distempered jealousy can never be dignified with that character. If we are in a humor to presume abuses of power, it is as fair to presume them on the part of the State governments as on the part of the general government. And as it is more consonant to the rules of a just theory, to trust the Union with the care of its own existence, than to transfer that care to any other hands, if abuses of power are to be hazarded on the one side or on the other, it is more rational to hazard them where the power would naturally be placed, than where it would unnaturally be placed.

Suppose an article had been introduced into the Constitution, empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it, both as an unwarrantable transposition of power, and as a premeditated engine for the destruction of the State governments? The violation of principle, in this

case, would have required no comment; and, to an unbiased observer, it will not be less apparent in the project of subjecting the existence of the national government, in a similar respect, to the pleasure of the State governments. An impartial view of the matter cannot fail to result in a conviction, that each, as far as possible, ought to depend on itself for its own preservation.

As an objection to this position, it may be remarked that the constitution of the national Senate would involve, in its full extent, the danger which it is suggested might flow from an exclusive power in the State legislatures to regulate the federal elections. It may be alleged, that by declining the appointment of Senators, they might at any time give a fatal blow to the Union; and from this it may be inferred, that as its existence would be thus rendered dependent upon them in so essential a point, there can be no objection to intrusting them with it in the particular case under consideration. The interest of each State, it may be added, to maintain its representation in the national councils, would be a complete security against an abuse of the trust.

This argument, though specious, will not, upon examination, be found solid. It is certainly true that the State legislatures, by forbearing the appointment of senators, may destroy the national government. But it will not follow that, because they have a power to do this in one instance, they ought to have it in every other. There are cases in which the pernicious tendency of such a power may be far more decisive, without any motive equally cogent with that which must have regulated the conduct of the convention in respect to the formation of the Senate, to recommend their admission into the system. So far as that construction may expose the Union to the possibility of injury from the State legislatures, it is an evil; but it is an evil which could not have been avoided without excluding the States, in their political capacities, wholly from a place in the organization of the national government. If this had been done, it would doubtless have been interpreted into an entire dereliction of the federal principle; and would certainly have deprived the State governments of that absolute safeguard which they will enjoy under this provision. But however wise it may have been to have submitted in this instance to an inconvenience, for the attainment of a necessary advantage or a greater good, no inference can be drawn from thence to favor an accumulation of the evil, where no necessity urges, nor any greater good invites.

It may be easily discerned also that the national government would run a much greater risk from a power in the State legislatures over the elections of its House of Representatives, than from their power of appointing the members of its Senate. The senators are to be chosen for the period of six years; there is to be a rotation, by which the seats of a third part of them are to be vacated and replenished every two years; and no State is to be entitled to more than two senators; a quorum of the body is to consist of sixteen members. The joint result of these circumstances would be, that a temporary combination of a few States to intermit the appointment of senators, could neither annul the existence nor impair the activity of the body; and it is not from a general and permanent combination of the States that we can have any thing to fear. The first might proceed from sinister designs in the leading members of a few of the State legislatures; the last would suppose a fixed and rooted disaffection in the great body of the people, which will either never exist at all, or will, in all probability, proceed from an experience of the inaptitude of the general government to the advancement of their happiness in which event no good citizen could desire its continuance.

But with regard to the federal House of Representatives, there is intended to be a general election of members once in two years. If the State legislatures were to be invested with an exclusive power of regulating these elections, every period of making them would be a delicate crisis in the national situation, which might issue in a dissolution of the Union, if the leaders of a few of the most important States should have entered into a previous conspiracy to prevent an election.

I shall not deny, that there is a degree of weight in the observation, that the interests of each State, to be represented in the federal councils, will be a security against the abuse of a power over its elections in the hands of the State legislatures. But the security will not be considered as complete, by those who attend to the force of an obvious distinction between the interest of the people in the public felicity, and the interest of their local rulers in the power and consequence of their offices. The people of America may be warmly attached to the government of the Union, at times when the particular rulers of particular States, stimulated by the natural rivalship of power, and by the hopes of personal aggrandizement, and supported by a strong faction in each of those States, may be in a very opposite temper. This diversity of sentiment between a majority of the people, and the

individuals who have the greatest credit in their councils, is exemplified in some of the States at the present moment, on the present question. The scheme of separate confederacies, which will always multiply the chances of ambition, will be a never failing bait to all such influential characters in the State administrations as are capable of preferring their own emolument and advancement to the public weal. With so effectual a weapon in their hands as the exclusive power of regulating elections for the national government, a combination of a few such men, in a few of the most considerable States, where the temptation will always be the strongest, might accomplish the destruction of the Union, by seizing the opportunity of some casual dissatisfaction among the people (and which perhaps they may themselves have excited), to discontinue the choice of members for the federal House of Representatives. It ought never to be forgotten, that a firm union of this country, under an efficient government, will probably be an increasing object of jealousy to more than one nation of Europe; and that enterprises to subvert it will sometimes originate in the intrigues of foreign powers, and will seldom fail to be patronized and abetted by some of them. Its preservation, therefore ought in no case that can be avoided, to be committed to the guardianship of any but those whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of the trust.

PUBLIUS

1. 1st clause, 4th section, of the 1st article.

FEDERALIST No. 60. The Same Subject Continued (Concerning the Power of Congress to Regulate the Election of Members)

From The Independent Journal. Saturday, February 23, 1788.

HAMILTON

To the People of the State of New York:

WE HAVE seen, that an uncontrollable power over the elections to the federal government could not, without hazard, be committed to the State legislatures. Let us now see, what would be the danger on the other side; that is, from confiding the ultimate right of regulating its own elections to the Union itself. It is not pretended, that this right would ever be used for the exclusion of any State from its share in the representation. The interest of all would, in this respect at least, be the security of all. But it is alleged, that it might be employed in such a manner as to promote the election of some favorite class of men in exclusion of others, by confining the places of election to particular districts, and rendering it impracticable to the citizens at large to partake in the choice. Of all chimerical suppositions, this seems to be the most chimerical. On the one hand, no rational calculation of probabilities would lead us to imagine that the disposition which a conduct so violent and extraordinary would imply, could ever find its way into the national councils; and on the other, it may be concluded with certainty, that if so improper a spirit should ever gain admittance into them, it would display itself in a form altogether different and far more decisive.

The improbability of the attempt may be satisfactorily inferred from this single reflection, that it could never be made without causing an immediate revolt of the great body of the people, headed and directed by the State governments. It is not difficult to conceive that this characteristic right of freedom may, in certain turbulent and factious seasons, be violated, in respect to a particular class of citizens, by a victorious and overbearing majority; but that so fundamental a privilege, in a country so situated and enlightened, should be invaded to the prejudice of the great mass of the

people, by the deliberate policy of the government, without occasioning a popular revolution, is altogether inconceivable and incredible.

In addition to this general reflection, there are considerations of a more precise nature, which forbid all apprehension on the subject. The dissimilarity in the ingredients which will compose the national government, and still more in the manner in which they will be brought into action in its various branches, must form a powerful obstacle to a concert of views in any partial scheme of elections. There is sufficient diversity in the state of property, in the genius, manners, and habits of the people of the different parts of the Union, to occasion a material diversity of disposition in their representatives towards the different ranks and conditions in society. And though an intimate intercourse under the same government will promote a gradual assimilation in some of these respects, yet there are causes, as well physical as moral, which may, in a greater or less degree, permanently nourish different propensities and inclinations in this respect. But the circumstance which will be likely to have the greatest influence in the matter, will be the dissimilar modes of constituting the several component parts of the government. The House of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by electors chosen for that purpose by the people, there would be little probability of a common interest to cement these different branches in a predilection for any particular class of electors.

As to the Senate, it is impossible that any regulation of "time and manner," which is all that is proposed to be submitted to the national government in respect to that body, can affect the spirit which will direct the choice of its members. The collective sense of the State legislatures can never be influenced by extraneous circumstances of that sort; a consideration which alone ought to satisfy us that the discrimination apprehended would never be attempted. For what inducement could the Senate have to concur in a preference in which itself would not be included? Or to what purpose would it be established, in reference to one branch of the legislature, if it could not be extended to the other? The composition of the one would in this case counteract that of the other. And we can never suppose that it would embrace the appointments to the Senate, unless we can at the same time suppose the voluntary co-operation of the State legislatures. If we make the latter supposition, it then becomes

immaterial where the power in question is placed—whether in their hands or in those of the Union.

But what is to be the object of this capricious partiality in the national councils? Is it to be exercised in a discrimination between the different departments of industry, or between the different kinds of property, or between the different degrees of property? Will it lean in favor of the landed interest, or the moneyed interest, or the mercantile interest, or the manufacturing interest? Or, to speak in the fashionable language of the adversaries to the Constitution, will it court the elevation of "the wealthy and the well-born," to the exclusion and debasement of all the rest of the society?

If this partiality is to be exerted in favor of those who are concerned in any particular description of industry or property, I presume it will readily be admitted, that the competition for it will lie between landed men and merchants. And I scruple not to affirm, that it is infinitely less likely that either of them should gain an ascendant in the national councils, than that the one or the other of them should predominate in all the local councils. The inference will be, that a conduct tending to give an undue preference to either is much less to be dreaded from the former than from the latter.

The several States are in various degrees addicted to agriculture and commerce. In most, if not all of them, agriculture is predominant. In a few of them, however, commerce nearly divides its empire, and in most of them has a considerable share of influence. In proportion as either prevails, it will be conveyed into the national representation; and for the very reason, that this will be an emanation from a greater variety of interests, and in much more various proportions, than are to be found in any single State, it will be much less apt to espouse either of them with a decided partiality, than the representation of any single State.

In a country consisting chiefly of the cultivators of land, where the rules of an equal representation obtain, the landed interest must, upon the whole, preponderate in the government. As long as this interest prevails in most of the State legislatures, so long it must maintain a correspondent superiority in the national Senate, which will generally be a faithful copy of the majorities of those assemblies. It cannot therefore be presumed, that a sacrifice of the landed to the mercantile class will ever be a favorite object of this branch of the federal legislature. In applying thus particularly to the

Senate a general observation suggested by the situation of the country, I am governed by the consideration, that the credulous votaries of State power cannot, upon their own principles, suspect, that the State legislatures would be warped from their duty by any external influence. But in reality the same situation must have the same effect, in the primitive composition at least of the federal House of Representatives: an improper bias towards the mercantile class is as little to be expected from this quarter as from the other.

In order, perhaps, to give countenance to the objection at any rate, it may be asked, is there not danger of an opposite bias in the national government, which may dispose it to endeavor to secure a monopoly of the federal administration to the landed class? As there is little likelihood that the supposition of such a bias will have any terrors for those who would be immediately injured by it, a labored answer to this question will be dispensed with. It will be sufficient to remark, first, that for the reasons elsewhere assigned, it is less likely that any decided partiality should prevail in the councils of the Union than in those of any of its members. Secondly, that there would be no temptation to violate the Constitution in favor of the landed class, because that class would, in the natural course of things, enjoy as great a preponderancy as itself could desire. And thirdly, that men accustomed to investigate the sources of public prosperity upon a large scale, must be too well convinced of the utility of commerce, to be inclined to inflict upon it so deep a wound as would result from the entire exclusion of those who would best understand its interest from a share in the management of them. The importance of commerce, in the view of revenue alone, must effectually guard it against the enmity of a body which would be continually importuned in its favor, by the urgent calls of public necessity.

I the rather consult brevity in discussing the probability of a preference founded upon a discrimination between the different kinds of industry and property, because, as far as I understand the meaning of the objectors, they contemplate a discrimination of another kind. They appear to have in view, as the objects of the preference with which they endeavor to alarm us, those whom they designate by the description of "the wealthy and the well-born." These, it seems, are to be exalted to an odious pre-eminence over the rest of their fellow-citizens. At one time, however, their elevation is to be a necessary consequence of the smallness of the representative body; at

another time it is to be effected by depriving the people at large of the opportunity of exercising their right of suffrage in the choice of that body.

But upon what principle is the discrimination of the places of election to be made, in order to answer the purpose of the meditated preference? Are "the wealthy and the well-born," as they are called, confined to particular spots in the several States? Have they, by some miraculous instinct or foresight, set apart in each of them a common place of residence? Are they only to be met with in the towns or cities? Or are they, on the contrary, scattered over the face of the country as avarice or chance may have happened to cast their own lot or that of their predecessors? If the latter is the case, (as every intelligent man knows it to be,(1)) is it not evident that the policy of confining the places of election to particular districts would be as subversive of its own aim as it would be exceptionable on every other account? The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the TIMES, the PLACES, the MANNER of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature.

Let it, however, be admitted, for argument sake, that the expedient suggested might be successful; and let it at the same time be equally taken for granted that all the scruples which a sense of duty or an apprehension of the danger of the experiment might inspire, were overcome in the breasts of the national rulers, still I imagine it will hardly be pretended that they could ever hope to carry such an enterprise into execution without the aid of a military force sufficient to subdue the resistance of the great body of the people. The improbability of the existence of a force equal to that object has been discussed and demonstrated in different parts of these papers; but that the futility of the objection under consideration may appear in the strongest light, it shall be conceded for a moment that such a force might exist, and the national government shall be supposed to be in the actual possession of it. What will be the conclusion? With a disposition to invade the essential rights of the community, and with the means of gratifying that disposition, is it presumable that the persons who were actuated by it would amuse themselves in the ridiculous task of fabricating election laws for securing a

preference to a favorite class of men? Would they not be likely to prefer a conduct better adapted to their own immediate aggrandizement? Would they not rather boldly resolve to perpetuate themselves in office by one decisive act of usurpation, than to trust to precarious expedients which, in spite of all the precautions that might accompany them, might terminate in the dismission, disgrace, and ruin of their authors? Would they not fear that citizens, not less tenacious than conscious of their rights, would flock from the remote extremes of their respective States to the places of election, to overthrow their tyrants, and to substitute men who would be disposed to avenge the violated majesty of the people?

PUBLIUS

1. Particularly in the Southern States and in this State.

FEDERALIST No. 61. The Same Subject Continued (Concerning the Power of Congress to Regulate the Election of Members)

From the New York Packet. Tuesday, February 26, 1788.

HAMILTON

To the People of the State of New York:

THE more candid opposers of the provision respecting elections, contained in the plan of the convention, when pressed in argument, will sometimes concede the propriety of that provision; with this qualification, however, that it ought to have been accompanied with a declaration, that all elections should be had in the counties where the electors resided. This, say they, was a necessary precaution against an abuse of the power. A declaration of this nature would certainly have been harmless; so far as it would have had the effect of quieting apprehensions, it might not have been undesirable. But it would, in fact, have afforded little or no additional security against the danger apprehended; and the want of it will never be considered, by an impartial and judicious examiner, as a serious, still less as an insuperable, objection to the plan. The different views taken of the subject in the two preceding papers must be sufficient to satisfy all dispassionate and discerning men, that if the public liberty should ever be the victim of the ambition of the national rulers, the power under examination, at least, will be guiltless of the sacrifice.

If those who are inclined to consult their jealousy only, would exercise it in a careful inspection of the several State constitutions, they would find little less room for disquietude and alarm, from the latitude which most of them allow in respect to elections, than from the latitude which is proposed to be allowed to the national government in the same respect. A review of their situation, in this particular, would tend greatly to remove any ill impressions which may remain in regard to this matter. But as that view would lead into long and tedious details, I shall content myself with the single example of the State in which I write. The constitution of New York

makes no other provision for LOCALITY of elections, than that the members of the Assembly shall be elected in the COUNTIES; those of the Senate, in the great districts into which the State is or may be divided: these at present are four in number, and comprehend each from two to six counties. It may readily be perceived that it would not be more difficult to the legislature of New York to defeat the suffrages of the citizens of New York, by confining elections to particular places, than for the legislature of the United States to defeat the suffrages of the citizens of the Union, by the like expedient. Suppose, for instance, the city of Albany was to be appointed the sole place of election for the county and district of which it is a part, would not the inhabitants of that city speedily become the only electors of the members both of the Senate and Assembly for that county and district? Can we imagine that the electors who reside in the remote subdivisions of the counties of Albany, Saratoga, Cambridge, etc., or in any part of the county of Montgomery, would take the trouble to come to the city of Albany, to give their votes for members of the Assembly or Senate, sooner than they would repair to the city of New York, to participate in the choice of the members of the federal House of Representatives? The alarming indifference discoverable in the exercise of so invaluable a privilege under the existing laws, which afford every facility to it, furnishes a ready answer to this question. And, abstracted from any experience on the subject, we can be at no loss to determine, that when the place of election is at an INCONVENIENT DISTANCE from the elector, the effect upon his conduct will be the same whether that distance be twenty miles or twenty thousand miles. Hence it must appear, that objections to the particular modification of the federal power of regulating elections will, in substance, apply with equal force to the modification of the like power in the constitution of this State; and for this reason it will be impossible to acquit the one, and to condemn the other. A similar comparison would lead to the same conclusion in respect to the constitutions of most of the other States.

If it should be said that defects in the State constitutions furnish no apology for those which are to be found in the plan proposed, I answer, that as the former have never been thought chargeable with inattention to the security of liberty, where the imputations thrown on the latter can be shown to be applicable to them also, the presumption is that they are rather the cavilling refinements of a predetermined opposition, than the well-founded inferences of a candid research after truth. To those who are disposed to

consider, as innocent omissions in the State constitutions, what they regard as unpardonable blemishes in the plan of the convention, nothing can be said; or at most, they can only be asked to assign some substantial reason why the representatives of the people in a single State should be more impregnable to the lust of power, or other sinister motives, than the representatives of the people of the United States? If they cannot do this, they ought at least to prove to us that it is easier to subvert the liberties of three millions of people, with the advantage of local governments to head their opposition, than of two hundred thousand people who are destitute of that advantage. And in relation to the point immediately under consideration, they ought to convince us that it is less probable that a predominant faction in a single State should, in order to maintain its superiority, incline to a preference of a particular class of electors, than that a similar spirit should take possession of the representatives of thirteen States, spread over a vast region, and in several respects distinguishable from each other by a diversity of local circumstances, prejudices, and interests.

Hitherto my observations have only aimed at a vindication of the provision in question, on the ground of theoretic propriety, on that of the danger of placing the power elsewhere, and on that of the safety of placing it in the manner proposed. But there remains to be mentioned a positive advantage which will result from this disposition, and which could not as well have been obtained from any other: I allude to the circumstance of uniformity in the time of elections for the federal House of Representatives. It is more than possible that this uniformity may be found by experience to be of great importance to the public welfare, both as a security against the perpetuation of the same spirit in the body, and as a cure for the diseases of faction. If each State may choose its own time of election, it is possible there may be at least as many different periods as there are months in the year. The times of election in the several States, as they are now established for local purposes, vary between extremes as wide as March and November. The consequence of this diversity would be that there could never happen a total dissolution or renovation of the body at one time. If an improper spirit of any kind should happen to prevail in it, that spirit would be apt to infuse itself into the new members, as they come forward in succession. The mass would be likely to remain nearly the same, assimilating constantly to itself its gradual accretions. There is a contagion in example which few men have

sufficient force of mind to resist. I am inclined to think that treble the duration in office, with the condition of a total dissolution of the body at the same time, might be less formidable to liberty than one third of that duration subject to gradual and successive alterations.

Uniformity in the time of elections seems not less requisite for executing the idea of a regular rotation in the Senate, and for conveniently assembling the legislature at a stated period in each year.

It may be asked, Why, then, could not a time have been fixed in the Constitution? As the most zealous adversaries of the plan of the convention in this State are, in general, not less zealous admirers of the constitution of the State, the question may be retorted, and it may be asked, Why was not a time for the like purpose fixed in the constitution of this State? No better answer can be given than that it was a matter which might safely be entrusted to legislative discretion; and that if a time had been appointed, it might, upon experiment, have been found less convenient than some other time. The same answer may be given to the question put on the other side. And it may be added that the supposed danger of a gradual change being merely speculative, it would have been hardly advisable upon that speculation to establish, as a fundamental point, what would deprive several States of the convenience of having the elections for their own governments and for the national government at the same epochs.

PUBLIUS

FEDERALIST No. 62. The Senate

For the Independent Journal. Wednesday, February 27, 1788

MADISON

To the People of the State of New York:

HAVING examined the constitution of the House of Representatives, and answered such of the objections against it as seemed to merit notice, I enter next on the examination of the Senate. The heads into which this member of the government may be considered are: I. The qualification of senators; II. The appointment of them by the State legislatures; III. The equality of representation in the Senate; IV. The number of senators, and the term for which they are to be elected; V. The powers vested in the Senate.

I. The qualifications proposed for senators, as distinguished from those of representatives, consist in a more advanced age and a longer period of citizenship. A senator must be thirty years of age at least; as a representative must be twenty-five. And the former must have been a citizen nine years; as seven years are required for the latter. The propriety of these distinctions is explained by the nature of the senatorial trust, which, requiring greater extent of information and stability of character, requires at the same time that the senator should have reached a period of life most likely to supply these advantages; and which, participating immediately in transactions with foreign nations, ought to be exercised by none who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education. The term of nine years appears to be a prudent mediocrity between a total exclusion of adopted citizens, whose merits and talents may claim a share in the public confidence, and an indiscriminate and hasty admission of them, which might create a channel for foreign influence on the national councils.

II. It is equally unnecessary to dilate on the appointment of senators by the State legislatures. Among the various modes which might have been devised for constituting this branch of the government, that which has been proposed by the convention is probably the most congenial with the public

opinion. It is recommended by the double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the federal government as must secure the authority of the former, and may form a convenient link between the two systems.

III. The equality of representation in the Senate is another point, which, being evidently the result of compromise between the opposite pretensions of the large and the small States, does not call for much discussion. If indeed it be right, that among a people thoroughly incorporated into one nation, every district ought to have a PROPORTIONAL share in the government, and that among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an EQUAL share in the common councils, it does not appear to be without some reason that in a compound republic, partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation. But it is superfluous to try, by the standard of theory, a part of the Constitution which is allowed on all hands to be the result, not of theory, but "of a spirit of amity, and that mutual deference and concession which the peculiarity of our political situation rendered indispensable." A common government, with powers equal to its objects, is called for by the voice, and still more loudly by the political situation, of America. A government founded on principles more consonant to the wishes of the larger States, is not likely to be obtained from the smaller States. The only option, then, for the former, lies between the proposed government and a government still more objectionable. Under this alternative, the advice of prudence must be to embrace the lesser evil; and, instead of indulging a fruitless anticipation of the possible mischiefs which may ensue, to contemplate rather the advantageous consequences which may qualify the sacrifice.

In this spirit it may be remarked, that the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small States; since they are not less solicitous to guard, by every possible expedient, against an improper consolidation of the States into one simple republic.

Another advantage accruing from this ingredient in the constitution of the Senate is, the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the States. It must be acknowledged that this complicated check on legislation may in some instances be injurious as well as beneficial; and that the peculiar defense which it involves in favor of the smaller States, would be more rational, if any interests common to them, and distinct from those of the other States, would otherwise be exposed to peculiar danger. But as the larger States will always be able, by their power over the supplies, to defeat unreasonable exertions of this prerogative of the lesser States, and as the faculty and excess of law-making seem to be the diseases to which our governments are most liable, it is not impossible that this part of the Constitution may be more convenient in practice than it appears to many in contemplation.

IV. The number of senators, and the duration of their appointment, come next to be considered. In order to form an accurate judgment on both of these points, it will be proper to inquire into the purposes which are to be answered by a senate; and in order to ascertain these, it will be necessary to review the inconveniences which a republic must suffer from the want of such an institution.

First. It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government.

Second. The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. But a position that will not be contradicted, need not be proved. All that need be remarked is, that a body which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous. It ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

Third. Another defect to be supplied by a senate lies in a want of due acquaintance with the objects and principles of legislation. It is not possible that an assembly of men called for the most part from pursuits of a private nature, continued in appointment for a short time, and led by no permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if left wholly to themselves, escape a variety of important errors in the exercise of their legislative trust. It may be affirmed, on the best grounds, that no small share of the present embarrassments of America is to be charged on the blunders of our governments; and that these have proceeded from the heads rather than the hearts of most of the authors of them. What indeed are all the repealing, explaining, and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom; so many impeachments exhibited by each succeeding against each preceding session; so many admonitions to the people, of the value of those aids which may be expected from a well-constituted senate?

A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some governments are deficient in both these qualities; most governments are deficient in the first. I scruple not to assert, that in American governments too little attention has been paid to the last. The federal Constitution avoids this error; and what merits particular notice, it provides for the last in a mode which increases the security for the first.

Fourth. The mutability in the public councils arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government. Every new election in the States is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success. The remark is verified in private life, and becomes more just, as well as more important, in national transactions.

To trace the mischievous effects of a mutable government would fill a volume. I will hint a few only, each of which will be perceived to be a source of innumerable others.

In the first place, it forfeits the respect and confidence of other nations, and all the advantages connected with national character. An individual who is observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once, by all prudent people, as a speedy victim to his own unsteadiness and folly. His more friendly neighbors may pity him, but all will decline to connect their fortunes with his; and not a few will seize the opportunity of making their fortunes out of his. One nation is to another what one individual is to another; with this melancholy distinction perhaps, that the former, with fewer of the benevolent emotions than the latter, are under fewer restraints also from taking undue advantage from the indiscretions of each other. Every nation, consequently, whose affairs betray a want of wisdom and stability, may calculate on every loss which can be sustained from the more systematic policy of their wiser neighbors. But the best instruction on this subject is unhappily conveyed to America by the example of her own situation. She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs.

The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or

undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the FEW, not for the MANY.

In another point of view, great injury results from an unstable government. The want of confidence in the public councils damps every useful undertaking, the success and profit of which may depend on a continuance of existing arrangements. What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy.

But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability.

PUBLIUS

FEDERALIST No. 63. The Senate Continued

For the Independent Journal. Saturday, March 1, 1788

MADISON

To the People of the State of New York:

A FIFTH desideratum, illustrating the utility of a senate, is the want of a due sense of national character. Without a select and stable member of the government, the esteem of foreign powers will not only be forfeited by an unenlightened and variable policy, proceeding from the causes already mentioned, but the national councils will not possess that sensibility to the opinion of the world, which is perhaps not less necessary in order to merit, than it is to obtain, its respect and confidence.

An attention to the judgment of other nations is important to every government for two reasons: the one is, that, independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy; the second is, that in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed. What has not America lost by her want of character with foreign nations; and how many errors and follies would she not have avoided, if the justice and propriety of her measures had, in every instance, been previously tried by the light in which they would probably appear to the unbiased part of mankind?

Yet however requisite a sense of national character may be, it is evident that it can never be sufficiently possessed by a numerous and changeable body. It can only be found in a number so small that a sensible degree of the praise and blame of public measures may be the portion of each individual; or in an assembly so durably invested with public trust, that the pride and consequence of its members may be sensibly incorporated with the reputation and prosperity of the community. The half-yearly representatives of Rhode Island would probably have been little affected in their

deliberations on the iniquitous measures of that State, by arguments drawn from the light in which such measures would be viewed by foreign nations, or even by the sister States; whilst it can scarcely be doubted that if the concurrence of a select and stable body had been necessary, a regard to national character alone would have prevented the calamities under which that misguided people is now laboring.

I add, as a SIXTH defect the want, in some important cases, of a due responsibility in the government to the people, arising from that frequency of elections which in other cases produces this responsibility. This remark will, perhaps, appear not only new, but paradoxical. It must nevertheless be acknowledged, when explained, to be as undeniable as it is important.

Responsibility, in order to be reasonable, must be limited to objects within the power of the responsible party, and in order to be effectual, must relate to operations of that power, of which a ready and proper judgment can be formed by the constituents. The objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending on a succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country, needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general welfare may essentially depend, ought not to be answerable for the final result, any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than half a dozen years. Nor is it possible for the people to estimate the SHARE of influence which their annual assemblies may respectively have on events resulting from the mixed transactions of several years. It is sufficiently difficult to preserve a personal responsibility in the members of a NUMEROUS body, for such acts of the body as have an immediate, detached, and palpable operation on its constituents.

The proper remedy for this defect must be an additional body in the legislative department, which, having sufficient permanency to provide for such objects as require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects.

Thus far I have considered the circumstances which point out the necessity of a well-constructed Senate only as they relate to the representatives of the people. To a people as little blinded by prejudice or corrupted by flattery as those whom I address, I shall not scruple to add, that such an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next.

It may be suggested, that a people spread over an extensive region cannot, like the crowded inhabitants of a small district, be subject to the infection of violent passions, or to the danger of combining in pursuit of unjust measures. I am far from denying that this is a distinction of peculiar importance. I have, on the contrary, endeavored in a former paper to show, that it is one of the principal recommendations of a confederated republic. At the same time, this advantage ought not to be considered as superseding the use of auxiliary precautions. It may even be remarked, that the same extended situation, which will exempt the people of America from some of the dangers incident to lesser republics, will expose them to the inconveniency of remaining for a longer time under the influence of those misrepresentations which the combined industry of interested men may succeed in distributing among them.

It adds no small weight to all these considerations, to recollect that history informs us of no long-lived republic which had not a senate. Sparta, Rome, and Carthage are, in fact, the only states to whom that character can

be applied. In each of the two first there was a senate for life. The constitution of the senate in the last is less known. Circumstantial evidence makes it probable that it was not different in this particular from the two others. It is at least certain, that it had some quality or other which rendered it an anchor against popular fluctuations; and that a smaller council, drawn out of the senate, was appointed not only for life, but filled up vacancies itself. These examples, though as unfit for the imitation, as they are repugnant to the genius, of America, are, notwithstanding, when compared with the fugitive and turbulent existence of other ancient republics, very instructive proofs of the necessity of some institution that will blend stability with liberty. I am not unaware of the circumstances which distinguish the American from other popular governments, as well ancient as modern; and which render extreme circumspection necessary, in reasoning from the one case to the other. But after allowing due weight to this consideration, it may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention. Many of the defects, as we have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly frequently elected by the people, and to the people themselves. There are others peculiar to the former, which require the control of such an institution. The people can never wilfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

The difference most relied on, between the American and other republics, consists in the principle of representation; which is the pivot on which the former move, and which is supposed to have been unknown to the latter, or at least to the ancient part of them. The use which has been made of this difference, in reasonings contained in former papers, will have shown that I am disposed neither to deny its existence nor to undervalue its importance. I feel the less restraint, therefore, in observing, that the position concerning the ignorance of the ancient governments on the subject of representation, is by no means precisely true in the latitude commonly given to it. Without entering into a disquisition which here would be misplaced, I will refer to a few known facts, in support of what I advance.

In the most pure democracies of Greece, many of the executive functions were performed, not by the people themselves, but by officers elected by the people, and REPRESENTING the people in their EXECUTIVE capacity.

Prior to the reform of Solon, Athens was governed by nine Archons, annually ELECTED BY THE PEOPLE AT LARGE. The degree of power delegated to them seems to be left in great obscurity. Subsequent to that period, we find an assembly, first of four, and afterwards of six hundred members, annually ELECTED BY THE PEOPLE; and PARTIALLY representing them in their LEGISLATIVE capacity, since they were not only associated with the people in the function of making laws, but had the exclusive right of originating legislative propositions to the people. The senate of Carthage, also, whatever might be its power, or the duration of its appointment, appears to have been ELECTIVE by the suffrages of the people. Similar instances might be traced in most, if not all the popular governments of antiquity.

Lastly, in Sparta we meet with the Ephori, and in Rome with the Tribunes; two bodies, small indeed in numbers, but annually ELECTED BY THE WHOLE BODY OF THE PEOPLE, and considered as the REPRESENTATIVES of the people, almost in their PLENIPOTENTIARY capacity. The Cosmi of Crete were also annually ELECTED BY THE PEOPLE, and have been considered by some authors as an institution analogous to those of Sparta and Rome, with this difference only, that in the election of that representative body the right of suffrage was communicated to a part only of the people.

From these facts, to which many others might be added, it is clear that the principle of representation was neither unknown to the ancients nor wholly overlooked in their political constitutions. The true distinction between these and the American governments, lies IN THE TOTAL EXCLUSION OF THE PEOPLE, IN THEIR COLLECTIVE CAPACITY, from any share in the LATTER, and not in the TOTAL EXCLUSION OF THE REPRESENTATIVES OF THE PEOPLE from the administration of the FORMER. The distinction, however, thus qualified, must be admitted to leave a most advantageous superiority in favor of the United States. But to insure to this advantage its full effect, we must be careful not to separate it from the other advantage, of an extensive territory. For it cannot be

believed, that any form of representative government could have succeeded within the narrow limits occupied by the democracies of Greece.

In answer to all these arguments, suggested by reason, illustrated by examples, and enforced by our own experience, the jealous adversary of the Constitution will probably content himself with repeating, that a senate appointed not immediately by the people, and for the term of six years, must gradually acquire a dangerous pre-eminence in the government, and finally transform it into a tyrannical aristocracy.

To this general answer, the general reply ought to be sufficient, that liberty may be endangered by the abuses of liberty as well as by the abuses of power; that there are numerous instances of the former as well as of the latter; and that the former, rather than the latter, are apparently most to be apprehended by the United States. But a more particular reply may be given.

Before such a revolution can be effected, the Senate, it is to be observed, must in the first place corrupt itself; must next corrupt the State legislatures; must then corrupt the House of Representatives; and must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it can attempt an establishment of tyranny. Without corrupting the State legislatures, it cannot prosecute the attempt, because the periodical change of members would otherwise regenerate the whole body. Without exerting the means of corruption with equal success on the House of Representatives, the opposition of that coequal branch of the government would inevitably defeat the attempt; and without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order. Is there any man who can seriously persuade himself that the proposed Senate can, by any possible means within the compass of human address, arrive at the object of a lawless ambition, through all these obstructions?

If reason condemns the suspicion, the same sentence is pronounced by experience. The constitution of Maryland furnishes the most apposite example. The Senate of that State is elected, as the federal Senate will be, indirectly by the people, and for a term less by one year only than the federal Senate. It is distinguished, also, by the remarkable prerogative of filling up its own vacancies within the term of its appointment, and, at the same time, is not under the control of any such rotation as is provided for

the federal Senate. There are some other lesser distinctions, which would expose the former to colorable objections, that do not lie against the latter. If the federal Senate, therefore, really contained the danger which has been so loudly proclaimed, some symptoms at least of a like danger ought by this time to have been betrayed by the Senate of Maryland, but no such symptoms have appeared. On the contrary, the jealousies at first entertained by men of the same description with those who view with terror the correspondent part of the federal Constitution, have been gradually extinguished by the progress of the experiment; and the Maryland constitution is daily deriving, from the salutary operation of this part of it, a reputation in which it will probably not be rivalled by that of any State in the Union.

But if anything could silence the jealousies on this subject, it ought to be the British example. The Senate there instead of being elected for a term of six years, and of being unconfined to particular families or fortunes, is an hereditary assembly of opulent nobles. The House of Representatives, instead of being elected for two years, and by the whole body of the people, is elected for seven years, and, in very great proportion, by a very small proportion of the people. Here, unquestionably, ought to be seen in full display the aristocratic usurpations and tyranny which are at some future period to be exemplified in the United States. Unfortunately, however, for the anti-federal argument, the British history informs us that this hereditary assembly has not been able to defend itself against the continual encroachments of the House of Representatives; and that it no sooner lost the support of the monarch, than it was actually crushed by the weight of the popular branch.

As far as antiquity can instruct us on this subject, its examples support the reasoning which we have employed. In Sparta, the Ephori, the annual representatives of the people, were found an overmatch for the senate for life, continually gained on its authority and finally drew all power into their own hands. The Tribunes of Rome, who were the representatives of the people, prevailed, it is well known, in almost every contest with the senate for life, and in the end gained the most complete triumph over it. The fact is the more remarkable, as unanimity was required in every act of the Tribunes, even after their number was augmented to ten. It proves the irresistible force possessed by that branch of a free government, which has the people on its side. To these examples might be added that of Carthage,

whose senate, according to the testimony of Polybius, instead of drawing all power into its vortex, had, at the commencement of the second Punic War, lost almost the whole of its original portion.

Besides the conclusive evidence resulting from this assemblage of facts, that the federal Senate will never be able to transform itself, by gradual usurpations, into an independent and aristocratic body, we are warranted in believing, that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the House of Representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles. Against the force of the immediate representatives of the people, nothing will be able to maintain even the constitutional authority of the Senate, but such a display of enlightened policy, and attachment to the public good, as will divide with that branch of the legislature the affections and support of the entire body of the people themselves.

PUBLIUS

FEDERALIST No. 64. The Powers of the Senate

From The Independent Journal. Wednesday, March 5, 1788.

JAY

To the People of the State of New York:

IT IS a just and not a new observation, that enemies to particular persons, and opponents to particular measures, seldom confine their censures to such things only in either as are worthy of blame. Unless on this principle, it is difficult to explain the motives of their conduct, who condemn the proposed Constitution in the aggregate, and treat with severity some of the most unexceptionable articles in it.

The second section gives power to the President, "BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, TO MAKE TREATIES, PROVIDED TWO THIRDS OF THE SENATORS PRESENT CONCUR."

The power of making treaties is an important one, especially as it relates to war, peace, and commerce; and it should not be delegated but in such a mode, and with such precautions, as will afford the highest security that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good. The convention appears to have been attentive to both these points: they have directed the President to be chosen by select bodies of electors, to be deputed by the people for that express purpose; and they have committed the appointment of senators to the State legislatures. This mode has, in such cases, vastly the advantage of elections by the people in their collective capacity, where the activity of party zeal, taking the advantage of the supineness, the ignorance, and the hopes and fears of the unwary and interested, often places men in office by the votes of a small proportion of the electors.

As the select assemblies for choosing the President, as well as the State legislatures who appoint the senators, will in general be composed of the most enlightened and respectable citizens, there is reason to presume that their attention and their votes will be directed to those men only who have become the most distinguished by their abilities and virtue, and in whom

the people perceive just grounds for confidence. The Constitution manifests very particular attention to this object. By excluding men under thirty-five from the first office, and those under thirty from the second, it confines the electors to men of whom the people have had time to form a judgment, and with respect to whom they will not be liable to be deceived by those brilliant appearances of genius and patriotism, which, like transient meteors, sometimes mislead as well as dazzle. If the observation be well founded, that wise kings will always be served by able ministers, it is fair to argue, that as an assembly of select electors possess, in a greater degree than kings, the means of extensive and accurate information relative to men and characters, so will their appointments bear at least equal marks of discretion and discernment. The inference which naturally results from these considerations is this, that the President and senators so chosen will always be of the number of those who best understand our national interests, whether considered in relation to the several States or to foreign nations, who are best able to promote those interests, and whose reputation for integrity inspires and merits confidence. With such men the power of making treaties may be safely lodged.

Although the absolute necessity of system, in the conduct of any business, is universally known and acknowledged, yet the high importance of it in national affairs has not yet become sufficiently impressed on the public mind. They who wish to commit the power under consideration to a popular assembly, composed of members constantly coming and going in quick succession, seem not to recollect that such a body must necessarily be inadequate to the attainment of those great objects, which require to be steadily contemplated in all their relations and circumstances, and which can only be approached and achieved by measures which not only talents, but also exact information, and often much time, are necessary to concert and to execute. It was wise, therefore, in the convention to provide, not only that the power of making treaties should be committed to able and honest men, but also that they should continue in place a sufficient time to become perfectly acquainted with our national concerns, and to form and introduce a system for the management of them. The duration prescribed is such as will give them an opportunity of greatly extending their political information, and of rendering their accumulating experience more and more beneficial to their country. Nor has the convention discovered less prudence in providing for the frequent elections of senators in such a way as to

obviate the inconvenience of periodically transferring those great affairs entirely to new men; for by leaving a considerable residue of the old ones in place, uniformity and order, as well as a constant succession of official information will be preserved.

There are a few who will not admit that the affairs of trade and navigation should be regulated by a system cautiously formed and steadily pursued; and that both our treaties and our laws should correspond with and be made to promote it. It is of much consequence that this correspondence and conformity be carefully maintained; and they who assent to the truth of this position will see and confess that it is well provided for by making concurrence of the Senate necessary both to treaties and to laws.

It seldom happens in the negotiation of treaties, of whatever nature, but that perfect SECRECY and immediate DESPATCH are sometimes requisite. These are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions, who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular Assembly. The convention have done well, therefore, in so disposing of the power of making treaties, that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest.

They who have turned their attention to the affairs of men, must have perceived that there are tides in them; tides very irregular in their duration, strength, and direction, and seldom found to run twice exactly in the same manner or measure. To discern and to profit by these tides in national affairs is the business of those who preside over them; and they who have had much experience on this head inform us, that there frequently are occasions when days, nay, even when hours, are precious. The loss of a battle, the death of a prince, the removal of a minister, or other circumstances intervening to change the present posture and aspect of affairs, may turn the most favorable tide into a course opposite to our wishes. As in the field, so in the cabinet, there are moments to be seized as they pass, and they who preside in either should be left in capacity to improve them. So often and so

essentially have we heretofore suffered from the want of secrecy and despatch, that the Constitution would have been inexcusably defective, if no attention had been paid to those objects. Those matters which in negotiations usually require the most secrecy and the most despatch, are those preparatory and auxiliary measures which are not otherwise important in a national view, than as they tend to facilitate the attainment of the objects of the negotiation. For these, the President will find no difficulty to provide; and should any circumstance occur which requires the advice and consent of the Senate, he may at any time convene them. Thus we see that the Constitution provides that our negotiations for treaties shall have every advantage which can be derived from talents, information, integrity, and deliberate investigations, on the one hand, and from secrecy and despatch on the other.

But to this plan, as to most others that have ever appeared, objections are contrived and urged.

Some are displeased with it, not on account of any errors or defects in it, but because, as the treaties, when made, are to have the force of laws, they should be made only by men invested with legislative authority. These gentlemen seem not to consider that the judgments of our courts, and the commissions constitutionally given by our governor, are as valid and as binding on all persons whom they concern, as the laws passed by our legislature. All constitutional acts of power, whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature; and therefore, whatever name be given to the power of making treaties, or however obligatory they may be when made, certain it is, that the people may, with much propriety, commit the power to a distinct body from the legislature, the executive, or the judicial. It surely does not follow, that because they have given the power of making laws to the legislature, that therefore they should likewise give them the power to do every other act of sovereignty by which the citizens are to be bound and affected.

Others, though content that treaties should be made in the mode proposed, are averse to their being the SUPREME laws of the land. They insist, and profess to believe, that treaties like acts of assembly, should be repealable at pleasure. This idea seems to be new and peculiar to this country, but new errors, as well as new truths, often appear. These

gentlemen would do well to reflect that a treaty is only another name for a bargain, and that it would be impossible to find a nation who would make any bargain with us, which should be binding on them ABSOLUTELY, but on us only so long and so far as we may think proper to be bound by it. They who make laws may, without doubt, amend or repeal them; and it will not be disputed that they who make treaties may alter or cancel them; but still let us not forget that treaties are made, not by only one of the contracting parties, but by both; and consequently, that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter or cancel them. The proposed Constitution, therefore, has not in the least extended the obligation of treaties. They are just as binding, and just as far beyond the lawful reach of legislative acts now, as they will be at any future period, or under any form of government.

However useful jealousy may be in republics, yet when like bile in the natural, it abounds too much in the body politic, the eyes of both become very liable to be deceived by the delusive appearances which that malady casts on surrounding objects. From this cause, probably, proceed the fears and apprehensions of some, that the President and Senate may make treaties without an equal eye to the interests of all the States. Others suspect that two thirds will oppress the remaining third, and ask whether those gentlemen are made sufficiently responsible for their conduct; whether, if they act corruptly, they can be punished; and if they make disadvantageous treaties, how are we to get rid of those treaties?

As all the States are equally represented in the Senate, and by men the most able and the most willing to promote the interests of their constituents, they will all have an equal degree of influence in that body, especially while they continue to be careful in appointing proper persons, and to insist on their punctual attendance. In proportion as the United States assume a national form and a national character, so will the good of the whole be more and more an object of attention, and the government must be a weak one indeed, if it should forget that the good of the whole can only be promoted by advancing the good of each of the parts or members which compose the whole. It will not be in the power of the President and Senate to make any treaties by which they and their families and estates will not be equally bound and affected with the rest of the community; and, having no private interests distinct from that of the nation, they will be under no temptations to neglect the latter.

As to corruption, the case is not supposable. He must either have been very unfortunate in his intercourse with the world, or possess a heart very susceptible of such impressions, who can think it probable that the President and two thirds of the Senate will ever be capable of such unworthy conduct. The idea is too gross and too invidious to be entertained. But in such a case, if it should ever happen, the treaty so obtained from us would, like all other fraudulent contracts, be null and void by the law of nations.

With respect to their responsibility, it is difficult to conceive how it could be increased. Every consideration that can influence the human mind, such as honor, oaths, reputations, conscience, the love of country, and family affections and attachments, afford security for their fidelity. In short, as the Constitution has taken the utmost care that they shall be men of talents and integrity, we have reason to be persuaded that the treaties they make will be as advantageous as, all circumstances considered, could be made; and so far as the fear of punishment and disgrace can operate, that motive to good behavior is amply afforded by the article on the subject of impeachments.

PUBLIUS

FEDERALIST No. 65. The Powers of the Senate Continued

From the New York Packet. Friday, March 7, 1788.

HAMILTON

To the People of the State of New York:

THE remaining powers which the plan of the convention allots to the Senate, in a distinct capacity, are comprised in their participation with the executive in the appointment to offices, and in their judicial character as a court for the trial of impeachments. As in the business of appointments the executive will be the principal agent, the provisions relating to it will most properly be discussed in the examination of that department. We will, therefore, conclude this head with a view of the judicial character of the Senate.

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.

The delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs, speak for themselves. The difficulty of placing it rightly, in a government resting entirely on the basis of periodical

elections, will as readily be perceived, when it is considered that the most conspicuous characters in it will, from that circumstance, be too often the leaders or the tools of the most cunning or the most numerous faction, and on this account, can hardly be expected to possess the requisite neutrality towards those whose conduct may be the subject of scrutiny.

The convention, it appears, thought the Senate the most fit depositary of this important trust. Those who can best discern the intrinsic difficulty of the thing, will be least hasty in condemning that opinion, and will be most inclined to allow due weight to the arguments which may be supposed to have produced it.

What, it may be asked, is the true spirit of the institution itself? Is it not designed as a method of NATIONAL INQUEST into the conduct of public men? If this be the design of it, who can so properly be the inquisitors for the nation as the representatives of the nation themselves? It is not disputed that the power of originating the inquiry, or, in other words, of preferring the impeachment, ought to be lodged in the hands of one branch of the legislative body. Will not the reasons which indicate the propriety of this arrangement strongly plead for an admission of the other branch of that body to a share of the inquiry? The model from which the idea of this institution has been borrowed, pointed out that course to the convention. In Great Britain it is the province of the House of Commons to prefer the impeachment, and of the House of Lords to decide upon it. Several of the State constitutions have followed the example. As well the latter, as the former, seem to have regarded the practice of impeachments as a bridle in the hands of the legislative body upon the executive servants of the government. Is not this the true light in which it ought to be regarded?

Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel CONFIDENCE ENOUGH IN ITS OWN SITUATION, to preserve, unawed and uninfluenced, the necessary impartiality between an INDIVIDUAL accused, and the REPRESENTATIVES OF THE PEOPLE, HIS ACCUSERS?

Could the Supreme Court have been relied upon as answering this description? It is much to be doubted, whether the members of that tribunal would at all times be endowed with so eminent a portion of fortitude, as would be called for in the execution of so difficult a task; and it is still more

to be doubted, whether they would possess the degree of credit and authority, which might, on certain occasions, be indispensable towards reconciling the people to a decision that should happen to clash with an accusation brought by their immediate representatives. A deficiency in the first, would be fatal to the accused; in the last, dangerous to the public tranquillity. The hazard in both these respects, could only be avoided, if at all, by rendering that tribunal more numerous than would consist with a reasonable attention to economy. The necessity of a numerous court for the trial of impeachments, is equally dictated by the nature of the proceeding. This can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors, or in the construction of it by the judges, as in common cases serve to limit the discretion of courts in favor of personal security. There will be no jury to stand between the judges who are to pronounce the sentence of the law, and the party who is to receive or suffer it. The awful discretion which a court of impeachments must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons.

These considerations seem alone sufficient to authorize a conclusion, that the Supreme Court would have been an improper substitute for the Senate, as a court of impeachments. There remains a further consideration, which will not a little strengthen this conclusion. It is this: The punishment which may be the consequence of conviction upon impeachment, is not to terminate the chastisement of the offender. After having been sentenced to a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country, he will still be liable to prosecution and punishment in the ordinary course of law. Would it be proper that the persons who had disposed of his fame, and his most valuable rights as a citizen in one trial, should, in another trial, for the same offense, be also the disposers of his life and his fortune? Would there not be the greatest reason to apprehend, that error, in the first sentence, would be the parent of error in the second sentence? That the strong bias of one decision would be apt to overrule the influence of any new lights which might be brought to vary the complexion of another decision? Those who know anything of human nature, will not hesitate to answer these questions in the affirmative; and will be at no loss to perceive, that by making the same persons judges in both cases, those who might happen to be the objects of prosecution would,

in a great measure, be deprived of the double security intended them by a double trial. The loss of life and estate would often be virtually included in a sentence which, in its terms, imported nothing more than dismission from a present, and disqualification for a future, office. It may be said, that the intervention of a jury, in the second instance, would obviate the danger. But juries are frequently influenced by the opinions of judges. They are sometimes induced to find special verdicts, which refer the main question to the decision of the court. Who would be willing to stake his life and his estate upon the verdict of a jury acting under the auspices of judges who had predetermined his guilt?

Would it have been an improvement of the plan, to have united the Supreme Court with the Senate, in the formation of the court of impeachments? This union would certainly have been attended with several advantages; but would they not have been overbalanced by the signal disadvantage, already stated, arising from the agency of the same judges in the double prosecution to which the offender would be liable? To a certain extent, the benefits of that union will be obtained from making the chief justice of the Supreme Court the president of the court of impeachments, as is proposed to be done in the plan of the convention; while the inconveniences of an entire incorporation of the former into the latter will be substantially avoided. This was perhaps the prudent mean. I forbear to remark upon the additional pretext for clamor against the judiciary, which so considerable an augmentation of its authority would have afforded.

Would it have been desirable to have composed the court for the trial of impeachments, of persons wholly distinct from the other departments of the government? There are weighty arguments, as well against, as in favor of, such a plan. To some minds it will not appear a trivial objection, that it could tend to increase the complexity of the political machine, and to add a new spring to the government, the utility of which would at best be questionable. But an objection which will not be thought by any unworthy of attention, is this: a court formed upon such a plan, would either be attended with a heavy expense, or might in practice be subject to a variety of casualties and inconveniences. It must either consist of permanent officers, stationary at the seat of government, and of course entitled to fixed and regular stipends, or of certain officers of the State governments to be called upon whenever an impeachment was actually depending. It will not be easy to imagine any third mode materially different, which could

rationally be proposed. As the court, for reasons already given, ought to be numerous, the first scheme will be reprobated by every man who can compare the extent of the public wants with the means of supplying them. The second will be espoused with caution by those who will seriously consider the difficulty of collecting men dispersed over the whole Union; the injury to the innocent, from the procrastinated determination of the charges which might be brought against them; the advantage to the guilty, from the opportunities which delay would afford to intrigue and corruption; and in some cases the detriment to the State, from the prolonged inaction of men whose firm and faithful execution of their duty might have exposed them to the persecution of an intemperate or designing majority in the House of Representatives. Though this latter supposition may seem harsh, and might not be likely often to be verified, yet it ought not to be forgotten that the demon of faction will, at certain seasons, extend his sceptre over all numerous bodies of men.

But though one or the other of the substitutes which have been examined, or some other that might be devised, should be thought preferable to the plan in this respect, reported by the convention, it will not follow that the Constitution ought for this reason to be rejected. If mankind were to resolve to agree in no institution of government, until every part of it had been adjusted to the most exact standard of perfection, society would soon become a general scene of anarchy, and the world a desert. Where is the standard of perfection to be found? Who will undertake to unite the discordant opinions of a whole community, in the same judgment of it; and to prevail upon one conceited projector to renounce his INFALLIBLE criterion for the FALLIBLE criterion of his more CONCEITED NEIGHBOR? To answer the purpose of the adversaries of the Constitution, they ought to prove, not merely that particular provisions in it are not the best which might have been imagined, but that the plan upon the whole is bad and pernicious.

PUBLIUS

FEDERALIST No. 66. Objections to the Power of the Senate To Set as a Court for Impeachments Further Considered.

From The Independent Journal. Saturday, March 8, 1788.

HAMILTON

To the People of the State of New York:

A REVIEW of the principal objections that have appeared against the proposed court for the trial of impeachments, will not improbably eradicate the remains of any unfavorable impressions which may still exist in regard to this matter.

The FIRST of these objections is, that the provision in question confounds legislative and judiciary authorities in the same body, in violation of that important and well-established maxim which requires a separation between the different departments of power. The true meaning of this maxim has been discussed and ascertained in another place, and has been shown to be entirely compatible with a partial intermixture of those departments for special purposes, preserving them, in the main, distinct and unconnected. This partial intermixture is even, in some cases, not only proper but necessary to the mutual defense of the several members of the government against each other. An absolute or qualified negative in the executive upon the acts of the legislative body, is admitted, by the ablest adepts in political science, to be an indispensable barrier against the encroachments of the latter upon the former. And it may, perhaps, with no less reason be contended, that the powers relating to impeachments are, as before intimated, an essential check in the hands of that body upon the encroachments of the executive. The division of them between the two branches of the legislature, assigning to one the right of accusing, to the other the right of judging, avoids the inconvenience of making the same persons both accusers and judges; and guards against the danger of persecution, from the prevalency of a factious spirit in either of those branches. As the concurrence of two thirds of the Senate will be requisite to

a condemnation, the security to innocence, from this additional circumstance, will be as complete as itself can desire.

It is curious to observe, with what vehemence this part of the plan is assailed, on the principle here taken notice of, by men who profess to admire, without exception, the constitution of this State; while that constitution makes the Senate, together with the chancellor and judges of the Supreme Court, not only a court of impeachments, but the highest judicatory in the State, in all causes, civil and criminal. The proportion, in point of numbers, of the chancellor and judges to the senators, is so inconsiderable, that the judiciary authority of New York, in the last resort, may, with truth, be said to reside in its Senate. If the plan of the convention be, in this respect, chargeable with a departure from the celebrated maxim which has been so often mentioned, and seems to be so little understood, how much more culpable must be the constitution of New York?(1)

A SECOND objection to the Senate, as a court of impeachments, is, that it contributes to an undue accumulation of power in that body, tending to give to the government a countenance too aristocratic. The Senate, it is observed, is to have concurrent authority with the Executive in the formation of treaties and in the appointment to offices: if, say the objectors, to these prerogatives is added that of deciding in all cases of impeachment, it will give a decided predominancy to senatorial influence. To an objection so little precise in itself, it is not easy to find a very precise answer. Where is the measure or criterion to which we can appeal, for determining what will give the Senate too much, too little, or barely the proper degree of influence? Will it not be more safe, as well as more simple, to dismiss such vague and uncertain calculations, to examine each power by itself, and to decide, on general principles, where it may be deposited with most advantage and least inconvenience?

If we take this course, it will lead to a more intelligible, if not to a more certain result. The disposition of the power of making treaties, which has obtained in the plan of the convention, will, then, if I mistake not, appear to be fully justified by the considerations stated in a former number, and by others which will occur under the next head of our inquiries. The expediency of the junction of the Senate with the Executive, in the power of appointing to offices, will, I trust, be placed in a light not less satisfactory, in the disquisitions under the same head. And I flatter myself the

observations in my last paper must have gone no inconsiderable way towards proving that it was not easy, if practicable, to find a more fit receptacle for the power of determining impeachments, than that which has been chosen. If this be truly the case, the hypothetical dread of the too great weight of the Senate ought to be discarded from our reasonings.

But this hypothesis, such as it is, has already been refuted in the remarks applied to the duration in office prescribed for the senators. It was by them shown, as well on the credit of historical examples, as from the reason of the thing, that the most POPULAR branch of every government, partaking of the republican genius, by being generally the favorite of the people, will be as generally a full match, if not an overmatch, for every other member of the Government.

But independent of this most active and operative principle, to secure the equilibrium of the national House of Representatives, the plan of the convention has provided in its favor several important counterpoises to the additional authorities to be conferred upon the Senate. The exclusive privilege of originating money bills will belong to the House of Representatives. The same house will possess the sole right of instituting impeachments: is not this a complete counterbalance to that of determining them? The same house will be the umpire in all elections of the President, which do not unite the suffrages of a majority of the whole number of electors; a case which it cannot be doubted will sometimes, if not frequently, happen. The constant possibility of the thing must be a fruitful source of influence to that body. The more it is contemplated, the more important will appear this ultimate though contingent power, of deciding the competitions of the most illustrious citizens of the Union, for the first office in it. It would not perhaps be rash to predict, that as a mean of influence it will be found to outweigh all the peculiar attributes of the Senate.

A THIRD objection to the Senate as a court of impeachments, is drawn from the agency they are to have in the appointments to office. It is imagined that they would be too indulgent judges of the conduct of men, in whose official creation they had participated. The principle of this objection would condemn a practice, which is to be seen in all the State governments, if not in all the governments with which we are acquainted: I mean that of rendering those who hold offices during pleasure, dependent on the pleasure

of those who appoint them. With equal plausibility might it be alleged in this case, that the favoritism of the latter would always be an asylum for the misbehavior of the former. But that practice, in contradiction to this principle, proceeds upon the presumption, that the responsibility of those who appoint, for the fitness and competency of the persons on whom they bestow their choice, and the interest they will have in the respectable and prosperous administration of affairs, will inspire a sufficient disposition to dismiss from a share in it all such who, by their conduct, shall have proved themselves unworthy of the confidence reposed in them. Though facts may not always correspond with this presumption, yet if it be, in the main, just, it must destroy the supposition that the Senate, who will merely sanction the choice of the Executive, should feel a bias, towards the objects of that choice, strong enough to blind them to the evidences of guilt so extraordinary, as to have induced the representatives of the nation to become its accusers.

If any further arguments were necessary to evince the improbability of such a bias, it might be found in the nature of the agency of the Senate in the business of appointments. It will be the office of the President to NOMINATE, and, with the advice and consent of the Senate, to APPOINT. There will, of course, be no exertion of CHOICE on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they cannot themselves CHOOSE—they can only ratify or reject the choice of the President. They might even entertain a preference to some other person, at the very moment they were assenting to the one proposed, because there might be no positive ground of opposition to him; and they could not be sure, if they withheld their assent, that the subsequent nomination would fall upon their own favorite, or upon any other person in their estimation more meritorious than the one rejected. Thus it could hardly happen, that the majority of the Senate would feel any other complacency towards the object of an appointment than such as the appearances of merit might inspire, and the proofs of the want of it destroy.

A FOURTH objection to the Senate in the capacity of a court of impeachments, is derived from its union with the Executive in the power of making treaties. This, it has been said, would constitute the senators their own judges, in every case of a corrupt or perfidious execution of that trust. After having combined with the Executive in betraying the interests of the nation in a ruinous treaty, what prospect, it is asked, would there be of their

being made to suffer the punishment they would deserve, when they were themselves to decide upon the accusation brought against them for the treachery of which they have been guilty?

This objection has been circulated with more earnestness and with greater show of reason than any other which has appeared against this part of the plan; and yet I am deceived if it does not rest upon an erroneous foundation.

The security essentially intended by the Constitution against corruption and treachery in the formation of treaties, is to be sought for in the numbers and characters of those who are to make them. The JOINT AGENCY of the Chief Magistrate of the Union, and of two thirds of the members of a body selected by the collective wisdom of the legislatures of the several States, is designed to be the pledge for the fidelity of the national councils in this particular. The convention might with propriety have meditated the punishment of the Executive, for a deviation from the instructions of the Senate, or a want of integrity in the conduct of the negotiations committed to him; they might also have had in view the punishment of a few leading individuals in the Senate, who should have prostituted their influence in that body as the mercenary instruments of foreign corruption: but they could not, with more or with equal propriety, have contemplated the impeachment and punishment of two thirds of the Senate, consenting to an improper treaty, than of a majority of that or of the other branch of the national legislature, consenting to a pernicious or unconstitutional law—a principle which, I believe, has never been admitted into any government. How, in fact, could a majority in the House of Representatives impeach themselves? Not better, it is evident, than two thirds of the Senate might try themselves. And yet what reason is there, that a majority of the House of Representatives, sacrificing the interests of the society by an unjust and tyrannical act of legislation, should escape with impunity, more than two thirds of the Senate, sacrificing the same interests in an injurious treaty with a foreign power? The truth is, that in all such cases it is essential to the freedom and to the necessary independence of the deliberations of the body, that the members of it should be exempt from punishment for acts done in a collective capacity; and the security to the society must depend on the care which is taken to confide the trust to proper hands, to make it their interest to execute it with fidelity, and to make it as difficult as possible for them to combine in any interest opposite to that of the public good.

So far as might concern the misbehavior of the Executive in perverting the instructions or contravening the views of the Senate, we need not be apprehensive of the want of a disposition in that body to punish the abuse of their confidence or to vindicate their own authority. We may thus far count upon their pride, if not upon their virtue. And so far even as might concern the corruption of leading members, by whose arts and influence the majority may have been inveigled into measures odious to the community, if the proofs of that corruption should be satisfactory, the usual propensity of human nature will warrant us in concluding that there would be commonly no defect of inclination in the body to divert the public resentment from themselves by a ready sacrifice of the authors of their mismanagement and disgrace.

PUBLIUS

1. In that of New Jersey, also, the final judiciary authority is in a branch of the legislature. In New Hampshire, Massachusetts, Pennsylvania, and South Carolina, one branch of the legislature is the court for the trial of impeachments.

FEDERALIST No. 67. The Executive Department

From the New York Packet. Tuesday, March 11, 1788.

HAMILTON

To the People of the State of New York:

THE constitution of the executive department of the proposed government, claims next our attention.

There is hardly any part of the system which could have been attended with greater difficulty in the arrangement of it than this; and there is, perhaps, none which has been inveighed against with less candor or criticised with less judgment.

Here the writers against the Constitution seem to have taken pains to signalize their talent of misrepresentation. Calculating upon the aversion of the people to monarchy, they have endeavored to enlist all their jealousies and apprehensions in opposition to the intended President of the United States; not merely as the embryo, but as the full-grown progeny, of that detested parent. To establish the pretended affinity, they have not scrupled to draw resources even from the regions of fiction. The authorities of a magistrate, in few instances greater, in some instances less, than those of a governor of New York, have been magnified into more than royal prerogatives. He has been decorated with attributes superior in dignity and splendor to those of a king of Great Britain. He has been shown to us with the diadem sparkling on his brow and the imperial purple flowing in his train. He has been seated on a throne surrounded with minions and mistresses, giving audience to the envoys of foreign potentates, in all the supercilious pomp of majesty. The images of Asiatic despotism and voluptuousness have scarcely been wanting to crown the exaggerated scene. We have been taught to tremble at the terrific visages of murdering janizaries, and to blush at the unveiled mysteries of a future seraglio.

Attempts so extravagant as these to disfigure or, it might rather be said, to metamorphose the object, render it necessary to take an accurate view of its real nature and form: in order as well to ascertain its true aspect and

genuine appearance, as to unmask the disingenuity and expose the fallacy of the counterfeit resemblances which have been so insidiously, as well as industriously, propagated.

In the execution of this task, there is no man who would not find it an arduous effort either to behold with moderation, or to treat with seriousness, the devices, not less weak than wicked, which have been contrived to pervert the public opinion in relation to the subject. They so far exceed the usual though unjustifiable licenses of party artifice, that even in a disposition the most candid and tolerant, they must force the sentiments which favor an indulgent construction of the conduct of political adversaries to give place to a voluntary and unreserved indignation. It is impossible not to bestow the imputation of deliberate imposture and deception upon the gross pretense of a similitude between a king of Great Britain and a magistrate of the character marked out for that of the President of the United States. It is still more impossible to withhold that imputation from the rash and barefaced expedients which have been employed to give success to the attempted imposition.

In one instance, which I cite as a sample of the general spirit, the temerity has proceeded so far as to ascribe to the President of the United States a power which by the instrument reported is EXPRESSLY allotted to the Executives of the individual States. I mean the power of filling casual vacancies in the Senate.

This bold experiment upon the discernment of his countrymen has been hazarded by a writer who (whatever may be his real merit) has had no inconsiderable share in the applauses of his party(1); and who, upon this false and unfounded suggestion, has built a series of observations equally false and unfounded. Let him now be confronted with the evidence of the fact, and let him, if he be able, justify or extenuate the shameful outrage he has offered to the dictates of truth and to the rules of fair dealing.

The second clause of the second section of the second article empowers the President of the United States "to nominate, and by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other OFFICERS of United States whose appointments are NOT in the Constitution OTHERWISE PROVIDED FOR, and WHICH SHALL BE ESTABLISHED BY LAW." Immediately after this clause follows another

in these words: "The President shall have power to fill up all VACANCIES that may happen DURING THE RECESS OF THE SENATE, by granting commissions which shall EXPIRE AT THE END OF THEIR NEXT SESSION." It is from this last provision that the pretended power of the President to fill vacancies in the Senate has been deduced. A slight attention to the connection of the clauses, and to the obvious meaning of the terms, will satisfy us that the deduction is not even colorable.

The first of these two clauses, it is clear, only provides a mode for appointing such officers, "whose appointments are NOT OTHERWISE PROVIDED FOR in the Constitution, and which SHALL BE ESTABLISHED BY LAW"; of course it cannot extend to the appointments of senators, whose appointments are OTHERWISE PROVIDED FOR in the Constitution(2), and who are ESTABLISHED BY THE CONSTITUTION, and will not require a future establishment by law. This position will hardly be contested.

The last of these two clauses, it is equally clear, cannot be understood to comprehend the power of filling vacancies in the Senate, for the following reasons: First. The relation in which that clause stands to the other, which declares the general mode of appointing officers of the United States, denotes it to be nothing more than a supplement to the other, for the purpose of establishing an auxiliary method of appointment, in cases to which the general method was inadequate. The ordinary power of appointment is confined to the President and Senate JOINTLY, and can therefore only be exercised during the session of the Senate; but as it would have been improper to oblige this body to be continually in session for the appointment of officers and as vacancies might happen IN THEIR RECESS, which it might be necessary for the public service to fill without delay, the succeeding clause is evidently intended to authorize the President, SINGLY, to make temporary appointments "during the recess of the Senate, by granting commissions which shall expire at the end of their next session." Second. If this clause is to be considered as supplementary to the one which precedes, the VACANCIES of which it speaks must be construed to relate to the "officers" described in the preceding one; and this, we have seen, excludes from its description the members of the Senate. Third. The time within which the power is to operate, "during the recess of the Senate," and the duration of the appointments, "to the end of the next session" of that body, conspire to elucidate the sense of the provision,

which, if it had been intended to comprehend senators, would naturally have referred the temporary power of filling vacancies to the recess of the State legislatures, who are to make the permanent appointments, and not to the recess of the national Senate, who are to have no concern in those appointments; and would have extended the duration in office of the temporary senators to the next session of the legislature of the State, in whose representation the vacancies had happened, instead of making it to expire at the end of the ensuing session of the national Senate. The circumstances of the body authorized to make the permanent appointments would, of course, have governed the modification of a power which related to the temporary appointments; and as the national Senate is the body, whose situation is alone contemplated in the clause upon which the suggestion under examination has been founded, the vacancies to which it alludes can only be deemed to respect those officers in whose appointment that body has a concurrent agency with the President. But last, the first and second clauses of the third section of the first article, not only obviate all possibility of doubt, but destroy the pretext of misconception. The former provides, that "the Senate of the United States shall be composed of two Senators from each State, chosen BY THE LEGISLATURE THEREOF for six years"; and the latter directs, that, "if vacancies in that body should happen by resignation or otherwise, DURING THE RECESS OF THE LEGISLATURE OF ANY STATE, the Executive THEREOF may make temporary appointments until the NEXT MEETING OF THE LEGISLATURE, which shall then fill such vacancies." Here is an express power given, in clear and unambiguous terms, to the State Executives, to fill casual vacancies in the Senate, by temporary appointments; which not only invalidates the supposition, that the clause before considered could have been intended to confer that power upon the President of the United States, but proves that this supposition, destitute as it is even of the merit of plausibility, must have originated in an intention to deceive the people, too palpable to be obscured by sophistry, too atrocious to be palliated by hypocrisy.

I have taken the pains to select this instance of misrepresentation, and to place it in a clear and strong light, as an unequivocal proof of the unwarrantable arts which are practiced to prevent a fair and impartial judgment of the real merits of the Constitution submitted to the consideration of the people. Nor have I scrupled, in so flagrant a case, to

allow myself a severity of animadversion little congenial with the general spirit of these papers. I hesitate not to submit it to the decision of any candid and honest adversary of the proposed government, whether language can furnish epithets of too much asperity, for so shameless and so prostitute an attempt to impose on the citizens of America.

PUBLIUS

1. See CATO, No. V.

2. Article I, section 3, clause 1.

FEDERALIST No. 68. The Mode of Electing the President

From The Independent Journal. Wednesday, March 12, 1788.

HAMILTON

To the People of the State of New York:

THE mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded.(1) I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.(E1)

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under

consideration, promise an effectual security against this mischief. The choice of SEVERAL, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of ONE who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place.

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a place of trust or profit under the United States, can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen States, in any combinations founded upon motives, which though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

Another and no less important desideratum was, that the Executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

All these advantages will happily combine in the plan devised by the convention; which is, that the people of each State shall choose a number of persons as electors, equal to the number of senators and representatives of such State in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the President. But as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select out of the candidates who shall have the five highest number of votes, the man who in their opinion may be best qualified for the office.

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says:

"For forms of government let fools contest—That which is best administered is best,"—yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration.

The Vice-President is to be chosen in the same manner with the President; with this difference, that the Senate is to do, in respect to the former, what is to be done by the House of Representatives, in respect to the latter.

The appointment of an extraordinary person, as Vice-President, has been objected to as superfluous, if not mischievous. It has been alleged, that it would have been preferable to have authorized the Senate to elect out of their own body an officer answering that description. But two considerations seem to justify the ideas of the convention in this respect. One is, that to secure at all times the possibility of a definite resolution of the body, it is necessary that the President should have only a casting vote. And to take the senator of any State from his seat as senator, to place him in that of President of the Senate, would be to exchange, in regard to the State from which he came, a constant for a contingent vote. The other consideration is, that as the Vice-President may occasionally become a substitute for the President, in the supreme executive magistracy, all the reasons which recommend the mode of election prescribed for the one, apply with great if not with equal force to the manner of appointing the other. It is remarkable that in this, as in most other instances, the objection which is made would lie against the constitution of this State. We have a Lieutenant-Governor, chosen by the people at large, who presides in the Senate, and is the constitutional substitute for the Governor, in casualties similar to those which would authorize the Vice-President to exercise the authorities and discharge the duties of the President.

PUBLIUS

1. Vide federal farmer.

E1. Some editions substitute "desired" for "wished for".

FEDERALIST No. 69. The Real Character of the Executive

From the New York Packet. Friday, March 14, 1788.

HAMILTON

To the People of the State of New York:

I PROCEED now to trace the real characters of the proposed Executive, as they are marked out in the plan of the convention. This will serve to place in a strong light the unfairness of the representations which have been made in regard to it.

The first thing which strikes our attention is, that the executive authority, with few exceptions, is to be vested in a single magistrate. This will scarcely, however, be considered as a point upon which any comparison can be grounded; for if, in this particular, there be a resemblance to the king of Great Britain, there is not less a resemblance to the Grand Seignior, to the khan of Tartary, to the Man of the Seven Mountains, or to the governor of New York.

That magistrate is to be elected for four years; and is to be re-eligible as often as the people of the United States shall think him worthy of their confidence. In these circumstances there is a total dissimilitude between him and a king of Great Britain, who is an hereditary monarch, possessing the crown as a patrimony descendible to his heirs forever; but there is a close analogy between him and a governor of New York, who is elected for three years, and is re-eligible without limitation or intermission. If we consider how much less time would be requisite for establishing a dangerous influence in a single State, than for establishing a like influence throughout the United States, we must conclude that a duration of four years for the Chief Magistrate of the Union is a degree of permanency far less to be dreaded in that office, than a duration of three years for a corresponding office in a single State.

The President of the United States would be liable to be impeached, tried, and, upon conviction of treason, bribery, or other high crimes or

misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law. The person of the king of Great Britain is sacred and inviolable; there is no constitutional tribunal to which he is amenable; no punishment to which he can be subjected without involving the crisis of a national revolution. In this delicate and important circumstance of personal responsibility, the President of Confederated America would stand upon no better ground than a governor of New York, and upon worse ground than the governors of Maryland and Delaware.

The President of the United States is to have power to return a bill, which shall have passed the two branches of the legislature, for reconsideration; and the bill so returned is to become a law, if, upon that reconsideration, it be approved by two thirds of both houses. The king of Great Britain, on his part, has an absolute negative upon the acts of the two houses of Parliament. The disuse of that power for a considerable time past does not affect the reality of its existence; and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation. The qualified negative of the President differs widely from this absolute negative of the British sovereign; and tallies exactly with the revisionary authority of the council of revision of this State, of which the governor is a constituent part. In this respect the power of the President would exceed that of the governor of New York, because the former would possess, singly, what the latter shares with the chancellor and judges; but it would be precisely the same with that of the governor of Massachusetts, whose constitution, as to this article, seems to have been the original from which the convention have copied.

The President is to be the "commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He is to have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment; to recommend to the consideration of Congress such measures as he shall judge necessary and expedient; to convene, on extraordinary occasions, both houses of the legislature, or either of them, and, in case of disagreement between them with respect to the time of adjournment, to adjourn them to such time as he shall think proper; to take

care that the laws be faithfully executed; and to commission all officers of the United States." In most of these particulars, the power of the President will resemble equally that of the king of Great Britain and of the governor of New York. The most material points of difference are these:—First. The President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union. The king of Great Britain and the governor of New York have at all times the entire command of all the militia within their several jurisdictions. In this article, therefore, the power of the President would be inferior to that of either the monarch or the governor. Second. The President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the declaring of war and to the raising and regulating of fleets and armies—all which, by the Constitution under consideration, would appertain to the legislature.(1) The governor of New York, on the other hand, is by the constitution of the State vested only with the command of its militia and navy. But the constitutions of several of the States expressly declare their governors to be commanders-in-chief, as well of the army as navy; and it may well be a question, whether those of New Hampshire and Massachusetts, in particular, do not, in this instance, confer larger powers upon their respective governors, than could be claimed by a President of the United States. Third. The power of the President, in respect to pardons, would extend to all cases, except those of impeachment. The governor of New York may pardon in all cases, even in those of impeachment, except for treason and murder. Is not the power of the governor, in this article, on a calculation of political consequences, greater than that of the President? All conspiracies and plots against the government, which have not been matured into actual treason, may be screened from punishment of every kind, by the interposition of the prerogative of pardoning. If a governor of New York, therefore, should be at the head of any such conspiracy, until the design had been ripened into actual hostility he could insure his accomplices and adherents an entire impunity. A President of the Union, on the other hand, though he may even pardon treason, when prosecuted in the ordinary course of law, could shelter

no offender, in any degree, from the effects of impeachment and conviction. Would not the prospect of a total indemnity for all the preliminary steps be a greater temptation to undertake and persevere in an enterprise against the public liberty, than the mere prospect of an exemption from death and confiscation, if the final execution of the design, upon an actual appeal to arms, should miscarry? Would this last expectation have any influence at all, when the probability was computed, that the person who was to afford that exemption might himself be involved in the consequences of the measure, and might be incapacitated by his agency in it from affording the desired impunity? The better to judge of this matter, it will be necessary to recollect, that, by the proposed Constitution, the offense of treason is limited "to levying war upon the United States, and adhering to their enemies, giving them aid and comfort"; and that by the laws of New York it is confined within similar bounds. Fourth. The President can only adjourn the national legislature in the single case of disagreement about the time of adjournment. The British monarch may prorogue or even dissolve the Parliament. The governor of New York may also prorogue the legislature of this State for a limited time; a power which, in certain situations, may be employed to very important purposes.

The President is to have power, with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur. The king of Great Britain is the sole and absolute representative of the nation in all foreign transactions. He can of his own accord make treaties of peace, commerce, alliance, and of every other description. It has been insinuated, that his authority in this respect is not conclusive, and that his conventions with foreign powers are subject to the revision, and stand in need of the ratification, of Parliament. But I believe this doctrine was never heard of, until it was broached upon the present occasion. Every jurist(2) of that kingdom, and every other man acquainted with its Constitution, knows, as an established fact, that the prerogative of making treaties exists in the crown in its utmost plentitude; and that the compacts entered into by the royal authority have the most complete legal validity and perfection, independent of any other sanction. The Parliament, it is true, is sometimes seen employing itself in altering the existing laws to conform them to the stipulations in a new treaty; and this may have possibly given birth to the imagination, that its co-operation was necessary to the obligatory efficacy of the treaty. But this parliamentary interposition proceeds from a different

cause: from the necessity of adjusting a most artificial and intricate system of revenue and commercial laws, to the changes made in them by the operation of the treaty; and of adapting new provisions and precautions to the new state of things, to keep the machine from running into disorder. In this respect, therefore, there is no comparison between the intended power of the President and the actual power of the British sovereign. The one can perform alone what the other can do only with the concurrence of a branch of the legislature. It must be admitted, that, in this instance, the power of the federal Executive would exceed that of any State Executive. But this arises naturally from the sovereign power which relates to treaties. If the Confederacy were to be dissolved, it would become a question, whether the Executives of the several States were not solely invested with that delicate and important prerogative.

The President is also to be authorized to receive ambassadors and other public ministers. This, though it has been a rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the government; and it was far more convenient that it should be arranged in this manner, than that there should be a necessity of convening the legislature, or one of its branches, upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor.

The President is to nominate, and, with the advice and consent of the Senate, to appoint ambassadors and other public ministers, judges of the Supreme Court, and in general all officers of the United States established by law, and whose appointments are not otherwise provided for by the Constitution. The king of Great Britain is emphatically and truly styled the fountain of honor. He not only appoints to all offices, but can create offices. He can confer titles of nobility at pleasure; and has the disposal of an immense number of church preferments. There is evidently a great inferiority in the power of the President, in this particular, to that of the British king; nor is it equal to that of the governor of New York, if we are to interpret the meaning of the constitution of the State by the practice which has obtained under it. The power of appointment is with us lodged in a council, composed of the governor and four members of the Senate, chosen by the Assembly. The governor claims, and has frequently exercised, the right of nomination, and is entitled to a casting vote in the appointment. If he really has the right of nominating, his authority is in this respect equal to

that of the President, and exceeds it in the article of the casting vote. In the national government, if the Senate should be divided, no appointment could be made; in the government of New York, if the council should be divided, the governor can turn the scale, and confirm his own nomination.(3) If we compare the publicity which must necessarily attend the mode of appointment by the President and an entire branch of the national legislature, with the privacy in the mode of appointment by the governor of New York, closeted in a secret apartment with at most four, and frequently with only two persons; and if we at the same time consider how much more easy it must be to influence the small number of which a council of appointment consists, than the considerable number of which the national Senate would consist, we cannot hesitate to pronounce that the power of the chief magistrate of this State, in the disposition of offices, must, in practice, be greatly superior to that of the Chief Magistrate of the Union.

Hence it appears that, except as to the concurrent authority of the President in the article of treaties, it would be difficult to determine whether that magistrate would, in the aggregate, possess more or less power than the Governor of New York. And it appears yet more unequivocally, that there is no pretense for the parallel which has been attempted between him and the king of Great Britain. But to render the contrast in this respect still more striking, it may be of use to throw the principal circumstances of dissimilitude into a closer group.

The President of the United States would be an officer elected by the people for four years; the king of Great Britain is a perpetual and hereditary prince. The one would be amenable to personal punishment and disgrace; the person of the other is sacred and inviolable. The one would have a qualified negative upon the acts of the legislative body; the other has an absolute negative. The one would have a right to command the military and naval forces of the nation; the other, in addition to this right, possesses that of declaring war, and of raising and regulating fleets and armies by his own authority. The one would have a concurrent power with a branch of the legislature in the formation of treaties; the other is the sole possessor of the power of making treaties. The one would have a like concurrent authority in appointing to offices; the other is the sole author of all appointments. The one can confer no privileges whatever; the other can make denizens of aliens, noblemen of commoners; can erect corporations with all the rights incident to corporate bodies. The one can prescribe no rules concerning the

commerce or currency of the nation; the other is in several respects the arbiter of commerce, and in this capacity can establish markets and fairs, can regulate weights and measures, can lay embargoes for a limited time, can coin money, can authorize or prohibit the circulation of foreign coin. The one has no particle of spiritual jurisdiction; the other is the supreme head and governor of the national church! What answer shall we give to those who would persuade us that things so unlike resemble each other? The same that ought to be given to those who tell us that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism.

PUBLIUS

1. A writer in a Pennsylvania paper, under the signature of TAMONY, has asserted that the king of Great Britain owes his prerogative as commander-in-chief to an annual mutiny bill. The truth is, on the contrary, that his prerogative, in this respect, is immemorial, and was only disputed, "contrary to all reason and precedent," as Blackstone vol. i., page 262, expresses it, by the Long Parliament of Charles I. but by the statute the 13th of Charles II., chap. 6, it was declared to be in the king alone, for that the sole supreme government and command of the militia within his Majesty's realms and dominions, and of all forces by sea and land, and of all forts and places of strength, EVER WAS AND IS the undoubted right of his Majesty and his royal predecessors, kings and queens of England, and that both or either house of Parliament cannot nor ought to pretend to the same.

2. Vide Blackstone's Commentaries, Vol I., p. 257.

3. Candor, however, demands an acknowledgment that I do not think the claim of the governor to a right of nomination well founded. Yet it is always justifiable to reason from the practice of a government, till its propriety has been constitutionally questioned. And independent of this claim, when we take into view the other considerations, and pursue them through all their consequences, we shall be inclined to draw much the same conclusion.

FEDERALIST No. 70. The Executive Department Further Considered

From The Independent Journal. Saturday, March 15, 1788.

HAMILTON

To the People of the State of New York:

THERE is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman history, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined

with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of counsellors to him. Of the first, the two Consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have intrusted the executive authority wholly to single men.(1) Both these methods of destroying the unity of the Executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction.

The experience of other nations will afford little instruction on this head. As far, however, as it teaches any thing, it teaches us not to be enamoured

of plurality in the Executive. We have seen that the Achaeans, on an experiment of two Praetors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions between the Consuls, and between the military Tribunes, who were at times substituted for the Consuls. But it gives us no specimens of any peculiar advantages derived to the state from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal, is a matter of astonishment, until we advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the circumstances of the state, and pursued by the Consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebeians for the preservation of their ancient authorities and dignities; the Consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the Consuls to divide the administration between themselves by lot—one of them remaining at Rome to govern the city and its environs, the other taking the command in the more distant provinces. This expedient must, no doubt, have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic.

But quitting the dim light of historical research, attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the Executive, under any modification whatever.

Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operation of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical emergencies of the state. And what is still worse, they might

split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

Men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character.

Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the Executive. It is here too that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here, they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition—vigor and expedition, and this without any counterbalancing good. In the conduct of war, in which the energy of the Executive is the bulwark of the national security, every thing would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed—that is, to a plurality of magistrates of equal dignity and authority a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal, yet with considerable weight to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible Executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

(But one of the weightiest objections to a plurality in the Executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds—to censure and to punishment. The first is the more important of the two, especially in an elective office. Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the Executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable.)(E1)

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"I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point." These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble or incur the odium, of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties?

In the single instance in which the governor of this State is coupled with a council—that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council, who, on their part, have charged it upon his nomination; while the people remain altogether at a loss to determine, by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

It is evident from these considerations, that the plurality of the Executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, first, the restraints of public

opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and, second, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom, than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office, and may observe or disregard the counsel given to him at his sole discretion.

But in a republic, where every magistrate ought to be personally responsible for his behavior in office the reason which in the British Constitution dictates the propriety of a council, not only ceases to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the chief magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic, it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself.

The idea of a council to the Executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is ONE";(2) that it is far more safe there

should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the Executive is rather dangerous than friendly to liberty.

A little consideration will satisfy us, that the species of security sought for in the multiplication of the Executive, is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty, than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men, as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man; who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The Decemvirs of Rome, whose name denotes their number,(3) were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an Executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers, is not too great for an easy combination; and from such a combination America would have more to fear, than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad and are almost always a cloak to his faults.

I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of equivocal utility. I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States, who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our constitution.

PUBLIUS

1. New York has no council except for the single purpose of appointing to offices; New Jersey has a council whom the governor may consult. But I think, from the terms of the constitution, their resolutions do not bind him.

2. De Lolme.

3. Ten.

E1. Two versions of these paragraphs appear in different editions.

FEDERALIST No. 71. The Duration in Office of the Executive

From the New York Packet. Tuesday, March 18, 1788.

HAMILTON

To the People of the State of New York:

DURATION in office has been mentioned as the second requisite to the energy of the Executive authority. This has relation to two objects: to the personal firmness of the executive magistrate, in the employment of his constitutional powers; and to the stability of the system of administration which may have been adopted under his auspices. With regard to the first, it must be evident, that the longer the duration in office, the greater will be the probability of obtaining so important an advantage. It is a general principle of human nature, that a man will be interested in whatever he possesses, in proportion to the firmness or precariousness of the tenure by which he holds it; will be less attached to what he holds by a momentary or uncertain title, than to what he enjoys by a durable or certain title; and, of course, will be willing to risk more for the sake of the one, than for the sake of the other. This remark is not less applicable to a political privilege, or honor, or trust, than to any article of ordinary property. The inference from it is, that a man acting in the capacity of chief magistrate, under a consciousness that in a very short time he MUST lay down his office, will be apt to feel himself too little interested in it to hazard any material censure or perplexity, from the independent exertion of his powers, or from encountering the ill-humors, however transient, which may happen to prevail, either in a considerable part of the society itself, or even in a predominant faction in the legislative body. If the case should only be, that he MIGHT lay it down, unless continued by a new choice, and if he should be desirous of being continued, his wishes, conspiring with his fears, would tend still more powerfully to corrupt his integrity, or debase his fortitude. In either case, feebleness and irresolution must be the characteristics of the station.

There are some who would be inclined to regard the servile pliancy of the Executive to a prevailing current, either in the community or in the legislature, as its best recommendation. But such men entertain very crude notions, as well of the purposes for which government was instituted, as of the true means by which the public happiness may be promoted. The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests. It is a just observation, that the people commonly INTEND the PUBLIC GOOD. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they always REASON RIGHT about the MEANS of promoting it. They know from experience that they sometimes err; and the wonder is that they so seldom err as they do, beset, as they continually are, by the wiles of parasites and sycophants, by the snares of the ambitious, the avaricious, the desperate, by the artifices of men who possess their confidence more than they deserve it, and of those who seek to possess rather than to deserve it. When occasions present themselves, in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests, to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure.

But however inclined we might be to insist upon an unbounded complaisance in the Executive to the inclinations of the people, we can with no propriety contend for a like complaisance to the humors of the legislature. The latter may sometimes stand in opposition to the former, and at other times the people may be entirely neutral. In either supposition, it is certainly desirable that the Executive should be in a situation to dare to act his own opinion with vigor and decision.

The same rule which teaches the propriety of a partition between the various branches of power, teaches us likewise that this partition ought to be so contrived as to render the one independent of the other. To what purpose

separate the executive or the judiciary from the legislative, if both the executive and the judiciary are so constituted as to be at the absolute devotion of the legislative? Such a separation must be merely nominal, and incapable of producing the ends for which it was established. It is one thing to be subordinate to the laws, and another to be dependent on the legislative body. The first comports with, the last violates, the fundamental principles of good government; and, whatever may be the forms of the Constitution, unites all power in the same hands. The tendency of the legislative authority to absorb every other, has been fully displayed and illustrated by examples in some preceding numbers. In governments purely republican, this tendency is almost irresistible. The representatives of the people, in a popular assembly, seem sometimes to fancy that they are the people themselves, and betray strong symptoms of impatience and disgust at the least sign of opposition from any other quarter; as if the exercise of its rights, by either the executive or judiciary, were a breach of their privilege and an outrage to their dignity. They often appear disposed to exert an imperious control over the other departments; and as they commonly have the people on their side, they always act with such momentum as to make it very difficult for the other members of the government to maintain the balance of the Constitution.

It may perhaps be asked, how the shortness of the duration in office can affect the independence of the Executive on the legislature, unless the one were possessed of the power of appointing or displacing the other. One answer to this inquiry may be drawn from the principle already remarked that is, from the slender interest a man is apt to take in a short-lived advantage, and the little inducement it affords him to expose himself, on account of it, to any considerable inconvenience or hazard. Another answer, perhaps more obvious, though not more conclusive, will result from the consideration of the influence of the legislative body over the people; which might be employed to prevent the re-election of a man who, by an upright resistance to any sinister project of that body, should have made himself obnoxious to its resentment.

It may be asked also, whether a duration of four years would answer the end proposed; and if it would not, whether a less period, which would at least be recommended by greater security against ambitious designs, would not, for that reason, be preferable to a longer period, which was, at the same

time, too short for the purpose of inspiring the desired firmness and independence of the magistrate.

It cannot be affirmed, that a duration of four years, or any other limited duration, would completely answer the end proposed; but it would contribute towards it in a degree which would have a material influence upon the spirit and character of the government. Between the commencement and termination of such a period, there would always be a considerable interval, in which the prospect of annihilation would be sufficiently remote, not to have an improper effect upon the conduct of a man indued with a tolerable portion of fortitude; and in which he might reasonably promise himself, that there would be time enough before it arrived, to make the community sensible of the propriety of the measures he might incline to pursue. Though it be probable that, as he approached the moment when the public were, by a new election, to signify their sense of his conduct, his confidence, and with it his firmness, would decline; yet both the one and the other would derive support from the opportunities which his previous continuance in the station had afforded him, of establishing himself in the esteem and good-will of his constituents. He might, then, hazard with safety, in proportion to the proofs he had given of his wisdom and integrity, and to the title he had acquired to the respect and attachment of his fellow-citizens. As, on the one hand, a duration of four years will contribute to the firmness of the Executive in a sufficient degree to render it a very valuable ingredient in the composition; so, on the other, it is not enough to justify any alarm for the public liberty. If a British House of Commons, from the most feeble beginnings, FROM THE MERE POWER OF ASSENTING OR DISAGREEING TO THE IMPOSITION OF A NEW TAX, have, by rapid strides, reduced the prerogatives of the crown and the privileges of the nobility within the limits they conceived to be compatible with the principles of a free government, while they raised themselves to the rank and consequence of a coequal branch of the legislature; if they have been able, in one instance, to abolish both the royalty and the aristocracy, and to overturn all the ancient establishments, as well in the Church as State; if they have been able, on a recent occasion, to make the monarch tremble at the prospect of an innovation(1) attempted by them, what would be to be feared from an elective magistrate of four years' duration, with the confined authorities of a President of the United States? What, but that he might be unequal to the task which the Constitution

assigns him? I shall only add, that if his duration be such as to leave a doubt of his firmness, that doubt is inconsistent with a jealousy of his encroachments.

PUBLIUS

1. This was the case with respect to Mr. Fox's India bill, which was carried in the House of Commons, and rejected in the House of Lords, to the entire satisfaction, as it is said, of the people.

FEDERALIST No. 72. The Same Subject Continued, and Re-Eligibility of the Executive Considered.

From The Independent Journal. Wednesday, March 19, 1788.

HAMILTON

To the People of the State of New York:

THE administration of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary; but in its most usual, and perhaps its most precise signification. it is limited to executive details, and falls peculiarly within the province of the executive department. The actual conduct of foreign negotiations, the preparatory plans of finance, the application and disbursement of the public moneys in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the directions of the operations of war—these, and other matters of a like nature, constitute what seems to be most properly understood by the administration of government. The persons, therefore, to whose immediate management these different matters are committed, ought to be considered as the assistants or deputies of the chief magistrate, and on this account, they ought to derive their offices from his appointment, at least from his nomination, and ought to be subject to his superintendence. This view of the subject will at once suggest to us the intimate connection between the duration of the executive magistrate in office and the stability of the system of administration. To reverse and undo what has been done by a predecessor, is very often considered by a successor as the best proof he can give of his own capacity and desert; and in addition to this propensity, where the alteration has been the result of public choice, the person substituted is warranted in supposing that the dismission of his predecessor has proceeded from a dislike to his measures; and that the less he resembles him, the more he will recommend himself to the favor of his constituents. These considerations, and the influence of personal confidences and attachments, would be likely to induce every new

President to promote a change of men to fill the subordinate stations; and these causes together could not fail to occasion a disgraceful and ruinous mutability in the administration of the government.

With a positive duration of considerable extent, I connect the circumstance of re-eligibility. The first is necessary to give to the officer himself the inclination and the resolution to act his part well, and to the community time and leisure to observe the tendency of his measures, and thence to form an experimental estimate of their merits. The last is necessary to enable the people, when they see reason to approve of his conduct, to continue him in his station, in order to prolong the utility of his talents and virtues, and to secure to the government the advantage of permanency in a wise system of administration.

Nothing appears more plausible at first sight, nor more ill-founded upon close inspection, than a scheme which in relation to the present point has had some respectable advocates—I mean that of continuing the chief magistrate in office for a certain time, and then excluding him from it, either for a limited period or forever after. This exclusion, whether temporary or perpetual, would have nearly the same effects, and these effects would be for the most part rather pernicious than salutary.

One ill effect of the exclusion would be a diminution of the inducements to good behavior. There are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantages of the station with which it was connected must be relinquished at a determinate period, than when they were permitted to entertain a hope of obtaining, by meriting, a continuance of them. This position will not be disputed so long as it is admitted that the desire of reward is one of the strongest incentives of human conduct; or that the best security for the fidelity of mankind is to make their interests coincide with their duty. Even the love of fame, the ruling passion of the noblest minds, which would prompt a man to plan and undertake extensive and arduous enterprises for the public benefit, requiring considerable time to mature and perfect them, if he could flatter himself with the prospect of being allowed to finish what he had begun, would, on the contrary, deter him from the undertaking, when he foresaw that he must quit the scene before he could accomplish the work, and must commit that, together with his own reputation, to hands which might be unequal or unfriendly to the task. The most to be expected from the generality of men,

in such a situation, is the negative merit of not doing harm, instead of the positive merit of doing good.

Another ill effect of the exclusion would be the temptation to sordid views, to peculation, and, in some instances, to usurpation. An avaricious man, who might happen to fill the office, looking forward to a time when he must at all events yield up the emoluments he enjoyed, would feel a propensity, not easy to be resisted by such a man, to make the best use of the opportunity he enjoyed while it lasted, and might not scruple to have recourse to the most corrupt expedients to make the harvest as abundant as it was transitory; though the same man, probably, with a different prospect before him, might content himself with the regular perquisites of his situation, and might even be unwilling to risk the consequences of an abuse of his opportunities. His avarice might be a guard upon his avarice. Add to this that the same man might be vain or ambitious, as well as avaricious. And if he could expect to prolong his honors by his good conduct, he might hesitate to sacrifice his appetite for them to his appetite for gain. But with the prospect before him of approaching an inevitable annihilation, his avarice would be likely to get the victory over his caution, his vanity, or his ambition.

An ambitious man, too, when he found himself seated on the summit of his country's honors, when he looked forward to the time at which he must descend from the exalted eminence for ever, and reflected that no exertion of merit on his part could save him from the unwelcome reverse; such a man, in such a situation, would be much more violently tempted to embrace a favorable conjuncture for attempting the prolongation of his power, at every personal hazard, than if he had the probability of answering the same end by doing his duty.

Would it promote the peace of the community, or the stability of the government to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?

A third ill effect of the exclusion would be, the depriving the community of the advantage of the experience gained by the chief magistrate in the exercise of his office. That experience is the parent of wisdom, is an adage the truth of which is recognized by the wisest as well as the simplest of

mankind. What more desirable or more essential than this quality in the governors of nations? Where more desirable or more essential than in the first magistrate of a nation? Can it be wise to put this desirable and essential quality under the ban of the Constitution, and to declare that the moment it is acquired, its possessor shall be compelled to abandon the station in which it was acquired, and to which it is adapted? This, nevertheless, is the precise import of all those regulations which exclude men from serving their country, by the choice of their fellowcitizens, after they have by a course of service fitted themselves for doing it with a greater degree of utility.

A fourth ill effect of the exclusion would be the banishing men from stations in which, in certain emergencies of the state, their presence might be of the greatest moment to the public interest or safety. There is no nation which has not, at one period or another, experienced an absolute necessity of the services of particular men in particular situations; perhaps it would not be too strong to say, to the preservation of its political existence. How unwise, therefore, must be every such self-denying ordinance as serves to prohibit a nation from making use of its own citizens in the manner best suited to its exigencies and circumstances! Without supposing the personal essentiality of the man, it is evident that a change of the chief magistrate, at the breaking out of a war, or at any similar crisis, for another, even of equal merit, would at all times be detrimental to the community, inasmuch as it would substitute inexperience to experience, and would tend to unhinge and set afloat the already settled train of the administration.

A fifth ill effect of the exclusion would be, that it would operate as a constitutional interdiction of stability in the administration. By necessitating a change of men, in the first office of the nation, it would necessitate a mutability of measures. It is not generally to be expected, that men will vary and measures remain uniform. The contrary is the usual course of things. And we need not be apprehensive that there will be too much stability, while there is even the option of changing; nor need we desire to prohibit the people from continuing their confidence where they think it may be safely placed, and where, by constancy on their part, they may obviate the fatal inconveniences of fluctuating councils and a variable policy.

These are some of the disadvantages which would flow from the principle of exclusion. They apply most forcibly to the scheme of a perpetual exclusion; but when we consider that even a partial exclusion

would always render the readmission of the person a remote and precarious object, the observations which have been made will apply nearly as fully to one case as to the other.

What are the advantages promised to counterbalance these disadvantages? They are represented to be: 1st, greater independence in the magistrate; 2d, greater security to the people. Unless the exclusion be perpetual, there will be no pretense to infer the first advantage. But even in that case, may he have no object beyond his present station, to which he may sacrifice his independence? May he have no connections, no friends, for whom he may sacrifice it? May he not be less willing by a firm conduct, to make personal enemies, when he acts under the impression that a time is fast approaching, on the arrival of which he not only MAY, but MUST, be exposed to their resentments, upon an equal, perhaps upon an inferior, footing? It is not an easy point to determine whether his independence would be most promoted or impaired by such an arrangement.

As to the second supposed advantage, there is still greater reason to entertain doubts concerning it. If the exclusion were to be perpetual, a man of irregular ambition, of whom alone there could be reason in any case to entertain apprehension, would, with infinite reluctance, yield to the necessity of taking his leave forever of a post in which his passion for power and pre-eminence had acquired the force of habit. And if he had been fortunate or adroit enough to conciliate the good-will of the people, he might induce them to consider as a very odious and unjustifiable restraint upon themselves, a provision which was calculated to debar them of the right of giving a fresh proof of their attachment to a favorite. There may be conceived circumstances in which this disgust of the people, seconding the thwarted ambition of such a favorite, might occasion greater danger to liberty, than could ever reasonably be dreaded from the possibility of a perpetuation in office, by the voluntary suffrages of the community, exercising a constitutional privilege.

There is an excess of refinement in the idea of disabling the people to continue in office men who had entitled themselves, in their opinion, to approbation and confidence; the advantages of which are at best speculative and equivocal, and are overbalanced by disadvantages far more certain and decisive.

PUBLIUS

FEDERALIST No. 73. The Provision For The Support of the Executive, and the Veto Power

From the New York Packet. Friday, March 21, 1788.

HAMILTON

To the People of the State of New York:

THE third ingredient towards constituting the vigor of the executive authority, is an adequate provision for its support. It is evident that, without proper attention to this article, the separation of the executive from the legislative department would be merely nominal and nugatory. The legislature, with a discretionary power over the salary and emoluments of the Chief Magistrate, could render him as obsequious to their will as they might think proper to make him. They might, in most cases, either reduce him by famine, or tempt him by largesses, to surrender at discretion his judgment to their inclinations. These expressions, taken in all the latitude of the terms, would no doubt convey more than is intended. There are men who could neither be distressed nor won into a sacrifice of their duty; but this stern virtue is the growth of few soils; and in the main it will be found that a power over a man's support is a power over his will. If it were necessary to confirm so plain a truth by facts, examples would not be wanting, even in this country, of the intimidation or seduction of the Executive by the terrors or allurements of the pecuniary arrangements of the legislative body.

It is not easy, therefore, to commend too highly the judicious attention which has been paid to this subject in the proposed Constitution. It is there provided that "The President of the United States shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them." It is impossible to imagine any provision which would have been more eligible than this. The legislature, on the appointment of a President, is once for all to declare what shall be the

compensation for his services during the time for which he shall have been elected. This done, they will have no power to alter it, either by increase or diminution, till a new period of service by a new election commences. They can neither weaken his fortitude by operating on his necessities, nor corrupt his integrity by appealing to his avarice. Neither the Union, nor any of its members, will be at liberty to give, nor will he be at liberty to receive, any other emolument than that which may have been determined by the first act. He can, of course, have no pecuniary inducement to renounce or desert the independence intended for him by the Constitution.

The last of the requisites to energy, which have been enumerated, are competent powers. Let us proceed to consider those which are proposed to be vested in the President of the United States.

The first thing that offers itself to our observation, is the qualified negative of the President upon the acts or resolutions of the two houses of the legislature; or, in other words, his power of returning all bills with objections, to have the effect of preventing their becoming laws, unless they should afterwards be ratified by two thirds of each of the component members of the legislative body.

The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already suggested and repeated; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon; and the necessity of furnishing each with constitutional arms for its own defense, has been inferred and proved. From these clear and indubitable principles results the propriety of a negative, either absolute or qualified, in the Executive, upon the acts of the legislative branches. Without the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands. If even no propensity had ever discovered itself in the legislative body to invade the rights of the Executive, the rules of just reasoning and theoretic propriety would of themselves teach us, that the one ought not to be left to the mercy of the other, but ought to possess a constitutional and effectual power of self-defense.

But the power in question has a further use. It not only serves as a shield to the Executive, but it furnishes an additional security against the enaction of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.

The propriety of a negative has, upon some occasions, been combated by an observation, that it was not to be presumed a single man would possess more virtue and wisdom than a number of men; and that unless this presumption should be entertained, it would be improper to give the executive magistrate any species of control over the legislative body.

But this observation, when examined, will appear rather specious than solid. The propriety of the thing does not turn upon the supposition of superior wisdom or virtue in the Executive, but upon the supposition that the legislature will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of other members of the government; that a spirit of faction may sometimes pervert its deliberations; that impressions of the moment may sometimes hurry it into measures which itself, on maturer reflexion, would condemn. The primary inducement to conferring the power in question upon the Executive is, to enable him to defend himself; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design. The oftener the measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest. It is far less probable, that culpable views of any kind should infect all the parts of the government at the same moment and in relation to the same object, than that they should by turns govern and mislead every one of them.

It may perhaps be said that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws, which form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the

excess of law-making, and to keep things in the same state in which they happen to be at any given period, as much more likely to do good than harm; because it is favorable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws, will be amply compensated by the advantage of preventing a number of bad ones.

Nor is this all. The superior weight and influence of the legislative body in a free government, and the hazard to the Executive in a trial of strength with that body, afford a satisfactory security that the negative would generally be employed with great caution; and there would oftener be room for a charge of timidity than of rashness in the exercise of it. A king of Great Britain, with all his train of sovereign attributes, and with all the influence he draws from a thousand sources, would, at this day, hesitate to put a negative upon the joint resolutions of the two houses of Parliament. He would not fail to exert the utmost resources of that influence to strangle a measure disagreeable to him, in its progress to the throne, to avoid being reduced to the dilemma of permitting it to take effect, or of risking the displeasure of the nation by an opposition to the sense of the legislative body. Nor is it probable, that he would ultimately venture to exert his prerogatives, but in a case of manifest propriety, or extreme necessity. All well-informed men in that kingdom will accede to the justness of this remark. A very considerable period has elapsed since the negative of the crown has been exercised.

If a magistrate so powerful and so well fortified as a British monarch, would have scruples about the exercise of the power under consideration, how much greater caution may be reasonably expected in a President of the United States, clothed for the short period of four years with the executive authority of a government wholly and purely republican?

It is evident that there would be greater danger of his not using his power when necessary, than of his using it too often, or too much. An argument, indeed, against its expediency, has been drawn from this very source. It has been represented, on this account, as a power odious in appearance, useless in practice. But it will not follow, that because it might be rarely exercised, it would never be exercised. In the case for which it is chiefly designed, that of an immediate attack upon the constitutional rights of the Executive, or in a case in which the public good was evidently and palpably sacrificed, a

man of tolerable firmness would avail himself of his constitutional means of defense, and would listen to the admonitions of duty and responsibility. In the former supposition, his fortitude would be stimulated by his immediate interest in the power of his office; in the latter, by the probability of the sanction of his constituents, who, though they would naturally incline to the legislative body in a doubtful case, would hardly suffer their partiality to delude them in a very plain case. I speak now with an eye to a magistrate possessing only a common share of firmness. There are men who, under any circumstances, will have the courage to do their duty at every hazard.

But the convention have pursued a mean in this business, which will both facilitate the exercise of the power vested in this respect in the executive magistrate, and make its efficacy to depend on the sense of a considerable part of the legislative body. Instead of an absolute negative, it is proposed to give the Executive the qualified negative already described. This is a power which would be much more readily exercised than the other. A man who might be afraid to defeat a law by his single VETO, might not scruple to return it for reconsideration; subject to being finally rejected only in the event of more than one third of each house concurring in the sufficiency of his objections. He would be encouraged by the reflection, that if his opposition should prevail, it would embark in it a very respectable proportion of the legislative body, whose influence would be united with his in supporting the propriety of his conduct in the public opinion. A direct and categorical negative has something in the appearance of it more harsh, and more apt to irritate, than the mere suggestion of argumentative objections to be approved or disapproved by those to whom they are addressed. In proportion as it would be less apt to offend, it would be more apt to be exercised; and for this very reason, it may in practice be found more effectual. It is to be hoped that it will not often happen that improper views will govern so large a proportion as two thirds of both branches of the legislature at the same time; and this, too, in spite of the counterposing weight of the Executive. It is at any rate far less probable that this should be the case, than that such views should taint the resolutions and conduct of a bare majority. A power of this nature in the Executive, will often have a silent and unperceived, though forcible, operation. When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare

apprehension of opposition, from doing what they would with eagerness rush into, if no such external impediments were to be feared.

This qualified negative, as has been elsewhere remarked, is in this State vested in a council, consisting of the governor, with the chancellor and judges of the Supreme Court, or any two of them. It has been freely employed upon a variety of occasions, and frequently with success. And its utility has become so apparent, that persons who, in compiling the Constitution, were violent opposers of it, have from experience become its declared admirers.(1)

I have in another place remarked, that the convention, in the formation of this part of their plan, had departed from the model of the constitution of this State, in favor of that of Massachusetts. Two strong reasons may be imagined for this preference. One is that the judges, who are to be the interpreters of the law, might receive an improper bias, from having given a previous opinion in their revisionary capacities; the other is that by being often associated with the Executive, they might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distinct from every other avocation than that of expounding the laws. It is peculiarly dangerous to place them in a situation to be either corrupted or influenced by the Executive.

PUBLIUS

1. Mr. Abraham Yates, a warm opponent of the plan of the convention is of this number.

FEDERALIST No. 74. The Command of the Military and Naval Forces, and the Pardoning Power of the Executive.

From the New York Packet. Tuesday, March 25, 1788.

HAMILTON

To the People of the State of New York:

THE President of the United States is to be "commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States." The propriety of this provision is so evident in itself, and it is, at the same time, so consonant to the precedents of the State constitutions in general, that little need be said to explain or enforce it. Even those of them which have, in other respects, coupled the chief magistrate with a council, have for the most part concentrated the military authority in him alone. Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength, forms a usual and essential part in the definition of the executive authority.

"The President may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective officers." This I consider as a mere redundancy in the plan, as the right for which it provides would result of itself from the office.

He is also to be authorized to grant "reprieves and pardons for offenses against the United States, except in cases of impeachment." Humanity and good policy conspire to dictate, that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. The criminal code of every country partakes so much of necessary severity, that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a

countenance too sanguinary and cruel. As the sense of responsibility is always strongest, in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations which were calculated to shelter a fit object of its vengeance. The reflection that the fate of a fellow-creature depended on his sole fiat, would naturally inspire scrupulousness and caution; the dread of being accused of weakness or connivance, would beget equal circumspection, though of a different kind. On the other hand, as men generally derive confidence from their numbers, they might often encourage each other in an act of obduracy, and might be less sensible to the apprehension of suspicion or censure for an injudicious or affected clemency. On these accounts, one man appears to be a more eligible dispenser of the mercy of government, than a body of men.

The expediency of vesting the power of pardoning in the President has, if I mistake not, been only contested in relation to the crime of treason. This, it has been urged, ought to have depended upon the assent of one, or both, of the branches of the legislative body. I shall not deny that there are strong reasons to be assigned for requiring in this particular the concurrence of that body, or of a part of it. As treason is a crime levelled at the immediate being of the society, when the laws have once ascertained the guilt of the offender, there seems a fitness in referring the expediency of an act of mercy towards him to the judgment of the legislature. And this ought the rather to be the case, as the supposition of the connivance of the Chief Magistrate ought not to be entirely excluded. But there are also strong objections to such a plan. It is not to be doubted, that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment, than any numerous body whatever. It deserves particular attention, that treason will often be connected with seditions which embrace a large proportion of the community; as lately happened in Massachusetts. In every such case, we might expect to see the representation of the people tainted with the same spirit which had given birth to the offense. And when parties were pretty equally matched, the secret sympathy of the friends and favorers of the condemned person, availing itself of the good-nature and weakness of others, might frequently bestow impunity where the terror of an example was necessary. On the other hand, when the sedition had proceeded from

causes which had inflamed the resentments of the major party, they might often be found obstinate and inexorable, when policy demanded a conduct of forbearance and clemency. But the principal argument for reposing the power of pardoning in this case to the Chief Magistrate is this: in seasons of insurrection or rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquillity of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall. The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction to the measure, would frequently be the occasion of letting slip the golden opportunity. The loss of a week, a day, an hour, may sometimes be fatal. If it should be observed, that a discretionary power, with a view to such contingencies, might be occasionally conferred upon the President, it may be answered in the first place, that it is questionable, whether, in a limited Constitution, that power could be delegated by law; and in the second place, that it would generally be impolitic beforehand to take any step which might hold out the prospect of impunity. A proceeding of this kind, out of the usual course, would be likely to be construed into an argument of timidity or of weakness, and would have a tendency to embolden guilt.

PUBLIUS

FEDERALIST No. 75. The Treaty-Making Power of the Executive

For the Independent Journal. Wednesday, March 26, 1788

HAMILTON

To the People of the State of New York:

THE President is to have power, "by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur." Though this provision has been assailed, on different grounds, with no small degree of vehemence, I scruple not to declare my firm persuasion, that it is one of the best digested and most unexceptionable parts of the plan. One ground of objection is the trite topic of the intermixture of powers; some contending that the President ought alone to possess the power of making treaties; others, that it ought to have been exclusively deposited in the Senate. Another source of objection is derived from the small number of persons by whom a treaty may be made. Of those who espouse this objection, a part are of opinion that the House of Representatives ought to have been associated in the business, while another part seem to think that nothing more was necessary than to have substituted two thirds of all the members of the Senate, to two thirds of the members present. As I flatter myself the observations made in a preceding number upon this part of the plan must have sufficed to place it, to a discerning eye, in a very favorable light, I shall here content myself with offering only some supplementary remarks, principally with a view to the objections which have been just stated.

With regard to the intermixture of powers, I shall rely upon the explanations already given in other places, of the true sense of the rule upon which that objection is founded; and shall take it for granted, as an inference from them, that the union of the Executive with the Senate, in the article of treaties, is no infringement of that rule. I venture to add, that the particular nature of the power of making treaties indicates a peculiar propriety in that union. Though several writers on the subject of

government place that power in the class of executive authorities, yet this is evidently an arbitrary disposition; for if we attend carefully to its operation, it will be found to partake more of the legislative than of the executive character, though it does not seem strictly to fall within the definition of either of them. The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society; while the execution of the laws, and the employment of the common strength, either for this purpose or for the common defense, seem to comprise all the functions of the executive magistrate. The power of making treaties is, plainly, neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones; and still less to an exertion of the common strength. Its objects are CONTRACTS with foreign nations, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong, properly, neither to the legislative nor to the executive. The qualities elsewhere detailed as indispensable in the management of foreign negotiations, point out the Executive as the most fit agent in those transactions; while the vast importance of the trust, and the operation of treaties as laws, plead strongly for the participation of the whole or a portion of the legislative body in the office of making them.

However proper or safe it may be in governments where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to intrust that power to an elective magistrate of four years' duration. It has been remarked, upon another occasion, and the remark is unquestionably just, that an hereditary monarch, though often the oppressor of his people, has personally too much stake in the government to be in any material danger of being corrupted by foreign powers. But a man raised from the station of a private citizen to the rank of chief magistrate, possessed of a moderate or slender fortune, and looking forward to a period not very remote when he may probably be obliged to return to the station from which he was taken, might sometimes be under temptations to sacrifice his duty to his interest, which it would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the state to the acquisition of wealth. An ambitious man might make his own aggrandizement, by the aid

of a foreign power, the price of his treachery to his constituents. The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.

To have intrusted the power of making treaties to the Senate alone, would have been to relinquish the benefits of the constitutional agency of the President in the conduct of foreign negotiations. It is true that the Senate would, in that case, have the option of employing him in this capacity, but they would also have the option of letting it alone, and pique or cabal might induce the latter rather than the former. Besides this, the ministerial servant of the Senate could not be expected to enjoy the confidence and respect of foreign powers in the same degree with the constitutional representatives of the nation, and, of course, would not be able to act with an equal degree of weight or efficacy. While the Union would, from this cause, lose a considerable advantage in the management of its external concerns, the people would lose the additional security which would result from the co-operation of the Executive. Though it would be imprudent to confide in him solely so important a trust, yet it cannot be doubted that his participation would materially add to the safety of the society. It must indeed be clear to a demonstration that the joint possession of the power in question, by the President and Senate, would afford a greater prospect of security, than the separate possession of it by either of them. And whoever has maturely weighed the circumstances which must concur in the appointment of a President, will be satisfied that the office will always bid fair to be filled by men of such characters as to render their concurrence in the formation of treaties peculiarly desirable, as well on the score of wisdom, as on that of integrity.

The remarks made in a former number, which have been alluded to in another part of this paper, will apply with conclusive force against the admission of the House of Representatives to a share in the formation of treaties. The fluctuating and, taking its future increase into the account, the multitudinous composition of that body, forbid us to expect in it those qualities which are essential to the proper execution of such a trust. Accurate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to

national character; decision, secrecy, and despatch, are incompatible with the genius of a body so variable and so numerous. The very complication of the business, by introducing a necessity of the concurrence of so many different bodies, would of itself afford a solid objection. The greater frequency of the calls upon the House of Representatives, and the greater length of time which it would often be necessary to keep them together when convened, to obtain their sanction in the progressive stages of a treaty, would be a source of so great inconvenience and expense as alone ought to condemn the project.

The only objection which remains to be canvassed, is that which would substitute the proportion of two thirds of all the members composing the senatorial body, to that of two thirds of the members present. It has been shown, under the second head of our inquiries, that all provisions which require more than the majority of any body to its resolutions, have a direct tendency to embarrass the operations of the government, and an indirect one to subject the sense of the majority to that of the minority. This consideration seems sufficient to determine our opinion, that the convention have gone as far in the endeavor to secure the advantage of numbers in the formation of treaties as could have been reconciled either with the activity of the public councils or with a reasonable regard to the major sense of the community. If two thirds of the whole number of members had been required, it would, in many cases, from the non-attendance of a part, amount in practice to a necessity of unanimity. And the history of every political establishment in which this principle has prevailed, is a history of impotence, perplexity, and disorder. Proofs of this position might be adduced from the examples of the Roman Tribuneship, the Polish Diet, and the States-General of the Netherlands, did not an example at home render foreign precedents unnecessary.

To require a fixed proportion of the whole body would not, in all probability, contribute to the advantages of a numerous agency, better then merely to require a proportion of the attending members. The former, by making a determinate number at all times requisite to a resolution, diminishes the motives to punctual attendance. The latter, by making the capacity of the body to depend on a proportion which may be varied by the absence or presence of a single member, has the contrary effect. And as, by promoting punctuality, it tends to keep the body complete, there is great likelihood that its resolutions would generally be dictated by as great a

number in this case as in the other; while there would be much fewer occasions of delay. It ought not to be forgotten that, under the existing Confederation, two members may, and usually do, represent a State; whence it happens that Congress, who now are solely invested with all the powers of the Union, rarely consist of a greater number of persons than would compose the intended Senate. If we add to this, that as the members vote by States, and that where there is only a single member present from a State, his vote is lost, it will justify a supposition that the active voices in the Senate, where the members are to vote individually, would rarely fall short in number of the active voices in the existing Congress. When, in addition to these considerations, we take into view the co-operation of the President, we shall not hesitate to infer that the people of America would have greater security against an improper use of the power of making treaties, under the new Constitution, than they now enjoy under the Confederation. And when we proceed still one step further, and look forward to the probable augmentation of the Senate, by the erection of new States, we shall not only perceive ample ground of confidence in the sufficiency of the members to whose agency that power will be intrusted, but we shall probably be led to conclude that a body more numerous than the Senate would be likely to become, would be very little fit for the proper discharge of the trust.

PUBLIUS

FEDERALIST No. 76. The Appointing Power of the Executive

From the New York Packet. Tuesday, April 1, 1788.

HAMILTON

To the People of the State of New York:

THE President is "to nominate, and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for in the Constitution. But the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, or in the courts of law, or in the heads of departments. The President shall have power to fill up all vacancies which may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

It has been observed in a former paper, that "the true test of a good government is its aptitude and tendency to produce a good administration." If the justness of this observation be admitted, the mode of appointing the officers of the United States contained in the foregoing clauses, must, when examined, be allowed to be entitled to particular commendation. It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling the offices of the Union; and it will not need proof, that on this point must essentially depend the character of its administration.

It will be agreed on all hands, that the power of appointment, in ordinary cases, ought to be modified in one of three ways. It ought either to be vested in a single man, or in a select assembly of a moderate number; or in a single man, with the concurrence of such an assembly. The exercise of it by the people at large will be readily admitted to be impracticable; as waiving every other consideration, it would leave them little time to do anything else. When, therefore, mention is made in the subsequent reasonings of an assembly or body of men, what is said must be understood to relate to a select body or assembly, of the description already given. The people

collectively, from their number and from their dispersed situation, cannot be regulated in their movements by that systematic spirit of cabal and intrigue, which will be urged as the chief objections to reposing the power in question in a body of men.

Those who have themselves reflected upon the subject, or who have attended to the observations made in other parts of these papers, in relation to the appointment of the President, will, I presume, agree to the position, that there would always be great probability of having the place supplied by a man of abilities, at least respectable. Premising this, I proceed to lay it down as a rule, that one man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particular offices, than a body of men of equal or perhaps even of superior discernment.

The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them. He will have fewer personal attachments to gratify, than a body of men who may each be supposed to have an equal number; and will be so much the less liable to be misled by the sentiments of friendship and of affection. A single well-directed man, by a single understanding, cannot be distracted and warped by that diversity of views, feelings, and interests, which frequently distract and warp the resolutions of a collective body. There is nothing so apt to agitate the passions of mankind as personal considerations whether they relate to ourselves or to others, who are to be the objects of our choice or preference. Hence, in every exercise of the power of appointing to offices, by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may at any time happen to be made under such circumstances, will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight. In the first, the qualifications best adapted to uniting the suffrages of the party, will be more considered than those which fit the person for the station. In the last, the coalition will commonly turn upon some interested equivalent: "Give us the man we wish for this office, and

you shall have the one you wish for that." This will be the usual condition of the bargain. And it will rarely happen that the advancement of the public service will be the primary object either of party victories or of party negotiations.

The truth of the principles here advanced seems to have been felt by the most intelligent of those who have found fault with the provision made, in this respect, by the convention. They contend that the President ought solely to have been authorized to make the appointments under the federal government. But it is easy to show, that every advantage to be expected from such an arrangement would, in substance, be derived from the power of nomination, which is proposed to be conferred upon him; while several disadvantages which might attend the absolute power of appointment in the hands of that officer would be avoided. In the act of nomination, his judgment alone would be exercised; and as it would be his sole duty to point out the man who, with the approbation of the Senate, should fill an office, his responsibility would be as complete as if he were to make the final appointment. There can, in this view, be no difference between nominating and appointing. The same motives which would influence a proper discharge of his duty in one case, would exist in the other. And as no man could be appointed but on his previous nomination, every man who might be appointed would be, in fact, his choice.

But might not his nomination be overruled? I grant it might, yet this could only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted, by the preference they might feel to another, to reject the one proposed; because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.

It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.

To this reasoning it has been objected that the President, by the influence of the power of nomination, may secure the complaisance of the Senate to his views. This supposition of universal venalty in human nature is little less an error in political reasoning, than the supposition of universal rectitude. The institution of delegated power implies, that there is a portion of virtue and honor among mankind, which may be a reasonable foundation of confidence; and experience justifies the theory. It has been found to exist in the most corrupt periods of the most corrupt governments. The venalty of the British House of Commons has been long a topic of accusation against that body, in the country to which they belong as well as in this; and it cannot be doubted that the charge is, to a considerable extent, well founded. But it is as little to be doubted, that there is always a large proportion of the body, which consists of independent and public-spirited men, who have an

influential weight in the councils of the nation. Hence it is (the present reign not excepted) that the sense of that body is often seen to control the inclinations of the monarch, both with regard to men and to measures. Though it might therefore be allowable to suppose that the Executive might occasionally influence some individuals in the Senate, yet the supposition, that he could in general purchase the integrity of the whole body, would be forced and improbable. A man disposed to view human nature as it is, without either flattering its virtues or exaggerating its vices, will see sufficient ground of confidence in the probity of the Senate, to rest satisfied, not only that it will be impracticable to the Executive to corrupt or seduce a majority of its members, but that the necessity of its co-operation, in the business of appointments, will be a considerable and salutary restraint upon the conduct of that magistrate. Nor is the integrity of the Senate the only reliance. The Constitution has provided some important guards against the danger of executive influence upon the legislative body: it declares that "No senator or representative shall during the time for which he was elected, be appointed to any civil office under the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person, holding any office under the United States, shall be a member of either house during his continuance in office."

PUBLIUS

FEDERALIST No. 77. The Appointing Power Continued and Other Powers of the Executive Considered.

From The Independent Journal. Wednesday, April 2, 1788.

HAMILTON

To the People of the State of New York:

IT HAS been mentioned as one of the advantages to be expected from the co-operation of the Senate, in the business of appointments, that it would contribute to the stability of the administration. The consent of that body would be necessary to displace as well as to appoint. A change of the Chief Magistrate, therefore, would not occasion so violent or so general a revolution in the officers of the government as might be expected, if he were the sole disposer of offices. Where a man in any station had given satisfactory evidence of his fitness for it, a new President would be restrained from attempting a change in favor of a person more agreeable to him, by the apprehension that a discountenance of the Senate might frustrate the attempt, and bring some degree of discredit upon himself. Those who can best estimate the value of a steady administration, will be most disposed to prize a provision which connects the official existence of public men with the approbation or disapprobation of that body which, from the greater permanency of its own composition, will in all probability be less subject to inconstancy than any other member of the government.

To this union of the Senate with the President, in the article of appointments, it has in some cases been suggested that it would serve to give the President an undue influence over the Senate, and in others that it would have an opposite tendency—a strong proof that neither suggestion is true.

To state the first in its proper form, is to refute it. It amounts to this: the President would have an improper influence over the Senate, because the Senate would have the power of restraining him. This is an absurdity in

terms. It cannot admit of a doubt that the entire power of appointment would enable him much more effectually to establish a dangerous empire over that body, than a mere power of nomination subject to their control.

Let us take a view of the converse of the proposition: "the Senate would influence the Executive." As I have had occasion to remark in several other instances, the indistinctness of the objection forbids a precise answer. In what manner is this influence to be exerted? In relation to what objects? The power of influencing a person, in the sense in which it is here used, must imply a power of conferring a benefit upon him. How could the Senate confer a benefit upon the President by the manner of employing their right of negative upon his nominations? If it be said they might sometimes gratify him by an acquiescence in a favorite choice, when public motives might dictate a different conduct, I answer, that the instances in which the President could be personally interested in the result, would be too few to admit of his being materially affected by the compliances of the Senate. The POWER which can originate the disposition of honors and emoluments, is more likely to attract than to be attracted by the POWER which can merely obstruct their course. If by influencing the President be meant restraining him, this is precisely what must have been intended. And it has been shown that the restraint would be salutary, at the same time that it would not be such as to destroy a single advantage to be looked for from the uncontrolled agency of that Magistrate. The right of nomination would produce all the (good, without the ill.)(E1) (good of that of appointment, and would in a great measure avoid its evils.)(E1)

Upon a comparison of the plan for the appointment of the officers of the proposed government with that which is established by the constitution of this State, a decided preference must be given to the former. In that plan the power of nomination is unequivocally vested in the Executive. And as there would be a necessity for submitting each nomination to the judgment of an entire branch of the legislature, the circumstances attending an appointment, from the mode of conducting it, would naturally become matters of notoriety; and the public would be at no loss to determine what part had been performed by the different actors. The blame of a bad nomination would fall upon the President singly and absolutely. The censure of rejecting a good one would lie entirely at the door of the Senate; aggravated by the consideration of their having counteracted the good intentions of the Executive. If an ill appointment should be made, the Executive for

nominating, and the Senate for approving, would participate, though in different degrees, in the opprobrium and disgrace.

The reverse of all this characterizes the manner of appointment in this State. The council of appointment consists of from three to five persons, of whom the governor is always one. This small body, shut up in a private apartment, impenetrable to the public eye, proceed to the execution of the trust committed to them. It is known that the governor claims the right of nomination, upon the strength of some ambiguous expressions in the constitution; but it is not known to what extent, or in what manner he exercises it; nor upon what occasions he is contradicted or opposed. The censure of a bad appointment, on account of the uncertainty of its author, and for want of a determinate object, has neither poignancy nor duration. And while an unbounded field for cabal and intrigue lies open, all idea of responsibility is lost. The most that the public can know, is that the governor claims the right of nomination; that two out of the inconsiderable number of four men can too often be managed without much difficulty; that if some of the members of a particular council should happen to be of an uncomplying character, it is frequently not impossible to get rid of their opposition by regulating the times of meeting in such a manner as to render their attendance inconvenient; and that from whatever cause it may proceed, a great number of very improper appointments are from time to time made. Whether a governor of this State avails himself of the ascendant he must necessarily have, in this delicate and important part of the administration, to prefer to offices men who are best qualified for them, or whether he prostitutes that advantage to the advancement of persons whose chief merit is their implicit devotion to his will, and to the support of a despicable and dangerous system of personal influence, are questions which, unfortunately for the community, can only be the subjects of speculation and conjecture.

Every mere council of appointment, however constituted, will be a conclave, in which cabal and intrigue will have their full scope. Their number, without an unwarrantable increase of expense, cannot be large enough to preclude a facility of combination. And as each member will have his friends and connections to provide for, the desire of mutual gratification will beget a scandalous bartering of votes and bargaining for places. The private attachments of one man might easily be satisfied; but to satisfy the private attachments of a dozen, or of twenty men, would occasion a monopoly of all the principal employments of the government in

a few families, and would lead more directly to an aristocracy or an oligarchy than any measure that could be contrived. If, to avoid an accumulation of offices, there was to be a frequent change in the persons who were to compose the council, this would involve the mischiefs of a mutable administration in their full extent. Such a council would also be more liable to executive influence than the Senate, because they would be fewer in number, and would act less immediately under the public inspection. Such a council, in fine, as a substitute for the plan of the convention, would be productive of an increase of expense, a multiplication of the evils which spring from favoritism and intrigue in the distribution of public honors, a decrease of stability in the administration of the government, and a diminution of the security against an undue influence of the Executive. And yet such a council has been warmly contended for as an essential amendment in the proposed Constitution.

I could not with propriety conclude my observations on the subject of appointments without taking notice of a scheme for which there have appeared some, though but few advocates; I mean that of uniting the House of Representatives in the power of making them. I shall, however, do little more than mention it, as I cannot imagine that it is likely to gain the countenance of any considerable part of the community. A body so fluctuating and at the same time so numerous, can never be deemed proper for the exercise of that power. Its unfitness will appear manifest to all, when it is recollected that in half a century it may consist of three or four hundred persons. All the advantages of the stability, both of the Executive and of the Senate, would be defeated by this union, and infinite delays and embarrassments would be occasioned. The example of most of the States in their local constitutions encourages us to reprobate the idea.

The only remaining powers of the Executive are comprehended in giving information to Congress of the state of the Union; in recommending to their consideration such measures as he shall judge expedient; in convening them, or either branch, upon extraordinary occasions; in adjourning them when they cannot themselves agree upon the time of adjournment; in receiving ambassadors and other public ministers; in faithfully executing the laws; and in commissioning all the officers of the United States.

Except some cavils about the power of convening either house of the legislature, and that of receiving ambassadors, no objection has been made

to this class of authorities; nor could they possibly admit of any. It required, indeed, an insatiable avidity for censure to invent exceptions to the parts which have been excepted to. In regard to the power of convening either house of the legislature, I shall barely remark, that in respect to the Senate at least, we can readily discover a good reason for it. AS this body has a concurrent power with the Executive in the article of treaties, it might often be necessary to call it together with a view to this object, when it would be unnecessary and improper to convene the House of Representatives. As to the reception of ambassadors, what I have said in a former paper will furnish a sufficient answer.

We have now completed a survey of the structure and powers of the executive department, which, I have endeavored to show, combines, as far as republican principles will admit, all the requisites to energy. The remaining inquiry is: Does it also combine the requisites to safety, in a republican sense—a due dependence on the people, a due responsibility? The answer to this question has been anticipated in the investigation of its other characteristics, and is satisfactorily deducible from these circumstances; from the election of the President once in four years by persons immediately chosen by the people for that purpose; and from his being at all times liable to impeachment, trial, dismission from office, incapacity to serve in any other, and to forfeiture of life and estate by subsequent prosecution in the common course of law. But these precautions, great as they are, are not the only ones which the plan of the convention has provided in favor of the public security. In the only instances in which the abuse of the executive authority was materially to be feared, the Chief Magistrate of the United States would, by that plan, be subjected to the control of a branch of the legislative body. What more could be desired by an enlightened and reasonable people?

PUBLIUS

E1. These two alternate endings of this sentence appear in different editions.

FEDERALIST No. 78. The Judiciary Department

From McLEAN'S Edition, New York. Wednesday, May 28, 1788

HAMILTON

To the People of the State of New York:

WE PROCEED now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged, as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other.

First. As to the mode of appointing the judges; this is the same with that of appointing the officers of the Union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places; this chiefly concerns their duration in office; the provisions for their support; the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices during good behavior; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of

the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power(1); that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."(2) And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in

office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between

the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is, that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an EQUAL authority, that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the

thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it prove any thing, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies,(3) in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts

would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only, that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by

a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established good behavior as the tenure of their judicial offices, in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective, if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

PUBLIUS

1. The celebrated Montesquieu, speaking of them, says: "Of the three powers above mentioned, the judiciary is next to nothing."—Spirit of Laws. Vol. I, page 186.

2. Idem, page 181.

3. Vide Protest of the Minority of the Convention of Pennsylvania, Martin's Speech, etc.

FEDERALIST No. 79. The Judiciary Continued

From MCLEAN's Edition, New York. Wednesday, May 28, 1788

HAMILTON

To the People of the State of New York:

NEXT to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. The remark made in relation to the President is equally applicable here. In the general course of human nature, a power over a man's subsistence amounts to a power over his will. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter. The enlightened friends to good government in every State, have seen cause to lament the want of precise and explicit precautions in the State constitutions on this head. Some of these indeed have declared that permanent(1) salaries should be established for the judges; but the experiment has in some instances shown that such expressions are not sufficiently definite to preclude legislative evasions. Something still more positive and unequivocal has been evinced to be requisite. The plan of the convention accordingly has provided that the judges of the United States "shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

This, all circumstances considered, is the most eligible provision that could have been devised. It will readily be understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of compensation in the Constitution inadmissible. What might be extravagant to-day, might in half a century become penurious and inadequate. It was therefore necessary to leave it to the discretion of the legislature to vary its provisions in conformity to the variations in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition

of the individual for the worse. A man may then be sure of the ground upon which he stands, and can never be deterred from his duty by the apprehension of being placed in a less eligible situation. The clause which has been quoted combines both advantages. The salaries of judicial officers may from time to time be altered, as occasion shall require, yet so as never to lessen the allowance with which any particular judge comes into office, in respect to him. It will be observed that a difference has been made by the convention between the compensation of the President and of the judges, That of the former can neither be increased nor diminished; that of the latter can only not be diminished. This probably arose from the difference in the duration of the respective offices. As the President is to be elected for no more than four years, it can rarely happen that an adequate salary, fixed at the commencement of that period, will not continue to be such to its end. But with regard to the judges, who, if they behave properly, will be secured in their places for life, it may well happen, especially in the early stages of the government, that a stipend, which would be very sufficient at their first appointment, would become too small in the progress of their service.

This provision for the support of the judges bears every mark of prudence and efficacy; and it may be safely affirmed that, together with the permanent tenure of their offices, it affords a better prospect of their independence than is discoverable in the constitutions of any of the States in regard to their own judges.

The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives, and tried by the Senate; and, if convicted, may be dismissed from office, and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution in respect to our own judges.

The want of a provision for removing the judges on account of inability has been a subject of complaint. But all considerate men will be sensible that such a provision would either not be practiced upon or would be more liable to abuse than calculated to answer any good purpose. The mensuration of the faculties of the mind has, I believe, no place in the catalogue of known arts. An attempt to fix the boundary between the regions of ability and inability, would much oftener give scope to personal

and party attachments and enmities than advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary; and insanity, without any formal or express provision, may be safely pronounced to be a virtual disqualification.

The constitution of New York, to avoid investigations that must forever be vague and dangerous, has taken a particular age as the criterion of inability. No man can be a judge beyond sixty. I believe there are few at present who do not disapprove of this provision. There is no station, in relation to which it is less proper than to that of a judge. The deliberating and comparing faculties generally preserve their strength much beyond that period in men who survive it; and when, in addition to this circumstance, we consider how few there are who outlive the season of intellectual vigor, and how improbable it is that any considerable portion of the bench, whether more or less numerous, should be in such a situation at the same time, we shall be ready to conclude that limitations of this sort have little to recommend them. In a republic, where fortunes are not affluent, and pensions not expedient, the dismission of men from stations in which they have served their country long and usefully, on which they depend for subsistence, and from which it will be too late to resort to any other occupation for a livelihood, ought to have some better apology to humanity than is to be found in the imaginary danger of a superannuated bench.

PUBLIUS

1. Vide Constitution of Massachusetts, Chapter 2, Section 1, Article 13.

FEDERALIST No. 80. The Powers of the Judiciary

From McLEAN's Edition, New York. Wednesday, May 28, 1788.

HAMILTON

To the People of the State of New York:

TO JUDGE with accuracy of the proper extent of the federal judicature, it will be necessary to consider, in the first place, what are its proper objects.

It seems scarcely to admit of controversy, that the judiciary authority of the Union ought to extend to these several descriptions of cases: 1st, to all those which arise out of the laws of the United States, passed in pursuance of their just and constitutional powers of legislation; 2d, to all those which concern the execution of the provisions expressly contained in the articles of Union; 3d, to all those in which the United States are a party; 4th, to all those which involve the PEACE of the CONFEDERACY, whether they relate to the intercourse between the United States and foreign nations, or to that between the States themselves; 5th, to all those which originate on the high seas, and are of admiralty or maritime jurisdiction; and, lastly, to all those in which the State tribunals cannot be supposed to be impartial and unbiased.

The first point depends upon this obvious consideration, that there ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of the State legislatures, without some constitutional mode of enforcing the observance of them? The States, by the plan of the convention, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union, and others with the principles of good government. The imposition of duties on imported articles, and the emission of paper money, are specimens of each kind. No man of sense will believe, that such prohibitions would be scrupulously regarded, without

some effectual power in the government to restrain or correct the infractions of them. This power must either be a direct negative on the State laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the articles of Union. There is no third course that I can imagine. The latter appears to have been thought by the convention preferable to the former, and, I presume, will be most agreeable to the States.

As to the second point, it is impossible, by any argument or comment, to make it clearer than it is in itself. If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative, may be ranked among the number. The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.

Still less need be said in regard to the third point. Controversies between the nation and its members or citizens, can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum.

The fourth point rests on this plain proposition, that the peace of the WHOLE ought not to be left at the disposal of a PART. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned. This is not less essential to the preservation of the public faith, than to the security of the public tranquillity. A distinction may perhaps be imagined between cases arising upon treaties and the laws of nations and those which may stand merely on the footing of the municipal law. The former kind may be supposed proper for the federal jurisdiction, the latter for that of the States. But it is at least problematical, whether an unjust sentence against a foreigner, where the subject of controversy was wholly relative to the lex loci, would not, if unredressed, be an aggression upon his sovereign, as well as one which violated the

stipulations of a treaty or the general law of nations. And a still greater objection to the distinction would result from the immense difficulty, if not impossibility, of a practical discrimination between the cases of one complexion and those of the other. So great a proportion of the cases in which foreigners are parties, involve national questions, that it is by far most safe and most expedient to refer all those in which they are concerned to the national tribunals.

The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps not less essential to the peace of the Union than that which has been just examined. History gives us a horrid picture of the dissensions and private wars which distracted and desolated Germany prior to the institution of the Imperial Chamber by Maximilian, towards the close of the fifteenth century; and informs us, at the same time, of the vast influence of that institution in appeasing the disorders and establishing the tranquillity of the empire. This was a court invested with authority to decide finally all differences among the members of the Germanic body.

A method of terminating territorial disputes between the States, under the authority of the federal head, was not unattended to, even in the imperfect system by which they have been hitherto held together. But there are many other sources, besides interfering claims of boundary, from which bickerings and animosities may spring up among the members of the Union. To some of these we have been witnesses in the course of our past experience. It will readily be conjectured that I allude to the fraudulent laws which have been passed in too many of the States. And though the proposed Constitution establishes particular guards against the repetition of those instances which have heretofore made their appearance, yet it is warrantable to apprehend that the spirit which produced them will assume new shapes, that could not be foreseen nor specifically provided against. Whatever practices may have a tendency to disturb the harmony between the States, are proper objects of federal superintendence and control.

It may be esteemed the basis of the Union, that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." And if it be a just principle that every government ought to possess the means of executing its own provisions by its own authority, it will follow, that in order to the inviolable maintenance of that equality of

privileges and immunities to which the citizens of the Union will be entitled, the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens. To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction should be committed to that tribunal which, having no local attachments, will be likely to be impartial between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded.

The fifth point will demand little animadversion. The most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizances of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace. The most important part of them are, by the present Confederation, submitted to federal jurisdiction.

The reasonableness of the agency of the national courts in cases in which the State tribunals cannot be supposed to be impartial, speaks for itself. No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias. This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens. And it ought to have the same operation in regard to some cases between citizens of the same State. Claims to land under grants of different States, founded upon adverse pretensions of boundary, are of this description. The courts of neither of the granting States could be expected to be unbiased. The laws may have even prejudged the question, and tied the courts down to decisions in favor of the grants of the State to which they belonged. And even where this had not been done, it would be natural that the judges, as men, should feel a strong predilection to the claims of their own government.

Having thus laid down and discussed the principles which ought to regulate the constitution of the federal judiciary, we will proceed to test, by these principles, the particular powers of which, according to the plan of the convention, it is to be composed. It is to comprehend "all cases in law and equity arising under the Constitution, the laws of the United States, and

treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands and grants of different States; and between a State or the citizens thereof and foreign states, citizens, and subjects." This constitutes the entire mass of the judicial authority of the Union. Let us now review it in detail. It is, then, to extend:

First. To all cases in law and equity, arising under the Constitution and the laws of the United States. This corresponds with the two first classes of causes, which have been enumerated, as proper for the jurisdiction of the United States. It has been asked, what is meant by "cases arising under the Constitution," in contradiction from those "arising under the laws of the United States"? The difference has been already explained. All the restrictions upon the authority of the State legislatures furnish examples of it. They are not, for instance, to emit paper money; but the interdiction results from the Constitution, and will have no connection with any law of the United States. Should paper money, notwithstanding, be emited, the controversies concerning it would be cases arising under the Constitution and not the laws of the United States, in the ordinary signification of the terms. This may serve as a sample of the whole.

It has also been asked, what need of the word "equity". What equitable causes can grow out of the Constitution and laws of the United States? There is hardly a subject of litigation between individuals, which may not involve those ingredients of fraud, accident, trust, or hardship, which would render the matter an object of equitable rather than of legal jurisdiction, as the distinction is known and established in several of the States. It is the peculiar province, for instance, of a court of equity to relieve against what are called hard bargains: these are contracts in which, though there may have been no direct fraud or deceit, sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortunes of one of the parties, which a court of equity would not tolerate. In such cases, where foreigners were concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction. Agreements to convey lands claimed under the grants of different States, may afford

another example of the necessity of an equitable jurisdiction in the federal courts. This reasoning may not be so palpable in those States where the formal and technical distinction between LAW and EQUITY is not maintained, as in this State, where it is exemplified by every day's practice.

The judiciary authority of the Union is to extend:

Second. To treaties made, or which shall be made, under the authority of the United States, and to all cases affecting ambassadors, other public ministers, and consuls. These belong to the fourth class of the enumerated cases, as they have an evident connection with the preservation of the national peace.

Third. To cases of admiralty and maritime jurisdiction. These form, altogether, the fifth of the enumerated classes of causes proper for the cognizance of the national courts.

Fourth. To controversies to which the United States shall be a party. These constitute the third of those classes.

Fifth. To controversies between two or more States; between a State and citizens of another State; between citizens of different States. These belong to the fourth of those classes, and partake, in some measure, of the nature of the last.

Sixth. To cases between the citizens of the same State, claiming lands under grants of different States. These fall within the last class, and are the only instances in which the proposed Constitution directly contemplates the cognizance of disputes between the citizens of the same State.

Seventh. To cases between a State and the citizens thereof, and foreign States, citizens, or subjects. These have been already explained to belong to the fourth of the enumerated classes, and have been shown to be, in a peculiar manner, the proper subjects of the national judicature.

From this review of the particular powers of the federal judiciary, as marked out in the Constitution, it appears that they are all conformable to the principles which ought to have governed the structure of that department, and which were necessary to the perfection of the system. If some partial inconveniences should appear to be connected with the incorporation of any of them into the plan, it ought to be recollected that the national legislature will have ample authority to make such exceptions, and to prescribe such regulations as will be calculated to obviate or remove

these inconveniences. The possibility of particular mischiefs can never be viewed, by a wellinformed mind, as a solid objection to a general principle, which is calculated to avoid general mischiefs and to obtain general advantages.

PUBLIUS

FEDERALIST No. 81. The Judiciary Continued, and the Distribution of the Judicial Authority.

From McLEAN's Edition, New York. Wednesday, May 28, 1788.

HAMILTON

To the People of the State of New York:

LET US now return to the partition of the judiciary authority between different courts, and their relations to each other.

"The judicial power of the United States is" (by the plan of the convention) "to be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish."(1)

That there ought to be one court of supreme and final jurisdiction, is a proposition which is not likely to be contested. The reasons for it have been assigned in another place, and are too obvious to need repetition. The only question that seems to have been raised concerning it, is, whether it ought to be a distinct body or a branch of the legislature. The same contradiction is observable in regard to this matter which has been remarked in several other cases. The very men who object to the Senate as a court of impeachments, on the ground of an improper intermixture of powers, advocate, by implication at least, the propriety of vesting the ultimate decision of all causes, in the whole or in a part of the legislative body.

The arguments, or rather suggestions, upon which this charge is founded, are to this effect: "The authority of the proposed Supreme Court of the United States, which is to be a separate and independent body, will be superior to that of the legislature. The power of construing the laws according to the spirit of the Constitution, will enable that court to mould them into whatever shape it may think proper; especially as its decisions will not be in any manner subject to the revision or correction of the legislative body. This is as unprecedented as it is dangerous. In Britain, the judicial power, in the last resort, resides in the House of Lords, which is a branch of the legislature; and this part of the British government has been

imitated in the State constitutions in general. The Parliament of Great Britain, and the legislatures of the several States, can at any time rectify, by law, the exceptionable decisions of their respective courts. But the errors and usurpations of the Supreme Court of the United States will be uncontrollable and remediless." This, upon examination, will be found to be made up altogether of false reasoning upon misconceived fact.

In the first place, there is not a syllable in the plan under consideration which directly empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect than may be claimed by the courts of every State. I admit, however, that the Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution. But this doctrine is not deducible from any circumstance peculiar to the plan of the convention, but from the general theory of a limited Constitution; and as far as it is true, is equally applicable to most, if not to all the State governments. There can be no objection, therefore, on this account, to the federal judicature which will not lie against the local judicatures in general, and which will not serve to condemn every constitution that attempts to set bounds to legislative discretion.

But perhaps the force of the objection may be thought to consist in the particular organization of the Supreme Court; in its being composed of a distinct body of magistrates, instead of being one of the branches of the legislature, as in the government of Great Britain and that of the State. To insist upon this point, the authors of the objection must renounce the meaning they have labored to annex to the celebrated maxim, requiring a separation of the departments of power. It shall, nevertheless, be conceded to them, agreeably to the interpretation given to that maxim in the course of these papers, that it is not violated by vesting the ultimate power of judging in a PART of the legislative body. But though this be not an absolute violation of that excellent rule, yet it verges so nearly upon it, as on this account alone to be less eligible than the mode preferred by the convention. From a body which had even a partial agency in passing bad laws, we could rarely expect a disposition to temper and moderate them in the application. The same spirit which had operated in making them, would be too apt in interpreting them; still less could it be expected that men who had infringed the Constitution in the character of legislators, would be disposed to repair

the breach in the character of judges. Nor is this all. Every reason which recommends the tenure of good behavior for judicial offices, militates against placing the judiciary power, in the last resort, in a body composed of men chosen for a limited period. There is an absurdity in referring the determination of causes, in the first instance, to judges of permanent standing; in the last, to those of a temporary and mutable constitution. And there is a still greater absurdity in subjecting the decisions of men, selected for their knowledge of the laws, acquired by long and laborious study, to the revision and control of men who, for want of the same advantage, cannot but be deficient in that knowledge. The members of the legislature will rarely be chosen with a view to those qualifications which fit men for the stations of judges; and as, on this account, there will be great reason to apprehend all the ill consequences of defective information, so, on account of the natural propensity of such bodies to party divisions, there will be no less reason to fear that the pestilential breath of faction may poison the fountains of justice. The habit of being continually marshalled on opposite sides will be too apt to stifle the voice both of law and of equity.

These considerations teach us to applaud the wisdom of those States who have committed the judicial power, in the last resort, not to a part of the legislature, but to distinct and independent bodies of men. Contrary to the supposition of those who have represented the plan of the convention, in this respect, as novel and unprecedented, it is but a copy of the constitutions of New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia; and the preference which has been given to those models is highly to be commended.

It is not true, in the second place, that the Parliament of Great Britain, or the legislatures of the particular States, can rectify the exceptionable decisions of their respective courts, in any other sense than might be done by a future legislature of the United States. The theory, neither of the British, nor the State constitutions, authorizes the revisal of a judicial sentence by a legislative act. Nor is there any thing in the proposed Constitution, more than in either of them, by which it is forbidden. In the former, as well as in the latter, the impropriety of the thing, on the general principles of law and reason, is the sole obstacle. A legislature, without exceeding its province, cannot reverse a determination once made in a particular case; though it may prescribe a new rule for future cases. This is the principle, and it applies in all its consequences, exactly in the same

manner and extent, to the State governments, as to the national government now under consideration. Not the least difference can be pointed out in any view of the subject.

It may in the last place be observed that the supposed danger of judiciary encroachments on the legislative authority, which has been upon many occasions reiterated, is in reality a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive as to amount to an inconvenience, or in any sensible degree to affect the order of the political system. This may be inferred with certainty, from the general nature of the judicial power, from the objects to which it relates, from the manner in which it is exercised, from its comparative weakness, and from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the consideration of the important constitutional check which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone a complete security. There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption, by degrading them from their stations. While this ought to remove all apprehensions on the subject, it affords, at the same time, a cogent argument for constituting the Senate a court for the trial of impeachments.

Having now examined, and, I trust, removed the objections to the distinct and independent organization of the Supreme Court, I proceed to consider the propriety of the power of constituting inferior courts,(2) and the relations which will subsist between these and the former.

The power of constituting inferior courts is evidently calculated to obviate the necessity of having recourse to the Supreme Court in every case of federal cognizance. It is intended to enable the national government to institute or authorize, in each State or district of the United States, a tribunal competent to the determination of matters of national jurisdiction within its limits.

But why, it is asked, might not the same purpose have been accomplished by the instrumentality of the State courts? This admits of different answers.

Though the fitness and competency of those courts should be allowed in the utmost latitude, yet the substance of the power in question may still be regarded as a necessary part of the plan, if it were only to empower the national legislature to commit to them the cognizance of causes arising out of the national Constitution. To confer the power of determining such causes upon the existing courts of the several States, would perhaps be as much "to constitute tribunals," as to create new courts with the like power. But ought not a more direct and explicit provision to have been made in favor of the State courts? There are, in my opinion, substantial reasons against such a provision: the most discerning cannot foresee how far the prevalency of a local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes; whilst every man may discover, that courts constituted like those of some of the States would be improper channels of the judicial authority of the Union. State judges, holding their offices during pleasure, or from year to year, will be too little independent to be relied upon for an inflexible execution of the national laws. And if there was a necessity for confiding the original cognizance of causes arising under those laws to them there would be a correspondent necessity for leaving the door of appeal as wide as possible. In proportion to the grounds of confidence in, or distrust of, the subordinate tribunals, ought to be the facility or difficulty of appeals. And well satisfied as I am of the propriety of the appellate jurisdiction, in the several classes of causes to which it is extended by the plan of the convention. I should consider every thing calculated to give, in practice, an unrestrained course to appeals, as a source of public and private inconvenience.

I am not sure, but that it will be found highly expedient and useful, to divide the United States into four or five or half a dozen districts; and to institute a federal court in each district, in lieu of one in every State. The judges of these courts, with the aid of the State judges, may hold circuits for the trial of causes in the several parts of the respective districts. Justice through them may be administered with ease and despatch; and appeals may be safely circumscribed within a narrow compass. This plan appears to me at present the most eligible of any that could be adopted; and in order to it, it is necessary that the power of constituting inferior courts should exist in the full extent in which it is to be found in the proposed Constitution.

These reasons seem sufficient to satisfy a candid mind, that the want of such a power would have been a great defect in the plan. Let us now

examine in what manner the judicial authority is to be distributed between the supreme and the inferior courts of the Union.

The Supreme Court is to be invested with original jurisdiction, only "in cases affecting ambassadors, other public ministers, and consuls, and those in which A STATE shall be a party." Public ministers of every class are the immediate representatives of their sovereigns. All questions in which they are concerned are so directly connected with the public peace, that, as well for the preservation of this, as out of respect to the sovereignties they represent, it is both expedient and proper that such questions should be submitted in the first instance to the highest judicatory of the nation. Though consuls have not in strictness a diplomatic character, yet as they are the public agents of the nations to which they belong, the same observation is in a great measure applicable to them. In cases in which a State might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal.

Though it may rather be a digression from the immediate subject of this paper, I shall take occasion to mention here a supposition which has excited some alarm upon very mistaken grounds. It has been suggested that an assignment of the public securities of one State to the citizens of another, would enable them to prosecute that State in the federal courts for the amount of those securities; a suggestion which the following considerations prove to be without foundation.

It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States, and the danger intimated must be merely ideal. The circumstances which are necessary to produce an alienation of State sovereignty were discussed in considering the article of taxation, and need not be repeated here. A recurrence to the principles there established will satisfy us, that there is no color to pretend that the State governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith. The contracts between a nation and individuals are only binding on the

conscience of the sovereign, and have no pretensions to a compulsive force. They confer no right of action, independent of the sovereign will. To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident, it could not be done without waging war against the contracting State; and to ascribe to the federal courts, by mere implication, and in destruction of a pre-existing right of the State governments, a power which would involve such a consequence, would be altogether forced and unwarrantable.

Let us resume the train of our observations. We have seen that the original jurisdiction of the Supreme Court would be confined to two classes of causes, and those of a nature rarely to occur. In all other cases of federal cognizance, the original jurisdiction would appertain to the inferior tribunals; and the Supreme Court would have nothing more than an appellate jurisdiction, "with such exceptions and under such regulations as the Congress shall make."

The propriety of this appellate jurisdiction has been scarcely called in question in regard to matters of law; but the clamors have been loud against it as applied to matters of fact. Some well-intentioned men in this State, deriving their notions from the language and forms which obtain in our courts, have been induced to consider it as an implied supersedure of the trial by jury, in favor of the civil-law mode of trial, which prevails in our courts of admiralty, probate, and chancery. A technical sense has been affixed to the term "appellate," which, in our law parlance, is commonly used in reference to appeals in the course of the civil law. But if I am not misinformed, the same meaning would not be given to it in any part of New England. There an appeal from one jury to another, is familiar both in language and practice, and is even a matter of course, until there have been two verdicts on one side. The word "appellate," therefore, will not be understood in the same sense in New England as in New York, which shows the impropriety of a technical interpretation derived from the jurisprudence of any particular State. The expression, taken in the abstract, denotes nothing more than the power of one tribunal to review the proceedings of another, either as to the law or fact, or both. The mode of doing it may depend on ancient custom or legislative provision (in a new government it must depend on the latter), and may be with or without the aid of a jury, as may be judged advisable. If, therefore, the re-examination of a fact once determined by a jury, should in any case be admitted under

the proposed Constitution, it may be so regulated as to be done by a second jury, either by remanding the cause to the court below for a second trial of the fact, or by directing an issue immediately out of the Supreme Court.

But it does not follow that the re-examination of a fact once ascertained by a jury, will be permitted in the Supreme Court. Why may not it be said, with the strictest propriety, when a writ of error is brought from an inferior to a superior court of law in this State, that the latter has jurisdiction of the fact as well as the law? It is true it cannot institute a new inquiry concerning the fact, but it takes cognizance of it as it appears upon the record, and pronounces the law arising upon it.(3) This is jurisdiction of both fact and law; nor is it even possible to separate them. Though the common-law courts of this State ascertain disputed facts by a jury, yet they unquestionably have jurisdiction of both fact and law; and accordingly when the former is agreed in the pleadings, they have no recourse to a jury, but proceed at once to judgment. I contend, therefore, on this ground, that the expressions, "appellate jurisdiction, both as to law and fact," do not necessarily imply a re-examination in the Supreme Court of facts decided by juries in the inferior courts.

The following train of ideas may well be imagined to have influenced the convention, in relation to this particular provision. The appellate jurisdiction of the Supreme Court (it may have been argued) will extend to causes determinable in different modes, some in the course of the COMMON LAW, others in the course of the CIVIL LAW. In the former, the revision of the law only will be, generally speaking, the proper province of the Supreme Court; in the latter, the re-examination of the fact is agreeable to usage, and in some cases, of which prize causes are an example, might be essential to the preservation of the public peace. It is therefore necessary that the appellate jurisdiction should, in certain cases, extend in the broadest sense to matters of fact. It will not answer to make an express exception of cases which shall have been originally tried by a jury, because in the courts of some of the States all causes are tried in this mode(4); and such an exception would preclude the revision of matters of fact, as well where it might be proper, as where it might be improper. To avoid all inconveniencies, it will be safest to declare generally, that the Supreme Court shall possess appellate jurisdiction both as to law and fact, and that this jurisdiction shall be subject to such exceptions and regulations as the national legislature may prescribe. This will enable the government

to modify it in such a manner as will best answer the ends of public justice and security.

This view of the matter, at any rate, puts it out of all doubt that the supposed abolition of the trial by jury, by the operation of this provision, is fallacious and untrue. The legislature of the United States would certainly have full power to provide, that in appeals to the Supreme Court there should be no re-examination of facts where they had been tried in the original causes by juries. This would certainly be an authorized exception; but if, for the reason already intimated, it should be thought too extensive, it might be qualified with a limitation to such causes only as are determinable at common law in that mode of trial.

The amount of the observations hitherto made on the authority of the judicial department is this: that it has been carefully restricted to those causes which are manifestly proper for the cognizance of the national judicature; that in the partition of this authority a very small portion of original jurisdiction has been preserved to the Supreme Court, and the rest consigned to the subordinate tribunals; that the Supreme Court will possess an appellate jurisdiction, both as to law and fact, in all the cases referred to them, both subject to any exceptions and regulations which may be thought advisable; that this appellate jurisdiction does, in no case, abolish the trial by jury; and that an ordinary degree of prudence and integrity in the national councils will insure us solid advantages from the establishment of the proposed judiciary, without exposing us to any of the inconveniences which have been predicted from that source.

PUBLIUS

1. Article 3, Sec. 1.

2. This power has been absurdly represented as intended to abolish all the county courts in the several States, which are commonly called inferior courts. But the expressions of the Constitution are, to constitute "tribunals INFERIOR TO THE SUPREME COURT"; and the evident design of the provision is to enable the institution of local courts, subordinate to the Supreme, either in States or larger districts. It is ridiculous to imagine that county courts were in contemplation.

3. This word is composed of JUS and DICTIO, juris dictio or a speaking and pronouncing of the law.

4. I hold that the States will have concurrent jurisdiction with the subordinate federal judicatories, in many cases of federal cognizance, as will be explained in my next paper.

FEDERALIST No. 82. The Judiciary Continued.

From McLEAN's Edition, New York. Wednesday, May 28, 1788

HAMILTON

To the People of the State of New York:

THE erection of a new government, whatever care or wisdom may distinguish the work, cannot fail to originate questions of intricacy and nicety; and these may, in a particular manner, be expected to flow from the establishment of a constitution founded upon the total or partial incorporation of a number of distinct sovereignties. 'Tis time only that can mature and perfect so compound a system, can liquidate the meaning of all the parts, and can adjust them to each other in a harmonious and consistent WHOLE.

Such questions, accordingly, have arisen upon the plan proposed by the convention, and particularly concerning the judiciary department. The principal of these respect the situation of the State courts in regard to those causes which are to be submitted to federal jurisdiction. Is this to be exclusive, or are those courts to possess a concurrent jurisdiction? If the latter, in what relation will they stand to the national tribunals? These are inquiries which we meet with in the mouths of men of sense, and which are certainly entitled to attention.

The principles established in a former paper(1) teach us that the States will retain all pre-existing authorities which may not be exclusively delegated to the federal head; and that this exclusive delegation can only exist in one of three cases: where an exclusive authority is, in express terms, granted to the Union; or where a particular authority is granted to the Union, and the exercise of a like authority is prohibited to the States; or where an authority is granted to the Union, with which a similar authority in the States would be utterly incompatible. Though these principles may not apply with the same force to the judiciary as to the legislative power, yet I am inclined to think that they are, in the main, just with respect to the

former, as well as the latter. And under this impression, I shall lay it down as a rule, that the State courts will retain the jurisdiction they now have, unless it appears to be taken away in one of the enumerated modes.

The only thing in the proposed Constitution, which wears the appearance of confining the causes of federal cognizance to the federal courts, is contained in this passage: "THE JUDICIAL POWER of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress shall from time to time ordain and establish." This might either be construed to signify, that the supreme and subordinate courts of the Union should alone have the power of deciding those causes to which their authority is to extend; or simply to denote, that the organs of the national judiciary should be one Supreme Court, and as many subordinate courts as Congress should think proper to appoint; or in other words, that the United States should exercise the judicial power with which they are to be invested, through one supreme tribunal, and a certain number of inferior ones, to be instituted by them. The first excludes, the last admits, the concurrent jurisdiction of the State tribunals; and as the first would amount to an alienation of State power by implication, the last appears to me the most natural and the most defensible construction.

But this doctrine of concurrent jurisdiction is only clearly applicable to those descriptions of causes of which the State courts have previous cognizance. It is not equally evident in relation to cases which may grow out of, and be peculiar to, the Constitution to be established; for not to allow the State courts a right of jurisdiction in such cases, can hardly be considered as the abridgment of a pre-existing authority. I mean not therefore to contend that the United States, in the course of legislation upon the objects intrusted to their direction, may not commit the decision of causes arising upon a particular regulation to the federal courts solely, if such a measure should be deemed expedient; but I hold that the State courts will be divested of no part of their primitive jurisdiction, further than may relate to an appeal; and I am even of opinion that in every case in which they were not expressly excluded by the future acts of the national legislature, they will of course take cognizance of the causes to which those acts may give birth. This I infer from the nature of judiciary power, and from the general genius of the system. The judiciary power of every government looks beyond its own local or municipal laws, and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction,

though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish the objects of legal discussion to our courts. When in addition to this we consider the State governments and the national governments, as they truly are, in the light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive, that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union, where it was not expressly prohibited.

Here another question occurs: What relation would subsist between the national and State courts in these instances of concurrent jurisdiction? I answer, that an appeal would certainly lie from the latter, to the Supreme Court of the United States. The Constitution in direct terms gives an appellate jurisdiction to the Supreme Court in all the enumerated cases of federal cognizance in which it is not to have an original one, without a single expression to confine its operation to the inferior federal courts. The objects of appeal, not the tribunals from which it is to be made, are alone contemplated. From this circumstance, and from the reason of the thing, it ought to be construed to extend to the State tribunals. Either this must be the case, or the local courts must be excluded from a concurrent jurisdiction in matters of national concern, else the judiciary authority of the Union may be eluded at the pleasure of every plaintiff or prosecutor. Neither of these consequences ought, without evident necessity, to be involved; the latter would be entirely inadmissible, as it would defeat some of the most important and avowed purposes of the proposed government, and would essentially embarrass its measures. Nor do I perceive any foundation for such a supposition. Agreeably to the remark already made, the national and State systems are to be regarded as ONE WHOLE. The courts of the latter will of course be natural auxiliaries to the execution of the laws of the Union, and an appeal from them will as naturally lie to that tribunal which is destined to unite and assimilate the principles of national justice and the rules of national decisions. The evident aim of the plan of the convention is, that all the causes of the specified classes shall, for weighty public reasons, receive their original or final determination in the courts of the Union. To confine, therefore, the general expressions giving appellate jurisdiction to the Supreme Court, to appeals from the subordinate federal courts, instead of allowing their extension to the State courts, would be to abridge the

latitude of the terms, in subversion of the intent, contrary to every sound rule of interpretation.

But could an appeal be made to lie from the State courts to the subordinate federal judicatories? This is another of the questions which have been raised, and of greater difficulty than the former. The following considerations countenance the affirmative. The plan of the convention, in the first place, authorizes the national legislature "to constitute tribunals inferior to the Supreme Court."(2) It declares, in the next place, that "the JUDICIAL POWER of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress shall ordain and establish"; and it then proceeds to enumerate the cases to which this judicial power shall extend. It afterwards divides the jurisdiction of the Supreme Court into original and appellate, but gives no definition of that of the subordinate courts. The only outlines described for them, are that they shall be "inferior to the Supreme Court," and that they shall not exceed the specified limits of the federal judiciary. Whether their authority shall be original or appellate, or both, is not declared. All this seems to be left to the discretion of the legislature. And this being the case, I perceive at present no impediment to the establishment of an appeal from the State courts to the subordinate national tribunals; and many advantages attending the power of doing it may be imagined. It would diminish the motives to the multiplication of federal courts, and would admit of arrangements calculated to contract the appellate jurisdiction of the Supreme Court. The State tribunals may then be left with a more entire charge of federal causes; and appeals, in most cases in which they may be deemed proper, instead of being carried to the Supreme Court, may be made to lie from the State courts to district courts of the Union.

PUBLIUS

1. No. 31.

2. Sec. 8, Art. 1.

FEDERALIST No. 83. The Judiciary Continued in Relation to Trial by Jury

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HAMILTON

To the People of the State of New York:

THE objection to the plan of the convention, which has met with most success in this State, and perhaps in several of the other States, is that relative to the want of a constitutional provision for the trial by jury in civil cases. The disingenuous form in which this objection is usually stated has been repeatedly adverted to and exposed, but continues to be pursued in all the conversations and writings of the opponents of the plan. The mere silence of the Constitution in regard to civil causes, is represented as an abolition of the trial by jury, and the declamations to which it has afforded a pretext are artfully calculated to induce a persuasion that this pretended abolition is complete and universal, extending not only to every species of civil, but even to criminal causes. To argue with respect to the latter would, however, be as vain and fruitless as to attempt the serious proof of the existence of matter, or to demonstrate any of those propositions which, by their own internal evidence, force conviction, when expressed in language adapted to convey their meaning.

With regard to civil causes, subtleties almost too contemptible for refutation have been employed to countenance the surmise that a thing which is only not provided for, is entirely abolished. Every man of discernment must at once perceive the wide difference between silence and abolition. But as the inventors of this fallacy have attempted to support it by certain legal maxims of interpretation, which they have perverted from their true meaning, it may not be wholly useless to explore the ground they have taken.

The maxims on which they rely are of this nature: "A specification of particulars is an exclusion of generals"; or, "The expression of one thing is

the exclusion of another." Hence, say they, as the Constitution has established the trial by jury in criminal cases, and is silent in respect to civil, this silence is an implied prohibition of trial by jury in regard to the latter.

The rules of legal interpretation are rules of common sense, adopted by the courts in the construction of the laws. The true test, therefore, of a just application of them is its conformity to the source from which they are derived. This being the case, let me ask if it is consistent with common-sense to suppose that a provision obliging the legislative power to commit the trial of criminal causes to juries, is a privation of its right to authorize or permit that mode of trial in other cases? Is it natural to suppose, that a command to do one thing is a prohibition to the doing of another, which there was a previous power to do, and which is not incompatible with the thing commanded to be done? If such a supposition would be unnatural and unreasonable, it cannot be rational to maintain that an injunction of the trial by jury in certain cases is an interdiction of it in others.

A power to constitute courts is a power to prescribe the mode of trial; and consequently, if nothing was said in the Constitution on the subject of juries, the legislature would be at liberty either to adopt that institution or to let it alone. This discretion, in regard to criminal causes, is abridged by the express injunction of trial by jury in all such cases; but it is, of course, left at large in relation to civil causes, there being a total silence on this head. The specification of an obligation to try all criminal causes in a particular mode, excludes indeed the obligation or necessity of employing the same mode in civil causes, but does not abridge the power of the legislature to exercise that mode if it should be thought proper. The pretense, therefore, that the national legislature would not be at full liberty to submit all the civil causes of federal cognizance to the determination of juries, is a pretense destitute of all just foundation.

From these observations this conclusion results: that the trial by jury in civil cases would not be abolished; and that the use attempted to be made of the maxims which have been quoted, is contrary to reason and common-sense, and therefore not admissible. Even if these maxims had a precise technical sense, corresponding with the idea of those who employ them upon the present occasion, which, however, is not the case, they would still be inapplicable to a constitution of government. In relation to such a

subject, the natural and obvious sense of its provisions, apart from any technical rules, is the true criterion of construction.

Having now seen that the maxims relied upon will not bear the use made of them, let us endeavor to ascertain their proper use and true meaning. This will be best done by examples. The plan of the convention declares that the power of Congress, or, in other words, of the national legislature, shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended.

In like manner the judicial authority of the federal judicatures is declared by the Constitution to comprehend certain cases particularly specified. The expression of those cases marks the precise limits, beyond which the federal courts cannot extend their jurisdiction, because the objects of their cognizance being enumerated, the specification would be nugatory if it did not exclude all ideas of more extensive authority.

These examples are sufficient to elucidate the maxims which have been mentioned, and to designate the manner in which they should be used. But that there may be no misapprehensions upon this subject, I shall add one case more, to demonstrate the proper use of these maxims, and the abuse which has been made of them.

Let us suppose that by the laws of this State a married woman was incapable of conveying her estate, and that the legislature, considering this as an evil, should enact that she might dispose of her property by deed executed in the presence of a magistrate. In such a case there can be no doubt but the specification would amount to an exclusion of any other mode of conveyance, because the woman having no previous power to alienate her property, the specification determines the particular mode which she is, for that purpose, to avail herself of. But let us further suppose that in a subsequent part of the same act it should be declared that no woman should dispose of any estate of a determinate value without the consent of three of her nearest relations, signified by their signing the deed; could it be inferred from this regulation that a married woman might not procure the approbation of her relations to a deed for conveying property of inferior value? The position is too absurd to merit a refutation, and yet this is precisely the position which those must establish who contend that the trial

by juries in civil cases is abolished, because it is expressly provided for in cases of a criminal nature.

From these observations it must appear unquestionably true, that trial by jury is in no case abolished by the proposed Constitution, and it is equally true, that in those controversies between individuals in which the great body of the people are likely to be interested, that institution will remain precisely in the same situation in which it is placed by the State constitutions, and will be in no degree altered or influenced by the adoption of the plan under consideration. The foundation of this assertion is, that the national judiciary will have no cognizance of them, and of course they will remain determinable as heretofore by the State courts only, and in the manner which the State constitutions and laws prescribe. All land causes, except where claims under the grants of different States come into question, and all other controversies between the citizens of the same State, unless where they depend upon positive violations of the articles of union, by acts of the State legislatures, will belong exclusively to the jurisdiction of the State tribunals. Add to this, that admiralty causes, and almost all those which are of equity jurisdiction, are determinable under our own government without the intervention of a jury, and the inference from the whole will be, that this institution, as it exists with us at present, cannot possibly be affected to any great extent by the proposed alteration in our system of government.

The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government. For my own part, the more the operation of the institution has fallen under my observation, the more reason I have discovered for holding it in high estimation; and it would be altogether superfluous to examine to what extent it deserves to be esteemed useful or essential in a representative republic, or how much more merit it may be entitled to, as a defense against the oppressions of an hereditary monarch, than as a barrier to the tyranny of popular magistrates in a popular government. Discussions of this kind would be more curious than beneficial, as all are satisfied of the utility of the institution, and of its friendly aspect to liberty. But I must acknowledge that I cannot readily discern the inseparable connection between the existence of liberty, and the

trial by jury in civil cases. Arbitrary impeachments, arbitrary methods of prosecuting pretended offenses, and arbitrary punishments upon arbitrary convictions, have ever appeared to me to be the great engines of judicial despotism; and these have all relation to criminal proceedings. The trial by jury in criminal cases, aided by the habeas corpus act, seems therefore to be alone concerned in the question. And both of these are provided for, in the most ample manner, in the plan of the convention.

It has been observed, that trial by jury is a safeguard against an oppressive exercise of the power of taxation. This observation deserves to be canvassed.

It is evident that it can have no influence upon the legislature, in regard to the amount of taxes to be laid, to the objects upon which they are to be imposed, or to the rule by which they are to be apportioned. If it can have any influence, therefore, it must be upon the mode of collection, and the conduct of the officers intrusted with the execution of the revenue laws.

As to the mode of collection in this State, under our own Constitution, the trial by jury is in most cases out of use. The taxes are usually levied by the more summary proceeding of distress and sale, as in cases of rent. And it is acknowledged on all hands, that this is essential to the efficacy of the revenue laws. The dilatory course of a trial at law to recover the taxes imposed on individuals, would neither suit the exigencies of the public nor promote the convenience of the citizens. It would often occasion an accumulation of costs, more burdensome than the original sum of the tax to be levied.

And as to the conduct of the officers of the revenue, the provision in favor of trial by jury in criminal cases, will afford the security aimed at. Wilful abuses of a public authority, to the oppression of the subject, and every species of official extortion, are offenses against the government, for which the persons who commit them may be indicted and punished according to the circumstances of the case.

The excellence of the trial by jury in civil cases appears to depend on circumstances foreign to the preservation of liberty. The strongest argument in its favor is, that it is a security against corruption. As there is always more time and better opportunity to tamper with a standing body of magistrates than with a jury summoned for the occasion, there is room to suppose that a corrupt influence would more easily find its way to the

former than to the latter. The force of this consideration is, however, diminished by others. The sheriff, who is the summoner of ordinary juries, and the clerks of courts, who have the nomination of special juries, are themselves standing officers, and, acting individually, may be supposed more accessible to the touch of corruption than the judges, who are a collective body. It is not difficult to see, that it would be in the power of those officers to select jurors who would serve the purpose of the party as well as a corrupted bench. In the next place, it may fairly be supposed, that there would be less difficulty in gaining some of the jurors promiscuously taken from the public mass, than in gaining men who had been chosen by the government for their probity and good character. But making every deduction for these considerations, the trial by jury must still be a valuable check upon corruption. It greatly multiplies the impediments to its success. As matters now stand, it would be necessary to corrupt both court and jury; for where the jury have gone evidently wrong, the court will generally grant a new trial, and it would be in most cases of little use to practice upon the jury, unless the court could be likewise gained. Here then is a double security; and it will readily be perceived that this complicated agency tends to preserve the purity of both institutions. By increasing the obstacles to success, it discourages attempts to seduce the integrity of either. The temptations to prostitution which the judges might have to surmount, must certainly be much fewer, while the co-operation of a jury is necessary, than they might be, if they had themselves the exclusive determination of all causes.

Notwithstanding, therefore, the doubts I have expressed, as to the essentiality of trial by jury in civil cases to liberty, I admit that it is in most cases, under proper regulations, an excellent method of determining questions of property; and that on this account alone it would be entitled to a constitutional provision in its favor if it were possible to fix the limits within which it ought to be comprehended. There is, however, in all cases, great difficulty in this; and men not blinded by enthusiasm must be sensible that in a federal government, which is a composition of societies whose ideas and institutions in relation to the matter materially vary from each other, that difficulty must be not a little augmented. For my own part, at every new view I take of the subject, I become more convinced of the reality of the obstacles which, we are authoritatively informed, prevented the insertion of a provision on this head in the plan of the convention.

The great difference between the limits of the jury trial in different States is not generally understood; and as it must have considerable influence on the sentence we ought to pass upon the omission complained of in regard to this point, an explanation of it is necessary. In this State, our judicial establishments resemble, more nearly than in any other, those of Great Britain. We have courts of common law, courts of probates (analogous in certain matters to the spiritual courts in England), a court of admiralty and a court of chancery. In the courts of common law only, the trial by jury prevails, and this with some exceptions. In all the others a single judge presides, and proceeds in general either according to the course of the canon or civil law, without the aid of a jury.(1) In New Jersey, there is a court of chancery which proceeds like ours, but neither courts of admiralty nor of probates, in the sense in which these last are established with us. In that State the courts of common law have the cognizance of those causes which with us are determinable in the courts of admiralty and of probates, and of course the jury trial is more extensive in New Jersey than in New York. In Pennsylvania, this is perhaps still more the case, for there is no court of chancery in that State, and its common-law courts have equity jurisdiction. It has a court of admiralty, but none of probates, at least on the plan of ours. Delaware has in these respects imitated Pennsylvania. Maryland approaches more nearly to New York, as does also Virginia, except that the latter has a plurality of chancellors. North Carolina bears most affinity to Pennsylvania; South Carolina to Virginia. I believe, however, that in some of those States which have distinct courts of admiralty, the causes depending in them are triable by juries. In Georgia there are none but common-law courts, and an appeal of course lies from the verdict of one jury to another, which is called a special jury, and for which a particular mode of appointment is marked out. In Connecticut, they have no distinct courts either of chancery or of admiralty, and their courts of probates have no jurisdiction of causes. Their common-law courts have admiralty and, to a certain extent, equity jurisdiction. In cases of importance, their General Assembly is the only court of chancery. In Connecticut, therefore, the trial by jury extends in practice further than in any other State yet mentioned. Rhode Island is, I believe, in this particular, pretty much in the situation of Connecticut. Massachusetts and New Hampshire, in regard to the blending of law, equity, and admiralty jurisdictions, are in a similar predicament. In the four Eastern States, the trial by jury not only stands upon a broader foundation than in

the other States, but it is attended with a peculiarity unknown, in its full extent, to any of them. There is an appeal of course from one jury to another, till there have been two verdicts out of three on one side.

From this sketch it appears that there is a material diversity, as well in the modification as in the extent of the institution of trial by jury in civil cases, in the several States; and from this fact these obvious reflections flow: first, that no general rule could have been fixed upon by the convention which would have corresponded with the circumstances of all the States; and secondly, that more or at least as much might have been hazarded by taking the system of any one State for a standard, as by omitting a provision altogether and leaving the matter, as has been done, to legislative regulation.

The propositions which have been made for supplying the omission have rather served to illustrate than to obviate the difficulty of the thing. The minority of Pennsylvania have proposed this mode of expression for the purpose—"Trial by jury shall be as heretofore"—and this I maintain would be senseless and nugatory. The United States, in their united or collective capacity, are the OBJECT to which all general provisions in the Constitution must necessarily be construed to refer. Now it is evident that though trial by jury, with various limitations, is known in each State individually, yet in the United States, as such, it is at this time altogether unknown, because the present federal government has no judiciary power whatever; and consequently there is no proper antecedent or previous establishment to which the term heretofore could relate. It would therefore be destitute of a precise meaning, and inoperative from its uncertainty.

As, on the one hand, the form of the provision would not fulfil the intent of its proposers, so, on the other, if I apprehend that intent rightly, it would be in itself inexpedient. I presume it to be, that causes in the federal courts should be tried by jury, if, in the State where the courts sat, that mode of trial would obtain in a similar case in the State courts; that is to say, admiralty causes should be tried in Connecticut by a jury, in New York without one. The capricious operation of so dissimilar a method of trial in the same cases, under the same government, is of itself sufficient to indispose every wellregulated judgment towards it. Whether the cause should be tried with or without a jury, would depend, in a great number of cases, on the accidental situation of the court and parties.

But this is not, in my estimation, the greatest objection. I feel a deep and deliberate conviction that there are many cases in which the trial by jury is an ineligible one. I think it so particularly in cases which concern the public peace with foreign nations—that is, in most cases where the question turns wholly on the laws of nations. Of this nature, among others, are all prize causes. Juries cannot be supposed competent to investigations that require a thorough knowledge of the laws and usages of nations; and they will sometimes be under the influence of impressions which will not suffer them to pay sufficient regard to those considerations of public policy which ought to guide their inquiries. There would of course be always danger that the rights of other nations might be infringed by their decisions, so as to afford occasions of reprisal and war. Though the proper province of juries be to determine matters of fact, yet in most cases legal consequences are complicated with fact in such a manner as to render a separation impracticable.

It will add great weight to this remark, in relation to prize causes, to mention that the method of determining them has been thought worthy of particular regulation in various treaties between different powers of Europe, and that, pursuant to such treaties, they are determinable in Great Britain, in the last resort, before the king himself, in his privy council, where the fact, as well as the law, undergoes a re-examination. This alone demonstrates the impolicy of inserting a fundamental provision in the Constitution which would make the State systems a standard for the national government in the article under consideration, and the danger of encumbering the government with any constitutional provisions the propriety of which is not indisputable.

My convictions are equally strong that great advantages result from the separation of the equity from the law jurisdiction, and that the causes which belong to the former would be improperly committed to juries. The great and primary use of a court of equity is to give relief in extraordinary cases, which are exceptions(2) to general rules. To unite the jurisdiction of such cases with the ordinary jurisdiction, must have a tendency to unsettle the general rules, and to subject every case that arises to a special determination; while a separation of the one from the other has the contrary effect of rendering one a sentinel over the other, and of keeping each within the expedient limits. Besides this, the circumstances that constitute cases proper for courts of equity are in many instances so nice and intricate, that

they are incompatible with the genius of trials by jury. They require often such long, deliberate, and critical investigation as would be impracticable to men called from their occupations, and obliged to decide before they were permitted to return to them. The simplicity and expedition which form the distinguishing characters of this mode of trial require that the matter to be decided should be reduced to some single and obvious point; while the litigations usual in chancery frequently comprehend a long train of minute and independent particulars.

It is true that the separation of the equity from the legal jurisdiction is peculiar to the English system of jurisprudence: which is the model that has been followed in several of the States. But it is equally true that the trial by jury has been unknown in every case in which they have been united. And the separation is essential to the preservation of that institution in its pristine purity. The nature of a court of equity will readily permit the extension of its jurisdiction to matters of law; but it is not a little to be suspected, that the attempt to extend the jurisdiction of the courts of law to matters of equity will not only be unproductive of the advantages which may be derived from courts of chancery, on the plan upon which they are established in this State, but will tend gradually to change the nature of the courts of law, and to undermine the trial by jury, by introducing questions too complicated for a decision in that mode.

These appeared to be conclusive reasons against incorporating the systems of all the States, in the formation of the national judiciary, according to what may be conjectured to have been the attempt of the Pennsylvania minority. Let us now examine how far the proposition of Massachusetts is calculated to remedy the supposed defect.

It is in this form: "In civil actions between citizens of different States, every issue of fact, arising in actions at common law, may be tried by a jury if the parties, or either of them request it."

This, at best, is a proposition confined to one description of causes; and the inference is fair, either that the Massachusetts convention considered that as the only class of federal causes, in which the trial by jury would be proper; or that if desirous of a more extensive provision, they found it impracticable to devise one which would properly answer the end. If the first, the omission of a regulation respecting so partial an object can never

be considered as a material imperfection in the system. If the last, it affords a strong corroboration of the extreme difficulty of the thing.

But this is not all: if we advert to the observations already made respecting the courts that subsist in the several States of the Union, and the different powers exercised by them, it will appear that there are no expressions more vague and indeterminate than those which have been employed to characterize that species of causes which it is intended shall be entitled to a trial by jury. In this State, the boundaries between actions at common law and actions of equitable jurisdiction, are ascertained in conformity to the rules which prevail in England upon that subject. In many of the other States the boundaries are less precise. In some of them every cause is to be tried in a court of common law, and upon that foundation every action may be considered as an action at common law, to be determined by a jury, if the parties, or either of them, choose it. Hence the same irregularity and confusion would be introduced by a compliance with this proposition, that I have already noticed as resulting from the regulation proposed by the Pennsylvania minority. In one State a cause would receive its determination from a jury, if the parties, or either of them, requested it; but in another State, a cause exactly similar to the other, must be decided without the intervention of a jury, because the State judicatories varied as to common-law jurisdiction.

It is obvious, therefore, that the Massachusetts proposition, upon this subject cannot operate as a general regulation, until some uniform plan, with respect to the limits of common-law and equitable jurisdictions, shall be adopted by the different States. To devise a plan of that kind is a task arduous in itself, and which it would require much time and reflection to mature. It would be extremely difficult, if not impossible, to suggest any general regulation that would be acceptable to all the States in the Union, or that would perfectly quadrate with the several State institutions.

It may be asked, Why could not a reference have been made to the constitution of this State, taking that, which is allowed by me to be a good one, as a standard for the United States? I answer that it is not very probable the other States would entertain the same opinion of our institutions as we do ourselves. It is natural to suppose that they are hitherto more attached to their own, and that each would struggle for the preference. If the plan of taking one State as a model for the whole had been thought of in the

convention, it is to be presumed that the adoption of it in that body would have been rendered difficult by the predilection of each representation in favor of its own government; and it must be uncertain which of the States would have been taken as the model. It has been shown that many of them would be improper ones. And I leave it to conjecture, whether, under all circumstances, it is most likely that New York, or some other State, would have been preferred. But admit that a judicious selection could have been effected in the convention, still there would have been great danger of jealousy and disgust in the other States, at the partiality which had been shown to the institutions of one. The enemies of the plan would have been furnished with a fine pretext for raising a host of local prejudices against it, which perhaps might have hazarded, in no inconsiderable degree, its final establishment.

To avoid the embarrassments of a definition of the cases which the trial by jury ought to embrace, it is sometimes suggested by men of enthusiastic tempers, that a provision might have been inserted for establishing it in all cases whatsoever. For this I believe, no precedent is to be found in any member of the Union; and the considerations which have been stated in discussing the proposition of the minority of Pennsylvania, must satisfy every sober mind that the establishment of the trial by jury in all cases would have been an unpardonable error in the plan.

In short, the more it is considered the more arduous will appear the task of fashioning a provision in such a form as not to express too little to answer the purpose, or too much to be advisable; or which might not have opened other sources of opposition to the great and essential object of introducing a firm national government.

I cannot but persuade myself, on the other hand, that the different lights in which the subject has been placed in the course of these observations, will go far towards removing in candid minds the apprehensions they may have entertained on the point. They have tended to show that the security of liberty is materially concerned only in the trial by jury in criminal cases, which is provided for in the most ample manner in the plan of the convention; that even in far the greatest proportion of civil cases, and those in which the great body of the community is interested, that mode of trial will remain in its full force, as established in the State constitutions, untouched and unaffected by the plan of the convention; that it is in no case

abolished(3) by that plan; and that there are great if not insurmountable difficulties in the way of making any precise and proper provision for it in a Constitution for the United States.

The best judges of the matter will be the least anxious for a constitutional establishment of the trial by jury in civil cases, and will be the most ready to admit that the changes which are continually happening in the affairs of society may render a different mode of determining questions of property preferable in many cases in which that mode of trial now prevails. For my part, I acknowledge myself to be convinced that even in this State it might be advantageously extended to some cases to which it does not at present apply, and might as advantageously be abridged in others. It is conceded by all reasonable men that it ought not to obtain in all cases. The examples of innovations which contract its ancient limits, as well in these States as in Great Britain, afford a strong presumption that its former extent has been found inconvenient, and give room to suppose that future experience may discover the propriety and utility of other exceptions. I suspect it to be impossible in the nature of the thing to fix the salutary point at which the operation of the institution ought to stop, and this is with me a strong argument for leaving the matter to the discretion of the legislature.

This is now clearly understood to be the case in Great Britain, and it is equally so in the State of Connecticut; and yet it may be safely affirmed that more numerous encroachments have been made upon the trial by jury in this State since the Revolution, though provided for by a positive article of our constitution, than has happened in the same time either in Connecticut or Great Britain. It may be added that these encroachments have generally originated with the men who endeavor to persuade the people they are the warmest defenders of popular liberty, but who have rarely suffered constitutional obstacles to arrest them in a favorite career. The truth is that the general GENIUS of a government is all that can be substantially relied upon for permanent effects. Particular provisions, though not altogether useless, have far less virtue and efficacy than are commonly ascribed to them; and the want of them will never be, with men of sound discernment, a decisive objection to any plan which exhibits the leading characters of a good government.

It certainly sounds not a little harsh and extraordinary to affirm that there is no security for liberty in a Constitution which expressly establishes the

trial by jury in criminal cases, because it does not do it in civil also; while it is a notorious fact that Connecticut, which has been always regarded as the most popular State in the Union, can boast of no constitutional provision for either.

PUBLIUS

1. It has been erroneously insinuated with regard to the court of chancery, that this court generally tries disputed facts by a jury. The truth is, that references to a jury in that court rarely happen, and are in no case necessary but where the validity of a devise of land comes into question.

2. It is true that the principles by which that relief is governed are now reduced to a regular system; but it is not the less true that they are in the main applicable to SPECIAL circumstances, which form exceptions to general rules.

3. Vide No. 81, in which the supposition of its being abolished by the appellate jurisdiction in matters of fact being vested in the Supreme Court, is examined and refuted.

FEDERALIST No. 84. Certain General and Miscellaneous Objections to the Constitution Considered and Answered.

From McLEAN's Edition, New York. Wednesday, May 28, 1788

HAMILTON

To the People of the State of New York:

IN THE course of the foregoing review of the Constitution, I have taken notice of, and endeavored to answer most of the objections which have appeared against it. There, however, remain a few which either did not fall naturally under any particular head or were forgotten in their proper places. These shall now be discussed; but as the subject has been drawn into great length, I shall so far consult brevity as to comprise all my observations on these miscellaneous points in a single paper.

The most considerable of the remaining objections is that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked that the constitutions of several of the States are in a similar predicament. I add that New York is of the number. And yet the opposers of the new system, in this State, who profess an unlimited admiration for its constitution, are among the most intemperate partisans of a bill of rights. To justify their zeal in this matter, they allege two things: one is that, though the constitution of New York has no bill of rights prefixed to it, yet it contains, in the body of it, various provisions in favor of particular privileges and rights, which, in substance amount to the same thing; the other is, that the Constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights, not expressed in it, are equally secured.

To the first I answer, that the Constitution proposed by the convention contains, as well as the constitution of this State, a number of such provisions.

Independent of those which relate to the structure of the government, we find the following: Article 1, section 3, clause 7—"Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law." Section 9, of the same article, clause 2—"The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Clause 3—"No bill of attainder or ex-post-facto law shall be passed." Clause 7—"No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state." Article 3, section 2, clause 3—"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." Section 3, of the same article—"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." And clause 3, of the same section—"The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

It may well be a question, whether these are not, upon the whole, of equal importance with any which are to be found in the constitution of this State. The establishment of the writ of habeas corpus, the prohibition of ex post facto laws, and of TITLES OF NOBILITY, to which we have no corresponding provision in our Constitution, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious Blackstone,(1) in reference to the latter, are well worthy of recital: "To bereave a man of life, (says he) or by violence to confiscate his

estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government." And as a remedy for this fatal evil he is everywhere peculiarly emphatical in his encomiums on the habeas corpus act, which in one place he calls "the BULWARK of the British Constitution."(2)

Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.

To the second that is, to the pretended establishment of the common and state law by the Constitution, I answer, that they are expressly made subject "to such alterations and provisions as the legislature shall from time to time make concerning the same." They are therefore at any moment liable to repeal by the ordinary legislative power, and of course have no constitutional sanction. The only use of the declaration was to recognize the ancient law and to remove doubts which might have been occasioned by the Revolution. This consequently can be considered as no part of a declaration of rights, which under our constitutions must be intended as limitations of the power of the government itself.

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the Petition of Right assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular

reservations. "WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

But a minute detail of particular rights is certainly far less applicable to a Constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution which has the regulation of every species of personal and private concerns. If, therefore, the loud clamors against the plan of the convention, on this score, are well founded, no epithets of reprobation will be too strong for the constitution of this State. But the truth is, that both of them contain all which, in relation to their objects, is reasonably to be desired.

I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason, that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights.

On the subject of the liberty of the press, as much as has been said, I cannot forbear adding a remark or two: in the first place, I observe, that there is not a syllable concerning it in the constitution of this State; in the

next, I contend, that whatever has been said about it in that of any other State, amounts to nothing. What signifies a declaration, that "the liberty of the press shall be inviolably preserved"? What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer, that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.(3) And here, after all, as is intimated upon another occasion, must we seek for the only solid basis of all our rights.

There remains but one other view of this matter to conclude the point. The truth is, after all the declamations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS. The several bills of rights in Great Britain form its Constitution, and conversely the constitution of each State is its bill of rights. And the proposed Constitution, if adopted, will be the bill of rights of the Union. Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the plan of the convention; comprehending various precautions for the public security, which are not to be found in any of the State constitutions. Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This we have seen has also been attended to, in a variety of cases, in the same plan. Adverting therefore to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. It may be said that it does not go far enough, though it will not be easy to make this appear; but it can with no propriety be contended that there is no such thing. It certainly must be immaterial what mode is observed as to the order of declaring the rights of the citizens, if they are to be found in any part of the instrument which establishes the government. And hence it must be apparent, that much of what has been said on this subject rests merely on verbal and nominal distinctions, entirely foreign from the substance of the thing.

Another objection which has been made, and which, from the frequency of its repetition, it is to be presumed is relied on, is of this nature: "It is improper (say the objectors) to confer such large powers, as are proposed, upon the national government, because the seat of that government must of

necessity be too remote from many of the States to admit of a proper knowledge on the part of the constituent, of the conduct of the representative body." This argument, if it proves any thing, proves that there ought to be no general government whatever. For the powers which, it seems to be agreed on all hands, ought to be vested in the Union, cannot be safely intrusted to a body which is not under every requisite control. But there are satisfactory reasons to show that the objection is in reality not well founded. There is in most of the arguments which relate to distance a palpable illusion of the imagination. What are the sources of information by which the people in Montgomery County must regulate their judgment of the conduct of their representatives in the State legislature? Of personal observation they can have no benefit. This is confined to the citizens on the spot. They must therefore depend on the information of intelligent men, in whom they confide; and how must these men obtain their information? Evidently from the complexion of public measures, from the public prints, from correspondences with their representatives, and with other persons who reside at the place of their deliberations. This does not apply to Montgomery County only, but to all the counties at any considerable distance from the seat of government.

It is equally evident that the same sources of information would be open to the people in relation to the conduct of their representatives in the general government, and the impediments to a prompt communication which distance may be supposed to create, will be overbalanced by the effects of the vigilance of the State governments. The executive and legislative bodies of each State will be so many sentinels over the persons employed in every department of the national administration; and as it will be in their power to adopt and pursue a regular and effectual system of intelligence, they can never be at a loss to know the behavior of those who represent their constituents in the national councils, and can readily communicate the same knowledge to the people. Their disposition to apprise the community of whatever may prejudice its interests from another quarter, may be relied upon, if it were only from the rivalship of power. And we may conclude with the fullest assurance that the people, through that channel, will be better informed of the conduct of their national representatives, than they can be by any means they now possess of that of their State representatives.

It ought also to be remembered that the citizens who inhabit the country at and near the seat of government will, in all questions that affect the

general liberty and prosperity, have the same interest with those who are at a distance, and that they will stand ready to sound the alarm when necessary, and to point out the actors in any pernicious project. The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the Union.

Among the many curious objections which have appeared against the proposed Constitution, the most extraordinary and the least colorable is derived from the want of some provision respecting the debts due to the United States. This has been represented as a tacit relinquishment of those debts, and as a wicked contrivance to screen public defaulters. The newspapers have teemed with the most inflammatory railings on this head; yet there is nothing clearer than that the suggestion is entirely void of foundation, the offspring of extreme ignorance or extreme dishonesty. In addition to the remarks I have made upon the subject in another place, I shall only observe that as it is a plain dictate of common-sense, so it is also an established doctrine of political law, that "States neither lose any of their rights, nor are discharged from any of their obligations, by a change in the form of their civil government."(4)

The last objection of any consequence, which I at present recollect, turns upon the article of expense. If it were even true, that the adoption of the proposed government would occasion a considerable increase of expense, it would be an objection that ought to have no weight against the plan.

The great bulk of the citizens of America are with reason convinced, that Union is the basis of their political happiness. Men of sense of all parties now, with few exceptions, agree that it cannot be preserved under the present system, nor without radical alterations; that new and extensive powers ought to be granted to the national head, and that these require a different organization of the federal government—a single body being an unsafe depositary of such ample authorities. In conceding all this, the question of expense must be given up; for it is impossible, with any degree of safety, to narrow the foundation upon which the system is to stand. The two branches of the legislature are, in the first instance, to consist of only sixty-five persons, which is the same number of which Congress, under the existing Confederation, may be composed. It is true that this number is intended to be increased; but this is to keep pace with the progress of the population and resources of the country. It is evident that a less number

would, even in the first instance, have been unsafe, and that a continuance of the present number would, in a more advanced stage of population, be a very inadequate representation of the people.

Whence is the dreaded augmentation of expense to spring? One source indicated, is the multiplication of offices under the new government. Let us examine this a little.

It is evident that the principal departments of the administration under the present government, are the same which will be required under the new. There are now a Secretary of War, a Secretary of Foreign Affairs, a Secretary for Domestic Affairs, a Board of Treasury, consisting of three persons, a Treasurer, assistants, clerks, etc. These officers are indispensable under any system, and will suffice under the new as well as the old. As to ambassadors and other ministers and agents in foreign countries, the proposed Constitution can make no other difference than to render their characters, where they reside, more respectable, and their services more useful. As to persons to be employed in the collection of the revenues, it is unquestionably true that these will form a very considerable addition to the number of federal officers; but it will not follow that this will occasion an increase of public expense. It will be in most cases nothing more than an exchange of State for national officers. In the collection of all duties, for instance, the persons employed will be wholly of the latter description. The States individually will stand in no need of any for this purpose. What difference can it make in point of expense to pay officers of the customs appointed by the State or by the United States? There is no good reason to suppose that either the number or the salaries of the latter will be greater than those of the former.

Where then are we to seek for those additional articles of expense which are to swell the account to the enormous size that has been represented to us? The chief item which occurs to me respects the support of the judges of the United States. I do not add the President, because there is now a president of Congress, whose expenses may not be far, if any thing, short of those which will be incurred on account of the President of the United States. The support of the judges will clearly be an extra expense, but to what extent will depend on the particular plan which may be adopted in regard to this matter. But upon no reasonable plan can it amount to a sum which will be an object of material consequence.

Let us now see what there is to counterbalance any extra expense that may attend the establishment of the proposed government. The first thing which presents itself is that a great part of the business which now keeps Congress sitting through the year will be transacted by the President. Even the management of foreign negotiations will naturally devolve upon him, according to general principles concerted with the Senate, and subject to their final concurrence. Hence it is evident that a portion of the year will suffice for the session of both the Senate and the House of Representatives; we may suppose about a fourth for the latter and a third, or perhaps half, for the former. The extra business of treaties and appointments may give this extra occupation to the Senate. From this circumstance we may infer that, until the House of Representatives shall be increased greatly beyond its present number, there will be a considerable saving of expense from the difference between the constant session of the present and the temporary session of the future Congress.

But there is another circumstance of great importance in the view of economy. The business of the United States has hitherto occupied the State legislatures, as well as Congress. The latter has made requisitions which the former have had to provide for. Hence it has happened that the sessions of the State legislatures have been protracted greatly beyond what was necessary for the execution of the mere local business of the States. More than half their time has been frequently employed in matters which related to the United States. Now the members who compose the legislatures of the several States amount to two thousand and upwards, which number has hitherto performed what under the new system will be done in the first instance by sixty-five persons, and probably at no future period by above a fourth or fifth of that number. The Congress under the proposed government will do all the business of the United States themselves, without the intervention of the State legislatures, who thenceforth will have only to attend to the affairs of their particular States, and will not have to sit in any proportion as long as they have heretofore done. This difference in the time of the sessions of the State legislatures will be clear gain, and will alone form an article of saving, which may be regarded as an equivalent for any additional objects of expense that may be occasioned by the adoption of the new system.

The result from these observations is that the sources of additional expense from the establishment of the proposed Constitution are much

fewer than may have been imagined; that they are counterbalanced by considerable objects of saving; and that while it is questionable on which side the scale will preponderate, it is certain that a government less expensive would be incompetent to the purposes of the Union.

PUBLIUS

1. Vide Blackstone's Commentaries, Vol. 1, p. 136.

2. Idem, Vol. 4, p. 438.

3. To show that there is a power in the Constitution by which the liberty of the press may be affected, recourse has been had to the power of taxation. It is said that duties may be laid upon the publications so high as to amount to a prohibition. I know not by what logic it could be maintained, that the declarations in the State constitutions, in favor of the freedom of the press, would be a constitutional impediment to the imposition of duties upon publications by the State legislatures. It cannot certainly be pretended that any degree of duties, however low, would be an abridgment of the liberty of the press. We know that newspapers are taxed in Great Britain, and yet it is notorious that the press nowhere enjoys greater liberty than in that country. And if duties of any kind may be laid without a violation of that liberty, it is evident that the extent must depend on legislative discretion, respecting the liberty of the press, will give it no greater security than it will have without them. The same invasions of it may be effected under the State constitutions which contain those declarations through the means of taxation, as under the proposed Constitution, which has nothing of the kind. It would be quite as significant to declare that government ought to be free, that taxes ought not to be excessive, etc., as that the liberty of the press ought not to be restrained.

4. Vide Rutherford's Institutes, Vol. 2, Book II, Chapter X, Sections XIV and XV. Vide also Grotius, Book II, Chapter IX, Sections VIII and IX.

FEDERALIST No. 85. Concluding Remarks

From MCLEAN's Edition, New York. Wednesday, May 28, 1788

HAMILTON

To the People of the State of New York:

ACCORDING to the formal division of the subject of these papers, announced in my first number, there would appear still to remain for discussion two points: "the analogy of the proposed government to your own State constitution," and "the additional security which its adoption will afford to republican government, to liberty, and to property." But these heads have been so fully anticipated and exhausted in the progress of the work, that it would now scarcely be possible to do any thing more than repeat, in a more dilated form, what has been heretofore said, which the advanced stage of the question, and the time already spent upon it, conspire to forbid.

It is remarkable, that the resemblance of the plan of the convention to the act which organizes the government of this State holds, not less with regard to many of the supposed defects, than to the real excellences of the former. Among the pretended defects are the re-eligibility of the Executive, the want of a council, the omission of a formal bill of rights, the omission of a provision respecting the liberty of the press. These and several others which have been noted in the course of our inquiries are as much chargeable on the existing constitution of this State, as on the one proposed for the Union; and a man must have slender pretensions to consistency, who can rail at the latter for imperfections which he finds no difficulty in excusing in the former. Nor indeed can there be a better proof of the insincerity and affectation of some of the zealous adversaries of the plan of the convention among us, who profess to be the devoted admirers of the government under which they live, than the fury with which they have attacked that plan, for matters in regard to which our own constitution is equally or perhaps more vulnerable.

The additional securities to republican government, to liberty and to property, to be derived from the adoption of the plan under consideration, consist chiefly in the restraints which the preservation of the Union will impose on local factions and insurrections, and on the ambition of powerful individuals in single States, who may acquire credit and influence enough, from leaders and favorites, to become the despots of the people; in the diminution of the opportunities to foreign intrigue, which the dissolution of the Confederacy would invite and facilitate; in the prevention of extensive military establishments, which could not fail to grow out of wars between the States in a disunited situation; in the express guaranty of a republican form of government to each; in the absolute and universal exclusion of titles of nobility; and in the precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit, have planted mutual distrust in the breasts of all classes of citizens, and have occasioned an almost universal prostration of morals.

Thus have I, fellow-citizens, executed the task I had assigned to myself; with what success, your conduct must determine. I trust at least you will admit that I have not failed in the assurance I gave you respecting the spirit with which my endeavors should be conducted. I have addressed myself purely to your judgments, and have studiously avoided those asperities which are too apt to disgrace political disputants of all parties, and which have been not a little provoked by the language and conduct of the opponents of the Constitution. The charge of a conspiracy against the liberties of the people, which has been indiscriminately brought against the advocates of the plan, has something in it too wanton and too malignant, not to excite the indignation of every man who feels in his own bosom a refutation of the calumny. The perpetual changes which have been rung upon the wealthy, the well-born, and the great, have been such as to inspire the disgust of all sensible men. And the unwarrantable concealments and misrepresentations which have been in various ways practiced to keep the truth from the public eye, have been of a nature to demand the reprobation of all honest men. It is not impossible that these circumstances may have occasionally betrayed me into intemperances of expression which I did not intend; it is certain that I have frequently felt a struggle between sensibility and moderation; and if the former has in some instances prevailed, it must be my excuse that it has been neither often nor much.

Let us now pause and ask ourselves whether, in the course of these papers, the proposed Constitution has not been satisfactorily vindicated from the aspersions thrown upon it; and whether it has not been shown to be worthy of the public approbation, and necessary to the public safety and prosperity. Every man is bound to answer these questions to himself, according to the best of his conscience and understanding, and to act agreeably to the genuine and sober dictates of his judgment. This is a duty from which nothing can give him a dispensation. 'T is one that he is called upon, nay, constrained by all the obligations that form the bands of society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country, or to his posterity, an improper election of the part he is to act. Let him beware of an obstinate adherence to party; let him reflect that the object upon which he is to decide is not a particular interest of the community, but the very existence of the nation; and let him remember that a majority of America has already given its sanction to the plan which he is to approve or reject.

I shall not dissemble that I feel an entire confidence in the arguments which recommend the proposed system to your adoption, and that I am unable to discern any real force in those by which it has been opposed. I am persuaded that it is the best which our political situation, habits, and opinions will admit, and superior to any the revolution has produced.

Concessions on the part of the friends of the plan, that it has not a claim to absolute perfection, have afforded matter of no small triumph to its enemies. "Why," say they, "should we adopt an imperfect thing? Why not amend it and make it perfect before it is irrevocably established?" This may be plausible enough, but it is only plausible. In the first place I remark, that the extent of these concessions has been greatly exaggerated. They have been stated as amounting to an admission that the plan is radically defective, and that without material alterations the rights and the interests of the community cannot be safely confided to it. This, as far as I have understood the meaning of those who make the concessions, is an entire perversion of their sense. No advocate of the measure can be found, who will not declare as his sentiment, that the system, though it may not be perfect in every part, is, upon the whole, a good one; is the best that the present views and circumstances of the country will permit; and is such an

one as promises every species of security which a reasonable people can desire.

I answer in the next place, that I should esteem it the extreme of imprudence to prolong the precarious state of our national affairs, and to expose the Union to the jeopardy of successive experiments, in the chimerical pursuit of a perfect plan. I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound, as well of the errors and prejudices, as of the good sense and wisdom, of the individuals of whom they are composed. The compacts which are to embrace thirteen distinct States in a common bond of amity and union, must as necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials?

The reasons assigned in an excellent little pamphlet lately published in this city,(1) are unanswerable to show the utter improbability of assembling a new convention, under circumstances in any degree so favorable to a happy issue, as those in which the late convention met, deliberated, and concluded. I will not repeat the arguments there used, as I presume the production itself has had an extensive circulation. It is certainly well worthy the perusal of every friend to his country. There is, however, one point of light in which the subject of amendments still remains to be considered, and in which it has not yet been exhibited to public view. I cannot resolve to conclude without first taking a survey of it in this aspect.

It appears to me susceptible of absolute demonstration, that it will be far more easy to obtain subsequent than previous amendments to the Constitution. The moment an alteration is made in the present plan, it becomes, to the purpose of adoption, a new one, and must undergo a new decision of each State. To its complete establishment throughout the Union, it will therefore require the concurrence of thirteen States. If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, alterations in it may at any time be effected by nine States. Here, then, the chances are as thirteen to nine(2) in favor of subsequent amendment, rather than of the original adoption of an entire system.

This is not all. Every Constitution for the United States must inevitably consist of a great variety of particulars, in which thirteen independent States are to be accommodated in their interests or opinions of interest. We may of

course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form a majority on one question, may become the minority on a second, and an association dissimilar to either may constitute the majority on a third. Hence the necessity of moulding and arranging all the particulars which are to compose the whole, in such a manner as to satisfy all the parties to the compact; and hence, also, an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act. The degree of that multiplication must evidently be in a ratio to the number of particulars and the number of parties.

But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point—no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place. There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution.

In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; and on this account alone, I think there is no weight in the observation just stated. I also think there is little weight in it on another account. The intrinsic difficulty of governing THIRTEEN STATES at any rate, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion constantly impose on the national rulers the necessity of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of a doubt, that the observation is futile. It is this that the national rulers, whenever nine States concur, will have no option upon the subject. By the fifth article of the plan, the Congress will be obliged "on the application of the legislatures of two thirds of the States (which at present amount to

nine), to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof." The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of that body. And of consequence, all the declamation about the disinclination to a change vanishes in air. Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority.

If the foregoing argument is a fallacy, certain it is that I am myself deceived by it, for it is, in my conception, one of those rare instances in which a political truth can be brought to the test of a mathematical demonstration. Those who see the matter in the same light with me, however zealous they may be for amendments, must agree in the propriety of a previous adoption, as the most direct road to their own object.

The zeal for attempts to amend, prior to the establishment of the Constitution, must abate in every man who is ready to accede to the truth of the following observations of a writer equally solid and ingenious: "To balance a large state or society (says he), whether monarchical or republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work; EXPERIENCE must guide their labor; TIME must bring it to perfection, and the FEELING of inconveniences must correct the mistakes which they inevitably fall into in their first trials and experiments."(3) These judicious reflections contain a lesson of moderation to all the sincere lovers of the Union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the States from each other, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from TIME and EXPERIENCE. It may be in me a defect of political fortitude, but I acknowledge that I cannot entertain an equal tranquillity with those who affect to treat the dangers of a longer continuance in our present situation as imaginary. A NATION,

without a NATIONAL GOVERNMENT, is, in my view, an awful spectacle. The establishment of a Constitution, in time of profound peace, by the voluntary consent of a whole people, is a PRODIGY, to the completion of which I look forward with trembling anxiety. I can reconcile it to no rules of prudence to let go the hold we now have, in so arduous an enterprise, upon seven out of the thirteen States, and after having passed over so considerable a part of the ground, to recommence the course. I dread the more the consequences of new attempts, because I know that POWERFUL INDIVIDUALS, in this and in other States, are enemies to a general national government in every possible shape.

PUBLIUS

1. Entitled "An Address to the People of the State of New York."

2. It may rather be said TEN, for though two thirds may set on foot the measure, three fourths must ratify.

3. Hume's Essays, Vol. I, p. 128: "The Rise of Arts and Sciences."

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The ANTIFEDERALIST Papers

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Antifederalist No. 1 GENERAL INTRODUCTION: A DANGEROUS PLAN OF BENEFIT ONLY TO THE "ARISTOCRATICK COMBINATION"

From The Boston Gazette and Country Journal, November 26, 1787.

I am pleased to see a spirit of inquiry burst the band of constraint upon the subject of the NEW PLAN for consolidating the governments of the United States, as recommended by the late Convention. If it is suitable to the GENIUS and HABITS of the citizens of these states, it will bear the strictest scrutiny. The PEOPLE are the grand inquest who have a RIGHT to judge of its merits. The hideous daemon of Aristocracy has hitherto had so much influence as to bar the channels of investigation, preclude the people from inquiry and extinguish every spark of liberal information of its qualities. At length the luminary of intelligence begins to beam its effulgent rays upon this important production; the deceptive mists cast before the eyes of the people by the delusive machinations of its INTERESTED advocates begins to dissipate, as darkness flies before the burning taper; and I dare venture to predict, that in spite of those mercenary dectaimers, the plan will have a candid and complete examination. Those furious zealots who are for cramming it down the throats of the people, without allowing them either time or opportunity to scan or weigh it in the balance of their understandings, bear the same marks in their features as those who have been long wishing to erect an aristocracy in THIS COMMONWEALTH [of Massachusetts]. Their menacing cry is for a RIGID government, it matters little to them of what kind, provided it answers THAT description. As the plan now offered comes something near their wishes, and is the most consonant to their views of any they can hope for, they come boldly forward and DEMAND its adoption. They brand with infamy every man who is not as determined and zealous in its favor as themselves. They cry aloud the whole must be swallowed or none at all, thinking thereby to preclude any amendment; they are afraid of having it abated of its present RIGID aspect. They have strived to overawe or seduce printers to stifle and obstruct a free discussion, and have endeavored to hasten it to a decision before the people can duty reflect upon its properties. In order to deceive them, they incessantly declare that none can discover any defect in the system but bankrupts who wish no government, and officers of the present government who fear to lose a part of their power. These zealous partisans may injure their own cause, and endanger the public tranquility by impeding a proper inquiry; the people may suspect the WHOLE to be a dangerous plan, from such COVERED and DESIGNING schemes to enforce it upon them. Compulsive or treacherous measures to establish any government whatever, will always excite jealousy among a free people: better remain single and alone, than blindly adopt whatever a few individuals shall demand, be they ever so wise. I had rather be a free citizen of the small republic of Massachusetts, than an oppressed subject of the great American empire. Let all act understandingly or not at all. If we can confederate upon terms that wilt secure to us our liberties, it is an object highly desirable, because of its additional security to the whole. If the proposed plan proves such an one, I hope it will be adopted, but if it will endanger our liberties as it stands, let it be amended; in order to which it must and ought to be open to inspection and free inquiry. The inundation of abuse that has been thrown out upon the heads of those who have had any doubts of its universal good qualities, have been so redundant,

that it may not be improper to scan the characters of its most strenuous advocates. It will first be allowed that many undesigning citizens may wish its adoption from the best motives, but these are modest and silent, when compared to the greater number, who endeavor to suppress all attempts for investigation. These violent partisans are for having the people gulp down the gilded pill blindfolded, whole, and without any qualification whatever. These consist generally, of the NOBLE order of C[incinnatu]s, holders of public securities, men of great wealth and expectations of public office, B[an]k[er]s and L[aw]y[er]s: these with their train of dependents form the Aristocratick combination. The Lawyers in particular, keep up an incessant declamation for its adoption; like greedy gudgeons they long to satiate their voracious stomachs with the golden bait. The numerous tribunals to be erected by the new plan of consolidated empire, will find employment for ten times their present numbers; these are the LOAVES AND FISHES for which they hunger. They will probably find it suited to THEIR HABITS, if not to the HABITS OF THE PEOPLE. There may be reasons for having but few of them in the State Convention, lest THEIR '0@' INTEREST should be too strongly considered. The time draws near for the choice of Delegates. I hope my fellow-citizens will look well to the characters of their preference, and remember the Old Patriots of 75; they have never led them astray, nor need they fear to try them on this momentous occasion.

A FEDERALIST

Antifederalist No. 2 "WE HAVE BEEN TOLD OF PHANTOMS"

This essay is an excerpted from a speech of William Grayson, June 11, 1788, in Jonathan Elliot (ed.), The Debates in the Several State Conventions on the Adoption of the Federal Constitution.....
(Philadelphia, 1876) 5 vols., III, 274-79.

The adoption of this government will not meliorate our own particular system. I beg leave to consider the circumstances of the Union antecedent to the meeting of the Convention at Philadelphia. We have been told of phantoms and ideal dangers to lead us into measures which will, in my opinion, be the ruin of our country. If the existence of those dangers cannot be proved, if there be no apprehension of wars, if there be no rumors of wars, it will place the subject in a different light, and plainly evince to the world that there cannot be any reason for adopting measures which we apprehend to be ruinous and destructive. When this state [Virginia] proposed that the general government should be improved, Massachusetts was just recovered from a rebellion which had brought the republic to the brink of destruction from a rebellion which was crushed by that federal government which is now so much contemned and abhorred. A vote of that august body for fifteen hundred men, aided by the exertions of the state, silenced all opposition, and shortly restored the public tranquility. Massachusetts was satisfied that these internal commotions were so happily settled, and was unwilling to risk any similar distresses by theoretic experiments. Were the Eastern States willing to enter into this measure? Were they willing to accede to the proposal of Virginia? In what manner was it received? Connecticut revolted at the idea. The Eastern States, sir, were unwilling to recommend a meeting of a convention. They were well aware of the dangers of revolutions and changes. Why was every effort used, and such uncommon pains taken, to bring it about? This would have been unnecessary, had it been approved of by the people. Was Pennsylvania disposed for the reception of this project of reformation? No, sir. She was even unwilling to amend her revenue laws, so as to make the five per centum operative. She was satisfied with things as they were. There was no complaint, that ever I heard of, from any other part of the Union, except Virginia. This being the case among ourselves, what dangers were there to be apprehended from foreign nations? It will be easily shown that dangers from that quarter were absolutely imaginary. Was not France friendly? Unequivocally so. She was devising new regulations of commerce for our advantage. Did she harass us with applications for her money? Is it likely that France will quarrel with us? Is it not reasonable to suppose that she will be more desirous than ever to cling, after losing the Dutch republic, to her best ally? How are the Dutch? We owe them money, it is true; and are they not willing that we should owe them more? Mr. [John] Adams applied to them for a new loan to the poor, despised Confederation. They readily granted it. The Dutch have a fellow-feeling for us. They were in the same situation with ourselves.

I believe that the money which the Dutch borrowed of Henry IV is not yet paid. How did they pass Queen Elizabeth's loan? At a very considerable discount. They took advantage of the weakness and necessities of James I, and made their own terms with that contemptible monarch. Loans from nations are not like loans from private men. Nations lend money, and grant assistance, to one another, from views of national interest-France was willing to pluck the fairest

feather out of the British crown. This was her object in aiding us. She will not quarrel with us on pecuniary considerations. Congress considered it in this point of view; for when a proposition was made to make it a debt of private persons, it was rejected without hesitation. That respectable body wisely considered, that, while we remained their debtors in so considerable a degree, they would not be inattentive to our interest.

With respect to Spain, she is friendly in a high degree. I wish to know by whose interposition was the treaty with Morocco made. Was it not by that of the king of Spain? Several predatory nations disturbed us, on going into the Mediterranean. The influence of Charles III at the Barbary court, and four thousand pounds, procured as good a treaty with Morocco as could be expected. But I acknowledge it is not of any consequence, since the Algerines and people of Tunis have not entered into similar measures. We have nothing to fear from Spain; and, were she hostile, she could never be formidable to this country. Her strength is so scattered, that she never can be dangerous to us either in peace or war. As to Portugal, we have a treaty with her, which may be very advantageous, though it be not yet ratified.

The domestic debt is diminished by considerable sales of western lands to Cutler, Sergeant, and Company; to Simms; and to Royal, Flint, and Company. The board of treasury is authorized to sell in Europe, or any where else, the residue of those lands.

An act of Congress has passed, to adjust the public debts between the individual states and the United States.

Was our trade in a despicable situation? I shall say nothing of what did not come under my own observation. When I was in Congress, sixteen vessels had had sea letters in the East India trade, and two hundred vessels entered and cleared out, in the French West India Islands, in one year.

I must confess that public credit has suffered, and that our public creditors have been ill used. This was owing to a fault at the head-quarters-to Congress themselves-in not selling the western lands at an earlier period. If requisitions have not been complied with, it must be owing to Congress, who might have put the unpopular debts on the back lands. Commutation is abhorrent to New England ideas. Speculation is abhorrent to the Eastern States. Those inconveniences have resulted from the bad policy of Congress.

There are certain modes of governing the people which will succeed. There are others which will not. The idea of consolidation is abhorrent to the people of this country. How were the sentiments of the people before the meeting of the Convention at Philadelphia? They had only one object in view. Their ideas reached no farther than to give the general government the five per centum impost, and the regulation of trade. When it was agitated in Congress, in a committee of the whole, this was all that was asked, or was deemed necessary. Since that period, their views have extended much farther. Horrors have been greatly magnified since the rising of the Convention.

We are now told by the honorable gentleman (Governor Randolph) that we shall have wars and rumors of wars, that every calamity is to attend us, and that we shall be ruined and disunited forever, unless we adopt this Constitution. Pennsylvania and Maryland are to fall upon us from

the north, like the Goths and Vandals of old; the Algerines, whose flat-sided vessels never came farther than Madeira, are to fill the Chesapeake with mighty fleets, and to attack us on our front; the Indians are to invade us with numerous armies on our rear, in order to convert our cleared lands into hunting- grounds; and the Carolinians, from the south, (mounted on alligators, I presume,) are to come and destroy our cornfields, and eat up our little children! These, sir, are the mighty dangers which await us if we reject dangers which are merely imaginary, and ludicrous in the extreme! Are we to be destroyed by Maryland and Pennsylvania? What will democratic states make war for, and how long since have they imbibed a hostile spirit?

But the generality are to attack us. Will they attack us after violating their faith in the first Union? Will they not violate their faith if they do not take us into their confederacy? Have they not agreed, by the old Confederation, that the Union shall be perpetual, and that no alteration should take place without the consent of Congress, and the confirmation of the legislatures of every state? I cannot think that there is such depravity in mankind as that, after violating public faith so flagrantly, they should make war upon us, also, for not following their example.

The large states have divided the back lands among themselves, and have given as much as they thought proper to the generality. For the fear of disunion, we are told that we ought to take measures which we otherwise should not. Disunion is impossible. The Eastern States hold the fisheries, which are their cornfields, by a hair. They have a dispute with the British government about their limits at this moment. Is not a general and strong government necessary for their interest? If ever nations had inducements to peace, the Eastern States now have. New York and Pennsylvania anxiously look forward for the fur trade. How can they obtain it but by union? Can the western posts be got or retained without union? How are the little states inclined? They are not likely to disunite. Their weakness will prevent them from quarrelling. Little men are seldom fond of quarrelling among giants. Is there not a strong inducement to union, while the British are on one side and the Spaniards on the other? Thank Heaven, we have a Carthage of our own . . .

But what would I do on the present occasion to remedy the existing defects of the present Confederation? There are two opinions prevailing in the world-the one, that mankind can only be governed by force; the other, that they are capable of freedom and a good government. Under a supposition that mankind can govern themselves, I would recommend that the present Confederation should be amended. Give Congress the regulation of commerce. Infuse new strength and spirit into the state governments; for, when the component parts are strong, it will give energy to the government, although it be otherwise weak....

Apportion the public debts in such a manner as to throw the unpopular ones on the back lands. Call only for requisitions for the foreign interest and aid them by loans. Keep on so till the American character be marked with some certain features. We are yet too young to know what we are fit for. The continual migration of people from Europe, and the settlement of new countries on our western frontiers, are strong arguments against making new experiments now in government. When these things are removed, we can with greater prospect of success, devise changes. We ought to consider, as Montesquieu says, whether the construction of the government be suitable to the genius and disposition of the people, as well as a variety of other circumstances.

Antifederalist No. 3 NEW CONSTITUTION CREATES A NATIONAL GOVERNMENT; WILL NOT ABATE FOREIGN INFLUENCE; DANGERS OF CIVIL WAR AND DESPOTISM

Like the nome de plume "Publius" used by pro Constitution writers in the Federalist Papers, several Antifederalists signed their writings "A FARMER." While the occupation of the writers may not have coincided with the name given, the arguments against consolodating power in the hands of a central government were widely read. The following was published in the Maryland Gazette and Baltimore Advertiser, March 7, 1788. The true identity of the author is unknown.

There are but two modes by which men are connected in society, the one which operates on individuals, this always has been, and ought still to be called, national government; the other which binds States and governments together (not corporations, for there is no considerable nation on earth, despotic, monarchical, or republican, that does not contain many subordinate corporations with various constitutions) this last has heretofore been denominated a league or confederacy. The term federalists is therefore improperly applied to themselves, by the friends and supporters of the proposed constitution. This abuse of language does not help the cause; every degree of imposition serves only to irritate, but can never convince. They are national men, and their opponents, or at least a great majority of them, are federal, in the only true and strict sense of the word.

Whether any form of national government is preferable for the Americans, to a league or confederacy, is a previous question we must first make up our minds upon....

That a national government will add to the dignity and increase the splendor of the United States abroad, can admit of no doubt: it is essentially requisite for both. That it will render government, and officers of government, more dignified at home is equally certain. That these objects are more suited to the manners, if not [the] genius and disposition of our people is, I fear, also true. That it is requisite in order to keep us at peace among ourselves, is doubtful. That it is necessary, to prevent foreigners from dividing us, or interfering in our government, I deny positively; and, after all, I have strong doubts whether all its advantages are not more specious than solid. We are vain, like other nations. We wish to make a noise in the world; and feel hurt that Europeans are not so attentive to America in peace, as they were to America in war. We are also, no doubt, desirous of cutting a figure in history. Should we not reflect, that quiet is happiness? That content and pomp are incompatible? I have either read or heard this truth, which the Americans should never forget: That the silence of historians is the surest record of the happiness of a people. The Swiss have been four hundred years the envy of mankind, and there is yet scarcely an history of their nation. What is history, but a disgusting and painful detail of the butcheries of conquerors, and the woeful calamities of the conquered? Many of us are proud, and are frequently disappointed that office confers neither respect or difference. No man of merit can ever be disgraced by office. A rogue in office may be feared in some governments-he will be respected in none. After all, what we call respect and difference only arise from contrast of situation, as most of our ideas come by comparison and relation. Where the people are free there can be no great contrast or distinction among honest citizens in or out of office. In proportion as the people

lose their freedom, every gradation of distinction, between the Governors and governed obtains, until the former become masters, and the latter become slaves. In all governments virtue will command reverence. The divine Cato knew every Roman citizen by name, and never assumed any preeminence; yet Cato found, and his memory will find, respect and reverence in the bosoms of mankind, until this world returns into that nothing, from whence Omnipotence called it. That the people are not at present disposed for, and are actually incapable of, governments of simplicity and equal rights, I can no longer doubt. But whose fault is it? We make them bad, by bad governments, and then abuse and despise them for being so. Our people are capable of being made anything that human nature was or is capable of, if we would only have a little patience and give them good and wholesome institutions; but I see none such and very little prospect of such. Alas! I see nothing in my fellow-citizens, that will permit my still fostering the delusion, that they are now capable of sustaining the weight of SELF-GOVERNMENT: a burden to which Greek and Roman shoulders proved unequal. The honor of supporting the dignity of the human character, seems reserved to the hardy Helvetians alone. If the body of the people will not govern themselves, and govern themselves well too, the consequence is unavoidable-a FEW will, and must govern them. Then it is that government becomes truly a government by force only, where men relinquish part of their natural rights to secure the rest, instead of an union of will and force, to protect all their natural rights, which ought to be the foundation of every rightful social compact.

Whether national government will be productive of internal peace, is too uncertain to admit of decided opinion. I only hazard a conjecture when I say, that our state disputes, in a confederacy, would be disputes of levity and passion, which would subside before injury. The people being free, government having no right to them, but they to government, they would separate and divide as interest or inclination prompted-as they do at this day, and always have done, in Switzerland. In a national government, unless cautiously and fortunately administered, the disputes will be the deep-rooted differences of interest, where part of the empire must be injured by the operation of general law; and then should the sword of government be once drawn (which Heaven avert) I fear it will not be sheathed, until we have waded through that series of desolation, which France, Spain, and the other great kingdoms of the world have suffered, in order to bring so many separate States into uniformity, of government and law; in which event the legislative power can only be entrusted to one man (as it is with them) who can have no local attachments, partial interests, or private views to gratify.

That a national government will prevent the influence or danger of foreign intrigue, or secure us from invasion, is in my judgment directly the reverse of the truth. The only foreign, or at least evil foreign influence, must be obtained through corruption. Where the government is lodged in the body of the people, as in Switzerland, they can never be corrupted; for no prince, or people, can have resources enough to corrupt the majority of a nation; and if they could, the play is not worth the candle. The facility of corruption is increased in proportion as power tends by representation or delegation, to a concentration in the hands of a few. . . .

As to any nation attacking a number of confederated independent republics ... it is not to be expected, more especially as the wealth of the empire is there universally diffused, and will not be collected into any one overgrown, luxurious and effeminate capital to become a lure to the enterprizing ambitious. That extensive empire is a misfortune to be deprecated, will not now be

disputed. The balance of power has long engaged the attention of all the European world, in order to avoid the horrid evils of a general government. The same government pervading a vast extent of territory, terrifies the minds of individuals into meanness and submission. All human authority, however organized, must have confined limits, or insolence and oppression will prove the offspring of its grandeur, and the difficulty or rather impossibility of escape prevents resistance. Gibbon relates that some Roman Knights who had offended government in Rome were taken up in Asia, in a very few days after. It was the extensive territory of the Roman republic that produced a Sylla, a Marius, a Caligula, a Nero, and an Elagabalus. In small independent States contiguous to each other, the people run away and leave despotism to reek its vengeance on itself; and thus it is that moderation becomes with them, the law of self-preservation. These and such reasons founded on the eternal and immutable nature of things have long caused and will continue to cause much difference of sentiment throughout our wide extensive territories. From our divided and dispersed situation, and from the natural moderation of the American character, it has hitherto proved a warfare of argument and reason.

A FARMER

Antifederalist No. 4 FOREIGN WARS, CIVIL WARS, AND INDIAN WARS - THREE BUGBEARS

Patrick Henry was a somewhat the antithesis to James Madison of Federalist note. While every bit as emotional a writer, Henry (who penned the well remembered "Give Me Liberty of Give Me Death" phrase) opposed the new Constitution for many reasons. He delivered long speeches to the Virginia Ratification convention June 5, 7, and 9, 1788. The following is taken from Elliot's Debates, 111, 46, 48, 141-42, 150-56.

If we recollect, on last Saturday, I made some observations on some of those dangers which these gentlemen would fain persuade us hang over the citizens of this commonwealth [Virginia] to induce us to change the government, and adopt the new plan. Unless there be great and awful dangers, the change is dangerous, and the experiment ought not to be made. In estimating the magnitude of these dangers, we are obliged to take a most serious view of them--to see them, to handle them, and to be familiar with them. It is not sufficient to feign mere imaginary dangers; there must be a dreadful reality. The great question between us is: Does that reality exist? These dangers are partially attributed to bad laws, execrated by the community at large. It is said the people wish to change the government. I should be happy to meet them on that ground. Should the people wish to change it, we should be innocent of the dangers. It is a fact that the people do not wish to change their government. How am I to prove it? It will rest on my bare assertion, unless supported by an internal conviction in men's breasts. My poor say-so is a mere nonentity. But, sir, I am persuaded that four fifths of the people of Virginia must have amendments to the new plan, to reconcile them to a change of their government. It is a slippery foundation for the people to rest their political salvation on my or their assertions. No government can flourish unless it be founded on the affection of the people. Unless gentlemen can be sure that this new system is founded on that ground, they ought to stop their career.

I will not repeat what the gentlemen say-I will mention one thing. There is a dispute between us and the Spaniards about the right of navigating the Mississippi ... Seven states wished to relinquish this river to them. The six Southern states opposed it. Seven states not being sufficient to convey it away, it remains now ours....

There is no danger of a dismemberment of our country, unless a Constitution be adopted which will enable the government to plant enemies on our backs. By the Confederation, the rights of territory are secured. No treaty can be made without the consent of nine states. While the consent of nine states is necessary to the cession of territory, you are safe. If it be put in the power of a less number, you will most infallibly lose the Mississippi. As long as we can preserve our unalienable rights, we are in safety. This new Constitution will involve in its operation the loss of the navigation of that valuable river.

The honorable gentleman [either James Madison or Edmund Randolph], cannot be ignorant of the Spanish transactions [the Jay-Gardoqui negotiations]. A treaty had been nearly entered into with Spain, to relinquish that navigation. That relinquishment would absolutely have taken place,

had the consent of seven states been sufficient ... This new government, I conceive, will enable those states who have already discovered their inclination that way, to give away this river....

We are threatened with danger [according to some,] for the non-payment of our debt due to France. We have information come from an illustrious citizen of Virginia, who is now in Paris, which disproves the suggestions of such danger. This citizen has not been in the airy regions of theoretic speculation-our ambassador [Thomas Jefferson] is this worthy citizen. The ambassador of the United States of America is not so despised as the honorable gentleman would make us believe. A servant of a republic is as much respected as that of a monarch. The honorable gentleman tells us that hostile fleets are to be sent to make reprisals upon us. Our ambassador tells you that the king of France has taken into consideration to enter into commercial regulations, on reciprocal terms, with us, which will be of peculiar advantage to us. Does this look like hostility? I might go farther. I might say, not from public authority, but good information, that his opinion is, that you reject this government. His character and abilities are in the highest estimation; he is well acquainted, in every respect, with this country; equally so with the policy of the European nations. Let us follow the sage advice of this common friend of our happiness.

It is little usual for nations to send armies to collect debts. The house of Bourbon, that great friend of America, will never attack her for her unwilling delay of payment. Give me leave to say, that Europe is too much engaged about objects of greater importance, to attend to us. On that great theatre of the world, the little American matters vanish. Do you believe that the mighty monarch of France, beholding the greatest scenes that ever engaged the attention of a prince of that country, will divert himself from those important objects, and now call for a settlement of accounts with America? This proceeding is not warranted by good sense. The friendly disposition to us, and the actual situation of France, render the idea of danger from that quarter absurd. Would this countryman of ours be fond of advising us to a measure which he knew to be dangerous? And can it be reasonably supposed that he can be ignorant of any premeditated hostility against this country? The honorable gentleman may suspect the account; but I will do our friend the justice to say, that he would warn us of any danger from France.

Do you suppose the Spanish monarch will risk a contest with the United States, when his feeble colonies are exposed to them? Every advance the people make to the westward, makes them tremble for Mexico and Peru. Despised as we are among ourselves, under our present government, we are terrible to that monarchy. If this be not a fact, it is generally said so.

We are, in the next place, frightened by dangers from Holland. We must change our government to escape the wrath of that republic. Holland groans under a government like this new one. A stadtholder, sir, a Dutch president, has brought on that country miseries which will not permit them to collect debts with fleets or armies ... This President will bring miseries on us like those of Holland. Such is the condition of European affairs, that it would be unsafe for them to send fleets or armies to collect debts.

But here, sir, they make a transition to objects of another kind. We are presented with dangers of a very uncommon nature. I am not acquainted with the arts of painting. Some gentlemen have a peculiar talent for them. They are practised with great ingenuity on this occasion. As a

counterpart to what we have already been intimidated with, we are told that some lands have been sold, which cannot be found; and that this will bring war on this country. Here the picture will not stand examination. Can it be supposed, if a few land speculators and jobbers have violated the principles of probity, that it will involve this country in war? Is there no redress to be otherwise obtained, even admitting the delinquents and sufferers to be numerous? When gentlemen are thus driven to produce imaginary dangers, to induce this Convention to assent to this change, I am sure it will not be uncandid to say that the change itself is really dangerous. Then the Maryland compact is broken, and will produce perilous consequences. I see nothing very terrible in this. The adoption of the new system will not remove the evil. Will they forfeit good neighborhood with us, because the compact is broken? Then the disputes concerning the Carolina line are to involve us in dangers. A strip of land running from the westward of the Alleghany to the Mississippi, is the subject of this pretended dispute. I do not know the length or breadth of this disputed spot. Have they not regularly confirmed our right to it, and relinquished all claims to it? I can venture to pledge that the people of Carolina will never disturb us. . . . Then, sir, comes Pennsylvania, in terrible array. Pennsylvania is to go in conflict with Virginia. Pennsylvania has been a good neighbor heretofore. She is federal- -something terrible--Virginia cannot look her in the face. If we sufficiently attend to the actual situation of things, we shall conclude that Pennsylvania will do what we do. A number of that country are strongly opposed to it. Many of them have lately been convinced of its fatal tendency. They are disgorged of their federalism. . . . Place yourselves in their situation; would you fight your neighbors for considering this great and awful matter? . . . Whatever may be the disposition of the aristocratical politicians of that country, I know there are friends of human nature in that state. If so, they will never make war on those who make professions of what they are attached to themselves.

As to the danger arising from borderers, it is mutual and reciprocal. If it be dangerous for Virginia, it is equally so for them. It will be their true interest to be united with us. The danger of our being their enemies will be a prevailing argument in our favor. It will be as powerful to admit us into the Union, as a vote of adoption, without previous amendments, could possibly be.

Then the savage Indians are to destroy us. We cannot look them in the face. The danger is here divided; they are as terrible to the other states as to us. But, sir, it is well known that we have nothing to fear from them. Our back settlers are considerably stronger than they. Their superiority increases daily. Suppose the states to be confederated all around us; what we want in numbers, we shall make up otherwise. Our compact situation and natural strength will secure us. But, to avoid all dangers, we must take shelter under the federal government. Nothing gives a decided importance but this federal government. You will sip sorrow, according to the vulgar phrase, if you want any other security than the laws of Virginia....

Where is the danger? If, sir, there was any, I would recur to the American spirit to defend us; that spirit which has enabled us to surmount the greatest difficulties--to that illustrious spirit I address my most fervent prayer to prevent our adopting a system destructive to liberty. Let not gentlemen be told that it is not safe to reject this government. Wherefore is it not safe? We are told there are dangers, but those dangers are ideal; they cannot be demonstrated....

The Confederation, this despised government, merits, in my opinion, the highest encomium--it carried us through a long and dangerous war; it rendered us victorious in that bloody conflict

with a powerful nation; it has secured us a territory greater than any European monarch possesses--and shall a government which has been thus strong and vigorous, be accused of imbecility, and abandoned for want of energy? Consider what you are about to do before you part with the government. Take longer time in reckoning things; revolutions like this have happened in almost every country in Europe; similar examples are to be found in ancient Greece and ancient Rome- -instances of the people losing their liberty by their own carelessness and the ambition of a few. We are cautioned . . . against faction and turbulence. I acknowledge that licentiousness is dangerous, and that it ought to be provided against. I acknowledge, also, the new form of government may effectually prevent it. Yet there is another thing it will as effectually do- -it will oppress and ruin the people.

Antifederalist No. 5 SCOTLAND AND ENGLAND - A CASE IN POINT

The ongoing Federalist essays appeared from October of 1787 to May of 1788. Rebuttals (Antifederalist in nature) to Federalist writers seldom were published. This selection was an answer to Publius [John Jay] Federalist No. 5. This article by "AN OBSERVER," was printed in The New-York Journal and was reprinted in the [Boston] American Herald on December 3, 1787.

A writer, under the signature Publius or The Federalist, No. V, in the Daily Advertiser, and in the New York Packet, with a view of proving the advantages which, he says, will be derived by the states if the new constitution is adopted, has given extracts of a letter from Queen Anne to the Scotch parliament, on the subject of a union between Scotland and England.

I would beg leave to remark, that Publius has been very unfortunate in selecting these extracts as a case in point, to convince the people of America of the benefits they would derive from a union, under such a government as would be effected by the new system. It is a certainty, that when the union was the subject of debate in the Scottish legislature, some of their most sensible and disinterested nobles, as well as commoners! (who were not corrupted by English gold), violently opposed the union, and predicted that the people of Scotland would, in fact, derive no advantages from a consolidation of government with England; but, on the contrary, they would bear a great proportion of her debt, and furnish large bodies of men to assist in her wars with France, with whom, before the union, Scotland was at all times on terms of the most cordial amity. It was also predicted that the representation in the parliament of Great Britain, particularly in the house of commons, was too small; forty-five members being very far from the proportion of Scotland, when its extent and numbers were duly considered; and that even they, being so few, might (or at least a majority of them might) at all times be immediately under the influence of the English ministry; and, of course, very little of their attention would be given to the true interest of their constituents, especially if they came in competition with the prospects of views of the ministry. How far these predictions have been verified I believe it will not require much trouble to prove. It must be obvious to everyone, the least acquainted with English history, that since the union of the two nations the great body of the people in Scotland are in a much worse situation now, than they would be, were they a separate nation. This will be fully illustrated by attending to the great emigrations which are made to America. For if the people could have but a common support at home, it is unreasonable to suppose that such large numbers would quit their country, break from the tender ties of kindred and friendship and trust themselves on a dangerous voyage across a vast ocean, to a country of which they can know but very little except by common report. I will only further remark, that it is not about two or three years since a member of the British parliament (I believe Mr. Dempster) gave a most pathetic description of the sufferings of the commonalty of Scotland, particularly on the sea coast, and endeavored to call the attention of parliament to their distresses, and afford them some relief by encouraging their fisheries. It deserves also to be remembered, that the people of Scotland, in the late war between France and Great Britain, petitioned to have arms and ammunition supplied them by their general government, for their defense, alleging that they were incapable of defending themselves and their property from an invasion unless they were assisted by government. It is a truth that their

petitions were disregarded, and reasons were assigned, that it would be dangerous to entrust them with the means of defense, as they would then have it in their power to break the union. From this representation of the situation of Scotland, surely no one can draw any conclusion that this country would derive happiness or security from a government which would, in reality, give the people but the mere name of being free. For if the representation, stipulated by the constitution, framed by the late convention, be attentively and dispassionately considered, it must be obvious to every disinterested observer (besides many other weighty objections which will present themselves to view), that the number is not, by any means, adequate to the present inhabitants of this extensive continent, much less to those it will contain at a future period.

I observe that the writer above mentioned, takes great pains to show the disadvantages which would result from three or four distinct confederacies of these states. I must confess that I have not seen, in any of the pieces published against the proposed constitution, any thing which gives the most distant idea that their writers are in favor of such governments; but it is clear these objections arise from a consolidation not affording security for the liberties of their country, and from hence it must evidently appear, that the design of Publius, in artfully holding up to public view [the bugbear of] such confederacies, can be with no other intention than wilfully to deceive his fellow citizens. I am confident it must be, and that it is, the sincere wish of every true friend to the United States, that there should be a confederated national government, but that it should be one which would have a control over national and external matters only, and not interfere with the internal regulations and police of the different states in the union. Such a government, while it would give us respectability abroad, would not encroach upon, or subvert our liberties at home.

AN OBSERVER

Antifederalist No. 6 THE HOBGOBLINS OF ANARCHY AND DISSENSIONS AMONG THE STATES

One of largest series of Antifederalist essays was penned under the pseudonym "CENTINEL." The Philadelphia Independent Gazetteer ran this 24 essay series between October 5, 1787 and November 24, 1788.

Some historians feel most of the "Centinel" letters were written by Samuel Bryan, and a few by Eleazer Oswald, owner of the Independent Gazetteer. A more recent study by Charles Page Smith, James Wilson, Founding Father (Chapel Hill, 1956), refrains from making such theory

This selection is from the eleventh letter of "Centinel," appearing in the Independent Gazetteer on January 16, 1788.

The evils of anarchy have been portrayed with all the imagery of language in the growing colors of eloquence; the affrighted mind is thence led to clasp the new Constitution as the instrument of deliverance, as the only avenue to safety and happiness. To avoid the possible and transitory evils of one extreme, it is seduced into the certain and permanent misery necessarily attendant on the other. A state of anarchy from its very nature can never be of long continuance; the greater its violence the shorter the duration. Order and security are immediately sought by the distracted people beneath the shelter of equal laws and the salutary restraints of regular government; and if this be not attainable, absolute power is assumed by the one, or a few, who shall be the most enterprising and successful. If anarchy, therefore, were the inevitable consequence of rejecting the new Constitution, it would be infinitely better to incur it, for even then there would be at least the chance of a good government rising out of licentiousness. But to rush at once into despotism because there is a bare possibility of anarchy ensuing from the rejection, or from what is yet more visionary, the small delay that would be occasioned by a revision and correction of the proposed system of government is so superlatively weak, so fatally blind, that it is astonishing any person of common understanding should suffer such an imposition to have the least influence on his judgment; still more astonishing that so flimsy and deceptive a doctrine should make converts among the enlightened freemen of America, who have so long enjoyed the blessings of liberty. But when I view among such converts men otherwise pre-eminent it raises a blush for the weakness of humanity that these, her brightest ornaments, should be so dimsighted to what is self-evident to most men, that such imbecility of judgment should appear where so much perfection was looked for. This ought to teach us to depend more on our own judgment and the nature of the case than upon the opinions of the greatest and best of men, who, from constitutional infirmities or particular situations, may sometimes view an object through a delusive medium; but the opinions of great men are more frequently the dictates of ambition or private interest.

The source of the apprehensions of this so much dreaded anarchy would upon investigation be found to arise from the artful suggestions of designing men, and not from a rational probability grounded on the actual state of affairs. The least reflection is sufficient to detect the fallacy to show that there is no one circumstance to justify the prediction of such an event. On the contrary

a short time will evince, to the utter dismay and confusion of the conspirators, that a perseverance in cramming down their scheme of power upon the freemen of this State [Pennsylvania] will inevitably produce an anarchy destructive of their darling domination, and may kindle a flame prejudicial to their safety. They should be cautious not to trespass too far on the forbearance of freemen when wresting their dearest concerns, but prudently retreat from the gathering storm.

The other specter that has been raised to terrify and alarm the people out of the exercise of their judgment on this great occasion, is the dread of our splitting into separate confederacies or republics, that might become rival powers and consequently liable to mutual wars from the usual motives of contention. This is an event still more improbable than the foregoing. It is a presumption unwarranted, either by the situation of affairs, or the sentiments of the people; no disposition leading to it exists; the advocates of the new constitution seem to view such a separation with horror, and its opponents are strenuously contending for a confederation that shall embrace all America under its comprehensive and salutary protection. This hobgoblin appears to have sprung from the deranged brain of Publius, [The Federalist] a New York writer, who, mistaking sound for argument, has with Herculean labor accumulated myriads of unmeaning sentences, and mechanically endeavored to force conviction by a torrent of misplaced words. He might have spared his readers the fatigue of wading through his long-winded disquisitions on the direful effects of the contentions of inimical states, as totally inapplicable to the subject he was professedly treating; this writer has devoted much time, and wasted more paper in combating chimeras of his own creation. However, for the sake of argument, I will admit that the necessary consequence of rejecting or delaying the establishment of the new constitution would be the dissolution of the union, and the institution of even rival and inimical republics; yet ought such an apprehension, if well founded, to drive us into the fangs of despotism? Infinitely preferable would be occasional wars to such an event. The former, although a severe scourge, is transient in its continuance, and in its operation partial, but a small proportion of the community are exposed to its greatest horrors, and yet fewer experience its greatest evils; the latter is permanent and universal misery, without remission or exemption. As passing clouds obscure for a time the splendor of the sun, so do wars interrupt the welfare of mankind; but despotism is a settled gloom that totally extinguishes happiness. Not a ray of comfort can penetrate to cheer the dejected mind; the goad of power with unabating rigor insists upon the utmost exaction; like a merciless taskmaster, [it] is continually inflicting the lash, and is never satiated with the feast of unfeeling domination, or the most abject servility.

The celebrated Lord Kaims, whose disquisitions of human nature evidence extraordinary strength of judgment and depth of investigation, says that a continual civil war, which is the most destructive and horrible scene of human discord, is preferable to the uniformity of wretchedness and misery attendant upon despotism; of all possible evils, as I observed in my first number, this is the worst and the most to be dreaded.

I congratulate my fellow citizens that a good government, the greatest earthly blessing, may be so easily obtained, that our circumstances are so favorable, that nothing but the folly of the conspirators can produce anarchy or civil war, which would presently terminate in their destruction and the permanent harmony of the state, alone interrupted by their ambitious machinations.

CENTINEL

Antifederalist No. 7 ADOPTION OF THE CONSTITUTION WILL LEAD TO CIVIL WAR

"PHILANTHROPOS," (an anonymous Virginia Antifederalist) appeared in The Virginia Journal and Alexandria Advertiser, December 6, 1787, writing his version of history under the proposed new Constitution.

The time in which the constitution or government of a nation undergoes any particular change, is always interesting and critical. Enemies are vigilant, allies are in suspense, friends hesitating between hope and fear; and all men are in eager expectation to see what such a change may produce. But the state of our affairs at present, is of such moment, as even to arouse the dead ...

[A certain defender of the Constitution has stated that objections to it] are more calculated to alarm the fears of the people than to answer any valuable end. Was that the case, as it is not, will any man in his sober senses say, that the least infringement or appearance of infringement on our liberty -that liberty which has lately cost so much blood and treasure, together with anxious days and sleepless nights-ought not both to rouse our fears and awaken our jealousy? ... The new constitution in its present form is calculated to produce despotism, thraldom and confusion, and if the United States do swallow it, they will find it a bolus, that will create convulsions to their utmost extremities. Were they mine enemies, the worst imprecation I could devise would be, may they adopt it. For tyranny, where it has been chained (as for a few years past) is always more cursed, and sticks its teeth in deeper than before. Were Col. [George] Mason's objections obviated, the improvement would be very considerable, though even then, not so complete as might be. The Congress's having power without control-to borrow money on the credit of the United States; their having power to appoint their own salaries, and their being paid out of the treasury of the United States, thereby, in some measure, rendering them independent of the individual states; their being judges of the qualification and election of their own members, by which means they can get men to suit any purpose; together with Col. Mason's wise and judicious objections-are grievances, the very idea of which is enough to make every honest citizen exclaim in the language of Cato, 0 Liberty, 0 my country! Our present constitution, with a few additional powers to Congress, seems better calculated to preserve the rights and defend the liberties of our citizens, than the one proposed, without proper amendments. Let us therefore, for once, show our judgment and solidity by continuing it, and prove the opinion to be erroneous, that levity and fickleness are not only the foibles of our tempers, but the reigning principles in these states. There are men amongst us, of such dissatisfied tempers, that place them in Heaven, they would find something to blame; and so restless and self- sufficient, that they must be eternally reforming the state. But the misfortune is, they always leave affairs worse than they find them. A change of government is at all times dangerous, but at present may be fatal, without the utmost caution, just after emerging out of a tedious and expensive war. Feeble in our nature, and complicated in our form, we are little able to bear the rough Posting of civil dissensions which are likely to ensue. Even now, discontent and opposition distract our councils. Division and despondency affect our people. Is it then a time to alter our government, that government which even now totters on its foundation, and will, without tender care, produce ruin by its fall?

Beware my countrymen! Our enemies- -uncontrolled as they are in their ambitious schemes, fretted with losses, and perplexed with disappointments-will exert their whole power and policy to increase and continue our confusion. And while we are destroying one another, they will be repairing their losses, and ruining our trade.

Of all the plagues that infest a nation, a civil war is the worst. Famine is severe, pestilence is dreadful; but in these, though men die, they die in peace. The father expires without the guilt of the son; and the son, if he survives, enjoys the inheritance of his father. Cities may be thinned, but they neither plundered nor burnt. But when a civil war is kindled, there is then forth no security of property nor protection from any law. Life and fortune become precarious. And all that is dear to men is at the discretion of profligate soldiery, doubly licentious on such an occasion. Cities are exhausted by heavy contributions, or sacked because they cannot answer exorbitant demand. Countries are eaten up by the parties they favor, and ravaged by the one they oppose. Fathers and sons, sheath their swords in anothers bowels in the field, and their wives and daughters are exposed to rudeness and lust of ruffians at home. And when the sword has decided quarrel, the scene is closed with banishments, forfeitures, and barbarous executions that entail distress on children then unborn. May Heaven avert the dreadful catastrophe! In the most limited governments, what wranglings, animosities, factions, partiality, and all other evils that tend to embroil a nation and weaken a state, are constantly practised by legislators. What then may we expect if the new constitution be adopted as it now stands? The great will struggle for power, honor and wealth; the poor become a prey to avarice, insolence and oppression. And while some are studying to supplant their neighbors, and others striving to keep their stations, one villain will wink at the oppression of another, the people be fleeced, and the public business neglected. From despotism and tyranny good Lord deliver us.

Antifederalist No. 8 "THE POWER VESTED IN CONGRESS OF SENDING TROOPS FOR SUPPRESSING INSURRECTIONS WILL ALWAYS ENABLE THEM TO STIFLE THE FIRST STRUGGLES OF FREEDOM"

"A FEDERAL REPUBLICAN" (from Virginia) had his `letter to the editor' appear in The Norfolk and Portsmouth Register March 5, 1788.

.... By the Articles of Confederation, the congress of the United State was vested with powers for conducting the common concerns of the continent. They had the sole and exclusive right and power of determining on peace and war; of sending and receiving ambassadors; of entering into treaties and alliances; and of pointing out the respective quotas of men and men which each state should furnish. But it was expressly provided that the money to be supplied by each state should be raised by the authority and direction of the legislature thereof-- thus reserving to the states the important privilege of levying taxes upon their citizens in such manner as might be most conformable to their peculiar circumstances and form of government. With powers thus constituted was congress enabled to unite the general exertions of the continent in the cause of liberty and to carry us triumphantly through a long and bloody war. It was not until sometime after peace and a glorious independence had been established that defects were discovered in that system of federal government which had procured to us those blessings. It was then perceived that the Articles of Confederation were inadequate to the purposes of the union; and it was particularly suggested as necessary to vest in congress the further power of exclusively regulating the commerce of the United States, as well to enable us, by a system more uniform, to counteract the policy of foreign nations, as for other important reasons. Upon this principle, a general convention of the United States was proposed to be held, and deputies were accordingly appointed by twelve of the states charged with power to revise, alter, and amend the Articles of Confederation. When these deputies met, instead of confining themselves to the powers with which they were entrusted, they pronounced all amendments to the Articles of Confederation wholly impracticable; and with a spirit of amity and concession truly remarkable proceeded to form a government entirely new, and totally different in its principles and its organization. Instead of a congress whose members could serve but three years out of six-and then to return to a level with their fellow citizens; and who were liable at all times, whenever the states might deem it necessary, to be recalled-- Congress, by this new constitution, will be composed of a body whose members during the time they are appointed to serve, can receive no check from their constituents. Instead of the powers formerly granted to congress of ascertaining each state's quota of men and money-to be raised by the legislatures of the different states in such a mode as they might think proper- -congress, by this new government, will be invested with the formidable powers of raising armies, and lending money, totally independent of the different states. They will moreover, have the power of leading troops among you in order to suppress those struggles which may sometimes happen among a free people, and which tyranny will impiously brand with the name of sedition. On one day the state collector will call on you for your proportion of those taxes which have been laid on you by the general assembly, where you are fully and adequately represented; on the next will come the Continental collector to demand from you those taxes which shall be levied by the continental congress, where the whole state of Virginia

will be represented by only ten men! Thus shall we imprudently confer on so small a number the very important power of taking our money out of our pockets, and of levying taxes without control-a right which the wisdom of our state constitution will, in vain, have confided to the most numerous branch of the legislature. Should the sheriff or state collector in any manner aggrieve you either in person or property, these sacred rights are amply secured by the most solemn compact. Beside, the arm of government is always at hand to shield you from his injustice and oppression. But if a Continental collector, in the execution of his office, should invade your freedom (according to this new government, which has expressly declared itself paramount to all state laws and constitutions) the state of which you are a citizen will have no authority to afford you relief. A continental court may, indeed, be established in the state, and it may be urged that you will find a remedy here; but, my fellow citizens, let me ask, what protection this will afford you against the insults or rapacity of a continental officer, when he will have it in his power to appeal to the seat of congress perhaps at several hundred miles distance, and by this means oblige you to expend hundreds of pounds in obtaining redress for twenty shillings unjustly extorted? Thus will you be necessarily compelled either to make a bold effort to extricate yourselves from these grievous and oppressive extortions, or you will be fatigued by fruitless attempts into the quiet and peaceable surrender of those rights, for which the blood of your fellow citizens has been shed in vain. But the latter will, no doubt, be the melancholy fate of a people once inspired with the love of liberty, as the power vested in congress of sending troops for suppressing insurrections will always enable them to stifle the first struggles of freedom.

A FEDERAL REPUBLICAN

Antifederalist No. 9 A CONSOLIDATED GOVERNMENT IS A TYRANNY

"MONTEZUMA," regarded as a Pennsylvanian, wrote this essay which showed up in the Independent Gazetteer on October 17, 1787.

We the Aristocratic party of the United States, lamenting the many inconveniences to which the late confederation subjected the well-born, the better kind of people, bringing them down to the level of the rabble-and holding in utter detestation that frontispiece to every bill of rights, "that all men are born equal"-beg leave (for the purpose of drawing a line between such as we think were ordained to govern, and such as were made to bear the weight of government without having any share in its administration) to submit to our Friends in the first class for their inspection, the following defense of our monarchical, aristocratical democracy.

lst. As a majority of all societies consist of men who (though totally incapable of thinking or acting in governmental matters) are more readily led than driven, we have thought meet to indulge them in something like a democracy in the new constitution, which part we have designated by the popular name of the House of Representatives. But to guard against every possible danger from this lower house, we have subjected every bill they bring forward, to the double negative of our upper house and president. Nor have we allowed the populace the right to elect their representatives annually . . . lest this body should be too much under the influence and control of their constituents, and thereby prove the "weatherboard of our grand edifice, to show the shiftings of every fashionable gale,"-for we have not yet to learn that little else is wanting to aristocratize the most democratical representative than to make him somewhat independent of his political creators. We have taken away that rotation of appointment which has so long perplexed us-that grand engine of popular influence. Every man is eligible into our government from time to time for life. This will have a two-fold good effect. First, it prevents the representatives from mixing with the lower class, and imbibing their foolish sentiments, with which they would have come charged on re-election.

2d. They will from the perpetuality of office be under our eye, and in a short time will think and act like us, independently of popular whims and prejudices. For the assertion "that evil communications corrupt good manners," is not more true than its reverse. We have allowed this house the power to impeach, but we have tenaciously reserved the right to try. We hope gentlemen, you will see the policy of this clause-for what matters it who accuses, if the accused is tried by his friends. In fine, this plebian house will have little power, and that little be rightly shaped by our house of gentlemen, who will have a very extensive influence-from their being chosen out of the genteeler class ... It is true, every third senatorial seat is to be vacated duennually, but two-thirds of this influential body will remain in office, and be ready to direct or (if necessary) bring over to the good old way, the young members, if the old ones should not be returned. And whereas many of our brethren, from a laudable desire to support their rank in life above the commonalty, have not only deranged their finances, but subjected their persons to indecent treatment (as being arrested for debt, etc.) we have framed a privilege clause, by which they may laugh at the fools who trusted them. But we have given out, that this clause was

provided, only that the members might be able without interruption, to deliberate on the important business of their country.

We have frequently endeavored to effect in our respective states, the happy discrimination which pervades this system; but finding we could not bring the states into it individually, we have determined ... and have taken pains to leave the legislature of each free and independent state, as they now call themselves, in such a situation that they will eventually be absorbed by our grand continental vortex, or dwindle into petty corporations, and have power over little else than yoaking hogs or determining the width of cart wheels. But (aware that an intention to annihilate state legislatures, would be objected to our favorite scheme) we have made their existence (as a board of electors) necessary to ours. This furnishes us and our advocates with a fine answer to any clamors that may be raised on this subject. We have so interwoven continental and state legislatures that they cannot exist separately; whereas we in truth only leave them the power of electing us, for what can a provincial legislature do when we possess the exclusive regulation of external and internal commerce, excise, duties, imposts, post-offices and roads; when we and we alone, have the power to wage war, make peace, coin money (if we can get bullion) if not, borrow money, organize the militia and call them forth to execute our decrees, and crush insurrections assisted by a noble body of veterans subject to our nod, which we have the power of raising and keeping even in the time of peace. What have we to fear from state legislatures or even from states, when we are armed with such powers, with a president at our head? (A name we thought proper to adopt in conformity to the prejudices of a silly people who are so foolishly fond of a Republican government, that we were obliged to accommodate in names and forms to them, in order more effectually to secure the substance of our proposed plan; but we all know that Cromwell was a King, with the title of Protector). I repeat it, what have we to fear armed with such powers, with a president at our head who is captain- -general of the army, navy and militia of the United States, who can make and unmake treaties, appoint and commission ambassadors and other ministers, who can grant or refuse reprieves or pardons, who can make judges of the supreme and other continental courts-in short, who will be the source, the fountain of honor, profit and power, whose influence like the rays of the sun, will diffuse itself far and wide, will exhale all democratical vapors and break the clouds of popular insurrection? But again gentlemen, our judicial power is a strong work, a masked battery, few people see the guns we can and will ere long play off from it. For the judicial power embraces every question which can arise in law or equity, under this constitution and under the laws of "the United States" (which laws will be, you know, the supreme laws of the land). This power extends to all cases, affecting ambassadors or other public ministers, "and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States; and between a State or the citizens thereof, and foreign States, citizens or subjects."

Now, can a question arise in the colonial courts, which the ingenuity or sophistry of an able lawyer may not bring within one or other of the above cases? Certainly not. Then our court will have original or appellate jurisdiction in all cases-and if so, how fallen are state judicatures-and must not every provincial law yield to our supreme flat? Our constitution answers yes. . . . And finally we shall entrench ourselves so as to laugh at the cabals of the commonalty. A few regiments will do at first; it must be spread abroad that they are absolutely necessary to defend

the frontiers. Now a regiment and then a legion must be added quietly; by and by a frigate or two must be built, still taking care to intimate that they are essential to the support of our revenue laws and to prevent smuggling. We have said nothing about a bill of rights, for we viewed it as an eternal clog upon our designs, as a lock chain to the wheels of government-though, by the way, as we have not insisted on rotation in our offices, the simile of a wheel is ill. We have for some time considered the freedom of the press as a great evil-it spreads information, and begets a licentiousness in the people which needs the rein more than the spur; besides, a daring printer may expose the plans of government and lessen the consequence of our president and senate-for these and many other reasons we have said nothing with respect to the "right of the people to speak and publish their sentiments" or about their "palladiums of liberty" and such stuff. We do not much like that sturdy privilege of the people-the right to demand the writ of habeas corpus. We have therefore reserved the power of refusing it in cases of rebellion, and you know we are the judges of what is rebellion.... Our friends we find have been assiduous in representing our federal calamities, until at length the people at large-frightened by the gloomy picture on one side, and allured by the prophecies of some of our fanciful and visionary adherents on the other-are ready to accept and confirm our proposed government without the delay or forms of examination--which was the more to be wished, as they are wholly unfit to investigate the principles or pronounce on the merit of so exquisite a system. Impressed with a conviction that this constitution is calculated to restrain the influence and power of the LOWER CLASS-to draw that discrimination we have so long sought after; to secure to our friends privileges and offices, which were not to be ... [obtained] under the former government, because they were in common; to take the burden of legislation and attendance on public business off the commonalty, who will be much better able thereby to prosecute with effect their private business; to destroy that political thirteen headed monster, the state sovereignties; to check the licentiousness of the people by making it dangerous to speak or publish daring or tumultuary sentiments; to enforce obedience to laws by a strong executive, aided by military pensioners; and finally to promote the public and private interests of the better kind of people-we submit it to your judgment to take such measures for its adoption as you in your wisdom may think fit.

Signed by unanimous order of the lords spiritual and temporal.

MONTEZUMA

Antifederalist No. 10 ON THE PRESERVATION OF PARTIES, PUBLIC LIBERTY DEPENDS

This essay follows a theme similar to Federalist No. 10, and appeared in the Maryland Gazette and Baltimore Advertiser, March 18, 1788.

The opposite qualities of the first confederation were rather caused by than the cause of two parties, which from its first existence began and have continued their operations, I believe, unknown to their country and almost unknown to themselves-as really but few men have the capacity or resolution to develop the secret causes which influence their daily conduct. The old Congress was a national government and an union of States, both brought into one political body, as these opposite powers-I do not mean parties were so exactly blended and very nearly balanced, like every artificial, operative machine where action is equal to reaction. It stood perfectly still. It would not move at all. Those who were merely confederal in their views, were for dividing the public debt. Those who were for national government, were for increasing of it. Those who thought any national government would be destructive to the liberties of America . . . assisted those who thought it our only safety-to put everything as wrong as possible. Requisitions were made, which every body knew it was impossible to comply with. Either in 82 or 83, ten millions of hard dollars, if not thirteen, were called into the continental treasury, when there could not be half that sum in the whole tract of territory between Nova-Scotia and Florida. The States neglected them in despair. The public honor was tarnished, and our governments abused by their servants and best friends. In fine, it became a cant word things are not yet bad enough to mend. However, as [a] great part of the important objects of society were entrusted to this mongrel species of general government, the sentiment of pushing it forward became general throughout America, and the late Convention met at Philadelphia under the uniform impression, that such was the desire of their constituents. But even then the advantages and disadvantages of national government operated so strongly, although silently, on each individual, that the conflict was nearly equal. A third or middle opinion, which always arises in such cases, broke off and took the lead-the national party [thus] assisted, pursued steadily their object- the federal party dropped off, one by one, and finally, when the middle party came to view the offspring which they had given birth to, and in a great measure reared, several of them immediately disowned the child. Such has been hitherto the progress of party; or rather of the human mind dispassionately contemplating our separate and relative situation, and aiming at that perfect completion of social happiness and grandeur, which perhaps can be combined only in ideas. Every description of men entertain the same wishes (excepting perhaps a few very bad men of each)-they forever will differ about the mode of accomplishment-and some must be permitted to doubt the practicability.

As our citizens are now apprized of the progress of parties or political opinions on the continent, it is fit they should also be informed of the present state, force and designs of each, in order that they may form their decisions with safety to the public and themselves-this shall be given with all the precision and impartiality the author is capable of.

America is at present divided into three classes or descriptions of men, and in a few years there will be but two.

[First]. The first class comprehends all those men of fortune and reputation who stepped forward in the late revolution, from opposition to the administration, rather than the government of Great Britain. All those aristocrats whose pride disdains equal law. Many men of very large fortune, who entertain real or imaginary fears for the security of property. Those young men, who have sacrificed their time and their talents to public service, without any prospect of an adequate pecuniary or honorary reward. All your people of fashion and pleasure who are corrupted by the dissipation of the French, English and American armies; and a love of European manners and luxury. The public creditors of the continent, whose interest has been heretofore sacrificed by their friends, in order to retain their services on this occasion. A large majority of the mercantile people, which is at present a very unformed and consequently dangerous interest. Our old native merchants have been almost universally ruined by the receipt of their debts in paper during the war, and the payment in hard money of what they owed their British correspondents since peace. Those who are not bankrupts, have generally retired and given place to a set of young men, who conducting themselves as rashly as ignorantly, have embarrassed their affairs and lay the blame on the government, and who are really unacquainted with the true mercantile interest of the country-which is perplexed from circumstances rather temporary than permanent. The foreign merchants are generally not to be trusted with influence in our government-- they are most of them birds of passage. Some, perhaps British emissaries increasing and rejoicing in our political mistakes, and even those who have settled among us with an intention to fix themselves and their posterity in our soil, have brought with them more foreign prejudices than wealth. Time must elapse before the mercantile interest will be so organized as to govern themselves, much less others, with propriety. And lastly, to this class I suppose we may ultimately add the tory interest, with the exception of very many respectable characters, who reflect with a gratification mixed with disdain, that those principles are now become fashionable for which they have been persecuted and hunted down-which, although by no means so formidable as is generally imagined, is still considerable. They are at present wavering. They are generally, though with very many exceptions, openly for the proposed, but secretly against any American government. A burnt child dreads the fire. But should they see any fair prospect of confusion arise, these gentry will be off at any moment for these five and twenty years to come. Ultimately, should the administration promise stability to the new government, they may be counted on as the Janizaries of power, ready to efface all suspicion by the violence of their zeal.

In general, all these various people would prefer a government, as nearly copied after that of Great Britain, as our circumstances will permit. Some would strain these circumstances. Others still retain a deep rooted jealousy of the executive branch and strong republican prejudices as they are called. Finally, this class contains more aggregate wisdom and moral virtue than both the other two together. It commands nearly two thirds of the property and almost one half the numbers of America, and has at present, become almost irresistible from the name of the truly great and amiable man who it has been said, is disposed to patronize it, and from the influence which it has over the second class. This [first] class is nearly at the height of their power; they must decline or moderate, or another revolution will ensue, for the opinion of America is becoming daily more unfavorable to those radical changes which high-toned government requires. A conflict would terminate in the destruction of this class, or the liberties of their country. May the Guardian Angel of America prevent both!

[Second]. The second class is composed of those descriptions of men who are certainly more numerous with us than in any other part of the globe. First, those men who are so wise as to discover that their ancestors and indeed all the rest of mankind were and are fools. We have a vast overproportion of these great men, who, when you tell them that from the earliest period at which mankind devoted their attention to social happiness, it has been their uniform judgment, that a government over governments cannot exist- -that is two governments operating on the same individual-assume the smile of confidence, and tell you of two people travelling the same road-of a perfect and precise division of the duties of the individual. Still, however, the political apothegm is as old as the proverb-That no man can serve two masters-and whoever will run their noddles against old proverbs will be sure to break them, however hard they may be. And if they broke only their own, all would be right; but it is very horrible to reflect that all our numskulls must be cracked in concert. Second. The trimmers, who from sympathetic indecision are always united with, and when not regularly employed, always fight under the banners of these great men, These people are forever at market, and when parties are nearly equally divided, they get very well paid for their services. Thirdly. The indolent, that is almost every second man of independent fortune you meet with in America-these are quite easy, and can live under any government. If men can be said to live, who scarcely breathe; and if breathing was attended with any bodily exertion, would give up their small portion of life in despair. These men do not swim with the stream as the trimmers do, but are dragged like mud at the bottom. As they have no other weight than their tat flesh, they are hardly worth mentioning when we speak of the sentiments and opinions of America. As this second class never can include any of the yeomanry of the union, who never affect superior wisdom, and can have no interests but the public good, it can be only said to exist at the birth of government, and as soon as the first and third classes become more decided in their views, this will divide with each and dissipate like a mist, or sink down into what are called moderate men, and become the tools and instruments of others. These people are prevented by a cloud from having any view; and if they are not virtuous, they at least preserve the appearance, which in this world amounts to the same thing.

[Third]. At the head of the third class appear the old rigid republicans, who although few in number, are still formidable. Reverence will follow these men in spite of detraction, as long as wisdom and virtue are esteemed among mankind. They are joined by the true democrats, who are in general fanatics and enthusiasts, and some few sensible, charming madmen. A decided majority of the yeomanry of America will, for a length of years, be ready to support these two descriptions of men. But as this last class is forced to act as a residuary legatee, and receive all the trash and filth, it is in some measure disgraced and its influence weakened. 3dly. The freebooters and plunderers, who infest all countries and ours perhaps as little as any other whatever. These men have that natural antipathy to any kind or sort of government, that a rogue has to a halter. In number they are few indeed such characters are the offspring of dissipation and want, and there is not that country in the world where so much real property is shared so equally among so few citizens, for where property is as easily acquired by fair means, very few indeed will resort to foul. Lastly, by the poor mob, infoelix pecus!l The property of whoever will feed them and take care of them-let them be spared. Let the burden of taxation sit lightly on their shoulders. But alas! This is not their fate. It is here that government forever falls with all its weight. It is here that the proposed government will press where it should scarcely be felt. . . .

In this [third] class may be counted men of the greatest mental powers and of as sublime virtue as any in America. They at present command nearly one-third of the property and above half the numbers of the United States, and in either event they must continue to increase in influence by great desertions from both the other classes. . . . If the [proposed] government is not adopted, theirs will be the prevalent opinion. The object of this class either is or will be purely federal-an union of independent States, not a government of individuals. And should the proposed federal plan fail, from the obstinacy of those who will listen to no conditional amendments, although such as they cannot disapprove; or should it ultimately in its execution upon a fair trial, disappoint the wishes and expectations of our country-[then] an union purely federal is what the reasonable and dispassionate patriots of America must bend their views to. My countrymen, preserve your jealousy-reject suspicion, it is the fiend that destroys public and private happiness. I know some weak, but very few if any wicked men in public confidence. And learn this most difficult and necessary lesson: That on the preservation of parties, public liberty depends. Whenever men are unanimous on great public questions, whenever there is but one party, freedom ceases and despotism commences. The object of a free and wise people should be so to balance parties, that from the weakness of all you may be governed by the moderation of the combined judgments of the whole, not tyrannized over by the blind passions of a few individuals.

A FARMER

Antifederalist No. 11 UNRESTRICTED POWER OVER COMMERCE SHOULD NOT BE GIVEN THE NATIONAL GOVERNMENT

Scholars regard James Winthrop of Cambridge, Mass. to be the "Agrippa" who contributed the series to The Massachusetts Gazette from November 23, 1787 to February 5, 1788. This is a compilation of excerpts from "Agrippa's" letters of December 14, 18, 25, and 28, 1787, taken from Ford, Essays, pp. 70-73, 76-77, 79-81.

It has been proved, by indisputable evidence, that power is not the grand principle of union among the parts of a very extensive empire; and that when this principle is pushed beyond the degree necessary for rendering justice between man and man, it debases the character of individuals, and renders them less secure in their persons and property. Civil liberty consists in the consciousness of that security, and is best guarded by political liberty, which is the share that every citizen has in the government. Accordingly all our accounts agree, that in those empires which are commonly called despotic, and which comprehend by far the greatest part of the world, the government is most fluctuating, and property least secure. In those countries insults are borne by the sovereign, which, if offered to one of our governors, would fill us with horror, and we should think the government dissolving.

The common conclusion from this reasoning is an exceedingly unfair one, that we must then separate, and form distinct confederacies. This would be true if there was no principle to substitute in the room of power. Fortunately there is one. This is commerce. All the states have local advantages, and in a considerable degree separate interests. They are, therefore, in a situation to supply each other's wants. Carolina, for instance, is inhabited by planters, while Massachusetts is more engaged in commerce and manufactures. Congress has the power of deciding their differences. The most friendly intercourse may therefore be established between them. A diversity of produce, wants and interests, produces commerce; and commerce, where there is a common, equal and moderate authority to preside, produces friendship.

The same principles apply to the connection with the new settlers in the west. Many supplies they want, for which they must look to the older settlements, and the greatness of their crops enables them to make payments. Here, then, we have a bond of -union which applies to all parts of the empire, and would continue to operate if the empire comprehended all America.

We are now, in the strictest sense of the terms, a federal republic. Each part has within its own limits the sovereignty over its citizens, while some of the general concerns are committed to Congress. The complaints of the deficiency of the Congressional powers are confined to two articles. They are not able to raise a revenue by taxation, and they have not a complete regulation of the intercourse between us and foreigners. For each of these complaints there is some foundation, but not enough to justify the clamor which has been raised. . . .

The second article of complaint against the present confederation . . . is that Congress has not the sole power to regulate the intercourse between us and foreigners. Such a power extends not only to war and peace, but to trade and naturalization. This last article ought never to be given them; for though most of the states may be willing for certain reasons to receive foreigners as citizens, yet reasons of equal weight may induce other states, differently circumstanced, to keep their blood pure. Pennsylvania has chosen to receive all that would come there. Let any indifferent person judge whether that state in point of morals, education, [or] energy, is equal to any of the eastern states; the small state of Rhode Island only excepted. Pennsylvania in the course of a century has acquired her present extent and population at the expense of religion and good morals. The eastern states have, by keeping separate from the foreign mixtures, acquired their present greatness in the course of a century and an half, and have preserved their religion and morals. They have also preserved that manly virtue which is equally fitted for rendering them respectable in war, and industrious in peace.

The remaining power for peace and trade might perhaps be safely lodged with Congress under some limitations. Three restrictions appear to me to be essentially necessary to preserve that equality of rights to the states, which it is the object of the state governments to secure to each citizen. 1st. It ought not to be in the power of Congress, either by treaty or otherwise, to alienate part of any state without the consent of the legislature. 2nd. They ought not to be able, by treaty or other law, to give any legal preference to one part above another. 3rd. They ought to be restrained from creating any monopolies....

The idea of consolidation is further kept up in the right given to regulate trade. Though this power under certain limitations would be a proper one for the department of Congress, it is in this system carried much too far, and much farther than is necessary. This is, without exception, the most commercial state upon the continent. Our extensive coasts, cold climate, small estates, and equality of rights, with a variety of subordinate and concurring circumstances, place us in this respect at the head of the Union. We must, therefore, be indulged if a point which so nearly relates to our welfare be rigidly examined. The new constitution not only prohibits vessels, bound from one state to another, from paying any duties, but even from entering and clearing. The only use of such a regulation is, to keep each state in complete ignorance of its own resources. It certainly is no hardship to enter and clear at the custom house, and the expense is too small to be an object.

The unlimited right to regulate trade, includes the right of granting exclusive charters. This, in all old countries, is considered as one principal branch of prerogative. We find hardly a country in Europe which has not felt the ill effects of such a power. Holland has carried the exercise of it farther than any other state, and the reason why that country has felt less evil from it is, that the territory is very small, and they have drawn large revenues from their colonies in the East and West Indies. In this respect, the whole country is to be considered as a trading company, having exclusive privileges. The colonies are large in proportion to the parent state; so that, upon the whole, the latter may gain by such a system. We are also to take into consideration the industry which the genius of a free government inspires. But in the British islands all these circumstances together have not prevented them from being injured by the monopolies created there. Individuals have been enriched, but the country at large has been hurt. Some valuable branches of trade being granted to companies, who transact their business in London, that city is, perhaps,

the place of the greatest trade in the world. But Ireland, under such influence, suffers exceedingly, and is impoverished; and Scotland is a mere by-word. Bristol, the second city in England, ranks not much above this town [Boston] in population. These things must be accounted for by the incorporation of trading companies; and if they are felt so severely in countries of small extent, they will operate with tenfold severity upon us, who inhabit an immense tract; and living towards one extreme of an extensive empire, shall feel the evil, without retaining that influence in government, which may enable us to procure redress. There ought, then, to have been inserted a restraining clause which might prevent the Congress from making any such grant, because they consequentially defeat the trade of the out-ports, and are also injurious to the general commerce, by enhancing prices and destroying that rivalship which is the great stimulus to industry. . . .

There cannot be a doubt, that, while the trade of this continent remains free, the activity of our countrymen will secure their full share. AR the estimates for the present year, let them be made by what party they may, suppose the balance of trade to be largely in our favor. The credit of our merchants is, therefore, fully established in foreign countries. This is a sufficient proof, that when business is unshackled, it will find out that channel which is most friendly to its course. We ought, therefore, to be exceedingly cautious about diverting or restraining it. Every day produces fresh proofs, that people, under the immediate pressure of difficulties, do not, at first glance, discover the proper relief. The last year, a desire to get rid of embarrassments induced many honest people to agree to a tender act, and many others, of a different description, to obstruct the courts of justice. Both these methods only increased the evil they were intended to cure. Experience has since shown that, instead of trying to lesson an evil by altering the present course of things, that every endeavor should have been applied to facilitate the course of law, and thus to encourage a mutual confidence among the citizens, which increases the resources of them all, and renders easy the payment of debts. By this means one does not grow rich at the expense of another, but all are benefited. The case is the same with the States. Pennsylvania, with one port and a large territory, is less favorably situated for trade than Massachusetts, which has an extensive coast in proportion to its limits of jurisdiction. Accordingly a much larger proportion of our people are engaged in maritime affairs. We ought therefore to be particularly attentive to securing so great an interest. It is vain to tell us that we ought to overlook local interests. It is only by protecting local concerns that the interest of the whole is preserved. No man when he enters into society does it from a view to promote the good of others, but he does it for his own good. All men having the same view are bound equally to promote the welfare of the whole. To recur then to such a principle as that local interests must be disregarded, is requiring of one man to do more than another, and is subverting the foundation of a free government. The Philadelphians would be shocked with a proposition to place the seat of general government and the unlimited right to regulate trade in Massachusetts. There can be no greater reason for our surrendering the preference to them. Such sacrifices, however we may delude ourselves with the form of words, always originate in folly, and not in generosity.

AGRIPPA

Antifederalist No. 12 HOW WILL THE NEW GOVERNMENT RAISE MONEY?

"CINCINNATUS" is an Antifederalist writer. In this essay, from an Address to a Meeting of the Citizens of Philadelphia, the writer responds to James Wilson's statements about Congress' powers to tax under the Constitution. It appeared in the November 29 and December 6, 1787, New-York Journal, as reprinted from a Philadelphia newspaper.

On the subject of taxation, in which powers are to be given so largely by the new constitution, you [James Wilson of Pennsylvania] lull our fears of abuse by venturing to predict "that the great revenue of the United States must, and always will, be raised by impost"-and you elevate our hopes by holding out, "the reviving and supporting the national credit." If you have any other plan for this, than by raising money upon the people to pay the interest of the national debt, your ingenuity will deserve our thanks. Supposing however, that raising money is necessary to payment of the interest, and such a payment [is] requisite to support the credit of the union-let us see how much will be necessary for that end, and how far the impost will supply what we want. The arrearages of French and Spanish interest amount now to--1,500,000 dollars; Interest and installments of do. for 1788--850,227; Support of government; and its departments, for 1788--500,000; Arrears and anticipations of 1787-- 300,000; Interest of domestic debt-- 500,000 {total} 4,650,227 [3,650,227]

The new Congress then, supposing it to get into operation towards October, 1788, will have to provide for this sum, and for the additional sum of 3,000,000 at least for the ensuing year; which together will make the sum of 7,650,227 [6,650,227].

Now let us see how the impost will answer this. Congress have furnished us with their estimate of the produce of the whole imports of America at five per cent and that is 800,000 dollars. There will remain to provide for, by other taxes, 6,850,227 [5,850,227].

We know too, that our imports diminish yearly, and from the nature of things must continue to diminish; and consequently that the above estimate of the produce of the impost, will in all probability fall much short of the supposed sum. But even without this, it must appear that you [were] either intentionally misleading your hearers, or [were] very little acquainted with the subject when you ventured to predict that the great revenue of the United States would always flow from the impost. The estimate above is from the publications of Congress, and I presume is right. But the sum stated, necessary to be raised by the new government, in order to answer the expectations they have raised, is not all. The state debts, independent of what each owes to the United States, amount to about 30,000,000 dollars; the annual interest of this is 1,000,000.

It will be expected that the new government will provide for this also; and such expectation is founded, not only on the promise you hold forth, of its reviving and supporting public credit among us, but also on this unavoidable principle of justice-that is, the new government takes away the impost, and other substantial taxes, from the produce of which the several states paid the interest of their debt, or funded the paper with which they paid it. The new government must

find ways and means of supplying that deficiency, . . . in hard money, for . . . paper . . . cannot [be used] without a violation of the principles it boasts. The sum then which it must annually raise in specie, after the first year, cannot be less than 4,800,000. At present there is not one half of this sum in specie raised in all the states. And yet the complaints of intolerable taxes has produced one rebellion and will be mainly operative in the adoption of your constitution. How you will get this sum is inconceivable and yet get it you must, or lose all credit. With magnificent promises you have bought golden opinions of all sorts of people, and with gold you must answer them, . . .

To satisfy [our fellow citizens] more fully on the subject of the revenue, that is to be raised upon them, in order to give enormous fortunes to the jobbers in public securities, I shall lay before them a proposition to Congress, from Mr. Robert Morris, when superintendent of finance. It is dated, I think,' the 29th of June, 1782, and is in these words:

[1 say, I think, because by accident the month is erased in the note I have, and I have not access to public papers which would enable me to supply the defect.]

"The requisition of a five per cent impost, made on the 3d of February, 1781, has not yet been complied with by the state of Rhode Island, but as there is reason to believe, that their compliance is not far off, this revenue may be considered as already granted. It will, however, be very inadequate to the purposes intended. If goods be imported, and prizes introduced to the amount of twelve millions annually, the five per cent would be six hundred thousand, from which at least one sixth must be deducted, as well for the cost of collection as for the various defalcations which will necessarily happen, and which it is unnecessary to enumerate. It is not safe therefore, to estimate this revenue at more than half a million of dollars; for though it may produce more, yet probably it will not produce so much. It was in consequence of this, that on the 27th day of February last, I took the liberty to submit the propriety of asking the states for a land tax of one dollar for every hundred acres of land-a poll-tax of one dollar on all freemen, and all male slaves, between sixteen and sixty, excepting such as are in the federal army, or by wounds or otherwise rendered unfit for service-and an excise of one eighth of a dollar, on all distilled spiritous liquors. Each of these may be estimated at half a million; and should the product be equal to the estimation, the sum total of revenues for funding the public debts, would be equal to two millions."

You will readily perceive, Mr. Wilson, that there is a vast difference between your prediction and your friend's proposition. Give me leave to say, sir, that it was not discreet, in you, to speak upon finance without instructions from this great financier. Since, independent of its delusive effect upon your audience, it may excite his jealousy, lest you should have a secret design of rivalling him in the expected office of superintendent under the new constitution. It is true, there is no real foundation for it; but then you know jealousy makes the food it feeds on. A quarrel between two such able and honest friends to the United States, would, I am persuaded, be felt as a public calamity. I beseech you then to be very tender upon this point in your next harangue. And if four months' study will not furnish you with sufficient discretion, we will indulge you with six.

It may be said, that let the government be what it may, the sums I have stated must be raised, and the same difficulties exist. This is not altogether true. For first, we are now in the way of paying

the interest of the domestic debt, with paper, which under the new system is utterly reprobated. This makes a difference between the specie to be raised of 1,800,000 dollars per annum. If the new government raises this sum in specie on the people, it will certainly support public credit, but it will overwhelm the people. It will give immense fortunes to the speculators; but it will grind the poor to dust. Besides, the present government is now redeeming the principal of the domestic debt by the sale of western lands. But let the full interest be paid in specie, and who will part with the principal for those lands? A principal, which having been generally purchased for two shillings and six pence on the pound, will yield to the holders two hundred and forty per cent. This paper system therefore, though in general an evil, is in this instance attended with the great benefit of enabling the public to cancel a debt upon easy terms, which has been swelled to its enormous size, by as enormous impositions. And the new government, by promising too much, will involve itself in a disreputable breach of faith. . . .

The present government promises nothing; the intended government, everything. From the present government little is expected; from the intended one, much. Because it is conceived that to the latter much is given; to the former, little. And yet the inability of the people to pay what is required in specie, remaining the same, the funds of the one will not much exceed those of the other. The public creditors are easy with the present government from a conviction of its inability [to pay]. They will be urgent with the new one from an opinion, that as is promised, so it can and will perform every thing. Whether the change will be for our prosperity and honor, is yet to be tried. Perhaps it will be found, that the supposed want of power in Congress to levy taxes is, at present a veil happily thrown over the inability of the people; and that the large powers given to the new government will, to every one, expose the nakedness of our land. Certain it is, that if the expectations which are grafted on the gift of those plenary powers, are not answered, our credit will be irretrievably ruined.

CINCINNATUS

Antifederalist No. 13 THE EXPENSE OF THE NEW GOVERNMENT

Part 1: From The Feeeman's Oracle and New Hampshire Advertiser, January 11, 1788, by "A FARMER"
Part 2: An unsigned essay from The Connecticut Journal, October 17, 1787.

. . . . Great complaint has been made, that Congress [under the Articles] has been too liberal in their grants of salaries to individuals, and I think not without just cause. For if I am rightly informed, there have been men whose salaries have been fifteen hundred dollars per year, and some of them did not do business at any rate, that the sum they negotiated would amount to their yearly salary. And some men [are] now in office, at twenty five hundred dollars per year, who I think would have been glad to have set down at one hundred pounds a year before the war, and would have done as much or more business. The truth is, when you carry a man's salary beyond what decency requires, he immediately becomes a man of consequence, and does little or no business at all. Let us cast our eyes around us, in the other departments-the judges of the superior court have but about one hundred pounds salary a year. The judges of the courts of common pleas, on an average, not more than sixty dollars per year. The ministers of the gospel-a very valuable set of men, who have done honor to themselves, and rendered great service to their country, in completing the revolution-have salaries but from sixty to an hundred pounds a year in general. The contrast is striking. I heartily wish that all ranks of men among us, ministers of the gospel as well as others, would turn their attention toward the Constitution they may be more concerned in the event than they at present think of.

Rouse up, my friends, a matter of infinite importance is before you on the carpet, soon to be decided in your convention: The New Constitution. Seize the happy moment. Secure to yourselves and your posterity the jewel Liberty, which has cost you so much blood and treasure, by a well regulated Bill of Rights, from the encroachments of men in power. For if Congress will do these things in the dry tree when their power is small, what won't they do when they have all the resources of the United States at their command? They are the servants of the public. You have an undoubted right to set their wages, or at least to say, thus far you and those under you may go and no further. This would in the end ease Congress of a great deal of trouble, as it would put a stop to the impertinence of individuals in asking large salaries. I would say that the wages of a Representative in Congress do not exceed five dollars per day; a Senator not to exceed six; and the President seven per day, with an allowance for his table. And that the wages of no person employed in the United States exceed the daily pay of a Representative in Congress, but be paid according to their service, not exceeding that sum. Perhaps it may be said that money may depreciate, or appreciate. Let a price current be taken when this Constitution is completed, of the produce of each state, and let that be the general standard.

My friends and countrymen, let us pause for a moment and consider. We are not driven to such great straits as to be obliged to swallow down every potion offered us by wholesale, or else die immediately by our disease. We can form a Constitution at our leisure; and guard and secure it on all sides. We are paying off our state debt, and the interest on the domestic, as fast as

Congress call upon us for it. As to the foreign debt, they have the promise of more interest from us than they can get anywhere else, and we shall be able to pay them both interest and principal shortly. But it is said they win declare war against us if we don't pay them immediately. Common sense will teach them better. We live at too great a distance, and are too hardy and robust a people, for them to make money out of us in that way.

But it is said, the trading towns are fond of this Constitution. Let us consider how they stand, including their interest.

lst. The merchant wishes to have it adopted, that trade might be regulated. 2dly. Another set of men wishes to have it adopted, that the idea of paper money might be annihilated. 3dly. Another class of men wish to have it take place, that the public might be enabled to pay off the foreign debt, and appear respectable abroad among the nations. So do I, with all my heart. But in neither of these cases do I wish to see it adopted without being guarded on all sides with a Magna Charta, or a Bill of Rights, as a bulwark to our liberties. Again, another class of men wish to have it adopted, so that the public chest might be furnished with money to pay the interest on their securities, which they purchased of the poor soldiers at two shillings on the pound. I wish the soldiers were now the holders of those securites they fought so hard for. However, as the public finances were such that they could not be paid off as they became due, and they have carried them to market, and sold them as the boy did his top-we must pay them to the holders. But we need not be in a hurry about it; certificates will do for that. Consider, my friends, you are the persons who must live and die by this Constitution. A merchant or mechanic may dispose of his goods, or pack them up in trunks and remove to another clime in the course of a few months. But you cannot shoulder your lands, or dispose of them when you please. It therefore behooves you to rouse up, and turn your most serious and critical attention to this Constitution. . . .

A FARMER

. . A large representation has ever been esteemed by the best whigs in Great Britain the best barrier against bribery and corruption. And yet we find a British king, having the disposition of all places, civil and military, and an immense revenue SQUEEZED out of the very mouths of his wretched subjects, is able to corrupt the parliament, to vote him any supplies he demands, to support armies, to defend the prerogatives of his crown, and carry fire and sword by his fleets and armies; to desolate whole provinces in the eastern world, to aggrandize himself, and satisfy the avarice of his tyrannical subjects.

No wonder our American ambassador, struck with the brilliancy of the British court [John Adams], where everything around St. James's wears the appearance of wealth, ease and plenty, should imagine a three branched legislature only can produce these effects, and make the subjects happy, should write a book in favor of such a government, and send it over for the illumination of this western world. If this is the sole fruit of his embassy, America will not canonize him for a saint on account of his services, when they have experienced the consequences of such a kind of government as be has planned out. In order to have formed a right judgment, he should have looked into the ditches which serve for graves for many of the human race-under hedges which serve as dreary habitations for the living; into the cottages of the poor and miserable, and critically examine with how much parsimony the mechanics, the day

laborers, cottagers and villagers live in order to support their high pampered lords-before he had wrote a book to persuade his country to pursue the same road to greatness, splendor and glory, and have reflected in his own mind, whether he could wish to see that country which gave him birth reduced to the same situation....

Now I submit it to the good sense of the people of these states, whether it is prudent we should make so liberal and extensive a grant of power and property to any body of men in these United States, before they have ever informed the public, the amount of the public debt, or what the annual expenses of the federal government is, or will be. It is now almost five years since the peace. Congress has employed thirteen commissioners, at 1500 dollars per annum, as I am informed, to settle the public accounts, and we know now no more what the national debt is, than at the first moment of their appointment. Nor do we know any more what is the amount of the annual expenses of the federal government, than we do of the empire of China. To grant therefore such an ample power of taxation, and the right of soil, to the amount of millions, upon the recommendation of this honorable Convention, without either knowing the amount of the national debt, or the annual expenses of government, would not argue, in my opinion, the highest degree of prudence.

Antifederalist No. 14 EXTENT OF TERRITORY UNDER CONSOLIDATED GOVERNMENT TOO LARGE TO PRESERVE LIBERTY OR PROTECT PROPERTY

George Clinton, Governor of New York, was an adversary of the Constitution. He composed several letters under the nome de plume "CATO." This essay is from the third letter of "Cato," The New-York Journal of October 25, 1787.

. . . The recital, or premises on which the new form of government is erected, declares a consolidation or union of all the thirteen parts, or states, into one great whole, under the form of the United States, for all the various and important purposes therein set forth. But whoever seriously considers the immense extent of territory comprehended within the limits of the United States, together with the variety of its climates, productions, and commerce, the difference of extent, and number of inhabitants in all; the dissimilitude of interest, morals, and politics, in almost every one, will receive it as an intuitive truth, that a consolidated republican form of government therein, can never form a perfect union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to you and your posterity, for to these objects it must be directed. This unkindred legislature therefore, composed of interests opposite and dissimilar in their nature, will in its exercise, emphatically be like a house divided against itself.

The governments of Europe have taken their limits and form from adventitious circumstances, and nothing can be argued on the motive of agreement from them; but these adventitious political principles have nevertheless produced effects that have attracted the attention of philosophy, which have established axioms in the science of politics therefrom, as irrefragable as any in Euclid. It is natural, says Montesquieu, to a republic to have only a small territory, otherwise it cannot long subsist: in a large one, there are men of large fortunes, and consequently of less moderation; there are too great deposits to trust in the hands of a single subject, an ambitious person soon becomes sensible that he may be happy, great, and glorious by oppressing his fellow citizens, and that he might raise himself to grandeur, on the ruins of his country. In large republics, the public good is sacrificed to a thousand views, in a small one, the interest of the public is easily perceived, better understood, and more within the reach of every citizen; abuses have a less extent, and of course are less protected. He also shows you, that the duration of the republic of Sparta was owing to its having continued with the same extent of territory after all its wars; and that the ambition of Athens and Lacedemon to command and direct the union, lost them their liberties, and gave them a monarchy.

From this picture, what can you promise yourselves, on the score of consolidation of the United States into one government? Impracticability in the just exercise of it, your freedom insecure, even this form of government limited in its continuance, the employments of your country disposed of to the opulent, to whose contumely you will continually be an object. You must risk much, by indispensably placing trusts of the greatest magnitude, into the hands of individuals whose ambition for power, and aggrandizement, will oppress and grind you. Where, from the vast extent of your territory, and the complication of interests, the science of government will

become intricate and perplexed, and too mysterious for you to understand and observe; and by which you are to be conducted into a monarchy, either limited or despotic; the latter, Mr. Locke remarks, is a government derived from neither nature nor compact.

Political liberty, the great Montesquieu again observes, consists in security, or at least in the opinion we have of security; and this security, therefore, or the opinion, is best obtained in moderate governments, where the mildness of the laws, and the equality of the manners, beget a confidence in the people, which produces this security, or the opinion. This moderation in governments depends in a great measure on their limits, connected with their political distribution.

The extent of many of the states of the Union, is at this time almost too great for the superintendence of a republican form of government, and must one day or other revolve into more vigorous ones, or by separation be reduced into smaller and more useful, as well as moderate ones. You have already observed the feeble efforts of Massachusetts against their insurgents; with what difficulty did they quell that insurrection; and is not the province of Maine at this moment on the eve of separation from her? The reason of these things is, that for the security of the property of the community-in which expressive term Mr. Locke makes life, liberty, and estate, to consist the wheels of a republic are necessarily slow in their operation. Hence, in large free republics, the evil sometimes is not only begun, but almost completed, before they are in a situation to turn the current into a contrary progression. The extremes are also too remote from the usual seat of government, and the laws, therefore, too feeble to afford protection to all its parts, and insure domestic tranquility without the aid of another principle. If, therefore, this state [New York], and that of North Carolina, had an army under their control, they never would have lost Vermont, and Frankland, nor the state of Massachusetts suffered an insurrection, or the dismemberment of her fairest district; but the exercise of a principle which would have prevented these things, if we may believe the experience of ages, would have ended in the destruction of their liberties.

Will this consolidated republic, if established, in its exercise beget such confidence and compliance, among the citizens of these states, as to do without the aid of a standing army? I deny that it will. The malcontents in each state, who will not be a few, nor the least important, will be exciting factions against it. The fear of a dismemberment of some of its parts, and the necessity to enforce the execution Of revenue laws (a fruitful source of oppression) on the extremes and in the other districts of the government, will incidentally and necessarily require a permanent force, to be kept on foot. Will not political security, and even the opinion of it, be extinguished? Can mildness and moderation exist in a government where the primary incident in its exercise must be force? Will not violence destroy confidence, and can equality subsist where the extent, policy, and practice of it will naturally lead to make odious distinctions among citizens?

The people who may compose this national legislature from the southern states, in which, from the mildness of the climate, the fertility of the soil, and the value of its productions, wealth is rapidly acquired, and where the same causes naturally lead to luxury, dissipation, and a passion for aristocratic distinction; where slavery is encouraged, and liberty of course less respected and protected; who know not what it is to acquire property by their own toil, nor to economize with

the savings of industry-will these men, therefore, be as tenacious of the liberties and interests of the more northern states, where freedom, independence, industry, equality and frugality are natural to the climate and soil, as men who are your own citizens, legislating in your own state, under your inspection, and whose manners and fortunes bear a more equal resemblance to your own?

It may be suggested, in answer to this, that whoever is a citizen of one state is a citizen of each, and that therefore he will be as interested in the happiness and interest of all, as the one he is delegated from. But the argument is fallacious, and, whoever has attended to the history of mankind, and the principles which bind them together as parents, citizens, or men, will readily perceive it. These principles are, in their exercise, like a pebble cast on the calm surface of a river-the circles begin in the center, and are small, active and forcible, but as they depart from that point, they lose their force, and vanish into calmness.

The strongest principle of union resides within our domestic walls. The ties of the parent exceed that of any other. As we depart from home, the next general principle of union is amongst citizens of the same state, where acquaintance, habits, and fortunes, nourish affection, and attachment. Enlarge the circle still further, and, as citizens of different states, though we acknowledge the same national denomination, we lose in the ties of acquaintance, habits, and fortunes, and thus by degrees we lessen in our attachments, till, at length, we no more than acknowledge a sameness of species. Is it, therefore, from certainty like this, reasonable to believe, that inhabitants of Georgia, or New Hampshire, will have the same obligations towards you as your own, and preside over your lives, liberties, and property, with the same care and attachment? Intuitive reason answers in the negative. . . .

CATO

Antifederalist No. 15 RHODE ISLAND IS RIGHT!

This essay appeared in The Massachusetts Gazette, December 7, 1787, as reprinted From The Freeman's Journal; (Or, The North-American Intelligencer?)

The abuse which has been thrown upon the state of Rhode Island seems to be greatly unmerited. Popular favor is variable, and those who are now despised and insulted may soon change situations with the present idols of the people. Rhode Island has out done even Pennsylvania in the glorious work of freeing the Negroes in this country, without which the patriotism of some states appears ridiculous. The General Assembly of the state of Rhode Island has prevented the further importation of Negroes, and have made a law by which all blacks born in that state after March, 1784, are absolutely and at once free.

They have fully complied with the recommendations of Congress in regard to the late treaty of peace with Great Britain, and have passed an act declaring it to be the law of the land. They have never refused their quota of taxes demanded by Congress, excepting the five per cent impost, which they considered as a dangerous tax, and for which at present there is perhaps no great necessity, as the western territory, of which a part has very lately been sold at a considerable price, may soon produce an immense revenue; and, in the interim, Congress may raise in the old manner the taxes which shall be found necessary for the support of the government.

The state of Rhode Island refused to send delegates to the Federal Convention, and the event has manifested that their refusal was a happy one as the new constitution, which the Convention has proposed to us, is an elective monarchy, which is proverbially the worst government. This new government would have been supported at a vast expense, by which our taxes-the right of which is solely vested in Congress, (a circumstance which manifests that the various states of the union will be merely corporations) -- would be doubled or trebled. The liberty of the press is not stipulated for, and therefore may be invaded at pleasure. The supreme continental court is to have, almost in every case, "appellate jurisdiction, both as to law and fact," which signifies, if there is any meaning in words, the setting aside the trial by jury. Congress will have the power of guaranteeing to every state a right to import Negroes for twenty one years, by which some of the states, who have now declined that iniquitous traffic, may re-enter into it-for the private laws of every state are to submit to the superior jurisdiction of Congress. A standing army is to be kept on foot, by which the vicious, the sycophantick, and the time- serving will be exalted, and the brave, the patriotic, and the virtuous will be depressed.

The writer, therefore, thinks it the part of wisdom to abide, like the state of Rhode Island, by the old articles of confederation, which, if re-examined with attention, we shall find worthy of great regard; that we should give high praise to the manly and public spirited sixteen members, who lately seceded from our house of Assembly [in Pennsylvania]; and that we should all impress with great care, this truth on our minds-That it is very easy to change a free government into an arbitrary one, but that it is very difficult to convert tyranny into freedom.

Antifederalist No. 16 EUROPEANS ADMIRE AND FEDERALISTS DECRY THE PRESENT SYSTEM

"ALFRED" defended the Articles of Confederation, taken from The New-York Journal, December 25, 1787 as reprinted from the [Philadelphia] Independent Gazetteer.

To the real PATRIOTS of America: . . . America is now free. She now enjoys a greater portion of political liberty than any other country under heaven. How long she may continue so depends entirely upon her own caution and wisdom. If she would look to herself more, and to Europe less, I am persuaded it would tend to promote her felicity. She possesses all the advantages which characterize a rich country-rich within herself, she ought less to regard the politics, the manufactures, and the interests of distant nations.

When I look to our situation-climate, extent, soil, and its productions, rivers, ports; when I find I can at this time purchase grain, bread, meat, and other necessaries of life at as reasonable a rate as in any country; when I see we are sending great quantities of tobacco, wheat and flour to England and other parts of the globe beyond the Atlantic; when I get on the other side of the western mountains, and see an extensive country, which for its multitude of rivers and fertility of soil is equal, if not superior, to any other whatever when I see these things, I cannot be brought to believe that America is in that deplorable ruined condition which some designing politicians represent; or that we are in a state of anarchy beyond redemption, unless we adopt, without any addition or amendment, the new constitution proposed by the late convention; a constitution which, in my humble opinion, contains the seeds and scions of slavery and despotism. When the volume of American constitutions [by John Adams] first made its appearance in Europe, we find some of the most eminent political writers of the present age, and the reviewers of literature, full of admiration and declaring they had never before seen so much good sense, freedom, and real wisdom in one publication. Our good friend Dr. [Richard] Price was charmed, and almost prophesied the near approach of the happy days of the millennium. We have lived under these constitutions; and, after the experience of a few years, some among us are ready to trample them under their feet, though they have been esteemed, even by our enemies, as "pearls of great price."

Let us not, ye lovers of freedom, be rash and hasty. Perhaps the real evils we labor under do not arise from these systems. There may be other causes to which our misfortunes may be properly attributed. Read the American constitutions, and you will find our essential rights and privileges well guarded and secured. May not our manners be the source of our national evils? May not our attachment to foreign trade increase them? Have we not acted imprudently in exporting almost all our gold and silver for foreign luxuries? It is now acknowledged that we have not a sufficient quantity of the precious metals to answer the various purposes of government and commerce; and without a breach of charity, it may be said, that this deficiency arises from the want of public virtue, in preferring private interest to every other consideration.

If the states had in any tolerable degree been able to answer the requisitions of Congress-if the continental treasury had been so far assisted, as to have enabled us to pay the interest of our foreign debt-possibly we should have heard little, very little about a new system of government. It is a just observation that in modern times money does everything. If a government can

command this unum necessarium from a certain revenue, it may be considered as wealthy and respectable; if not, it will lose its dignity, become inefficient and contemptible. But cannot we regulate our finances and lay the foundations for a permanent and certain revenue, without undoing all that we have done, without making an entire new government? The most wise and philosophic characters have bestowed on our old systems the highest encomiums. Are we sure this new political phenomenon will not fail? If it should fail, is there not a great probability, that our last state will be worse than the first? Orators may declaim on the badness of the times as long as they please, but I must tell them that the want of public virtue, and the want of money, are two of the principal sources of our grievances; and if we are -under the pressure of these wants, it ought to teach us frugality-to adopt a frugal administration of public affairs....

ALFRED

Antifederalist No. 17 FEDERALIST POWER WILL ULTIMATELY SUBVERT STATE AUTHORITY

The "necessary and proper" clause has, from the beginning, been a thorn in the side of those seeking to reduce federal power, but its attack by Brutus served to call attention to it, leaving a paper trail of intent verifying its purpose was not to give Congress anything the Constitution "forgot," but rather to show two additional tests for any legislation Congress should attempt: to wit--that the intended actions would be both necessary AND proper to executing powers given under clauses 1-17 of Article I Section 8. This is the fameous BRUTUS.

This [new] government is to possess absolute and uncontrollable powers, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section eighth, article first, it is declared, that the Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof." And by the sixth article, it is declared, "that this Constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or law of any State to the contrary notwithstanding." It appears from these articles, that there is no need of any intervention of the State governments, between the Congress and the people, to execute any one power vested in the general government, and that the Constitution and laws of every State are nullified and declared void, so far as they are or shall be inconsistent with this Constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States. The government, then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New York or Massachusetts; has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offenses, and annex penalties, with respect to every object to which it extends, as any other in the world. So far, therefore, as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the States; but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual States must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance-there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has the authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the Constitution or laws of any State, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises;-there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes and duties shall be applied, may be said to be a limitation. But this is no restriction of the power at all, for by this clause they are to be applied to pay the debts and provide for the common defense and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary

to provide for the common defense, and they only are to determine what is for the general welfare. This power, therefore, is neither more nor less than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only the power to lay taxes unlimited as to the amount they may require, but it is perfect and absolute to raise ;hem in any mode they please. No State legislature, or any power in the State governments, have any more to do in carrying this into effect than the authority of one State has to do with that of another. In the business, therefore, of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all others after it; it is the great mean of protection, security, and defense, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits which are set by this Constitution, to the State governments, on this article of raising money. No State can emit paper money, lay any duties or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States. The only means, therefore, left for any State to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Everyone who has thought on the subject, must be convinced that but small sums of money can he collected in any country, by direct tax; when the federal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers be absorbed in that of the general government.

It might be here shown, that the power in the federal legislature, to raise and support armies at pleasure, as well in peace as in war, and their control over the militia, tend not only to a consolidation of the government, but the destruction of liberty. I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may, from time to time, ordain and establish. The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same State; and it extends to all cases in law and equity arising under the Constitution. One inferior court must be established, I presume, in each State, at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the State courts. These courts will be, in themselves, totally independent of the States, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected that they will swallow up all the powers of the courts in the respective States.

How far the clause in the eighth section of the first article may operate to do away with all idea of confederated States, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be necessary and proper, for carrying into execution all powers

vested by the Constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite, and may, for aught I know, be exercised in such manner as entirely to abolish the State legislatures. Suppose the legislature of a State should pass a law to raise money to support their government and pay the State debt; may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this Constitution, are the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of the different States to the contrary notwithstanding. By such a law, the government of a particular State might be overturned at one stroke, and thereby be deprived of every means of its support.

It is not meant, by stating this case, to insinuate that the Constitution would warrant a law of this kind! Or unnecessarily to alarm the fears of the people, by suggesting that the Federal legislature would be more likely to pass the limits assigned them by the Constitution, than that of an individual State, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontrollable powers of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers; and are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the State governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual States, small as it is, will be a clog upon the wheels of the government of the United States; the latter, therefore, will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over everything that stands in their way. This disposition, which is implanted in human nature, will operate in the Federal legislature to lessen and ultimately to subvert the State authority, and having such advantages, will most certainly succeed, if the Federal government succeeds at all. It must be very evident, then, that what this Constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise in operation.

BRUTUS

Antifederalist No. 18-20 WHAT DOES HISTORY TEACH? (PART 1)

"AN OLD WHIG," taken from The Massachusetts Gazette, November 27, 1787, as reprinted from the [Philadelphia] Independent Gazetteer.

. . . . By the proposed constitution, every law, before it passes, is to undergo repeated revisions; and the constitution of every state in the union provide for the revision of the most trifling laws, either by their passing through different houses of assembly and senate, or by requiring them to be published for the consideration of the people. Why then is a constitution which affects all the inhabitants of the United States-which is to be the foundation of all laws and the source of misery or happiness to one- quarter of the globe-why is this to be so hastily adopted or rejected, that it cannot admit of a revision? If a law to regulate highways requires to be leisurely considered and undergo the examination of different bodies of men, one after another, before it be passed, why is it that the framing of a constitution for the government of a great people-a work which has been justly considered as the greatest effort of human genius, and which from the beginning of the world has so often baffled the skill of the wisest men in every age-shall be considered as a thing to be thrown out, in the first shape which it may happen to assume? Where is the impracticability of a revision? Cannot the same power which called the late convention call another? Are not the people still their own masters? If, when the several state conventions come to consider this constitution, they should not approve of it, in its present form, they may easily apply to congress and state their objections. Congress may as easily direct the calling another convention, as they did the calling the last. The plan may then be reconsidered, deliberately received and corrected, so as to meet the approbation of every friend to his country. A few months only will be necessary for this purpose; and if we consider the magnitude of the object, we shall deem it well worth a little time and attention. It is Much better to pause and reflect before hand, than to repent when it is too late; when no peaceable remedy will be left us, and unanimity will be forever banished. The struggles of the people against a bad government, when it is once fixed, afford but a gloomy picture in the annals of mankind, They are often unfortunate; they are always destructive of private and public happiness; but the peaceable consent of a people to establish a free and effective government is one of the most glorious objects that is ever exhibited on the theater of human affairs. Some, I know, have objected that another convention will not be likely to agree upon anything-I am far however from being of that opinion. The public voice calls so loudly for a new constitution that I have no doubt we shall have one of some sort. My only fear is that the impatience of the people will lead them to accept the first that is offered them without examining whether it is right or wrong. And after all, if a new convention cannot agree upon any amendments in the constitution, which is at present proposed, we can still adopt this in its present form; and all further opposition being vain, it is to be hoped we shall be unanimous in endeavouring to make the best of it. The experiment is at least worth trying, and I shall be much astonished, if a new convention called together for the purpose of revising the proposed constitution, do not greatly reform it ...

It is beyond a doubt that the new federal constitution, if adopted, will in a great measure destroy, if it does not totally annihilate, the separate governments of the several states. We shall, in effect,

become one great republic. Every measure of any importance will be continental. What will be the consequence of this? One thing is evident-that no republic of so great magnitude ever did or ever can exist. But a few years elapsed, from the time in which ancient Rome extended her dominions beyond the bounds of Italy, until the downfall of her republic. And all political writers agree, that a republican government can exist only in a narrow territory. But a confederacy of different republics has, in many instances, existed and flourished for a long time together. The celebrated Helvetian league, which exists at this moment in full vigor, and with unimpaired strength, while its origin may be traced to the confines of antiquity, is one among many examples on this head; and at the same time furnishes an eminent proof of how much less importance it is, that the constituent parts of a confederacy of republics may be rightly framed, than it is that the confederacy itself should be rightly organized. For hardly any two of the Swiss cantons have the same form of government, and they are almost equally divided in their religious principles, which have so often rent asunder the firmest establishments. A confederacy of republics must be the establishment in America, or we must cease altogether to retain the republican form of government. From the moment we become one great republic, either in form or substance, the period is very shortly removed when we shall sink first into monarchy, and then into despotism. . . . If the men who at different times have been entrusted to form plans of government for the world, had been really actuated by no other motives than the public good, the condition of human nature in all ages would have been widely different from that which has been exhibited to us in history. In this country perhaps we are possessed of more than our share of political virtue. If we will exercise a little patience and bestow our best endeavors on the business, I do not think it impossible, that we may yet form a federal constitution much superior to any form of government which has ever existed in the world. But whenever this important work shall be accomplished, I venture to pronounce that it will not be done without a careful attention to the Framing of a bill of rights. . . .

In different nations, we find different grants or reservations of privileges appealed to in the struggles between the rulers and the people; many of which, in the different nations of Europe, have long since been swallowed up and lost by time, or destroyed by the arbitrary hand of power. In England, we find the people, with the barons at their head, exacting a solemn resignation of their rights from King John, in their celebrated magna charta, which was many times renewed in Parliament during the reigns of his successors. The petition of rights was afterwards consented to by Charles I and contained a declaration of the liberties of the people. The habeas corpus act, after the restoration of Charles 11, the bill of rights, which was obtained of the Prince and Princess of Orange, on their accession to the throne, and the act of settlement, at the accession of the Hanover family-are other instances to show the care and watchfulness of that nation to improve every Opportunity, of the reign of a weak prince or the revolution in their government, to obtain the most explicit declarations in favor of their liberties. In like manner the people of this country, at the revolution, having all power in their own hands, in forming the constitutions of the several states, took care to secure themselves, by bills of rights, so as to prevent as far as possible the encroachments of their future rulers upon the rights of the people. Some of these rights are said to be unalienable, such as the rights of conscience. Yet even these have been often invaded, where they have not been carefully secured, by express and solemn bills and declarations in their favor.

Before we establish a government, whose acts will be the supreme law of the land, and whose power will extend to almost every case without exception, we ought carefully to guard ourselves by a bill of rights, against the invasion of those liberties which it is essential for us to retain, which it is of no real use for government to deprive us of; but which, in the course of human events, have been too often insulted with all the wantonness of an idle barbarity.

AN OLD WHIG

Antifederalist No. 18-20 WHAT DOES HISTORY TEACH? (PART II)

"A NEWPORT MAN," wrote this wit which appeared in The Newport Mercury, March 17, 1788.

. . . - I perceive in your last [issue a] piece signed "A Rhode-Island Man," it seems wrote with an air of confidence and triumph; he speaks of reason and reasoning-I wish he had known or practised some of that reasoning he so much pretends to; his essay had been much shorter. We are told in this piece, as well as others on the same side, that an ability given to British subjects to recover their debts in this country will be one of the blessings of a new government, by inducing the British to abandon the frontiers, or be left without excuse. But the British have no other reason for holding the posts, after the time named in the treaty for their evacuation, than the last reason of Kings, that is, their guns. And giving them the treasure of the United States is a very unlikely means of removing that. If the British subject met with legal impediments to the recovery of his debts in this country, for [the] British government to have put the same stop on our citizens would have been a proper, an ample retaliation. But there is nothing within the compass of possibility of which I am not perfectly sure, that I am more fully persuaded of than I am, that the British will never relinquish the posts in question until compelled by force; because no nation pays less regard to the faith of treaties than the British. Witness their conduct to the French in 1755, when they took a very great number of men of war and merchant ships before war was declared, because the French had built some forts on the south side of an imaginary line in the wilds of America; and again, the violation of the articles by which the people of Boston resigned their arms; and the violation of the capitulation of Charles Town. Again we are told that Congress has no credit with foreigners, because they have no power to fulfill their engagements. And this we are told, with a boldness exceeded by nothing but its falsehood, perhaps in the same paper that announces to the world the loan of a million of Holland gilders-if I mistake not the sum; a sum equal to 250,000 Spanish Dollars-and all this done by the procurement of that very Congress whose insignificancy and want of power had been constantly proclaimed for two or three years before. The Dutch are the most cautious people on earth, and it is reasonable to suppose they were abundantly persuaded of the permanency and efficacy of our government by their risking so much money on it.

We are told that so long as we withhold this power from Congress we shall be a weak, despised people. We were long contending for Independence, and now we are in a passion to be rid of it. But let us attempt to reason on this subject, and see to which side that will lead us. Reason is truly defined, in all cases short of mathematical demonstration, to be a supposing that the like causes will produce the like effects. Let us proceed by this rule. The Swiss Cantons for a hundred years have remained separate Independent States, consequently without any controlling power. Even the little Republic of St. Marino, containing perhaps but little more ground than the town of Newport, and about five thousand inhabitants, surrounded by powerful and ambitious neighbors, has kept its freedom and independence these thirteen hundred years, and is mentioned by travellers as a very enlightened and happy people. If these small republics, in the neighborhood of the warlike and intriguing Courts of Paris, Vienna, and Berlin, have kept their freedom and

original form of government, is it not reasonable to suppose that the same good sense and love of freedom, on this side the Atlantic, will secure us from all attempt within and without. And the only internal discord that has happened in Switzerland was on a religious account, and a supreme controlling power is no security against this, as appears by what happened in Ireland in the time of Charles the First, and in France in the time of Henry the Fourth. It seems rational in a case of this importance to consult the opinion of the ablest men, and to whom can we better appeal than to J. J. Rousseau, a republican by birth and education-one of the most exalted geniuses and one of the greatest writers of his age, or perhaps any age; a man the most disinterested and benevolent towards mankind; a man the most industrious in the acquisition of knowledge and information, by travel, conversation, reading, and thinking; and one who has wrote a Volume on Government entitled the Social Contract, wherein he inculcates, that the people should examine and determine every public act themselves. His words are, that "every law that the people have not ratified in person, is void; it is no law. The people of England think they are free. They are much mistaken. They are never so but during the election of members of Parliament. As soon as they are elected, they are slaves, they are nothing. And by the use they make of their liberty during the short moments they possess it, they well deserve to lose it." This is far from advising that thirty thousand souls should resign their judgments and wishes entirely to one man for two years-to a man, who, perhaps, may go from home sincere and patriotic but by the time he has dined in pomp for a week with the wealthy citizens of New York or Philadelphia, will have lost all his rigid ideas of economy and equality. He becomes fascinated with the elegancies and luxuries of wealth. . . . Objects and intimations like these soon change the champion for the people to an advocate for power; and the people, finding themselves thus basely betrayed, cry that virtue is but a name. We are not sure that men have more virtue at this time and place than they had in England in the time of George the Second. Let anyone look into the history of those times, and see with what boldness men changed sides and deserted the people in pursuit of profit and power. If to take up the cross and renounce the pomps and vanities of this sinful world is a hard lesson for divines, 'tis much harder for politicians. A Cincinnatus, a Cato, a Fabricius, and a Washington, are rarely to be found. We are told that the Trustees of our powers and freedom, being mostly married men, and all of them inhabitants and proprietors of the country, is an ample security against an abuse of power. Whether human nature be less corrupt than formerly I will not determine-but this I know: that Julius Caesar, Oliver Cromwell, and the nobles of Venice, were natives and inhabitants of the countries whose power they usurped and drenched in blood.

Again, our country is compared to a ship of which we are all passengers, and, from thence 'tis gravely concluded that no officer can ever betray or abuse his trust. But that men will sacrifice the public to their private interest, is a saying too well known to need repeating. And the instances of designed shipwrecks, and ships run away with by a combination of masters, supercargoes, and part owners, is so great that nothing can equal them but those instances in which pretended patriots and politicians have raised themselves and families to power and greatness, by destroying that freedom and those laws they were chosen to defend.

If it were necessary to cite more precedents to prove that the people ought not to trust or remove their power any further from them, the little Republic of Lucca may be mentioned-which, surrounded by the Dukedom of Tuscany, has existed under its present constitution about five hundred years, and as Mr. Addison says, is for the extent of its dominion the richest and best peopled of all the States of Italy. And he says further that "the whole administration of the

government passes into different hands every two months." This is very far from confirming the doctrine of choosing those officers for two years who were before chosen for one. The want of a decisive, efficient power is much talked of by the discontented, and that we are in danger of being conquered by the intrigues of European powers. But it has already been shown that we have delegated a more decisive power to our Congress than is granted by the Republic Swiss Cantons to their General Diet. These Republics have enjoyed peace some hundreds of years; while those governments which possess this decisive, efficient power, so much aimed at, are as often as twenty or thirty years, drawing their men from the plough and loom to be shot at and cut each other's throats for the honor of their respective nations. And by how much further we are from Europe than the Swiss Cantons with their allies, and Lucca and St. Marino are from France, Prussia, and Austria, by so much less are we in danger of being conquered than those republics which have existed, some earlier than others, but the youngest of them one hundred and thirty years, without being conquered. As for the United Provinces of Holland, they are but nominal Republics; their Stadtholder, very much like our intended President, making them in reality a monarchy, and subject to all its calamities. But supposing that the present constitution, penned by the ablest men, four or five years in completion, and its adoption considered as the happiest event-supposing, I say, the present Constitution destroyed, can a new one be ratified with more solemnity, agreed to in stronger or more binding terms? What security can be given that in seven years hence, another Convention shall not be called to frame a third Constitution? And as ancient Greece counted by olympiads, and monarchies by their Kings' reigns, we shall date in the first, second, or third year, of the seventh, eighth, or ninth Constitution.

In treating this subject I have not presumed to advise, and have intruded but few comments. I have mentioned the state of those countries which most resemble our own and leave to the natural sense of the reader to make his own conclusions. The malcontents, the lovers of novelty, delight much in allegory. Should I be indulged a few words in that way, I should not compare the new Constitution to a house. I should fetch my simile from the country and compare it to Siberian Wheat (otherwise called Siberian cheat) which is known to have been the most praised, the most dear, the most worthless, and most short-lived thing that was ever adopted. But if the free men of this continent are weary of that power and freedom they have so dearly bought and so shortly enjoyed- the power of judging and determining what laws are most wholesome; what taxes are requisite and sufficient-I say, if the people are tired of these privileges, now is the time to part with them forever. Much more might be said to show the bitterness and mischief contained in this gilded pill, but being fond of brevity, I shall rely on the good sense of the public to keep themselves out of the trap, and sign myself in plain English.

A NEWPORT MAN

Antifederalist No. 21 WHY THE ARTICLES FAILED

This essay is composed of excerpts from "CENTINEL" letters appearing in the (Philadelphia) Independent Gazetteer, October 5 and November 30, 1787.

That the present confederation is inadequate to the objects of the union, seems to be universally allowed. The only question is, what additional powers are wanting to give due energy to the federal government? We should, however, be careful, in forming our opinion on this subject, not to impute the temporary and extraordinary difficulties that have hitherto impeded the execution of the confederation, to defects in the system itself. For years past, the harpies of power have been industriously inculcating the idea that all our difficulties proceed from the impotency of Congress, and have at length succeeded to give to this sentiment almost universal currency and belief. The devastations, losses and burdens occasioned by the late war; the excessive importations of foreign merchandise and luxuries, which have drained the country of its specie and involved it in debt, are all overlooked, and the inadequacy of the powers of the present confederation is erroneously supposed to be the only cause of our difficulties. Hence persons of every description are revelling in the anticipation of the halcyon days consequent on the establishment of the new constitution. What gross deception and fatal delusion! Although very considerable benefit might be derived from strengthening the hands of Congress, so as to enable them to regulate commerce, and counteract the adverse restrictions of other nations, which would meet with the concurrence of all persons; yet this benefit is accompanied in the new constitution with the scourge of despotic power. . . .

Taxation is in every government a very delicate and difficult subject. Hence it has been the policy of all wise statesmen, as far as circumstances permitted, to lead the people by small beginnings and almost imperceptible degrees, into the habits of taxation. Where the contrary conduct has been pursued, it has ever failed of full success, not unfrequently proving the ruin of the projectors. The imposing of a burdensome tax at once on a people, without the usual gradations, is the severest test that any government can be put to; despotism itself has often proved unequal to the attempt. Under this conviction, let us take a review of our situation before and since the revolution. From the first settlement of this country until the commencement of the late war, the taxes were so light and trivial as to be scarcely felt by the people. When we engaged in the expensive contest with Great Britain, the Congress, sensible of the difficulty of levying the monies necessary to its support, by direct taxation, had resource to an anticipation of the public resources, by emitting bills of credit, and thus postponed the necessity of taxation for several years. This means was pursued to a most ruinous length. But about the year 80 or 81, it was wholly exhausted, the bills of credit had suffered such a depreciation from the excessive quantities in circulation, that they ceased to be useful as a medium. The country at this period was very much impoverished and exhausted; commerce had been suspended for near six years; the husbandman, for want of a market, limited his crops to his own subsistence; the frequent calls of the militia and long continuance in actual service, the devastations of the enemy, the subsistence of our own armies, the evils of the depreciation of the paper money, which fell chiefly upon the patriotic and virtuous part of the community, had all concurred to produce great distress throughout America. In this situation of affairs, we still had the same powerful enemy to

contend with, who had even more numerous and better appointed armies in the field than at any former time. Our allies were applied to in this exigency, but the pecuniary assistance that we could procure from them was soon exhausted. The only resource now remaining was to obtain by direct taxation, the moneys necessary for our defense. The history of mankind does not furnish a similar instance of an attempt to levy such enormous taxes at once, nor of a people so wholly unprepared and uninured to them-the lamp of sacred liberty must indeed have burned with unsullied lustre, every sordid principle of the mind must have been then extinct, when the people not only submitted to the grievous impositions, but cheerfully exerted themselves to comply with the calls of their country. Their abilities, however, were not equal to furnish the necessary sums-indeed, the requisition of the year 1782, amounted to the whole income of their farms and other property, including the means of their subsistence. Perhaps the strained exertions of two years would not have sufficed to the discharge of this requisition. How then can we impute the difficulties of the people to a due compliance with the requisitions of Congress, to a defect in the confederation? Any government, however energetic, in similar circumstances, would have experienced the same fate. If we review the proceedings of the States, we shall find that they gave every sanction and authority to the requisitions of Congress that their laws could confer, that they attempted to collect the sums called for in the same manner as is proposed to be done in future by the general government, instead of the State legislatures....

The wheels of the general government having been thus clogged, and the arrearages of taxes still accumulating, it may be asked what prospect is there of the government resuming its proper tone, -unless more compulsory powers are granted? To this it may be answered, that the produce of imposts on commerce, which all agree to vest in Congress, together with the immense tracts of land at their disposal, will rapidly lessen and eventually discharge the present encumbrances. When this takes place, the mode by requisition will be found perfectly adequate to the extraordinary exigencies of the union. Congress have lately sold land to the amount of eight millions of dollars, which is a considerable portion of the whole debt.

It is to be lamented that the interested and designing have availed themselves so successfully of the present crisis, and under the specious pretence of having discovered a panacea for all the ills of the people, they are about establishing a system of government, that will prove more destructive to them than the wooden horse filled with soldiers did in ancient times to the city of Troy. This horse was introduced by their hostile enemy the Grecians, by a prostitution of the sacred rites of their religion; in like manner, my fellow citizens, are aspiring despots among yourselves prostituting the name of a Washington to cloak their designs upon your liberties.

I would ask how was the proposed Constitution to have showered down those treasures upon every class of citizens, as has been so industriously inculcated and so fondly believed by some? Would it have been by the addition of numerous and expensive establishments? By doubling our judiciaries, instituting federal courts in every county of every state? By a superb presidential court? By a large standing army? In short, by putting it in the power of the future government to levy money at pleasure, and placing this government so independent of the people as to enable the administration to gratify every corrupt passion of the mind, to riot on your spoils, without check or control?

A transfer to Congress of the power of imposing imposts on commerce, the unlimited regulation of trade, and to make treaties, I believe is all that is wanting to render America as prosperous as it is in the power of any form of government to render her; this properly understood would meet the views of all the honest and well meaning.

What gave birth to the late continental Convention? Was it not the situation of our commerce, which lay at the mercy of every foreign power, who, from motives of interest or enmity, could restrict and control it without risking a retaliation on the part of America, as Congress was impotent on this subject? Such indeed was the case with respect to Britain, whose hostile regulations gave such a stab to our navigation as to threaten its annihilation, it became the interest of even the American merchant to give a preference to foreign bottoms; hence the distress of our seamen, shipwrights, and every mechanic art dependent on navigation.

By these regulations too, we were limited in markets for our produce; our vessels were excluded from their West India islands; many of our staple commodities were denied entrance in Britain. Hence the husbandman were distressed by the demand for their crops being lessened and their prices reduced. This is the source to which may be traced every evil we experience, that can be relieved by a more energetic government. Recollect the language of complaint for years past; compare the recommendations of Congress, founded on such complaints, pointing out the remedy; examine the reasons assigned by the different states for appointing delegates to the late Convention; view the powers vested in that body-they all harmonize in the sentiment, that the due regulation of trade and navigation was the anxious wish of every class of citizens, was the great object of calling the Convention.

This object being provided for by the Constitution proposed by the general Convention, people overlooked and were not sensible of the needless sacrifice they were making for it. Allowing for a moment that it would be possible for trade to flourish under a despotic government, of what avail would be a prosperous state of commerce, when the produce of it would be at the absolute disposal of an arbitrary unchecked general government, who may levy at pleasure the most oppressive taxes; who may destroy every principle of freedom; who may even destroy the privilege of complaining....

After so recent a triumph over British despots, after such torrents of blood and treasure have been spent, after involving ourselves in the distresses of an arduous war, and incurring such a debt, for the express purpose of asserting the rights of humanity, it is truly astonishing that a set of men among ourselves should have had the effrontery to attempt the destruction of our liberties. But in this enlightened age, to dupe the people by the arts they are practising, is still more extraordinary. . .

CENTINEL

Antifederalist No. 22 ARTICLES OF CONFEDERATION SIMPLY REQUIRES AMENDMENTS, PARTICULARLY FOR COMMERCIAL POWER AND JUDICIAL POWER; CONSTITUTION GOES TOO FAR

Benjamin Austin of Massachusetts, used the pen-name "CANDIDUS." Taken from two letters by "Candidus" which appeared in the [Boston] Independent Chronicle, December 6 and 20, 1787.

.... Many people are sanguine for the Constitution, because they apprehend our commerce will be benefited. I would advise those persons to distinguish between the evils that arise from extraneous causes and our private imprudencies, and those that arise from our government. It does not appear that the embarrassments of our trade will be removed by the adoption of this Constitution. The powers of Europe do not lay any extraordinary duties on our oil, fish, or tobacco, because of our government; neither do they discourage our ship building on this account. I would ask what motive would induce Britain to repeal the duties on our oil, or France on our fish, if we should adopt the proposed Constitution? Those nations laid these duties to promote their own fishery, etc., and let us adopt what mode of government we please, they will pursue their own politics respecting our imports and exports, unless we can check them by some commercial regulations.

But it may be said, that such commercial regulations will take place after we have adopted the Constitution, and that the northern states would then become carriers for the southern. The great question then is, whether it is necessary in order to obtain these purposes, for every state to give up their whole power of legislation and taxation, and become an unwieldy republic, when it is probable the important object of our commerce could be effected by a uniform navigation act, giving Congress full power to regulate the whole commerce of the States? This power Congress have often said was sufficient to answer all their purposes. The circular letter from the Boston merchants and others, was urgent on this subject. Also the navigation act of this state [Massachusetts], was adopted upon similar principles, and . . . was declared by our Minister in England, to be the most effectual plan to promote our navigation, provided it had been adopted by the whole confederacy.

But it may be said, this regulation of commerce, without energy to enforce a compliance, is quite ideal. Coercion with some persons seems the principal object, but I believe we have more to expect from the affections of the people, than from an armed body of men. Provided a uniform commercial system was adopted, and each State felt its agreeable operations, we should have but little occasion to exercise force. But however, as power is thought necessary to raise an army, if required, to carry into effect any federal measure, I am willing to place it, where it is likely to be used with the utmost caution. This power I am willing to place among the confederated States, to be exercised when two thirds of them in their legislative capacities shall say the common good requires it. But to trust this power in the hands of a few men delegated for two, four and six years, is complimenting the ambition of human nature too highly, to risk the tranquility of these

States on their absolute determination. Certain characters now on the stage, we have reason to venerate, but though this country is now blessed with a Washington, Franklin, Hancock and Adams, yet posterity may have reason to rue the day when their political welfare depends on the decision of men who may fill the places of these worthies....

The advocates for the Constitution, have always assumed an advantage by saying, that their opposers have never offered any plan as a substitute; the following outlines are therefore submitted, not as originating from an individual, but as copied from former resolutions of Congress, and united with some parts of the Constitution proposed by the respectable convention. This being the case, I presume it will not be invalidated by the cant term of antifederalism.

lst. That the Legislature of each state, empower Congress to frame a navigation act, to operate uniformly throughout the states; receiving to Congress all necessary powers to regulate our commerce with foreign nations, and among the several states, and with the Indian tribes. The revenue arising from the impost to be subject to their appropriations, "to enable them to fulfill their public engagements with foreign creditors."

2nd. That the Legislature of each state, instruct their delegates in Congress, to frame a treaty of AMITY for the purposes of discharging each state's proportion of the public debt, either foreign or domestic, and to enforce (if necessary) their immediate payment. Each state obligating themselves in the treaty of amity, to furnish (whenever required by Congress) a proportionate number of the Militia who are ever to be well organized and disciplined, for the purposes of repelling any invasion; suppressing any insurrection; or reducing any delinquent state within the confederacy, to a compliance with the federal treaty of commerce and amity. Such assistance to be furnished by the Supreme Executive of each state, on the application of Congress. The troops in cases of invasion to be under the command of the Supreme Executive of the state immediately in danger; but in cases of insurrection, and when employed against any delinquent state in the confederacy, the troops to be under the command of Congress.

3d. That such states as did not join the confederacy of commerce and amity, should be considered as aliens; and any goods brought from such state into any of the confederated states, together with their vessels, should be subject to heavy extra duties.

4th. The treaty of amity, agreed to by the several states, should expressly declare that no State (without the consent of Congress) should enter into any treaty, alliances, or confederacy; grant letters of marque and reprisal; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder or ex post facto law, or impair the obligations of contracts; engage in war, or declare peace.

5th. A Supreme Judicial Court to be constituted for the following federal purposes-to extend to all treaties made previous to, or which shall be made under the authority of the confederacy; all cases affecting Ambassadors, and other public Ministers and Consuls; controversies between two or more states; and between citizens of the same state claiming lands under grants of different states; to define and punish piracies, and felonies committed on the high seas, and offenses against the law of nations.

6th. That it be recommended to Congress, that the said navigation act, and treaty of amity, be sent to the Legislatures (or people) of the several states, for their assenting to, and ratifying the same.

7th. A regular statement and account of the receipts and expenditures, of all public monies, should be published from time to time.

The above plan it is humbly conceived-secures the internal government of the several states; promotes the commerce of the whole union; preserves a due degree of energy; lays restraints on aliens; secures the several states against invasions and insurrection by a MILITIA, rather than a STANDING ARMY; checks all ex post facto laws; cements the states by certain federal restrictions; confines the judiciary powers to national matters; and provides for the public information of receipts and expenditures. In a word, it places us in a complete federal state.

The resolves of Congress, 18th April, 1783, "recommends to the several States, to invest them with powers to levy for the use of the United States, certain duties upon goods, imported from any foreign port, island or plantation;" which measures is declared by them, "to be a system more free, from well founded exception, and is better calculated to receive the approbation of the several States, than any other, that the wisdom of Congress could devise; and if adopted, would enable them to fulfill their public engagements with their foreign creditors.". . . .

Should we adopt this plan, no extraordinary expenses would arise, and Congress having but one object to attend, every commercial regulation would be uniformly adopted; the duties of impost and excise, would operate equally throughout the states; our ship building and carrying trade, would claim their immediate attention; and in consequence thereof, our agriculture, trade and manufactures would revive and flourish. No acts of legislation, independent of this great business, would disaffect one State against the other; but the whole, . . . in one Federal System of commerce, would serve to remove all local attachments, and establish our navigation upon a most extensive basis. The powers of Europe, would be alarmed at our Union, and would fear lest we should retaliate on them by laying restrictions on their trade....

These states, by the blessing of Heaven, are now in a very tranquil state. This government, in particular, has produced an instance of ENERGY, in suppressing a late rebellion, which no absolute monarchy can boast. And notwithstanding the insinuations of a "small party," who are ever branding the PEOPLE with the most opprobrious epithets-representing them as aiming to level all distinctions; emit paper money; encourage the rebellion-yet the present General Court, the voice of that body, whom they have endeavored to stigmatize, have steadily pursued measures foreign from the suggestions of such revilers. And the public credit has been constantly appreciating since the present Administration.

Let us then be cautious how we disturb this general harmony. Every exertion is now making, by the people, to discharge their taxes. Industry and frugality prevail. Our commerce is every day increasing by the enterprise of our merchants. And above all, the PEOPLE of the several states are convinced of the necessity of adopting some Federal Commercial Plan....

CANDIDUS

Antifederalist No. 23 CERTAIN POWERS NECESSARY FOR THE COMMON DEFENSE, CAN AND SHOULD BE LIMITED

In Federalist No. 23, Alexander Hamilton spoke of the necessity for an energetic government. "BRUTUS" replied.

Taken from the 7th and 8th essays of "Brutus" in The New-York Journal, January 3 and 10, 1788.

In a confederated government, where the powers are divided between the general and the state government, it is essential . . . that the revenues of the country, without which no government can exist, should be divided between them, and so apportioned to each, as to answer their respective exigencies, as far as human wisdom can effect such a division and apportionment....

No such allotment is made in this constitution, but every source of revenue is under the control of Congress; it therefore follows, that if this system is intended to be a complex and not a simple, a confederate and not an entire consolidated government, it contains in it the sure seeds of its own dissolution. One of two things must happen. Either the new constitution will become a mere nudum pactum, and all the authority of the rulers under it be cried down, as has happened to the present confederacy. Or the authority of the individual states will be totally supplanted, and they will retain the mere form without any of the powers of government. To one or the other of these issues, I think, this new government, if it is adopted, will advance with great celerity.

It is said, I know, that such a separation of the sources of revenue, cannot be made without endangering the public safety-"unless (says a writer) [Alexander Hamilton] it can be shown that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted, as a necessary consequence, that there can be no limitation of that authority which is to provide for the defense and protection of the community, etc."(1)
(1 Federalist, No. 23.)

The pretended demonstration of this writer will instantly vanish, when it is considered, that the protection and defense of the community is not intended to be entrusted solely into the hands of the general government, and by his own confession it ought not to be. It is true this system commits to the general government the protection and defense of the community against foreign force and invasion, against piracies and felonies on the high seas, and against insurrection among ourselves. They are also authorized to provide for the administration of justice in certain matters of a general concern, and in some that I think are not so. But it ought to be left to the state governments to provide for the protection and defense of the citizen against the hand of private violence, and the wrongs done or attempted by individuals to each other. Protection and defense against the murderer, the robber, the thief, the cheat, and the unjust person, is to be derived from the respective state governments. The just way of reasoning therefore on this subject is this, the general government is to provide for the protection and defense of the community against foreign attacks, etc. They therefore ought to have authority sufficient to effect this, so far as is consistent with the providing for our internal protection and defense. The state governments are entrusted

with the care of administering justice among its citizens, and the management of other internal concerns; they ought therefore to retain power adequate to that end. The preservation of internal peace and good order, and the due administration of law and justice, ought to be the first care of every government. The happiness of a people depends infinitely more on this than it does upon all that glory and respect which nations acquire by the most brilliant martial achievements. And I believe history will furnish but few examples of nations who have duly attended to these, who have been subdued by foreign invaders. If a proper respect and submission to the laws prevailed over all orders of men in our country; and if a spirit of public and private justice, economy, and industry influenced the people, we need not be under any apprehensions but what they would be ready to repel any invasion that might be made on the country. And more than this, I would not wish from them. A defensive war is the only one I think justifiable. I do not make these observations to prove, that a government ought not to be authorised to provide for the protection and defense of a country against external enemies, but to show that this is not the most important, much less the only object of their care.

The European governments are almost all of them framed, and administered with a view to arms, and war, as that in which their chief glory consists. They mistake the end of government. It was designed to save men's lives, not to destroy them. We ought to furnish the world with an example of a great people, who in their civil institutions hold chiefly in view, the attainment of virtue, and happiness among ourselves. Let the monarchs in Europe share among them the glory of depopulating countries, and butchering thousands of their innocent citizens, to revenge private quarrels, or to punish an insult offered to a wife, a mistress, or a favorite. I envy them not the honor, and I pray heaven this country may never be ambitious of it. The czar Peter the great, acquired great glory by his arms; but all this was nothing, compared with the true glory which he obtained, by civilizing his rude and barbarous subjects, diffusing among them knowledge, and establishing and cultivating the arts of life. By the former he desolated countries, and drenched the earth with human blood; by the latter he softened the ferocious nature of his people, and pointed them to the means of human happiness. The most important end of government then, is the proper direction of its internal police, and economy; this is the province of the state governments, and it is evident, and is indeed admitted, that these ought to be under their control. Is it not then preposterous, and in the highest degree absurd, when the state governments are vested with powers so essential to the peace and good order of society, to take from them the means of their own preservation?

The idea that the powers of congress in respect to revenue ought to be unlimited, because 'the circumstances which may affect the public safety are not reducible to certain determinate limits' is novel, as it relates to the government of the United States. The inconveniencies which resulted from the feebleness of the present confederation was discerned, and felt soon after its adoption. It was soon discovered, that a power to require money, without either the authority or means to enforce a collection of it, could not be relied upon either to provide for the common defense, discharge the national debt, or for support of government. Congress therefore, as early as February 1781, recommended to the states to invest them with a power to levy an impost of :five per cent ad valorem, on all imported goods, as a fund to be appropriated to discharge the debts already contracted, or which should hereafter be contracted for the support of the war, to be continued until the debts should be fully and finally discharged. There is not the most distant idea held out in this act, that an unlimited power to collect taxes, duties and excises was

necessary to be vested in the United States, and yet this was a time of the most pressing danger and distress. The idea then was, that if certain definite funds were assigned to the union, which were certain in their natures, productive, and easy of collection, it would enable them to answer their engagements, and provide for their defense, and the impost of five per cent was fixed upon for the purpose.

This same subject was revived in the winter and spring of 1783, and after a long consideration of the subject, many schemes were proposed. The result was, a recommendation of the revenue system of April 1783; this system does not suggest an idea that it was necessary to grant the United States unlimited authority in matters of revenue. A variety of amendments were proposed to this system, some of which are upon the journals of Congress, but it does not appear that any of them proposed to invest the general government with discretionary power to raise money. On the contrary, all of them limit them to certain definite objects, and fix the bounds over which they could not pass. This recommendation was passed at the conclusion of the war, and was founded on an estimate of the whole national debt. It was computed, that one million and an half of dollars, in addition to the impost, was a sufficient sum to pay the annual interest of the debt, and gradually to abolish the principal. Events have proved that their estimate was sufficiently liberal, as the domestic debt appears upon its being adjusted to be less than it was computed; and since this period a considerable portion of the principal of the domestic debt has been discharged by the sale of the western lands. It has been constantly urged by Congress, and by individuals, ever since, until lately, that had this revenue been appropriated by the states, as it was recommended, it would have been adequate to every exigency of the union. Now indeed it is insisted, that all the treasures of the country are to be under the control of that body, whom we are to appoint to provide for our protection and defense against foreign enemies. The debts of the several states, and the support of the governments of them are to trust to fortune and accident. If the union should not have occasion for all the money they can raise, they will leave a portion for the state, but this must be a matter of mere grace and favor. Doctrines like these would not have been listened to by any state in the union, at a time when we were pressed on every side by a powerful enemy, and were called upon to make greater exertions than we have any reason to expect we shall ever be again. . . .

I may be asked to point out the sources, from which the general government could derive a sufficient revenue, to answer the demands of the union. ... There is one source of revenue, which it is agreed, the general government ought to have the sole control of. This is an impost upon all goods imported from foreign countries. This would, of itself, be very productive, and would be collected with ease and certainty. It will be a fund too, constantly increasing, for our commerce will grow with the productions of the country. And these, together with our consumption of foreign goods, wilt increase with our population. It is said, that the impost will not produce a sufficient sum to satisfy the demands of the general government; perhaps it would not.... My own opinion is, that the objects from which the general government should have authority to raise a revenue, should be of such a nature, that the tax should be raised by simple laws, with few officers, with certainty and expedition, and with the least interference with the internal police of the states. Of this nature is the impost on imported goods. And it appears to me that a duty on exports, would also be of this nature. Therefore, for ought I can discover, this would be the best source of revenue to grant the general government. I know neither the Congress nor the state legislatures will have authority under the new constitution to raise a revenue in this way. But I

cannot perceive the reason of the restriction. It appears to me evident, that a tax on articles exported, would be as nearly equal as any that we can expect to lay, and it certainly would be collected with more ease and less expense than any direct tax. I do not however, contend for this mode; it may be liable to well founded objections that have not occurred to me. But this I do contend for, that some mode is practicable, and that limits must be marked between the general government, and the states on this head, or if they be not, either the Congress in the exercise of this power, will deprive the state legislatures of the means of their existence, or the states by resisting the constitutional authority of the general government, will render it nugatory....

The next powers vested by this Constitution in the general government, which we shall consider, are those which authorize them to "borrow money on the credit of the United States, and to raise and support armies." I take these two together and connect them with the power to lay and collect taxes, duties, imposts and excises, because their extent, and the danger that will arise from the exercise of these powers, cannot be fully understood, unless they are viewed in relation to each other.

The power to borrow money is general and unlimited, and the clause so often before referred to, authorizes the passing [of] any laws proper and necessary to carry this into execution. Under this authority, Congress may mortgage any or all the revenues of the union, as a fund to loan money upon; and it is probable, in this way, they may borrow of foreign nations, a principal sum, the interest of which will be equal to the annual revenues of the country. By this means, they may create a national debt, so large, as to exceed the ability of the country ever to sink. I can scarcely contemplate a greater calamity that could befall this country, than to be loaded with a debt exceeding their ability ever to discharge. If this be a just remark, it is unwise and improvident to vest in the general government a power to borrow at discretion, without any limitation or restriction.

It may possibly happen that the safety and welfare of the country may require, that money be borrowed, and it is proper when such a necessity arises that the power should be exercised by the general government. But it certainly ought never to be exercised, but on the most urgent occasions, and then we should not borrow of foreigners if we could possibly avoid it.

The constitution should therefore have so restricted the exercise of this power as to have rendered it very difficult for the government to practice it. The present confederation requires the assent of nine states to exercise this, and a number of other important powers of the confederacy. It would certainly have been a wise provision in this constitution, to have made it necessary that two thirds of the members should assent to borrowing money. When the necessity was indispensable, this assent would always be given, and in no other cause ought it to be.

The power to raise armies is indefinite and unlimited, and authorises the raising [of] forces, as well in peace as in war. Whether the clause which empowers the Congress to pass all laws which are proper and necessary, to carry this into execution, will not authorise them to impress men for the army, is a question well worthy [of] consideration. If the general legislature deem it for the general welfare to raise a body of troops, and they cannot be procured by voluntary enlistments, it seems evident, that it will be proper and necessary to effect it, that men be impressed from the militia to make up the deficiency.

These powers taken in connection, amount to this: that the general government have unlimited authority and control over all the wealth and all the force of the union. The advocates for this scheme, would favor the world with a new discovery, if they would show, what kind of freedom or independency is left to the state governments, when they cannot command any part of the property or of the force of the country, but at the will of the Congress. It seems to me as absurd, as it would be to say, that I was free and independent, when I had conveyed all my property to another, and was tenant to him, and had beside, given an indenture of myself to serve him during life. . . .

Antifederalist No. 24 OBJECTIONS TO A STANDING ARMY (PART I)

BRUTUS

The first essay is taken from the ninth letter of "BRUTUS" which appeared in The New-York Journal, January 17, 1788.

. . . . Standing armies are dangerous to the liberties of a people. . . . [If] necessary, the truth of the position might be confirmed by the history of almost every nation in the world. A cloud of the most illustrious patriots of every age and country, where freedom has been enjoyed, might be adduced as witnesses in support of the sentiment. But I presume it would be useless, to enter into a labored argument, to prove to the people of America, a position which has so long and so generally been received by them as a kind of axiom.

Some of the advocates for this new system controvert this sentiment, as they do almost every other that has been maintained by the best writers on free government. Others, though they will not expressly deny, that standing armies in times of peace are dangerous, yet join with these in maintaining, that it is proper the general government should be vested with the power to do it. I shall now proceed to examine the arguments they adduce in support of their opinions.

A writer, in favor of this system, treats this objection as a ridiculous one. He supposes it would be as proper to provide against the introduction of Turkish Janizaries, or against making the Alcoran a rule of faith.'

{1 A citizen of America [Noah Webster], An Examination Into the Leading Principles of the Federal Constitution proposed by the late Convention held at Philadelphia. With Answers to the Principal Objections Raised Against the System (Philadelphia, 1787), reprinted in Ford (ed.), Pamphlets pp. 29-65.}

From the positive, and dogmatic manner, in which this author delivers his opinions, and answers objections made to his sentiments-one would conclude, that he was some pedantic pedagogue who had been accustomed to deliver his dogmas to pupils, who always placed implicit faith in what he delivered.

But, why is this provision so ridiculous? Because, says this author, it is unnecessary. But, why is it unnecessary? Because, "the principles and habits, as well as the power of the Americans are directly opposed to standing armies; and there is as little necessity to guard against them by positive constitutions, as to prohibit the establishment of the Mahometan religion." It is admitted then, that a standing army in time of peace is an evil. I ask then, why should this government be authorised to do evil? If the principles and habits of the people of this country are opposed to standing armies in time of peace, if they do not contribute to the public good, but would endanger the public liberty and happiness, why should the government be vested with the power? No reason can be given, why rulers should be authorised to do, what, if done, would oppose the principles and habits of the people, and endanger the public safety; but there is every reason in

the world, that they should be prohibited from the exercise of such a power. But this author supposes, that no danger is to be apprehended from the exercise of this power, because if armies are kept up, it will be by the people themselves, and therefore, to provide against it would be as absurd as for a man to "pass a law in his family, that no troops should be quartered in his family by his consent." This reasoning supposes, that the general government is to be exercised by the people of America themselves. But such an idea is groundless and absurd. There is surely a distinction between the people and their rulers, even when the latter are representatives of the former. They certainly are not identically the same, and it cannot be disputed, but it may and often does happen, that they do not possess the same sentiments or pursue the same interests. I think I have shown [in a previous paper] that as this government is constructed, there is little reason to expect, that the interest of the people and their rulers will be the same.

Besides, if the habits and sentiments of the people of America are to be relied upon, as the sole security against the encroachment of their rulers, all restrictions in constitutions are unnecessary; nothing more is requisite, than to declare who shall be authorized to exercise the powers of government, and about this we need not be very careful-for the habits and principles of the people will oppose every abuse of power. This I suppose to be the sentiments of this author, as it seems to be of many of the advocates of this new system. An opinion like this, is as directly opposed to the principles and habits of the people of America, as it is to the sentiments of every writer of reputation on the science of government, and repugnant to the principles of reason and common sense.

The idea that there is no danger of the establishment of a standing army, under the new constitution, is without foundation.

It is a well known fact, that a number of those who had an agency in producing this system, and many of those who it is probable will have a principal share in the administration of the government under it, if it is adopted, are avowedly in favor of standing armies. It is a language common among them, "That no people can be kept in order, unless the government have an army to awe them into obedience; it is necessary to support the dignity of government, to have a military establishment. And there will not be wanting a variety of plausible reasons to justify the raising one, drawn from the danger we are in from the Indians on our frontiers, or from the European provinces in our neighborhood. If to this we add, that an army will afford a decent support, and agreeable employment to the young men of many families, who are too indolent to follow occupations that will require care and industry, and too poor to live without doing any business, we can have little reason to doubt but that we shall have a large standing army as soon as this government can find money to pay them, and perhaps sooner.

A writer, who is the boast of the advocates of this new constitution, has taken great pains to show, that this power was proper and necessary to be vested in the general government.

He sets out with calling in question the candor and integrity of those who advance the objection; and with insinuating, that it is their intention to mislead the people, by alarming their passions, rather than to convince them by arguments addressed to their understandings.

The man who reproves another for a fault, should be careful that he himself be not guilty of it. How far this writer has manifested a spirit of candor, and has pursued fair reasoning on this subject, the impartial public will judge, when his arguments pass before them in review.

He first attempts to show, that this objection is futile and disingenuous, because the power to keep up standing armies, in time of peace, is vested, under the present government, in the legislature of every state in the union, except two. Now this is so far from being true, that it is expressly declared by the present articles of confederation, that no body of forces "Shall be kept up by any state, in time of peace, except such number only, as in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state." Now, was it candid and ingenuous to endeavour to persuade the public, that the general government had no other power than your own legislature have on this head; when the truth is, your legislature have no authority to raise and keep up any forces?

He next tells us, that the power given by this constitution, on this head, is similar to that which Congress possess under the present confederation. As little ingenuity is manifested in this representation as in that of the former.

I shall not undertake to inquire whether or not Congress are vested with a power to keep up a standing army in time of peace; it has been a subject warmly debated in Congress, more than once, since the peace; and one of the most respectable states in the union, were so fully convinced that they had no such power, that they expressly instructed their delegates to enter a solemn protest against it on the journals of Congress, should they attempt to exercise it.

But should it be admitted that they have the power, there is such a striking dissimilarity between the restrictions under which the present Congress can exercise it, and that of the proposed government, that the comparison will serve rather to show the impropriety of vesting the proposed government with the power, than of justifying it.

It is acknowledged by this writer, that the powers of Congress, under the present confederation, amount to little more than that of recommending. If they determine to raise troops, they are obliged to effect it through the authority of the state legislatures. This will, in the first instance, be a most powerful restraint upon them, against ordering troops to be raised. But if they should vote an army, contrary to the opinion and wishes of the people, the legislatures of the respective states would not raise them. Besides, the present Congress hold their places at the wilt and pleasure of the legislatures of the states who send them, and no troops can be raised, but by the assent of nine states out of the thirteen. Compare the power proposed to be lodged in the legislature on this head, under this constitution, with that vested in the present Congress, and every person of the least discernment, whose understanding is not totally blinded by prejudice, will perceive, that they bear no analogy to each other. Under the present confederation, the representatives of nine states, out of thirteen, must assent to the raising of troops, or they cannot be levied. Under the proposed constitution, a less number than the representatives of two states, in the house of representatives, and the representatives of three states and an half in the senate, with the assent of the president, may raise any number of troops they please. The present Congress are restrained from an undue exercise of this power; from this consideration, they know the state legislatures, through whose authority it must be carried into effect, would not

comply with the requisition for the purpose, [if] it was evidently opposed to the public good. The proposed constitution authorizes the legislature to carry their determinations into execution, without intervention of any other body between them and the people. The Congress under the present form are amenable to, and removable by, the legislatures of the respective states, and are chosen for one year only. The proposed constitution does not make the members of the legislature accountable to, or removable by the state legislatures at all; and they are chosen, the one house for six, and the other for two years; and cannot be removed until their time of service is expired, let them conduct ever so badly. The public will judge, from the above comparison, how just a claim this writer has to that candor he asserts to possess. In the mean time, to convince him, and the advocates for this system, that I possess some share of candor, I pledge myself to give up all opposition to it, on the head of standing armies, if the power to raise them be restricted as it is in the present confederation; and I believe I may safely answer, not only for myself, but for all who make the objection, that they will [not] be satisfied with less.

Antifederalist No. 25 OBJECTIONS TO A STANDING ARMY (PART II)

From the tenth letter of "BRUTUS" appearing in The New-York Journal, January 24, 1788.

The liberties of a people are in danger from a large standing army, not only because the rulers may employ them for the purposes of supporting themselves in any usurpations of power, which they may see proper to exercise; but there is great hazard, that an army will subvert the forms of the government, under whose authority they are raised, and establish one [rule] according to the pleasure of their leaders.

We are informed, in the faithful pages of history, of such events frequently happening. Two instances have been mentioned in a former paper. They are so remarkable, that they are worthy of the most careful attention of every lover of freedom. They are taken from the history of the two most powerful nations that have ever existed in the world; and who are the most renowned, for the freedom they enjoyed, and the excellency of their constitutions-I mean Rome and Britain.

In the first, the liberties of the commonwealth were destroyed, and the constitution over-turned, by an army, led by Julius Caesar, who was appointed to the command by the constitutional authority of that commonwealth. He changed it from a free republic, whose fame ... is still celebrated by all the world, into that of the most absolute despotism. A standing army effected this change, and a standing army supported it through a succession of ages, which are marked in the annals of history with the most horrid cruelties, bloodshed, and carnage-the most devilish, beastly, and unnatural vices, that ever punished or disgraced human nature.

The same army, that in Britain, vindicated the liberties of that people from the encroachments and despotism of a tyrant king, assisted Cromwell, their General, in wresting from the people that liberty they had so dearly earned.

You may be told, these instances will not apply to our case. But those who would persuade you to believe this, either mean to deceive you, or have not themselves considered the subject.

I firmly believe, no country in the world had ever a more patriotic army, than the one which so ably served this country in the late war. But had the General who commanded them been possessed of the spirit of a Julius Caesar or a Cromwell, the liberties of this country . - . [might have] in all probability terminated with the war. Or bad they been maintained, [they] might have cost more blood and treasure than was expended in the conflict with Great Britain. When an anonymous writer addressed the officers of the army at the close of the war, advising them not to part with their arms, until justice was done them-the effect it had is well known. It affected them like an electric shock. He wrote like Caesar; and had the commander in chief, and a few more officers of rank, countenanced the measure, the desperate resolution. . . [might have] been taken, to refuse to disband. What the consequences of such a determination would have been, heaven only knows. The army were in the full vigor of health and spirits, in the habit of discipline, and possessed of all our military stores and apparatus. They would have acquired great accessions of strength from the country. Those who were disgusted at our republican forms of government (for

such there then were, of high rank among us) would have lent them all their aid. We should in all probability have seen a constitution and laws dictated to us, at the head of an army, and at the point of a bayonet, and the liberties for which we had so severely struggled, snatched from us in a moment. It remains a secret, yet to be revealed, whether this measure was not suggested, or at least countenanced, by some, who have bad great influence in producing the present system. Fortunately indeed for this country, it had at the head of the army, a patriot as well as a general; and many of our principal officers had not abandoned the characters of citizens, by assuming that of soldiers; and therefore, the scheme proved abortive. But are we to expect, that this will always be the case? Are we so much better than the people of other ages and of other countries, that the same allurements of power and greatness, which led them aside from their duty, will have no influence upon men in our country? Such an idea is wild and extravagant. Had we indulged such a delusion, enough has appeared in a little time past, to convince the most credulous, that the passion for pomp, power, and greatness, works as powerfully in the hearts of many of our better sort, as it ever did in any country under heaven. Were the same opportunity again to offer, we should very probably be grossly disappointed, if we made dependence, that all who then rejected the overture, would do it again.

From these remarks, it appears, that the evils to be feared from a large standing army in time of peace, do not arise solely from the apprehension, that the rulers may employ them for the purpose of promoting their own ambitious views; but that equal, and perhaps greater danger, is to be apprehended from their overturning the constitutional powers of the government, and assuming the power to dictate any form they please.

The advocates for power, in support of this right in the proposed government, urge that a restraint upon the discretion of the legislatures, in respect to military establishments in time of peace, would be improper to be imposed, because they say, it will be necessary to maintain small garrisons on the frontiers, to guard against the depredations of the Indians, and to be prepared to repel any encroachments or invasions that may be made by Spain or Britain.

The amount of this argument stripped of the abundant verbiages with which the author has dressed it, is this:

It will probably be necessary to keep up a small body of troops to garrison a few posts, which it will be necessary to maintain, in order to guard against the sudden encroachments of the Indians, or of the Spaniards and British; and therefore, the general government ought to be invested with power to raise and keep up a standing army in time of peace, without restraint, at their discretion.

I confess, I cannot perceive that the conclusion follows from the premises. Logicians say, it is not good reasoning to infer a general conclusion from particular premises. Though I am not much of a logician, it seems to me, this argument is very like that species of reasoning.

When the patriots in the parliament in Great Britain, contended with such force of argument, and all the powers of eloquence, against keeping up standing armies in time of peace, it is obvious they never entertained an idea, that small garrisons on their frontiers, or in the neighborhood of powers from whom they were in danger of encroachments, or guards to take care of public arsenals, would thereby be prohibited.

The advocates for this power further urge that it is necessary, because it may, and probably will happen, that circumstances will render it requisite to raise an army to be prepared to repel attacks of an enemy, before a formal declaration of war, which in modern times has fallen into disuse. If the constitution prohibited the raising an army, until a war actually commenced, it would deprive the government of the power of providing for the defense of the country, until the enemy were within our territory. If the restriction is not to extend to the raising armies in cases of emergency, but only to the keeping them up, this would leave the matter to the discretion of the legislature, and they might, under the pretence that there was danger of an invasion, keep up the army as long as they judged proper-and hence it is inferred, that the legislature should have authority to raise and keep up an army without any restriction. But from these premises nothing more will follow than this: that the legislature should not be so restrained, as to put it out of their power to raise an army, when such exigencies as are instanced shall arise. But it does not thence follow, that the government should be empowered to raise and maintain standing armies at their discretion as well in peace as in war. If indeed, it is impossible to vest the general government with the power of raising troops to garrison the frontier posts, to guard arsenals, or to be prepared to repel an attack, when we saw a power preparing to make one, without giving them a general and indefinite authority to raise and keep up armies, without any restriction or qualification, then this reasoning might have weight; but this has not been proved nor can it be.

It is admitted that to prohibit the general government from keeping up standing armies, while yet they were authorised to raise them in case of exigency, would be an insufficient guard against the danger. A discretion of such latitude would give room to elude the force of the provision.

It is also admitted that an absolute prohibition against raising troops, except in cases of actual war, would be improper; because it will be requisite to raise and support a small number of troops to garrison the important frontier posts, and to guard arsenals; and it may happen, that the danger of an attack from a foreign power may be so imminent, as to render it highly proper we should raise an army, in order to be prepared to resist them. But to raise and keep up forces for such purposes and on such occasions, is not included in the idea of keeping up standing armies in times of peace.

It is a thing very practicable to give the government sufficient authority to provide for these cases, and at the same time to provide a reasonable and competent security against the evil of a standing army-a clause to the following purpose would answer the end:

As standing armies in time of peace arc dangerous to liberty, and have often been the means of overturning the best constitutions of government, no standing army, or troops of any description whatsoever, shall be raised or kept up by the legislature, except so many as shall be necessary for guards to the arsenals of the United States, or for garrisons to such posts on the frontiers, as it shall be deemed absolutely necessary to hold, to secure the inhabitants, and facilitate the trade with the Indians: unless when the United States are threatened with an attack or invasion from some foreign power, in which case the legislature shall be authorised to raise an army to be prepared to repel the attack; provided that no troops whatsoever shall be raised in time of peace, without the assent of two thirds of the members, composing both houses of the legislature.

A clause similar to this would afford sufficient latitude to the legislature to raise troops in all cases that were really necessary, and at the same time competent security against the establishment of that dangerous engine of despotism, a standing army.

The same writer who advances the arguments I have noticed, makes a number of other observations with a view to prove that the power to raise and keep up armies ought to be discretionary in the general legislature. Some of them are curious. He instances the raising of troops in Massachusetts and Pennsylvania, to show the necessity of keeping a standing army in time of peace; the least reflection must convince every candid mind that both these cases are totally foreign to his purpose. Massachusetts raised a body of troops for six months, at the expiration of which they were to disband ... ; this looks very little like a standing army. But beside, was that commonwealth in a state of peace at that time? So far from it, that they were in the most violent commotions and contests, and their legislature had formally declared that an unnatural rebellion existed within the state. The situation of Pennsylvania was similar; a number of armed men had levied war against the authority of the state and openly avowed their intention of withdrawing their allegiance from it. To what purpose examples are brought, of states raising troops for short periods in times of war or insurrections, on a question concerning the propriety of keeping up standing armies in times of peace, the public must judge.

It is further said, that no danger can arise from this power being lodged in the hands of the general government, because the legislatures will be a check upon them, to prevent their abusing it.

This is offered, as what force there is in it will hereafter receive a more particular examination. At present, I shall only remark, that it is difficult to conceive how the state legislatures can, in any case, hold a check over the general legislature, in a constitutional way. The latter has, in every instance to which their powers extend, complete control over the former. The state legislatures can, in no case-by law, resolution, or otherwise of right, prevent or impede the general government, from enacting any law, or executing it, which this constitution authorizes them to enact or execute. If then the state legislatures check the general legislature, it must be by exciting the people to resist constitutional laws. In this way every individual, or every body of men, may check any government, in proportion to the influence they may have over the body of the people. But such kinds of checks as these, though they sometimes correct the abuses of government, [more) often destroy all government.

It is further said, that no danger is to be apprehended from the exercise of this power, because it is lodged in the hands of representatives of the people. If they abuse it, it is in the power of the people to remove them, and choose others who will pursue their interests.... That it is unwise in any people, to authorize their rulers to do, what, if done, would prove injurious-I have, in some former numbers, shown. . . . The representation in the proposed government will be a mere shadow without the substance. I am so confident that I am well founded in this opinion, that I am persuaded if it was to be adopted or rejected, upon a fair discussion of its merits without taking into contemplation circumstances extraneous to it, as reasons for its adoption, nineteen-twentieths of the sensible men in the union would reject it on this account alone; unless its powers were confined to much fewer objects than it embraces.

BRUTUS

Antifederalist No. 26 THE USE OF COERCION BY THE NEW GOVERNMENT (PART I)

"A FARMER AND PLANTER" had his work printed in The Maryland Journal, and Baltimore Advertiser, April 1, 1788.

The time is nearly at hand, when you are called upon to render up that glorious liberty you obtained, by resisting the tyranny and oppression of George the Third, King of England, and his ministers. The first Monday in April is the day appointed by our assembly, for you to meet and choose delegates in each county, to take into consideration the new Federal Government, and either adopt or refuse it. Let me entreat you, my fellows, to consider well what you are about. Read the said constitution, and consider it well before you act. I have done so, and can find that we are to receive but little good, and a great deal of evil. Aristocracy, or government in the hands of a very few nobles, or RICH MEN, is therein concealed in the most artful wrote plan that ever was formed to entrap a free people. The contrivers of it have so completely entrapped you, and laid their plans so sure and secretly, that they have only left you to do one of two things-that is either to receive or refuse it. And in order to bring you into their snare, you may daily read new pieces published in the newspapers, in favor of this new government; and should a writer dare to publish any piece against it, he is immediately abused and vilified.

Look round you and observe well the RICH MEN, who are to be your only rulers, lords and masters in future! Are they not all for it? Yes! Ought not this to put you on your guard? Does not riches beget power, and power, oppression and tyranny?

I am told that four of the richest men in Ann-Arundel County [Maryland], have offered themselves candidates to serve in the convention, who are all in favor of the new Federal Government. Let me beg of you to reflect a moment on the danger you run. If you choose these men, or others like them, they certainly will do everything in their power to adopt the new government. Should they succeed, your liberty is gone forever; and you will then be nothing better than a strong ass crouching down between two burdens. The new form of government gives Congress liberty at any time, by their laws, to alter the state laws, and the time, places and manner of holding elections for representatives. By this clause they may command, by their laws, the people of Maryland to go to Georgia, and the people of Georgia to go to Boston, to choose their representatives. Congress, or our future lords and masters, are to have power to lay and collect taxes, duties, imposts, and excises. Excise is a new thing in America, and few country farmers and planters know the meaning of it. But it is not so in Old England, where I have seen the effects of it, and felt the smart. It is there a duty, or tax, laid upon almost every necessary of life and convenience, and a great number of other articles. The excise on salt in the year 1762, to the best of my recollection, in England, was 4s. sterling per bushel, for all that was made use of in families; and the price of salt per bushel about 6s. sterling, and the excise 4s.6d. on every gallon of rum made use of. If a private family make their own soap, candles, beer, cider, etc., they pay an excise duty on them. And if they neglect calling in an excise officer at the time of making these things, they are liable to grievous fines and forfeitures, besides a long train of evils and inconveniences attending this detestable excise-to enumerate particularly would fill a

volume. The excise officers have power to enter your houses at all times, by night or day, and if you refuse them entrance, they can, under pretense of searching for exciseable goods, that the duty has not been paid on, break open your doors, chests, trunks, desks, boxes, and rummage your houses from bottom to top. Nay, they often search the clothes, petticoats and pockets of ladies or gentlemen (particularly when they are coming from on board an East-India ship), and if they find any the least article that you cannot prove the duty to be paid on, seize it and carry it away with them; who are the very scum and refuse of mankind, who value not their oaths, and will break them for a shilling. This is their true character in England, and I speak from experience, for I have had the opportunity of putting their virtue to the test, and saw two of them break their oath for one guinea, and a third for one shilling's worth of punch. What do you think of a law to let loose such a set of vile officers among you! Do you expect the Congress excise-officers will be any better-if God, in his anger, should think it proper to punish us for our ignorance, and sins of ingratitude to him, after carrying us through the late war, and giving us liberty, and now so tamely to give it up by adopting this aristocratical government?

Representatives and direct taxes shall be apportioned among the several states which may be included within this union according to their respective numbers. This seems to imply, that we shall be taxed by the poll again, which is contrary to our Bill of Rights. But it is possible that the rich men, who are the great land holders, will tax us in this manner, which will exempt them from paying assessments on their great bodies of land in the old and new parts of the United States; many of them having but few taxable by the poll. Our great Lords and Masters are to lay taxes, raise and support armies, provide a navy, and may appropriate money for two years, call forth the militia to execute their laws, suppress insurrections, and the President is to have the command of the militia. Now, my countrymen, I would ask you, why are all these things directed and put into their power? Why, I conceive, they are to keep you in a good humor; and if you should, at any time, think you are imposed upon by Congress and your great Lords and Masters, and refuse or delay to pay your taxes, or do anything that they shall think proper to order you to do, they can, and I have not a doubt but they will, send the militia of Pennsylvania, Boston, or any other state or place, to cut your throats, ravage and destroy your plantations, drive away your cattle and horses, abuse your wives, kill your infants, and ravish your daughters, and live in free quarters, until you get into a good humor, and pay all that they may think proper to ask of you, and you become good and faithful servants and slaves.[1] Such things have been done, and I have no doubt will be done again, if you consent to the adoption of this new Federal Government. You labored under many hardships while the British tyrannized over you! You fought, conquered and gained your liberty-then keep it, I pray you, as a precious jewel. Trust it not out of your own hands; be assured, if you do, you will never more regain it. The train is laid, the match is on fire, and they only wait for yourselves to put it to the train, to blow up all your liberty and commonwealth governments, and introduce aristocracy and monarchy, and despotism will follow of course in a few years. Four-years President will be in time a King for life; and after him, his son, or he that has the greatest power among them, will be King also. View your danger, and find out good men to represent you in convention-men of your own profession and station in life; men who will not adopt this destructive and diabolical form of a federal government. There are many among you that will not be led by the nose by rich men, and would scorn a bribe. Rich men can live easy under any government, be it ever so tyrannical. They come in for a great share of the tyranny, because they are the ministers of tyrants, and always engross the places of honor and profit, while the greater part of the common people are led by the nose, and played about by

these very men, for the destruction of themselves and their class. Be wise, be virtuous, and catch the precious moment as it passes, to refuse this newfangled federal government, and extricate yourselves and posterity from tyranny, oppression, aristocratical or monarchical government. . . .

A FARMER AND PLANTER

[1] See the history of the confederate Grecian states-also the history of England, for the massacre of the people in the valley of Glenco, in the time of William the Third. [Note by "A Farmer and Planter".]

Antifederalist No. 27 THE USE OF COERCION BY THE NEW GOVERNMENT (PART II)

"JOHN HUMBLE's," following piece was published in the Independent Gazetteer, October 29, 1787.

The humble address of the low-born of the United States of America, to their fellow slaves scattered throughout the world-greeting:

Whereas it hath been represented unto us that a most dreadful disease hath for these five years last past infected, preyed upon and almost ruined the government and people of this our country; and of this malady we ourselves have had perfect demonstration, not mentally, but bodily, through every one of the five senses. For although our sensations in regard to the mind be not just so nice as those of the well born, yet our feeling, through the medium of the plow, the hoe and the grubbing ax, is as acute as any nobleman's in the world. And, whereas, a number of skillful physicians having met together at Philadelphia last summer, for the purpose of exploring, and, if possible, removing the cause of this direful disease, have, through the assistance of John Adams, Esq., in the profundity of their great political knowledge, found out and discovered that nothing but a new government, consisting of three different branches, namely, king, lords, and commons or, in the American language, President, Senate and Representatives-can save this, our country, from inevitable destruction. And, whereas, it has been reported that several of our low-born brethren have had the horrid audacity to think for themselves in regard to this new system of government, and, dreadful thought! have wickedly begun to doubt concerning the perfection of this evangelical constitution, which our political doctors have declared to be a panacea, which (by inspiration) they know will infallibly heal every distemper in the confederation, and finally terminate in the salvation of America.

Now we the low born, that is, all the people of the United States, except 600 thereabouts, well born, do by this our humble address, declare and most solemnly engage, that we will allow and admit the said 600 well born, immediately to establish and confirm this most noble, most excellent and truly divine constitution. And we further declare that without any equivocation or mental reservation whatever we will support and maintain the same according to the best of our power, and after the manner and custom of all other slaves in foreign countries, namely by the sweat and toil of our body. Nor will we at any future period of time ever attempt to complain of this our royal government, let the consequences be what they may.

And although it appears to us that a standing army, composed of the purgings of the jails of Great Britain, Ireland and Germany, shall be employed in collecting the revenues of this our king and government, yet, we again in the most solemn manner declare, that we will abide by our present determination of non- resistance and passive obedience-so that we shall not dare to molest or disturb those military gentlemen in the service of our royal government. And (which is not improbable) should any one of those soldiers when employed on duty in collecting the taxes, strike off the arm (with his sword) of one of our fellow slaves, we will conceive our case remarkably fortunate if he leaves the other arm on. And moreover, because we are aware that many of our fellow slaves shall be unable to pay their taxes, and this incapacity of theirs is a just

cause of impeachment of treason; wherefore in such cases we will use our utmost endeavors, in conjunction with the standing army, to bring such atrocious offenders before our federal judges, who shall have power, without jury or trial, to order the said miscreants for immediate execution; nor will we think their sentence severe unless after being hanged they are also to be both beheaded and quartered. And finally we shall henceforth and forever leave all power, authority and dominion over our persons and properties in the hands of the well born, who were designed by Providence to govern. And in regard to the liberty of the press, we renounce all claim to it forever more, Amen; and we shall in future be perfectly contented if our tongues be left us to lick the feet of our well born masters.

Done on behalf of three millions of low-born American slaves.

JOHN HUMBLE, Secretary

Antifederalist No. 28 THE USE OF COERCION BY THE NEW GOVERNMENT (PART III)

This essay was published in either the (Philadelphia) Freeman's Journal; or, The North-American Intelligencer, January 16, 1788.

The Congress under the new Constitution have the power "of organizing, arming and disciplining the militia, and of governing them when in the service of the United States, giving to the separate States the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress." Let us inquire why they have assumed this great power. Was it to strengthen the power which is now lodged in your hands, and relying upon you and you solely for aid and support to the civil power in the execution of all the laws of the new Congress? Is this probable? Does the complexion of this new plan countenance such a supposition? When they unprecedently claim the power of raising and supporting armies, do they tell you for what purposes they are to be raised? How they are to be employed? How many they are to consist of, and where to be stationed? Is this power fettered with any one of those restrictions, which will show they depend upon the militia, and not upon this infernal engine of oppression to execute their civil laws? The nature of the demand in itself contradicts such a supposition, and forces you to believe that it is for none of these causes-but rather for the purpose of consolidating and finally destroying your strength, as your respective governments are to be destroyed. They well know the impolicy of putting or keeping arms in the hands of a nervous people, at a distance from the seat of a government, upon whom they mean to exercise the powers granted in that government. They have no idea of calling upon or trusting to the party aggrieved to support and enforce their own grievances, (notwithstanding they may select and subject them to as strict subordination as regular troops) unless they have a standing army to back and compel the execution of their orders. It is asserted by the most respectable writers upon government, that a well regulated militia, composed of the yeomanry of the country, have ever been considered as the bulwark of a free people. Tyrants have never placed any confidence on a militia composed of freemen. Experience has taught them that a standing body of regular forces, whenever they can be completely introduced, are always efficacious in enforcing their edicts, however arbitrary; and slaves by profession themselves, are "nothing loth" to break down the barriers of freedom with a gout. No, my fellow citizens, this plainly shows they do not mean to depend upon the citizens of the States alone to enforce their powers. They mean to lean upon something more substantial and summary. They have left the appointment of officers in the breasts of the several States; but this appears to me an insult rather than a privilege, for what avails this right if they at their pleasure may arm or disarm all or any part of the freemen of the United States, so that when their army is sufficiently numerous, they may put it out of the power of the freemen militia of America to assert and defend their liberties, however they might be encroached upon by Congress. Does any, after reading this provision for a regular standing army, suppose that they intended to apply to the militia in all cases, and to pay particular attention to making them the bulwark of this continent? And would they not be equal to such an undertaking? Are they not abundantly able to give security and stability to your government as long as it is free? Are they not the only proper persons to do it? Are they not the most respectable body of yeomanry in that character upon earth? Have they not been engaged in some of the most

brilliant actions in America, and more than once decided the fate of princes? In short, do they not preclude the necessity of any standing army whatsoever, unless in case of invasion? And in that case it would be time enough to raise them, for no free government under heaven, with a well disciplined militia, was ever yet subdued by mercenary troops.

The advocates at the present day, for a standing army in the new Congress, pretend it is necessary for the respectability of government. I defy them to produce an instance in any country, in the Old or New World, where they have not finally done away the liberties of the people. Every writer upon government-- Locke, Sidney, Hampden, and a list of others have uniformly asserted, that standing armies are a solecism in any government; that no nation ever supported them, that did not resort to, rely upon, and finally become a prey to them. No western historians have yet been hardy enough to advance principles that look a different way. What historians have asserted, all the Grecian republics have verified. They are brought up to obedience and unconditional submission; with arms in their bands, they are taught to feel the weight of rigid discipline; they are excluded from the enjoyments which liberty gives to its votaries; they, in consequence, hate and envy the rest of the community in which they are placed, and indulge a malignant pleasure in destroying those privileges to which they never can be admitted. "Without a standing army," (says the Marquis of Beccaria), "in every society there is an effort constantly tending to confer on one part the height and to reduce the other to the extreme of weakness, and this is of itself sufficient to employ the people's attention." There is no instance of any government being reduced to a confirmed tyranny without military oppression. And the first policy of tyrants has been to annihilate all other means of national activity and defense, when they feared opposition, and to rely solely upon standing troops. Repeated were the trials, before the sovereigns of Europe dared to introduce them upon any pretext whatever; and the whole record of the transactions of mankind cannot furnish an instance, (unless the proposed constitution may be called part of that record) where the motives which caused that establishment were not completely disguised. Peisistratus in Greece, and Dionysius in Syracuse, Charles in France, and Henry in England, all cloaked their villainous intentions under an idea of raising a small body as a guard for their persons; and Spain could not succeed in the same nefarious plan, until thro' the influence of an ambitious priest (who have in all countries and in all ages, even at this day, encouraged and preached up arbitrary power) they obtained it. "Caesar, who first attacked the commonwealth with mines, very soon opened his batteries." Notwithstanding all these objections to this engine of oppression, which are made by the most experienced men, and confirmed by every country where the rays of freedom ever extended-yet in America, which has hitherto been her favorite abode; in this civilized territory, where property is so valuable, and men are found with feelings that win not patiently submit to arbitrary control; in this western region, where, my fellow countrymen, it is confessedly proper that you should associate and dwell in society from choice and reflection, and not be kept together by force and fear-you are modestly requested to engraft into the component parts of your constitution a Standing Army, without any qualifying restraints whatever, certainly to exist somewhere in the bowels of your country in time of peace. It is very true that Lawyer [James] Wilson-member of the Federal Convention, and who we may suppose breathes in some measure the spirit of that body-tells you it is for the purpose of forming cantonments upon your frontiers, and for the dignity and safety of your country, as it respects foreign nations. No man that loves his country could object to their being raised for the first of these causes, but for the last it cannot be necessary. God has so separated us by an extensive ocean from the rest of mankind; he hath so

liberally endowed us with privileges, and so abundantly taught us to esteem them precious, it would be impossible while we retain our integrity, and advert to first principles, for any nation whatever to subdue us. We have succeeded in our opposition to the most powerful people upon the globe; and the wound that America received in the struggle, where is it? As speedily healed as the track in the ocean is buried by the succeeding wave. It has scarcely stopped her progress, and our private dissensions only, at this moment, tarnish the lustre of the most illustrious infant nation under heaven.

You cannot help suspecting this gentleman [James Wilson], when he goes on to tell you "that standing armies in time of peace have always been a topic of popular declamation, but Europe hath found them necessary to maintain the appearance of strength in a season of the most profound tranquility." This shows you his opinion-and that he, as one of the Convention, was for unequivocally establishing them in time of peace; and to object to them, is a mere popular declamation. But I will not, my countrymen-I cannot believe you to be of the same sentiment. Where is the standing army in the world that, like the musket they make use of, hath been in time of peace brightened and burnished for the sake only of maintaining an appearance of strength, without being put to a different use-without having had a pernicious influence upon the morals, the habits, and the sentiments of society, and finally, taking a chief part in executing its laws? . . .

If tyranny is at all feared, the tyranny of the many is to be guarded against MORE than that of a single person. The Athenians found by sad experience, that 30 tyrants were thirty times worse than one. A bad aristocracy is thirty times worse than a bad monarchy, allowing each to have a standing army as unrestricted as in the proposed constitution.

If the people are not in general disposed to execute the powers of government, it is time to suspect there is something wrong in that government; and rather than employ a standing army, they had better have another. For, in my humble opinion, it is yet much too early to set it down for a fact, that mankind cannot be governed but by force.

Antifederalist No. 29 OBJECTIONS TO NATIONAL CONTROL OF THE MILITIA

"A DEMOCRATIC FEDERALIST," appeared in "the Pennsylvania Packet," October 23, 1787; following #29, #30 is excerpted from THE ADDRESS AND REASONS OF DISSENT OF THE MINORITY OF THE CONVENTION OF THE STATE OF PENNSYLVANIA TO THEIR CONSTITUENTS, December 12, 1787.

Hume, an aristocratical writer, has candidly confessed that an army is a moral distemper in a government, of which it must at last inevitably perish (2d Burgh, 349); and the Earl of Oxford (Oxford the friend of France and the Pretender, the attainted Oxford), said in the British parliament, in a speech on the mutiny bill, that, "While he had breath he would speak for the liberties of his country, and against courts martial and a standing army in peace, as dangerous to the Constitution." (Ibid., page 455.) Such were the speeches even of the enemies of liberty when Britain had yet a right to be called free. But, says Mr. [James] Wilson, "It is necessary to maintain the appearance of strength even in times of the most profound tranquillity." And what is this more than a threadbare hackneyed argument, which has been answered over and over in different ages, and does not deserve even the smallest consideration? Had we a standing army when the British invaded our peaceful shores? Was it a standing army that gained the battles of Lexington and Bunker Hill, and took the ill-fated Burgoyne? Is not a well- regulated militia sufficient for every purpose of internal defense? And which of you, my fellow citizens, is afraid of any invasion from foreign powers that our brave militia would not be able immediately to repel?

Mr. Wilson says, that he does not know of any nation in the world which has not found it necessary to maintain the appearance of strength in a season of the most profound tranquillity. If by this equivocal assertion he has meant to say that there is no nation in the world without a standing army in time of peace, he has been mistaken. I need only adduce the example of Switzerland, which, like us, is a republic, whose thirteen cantons, like our thirteen States, are under a federal government, and which besides is surrounded by the most powerful nations in Europe, all jealous of its liberty and prosperity. And yet that nation has preserved its freedom for many ages, with the sole help of a militia, and has never been known to have a standing army, except when in actual war. Why should we not follow so glorious an example; and are we less able to defend our liberty without an army, than that brave but small nation which, with its militia alone has hitherto defied all Europe?

A DEMOCRATIC FEDERALIST

The framers of this constitution appear to have been . . . sensible that no dependence could be placed on the people for their support; but on the contrary, that the government must be executed by force. They have therefore made a provision for this purpose in a permanent standing army and a militia that may be objected to as strict discipline and government.

A standing army in the hands of a government placed so independent of the people, may be made a fatal instrument to overturn the public liberties; it may be employed to enforce the collection of

the most oppressive taxes; and to carry into execution the most arbitrary measures. An ambitious man who may have the army at his devotion, may step up into the throne, and seize upon absolute power.

The absolute unqualified command that Congress have over the militia may be made instrumental to the destruction of all liberty both public and private; whether of a personal, civil or religious nature.

First, the personal liberty of every man, probably from sixteen to sixty years of age, may be destroyed by the power Congress have in organizing and governing of the militia. As militia they may be subjected to fines to any amount, levied in a military manner; they may be subjected to corporal punishments of the most disgraceful and humiliating kind; and to death itself, by the sentence of a court martial. To this our young men will be more immediately subjected, as a select militia, composed of them, will best answer the purposes of government.

Secondly, the rights of conscience may be violated, as there is no exemption of those persons who are conscientiously scrupulous of hearing arms. These compose a respectable proportion of the community in the State [Pennsylvania]. This is the more remarkable, because even when the distresses of the late war and the evident disaffection of many citizens of that description inflamed our passions, and when every person who was obliged to risk his own life must have been exasperated against such as on any account kept back from the common danger, yet even then, when outrage and violence might have been expected, the rights of conscience were held sacred.

At this momentous crisis, the framers of our State Constitution made the most express and decided declaration and stipulations in favor of the rights of conscience; but now, when no necessity exists, those dearest rights of men are left insecure.

Thirdly, the absolute command of Congress over the militia may be destructive of public liberty; for under the guidance of an arbitrary government, they may be made the unwilling instruments of tyranny. The militia of Pennsylvania may be marched to New England or Virginia to quell an insurrection occasioned by the most galling oppression, and aided by the standing army, they will no doubt be successful in subduing their liberty and independency. But in so doing, although the magnanimity of their minds will be extinguished, yet the meaner passions of resentment and revenge will be increased, and these in turn will be the ready and obedient instruments of despotism to enslave the others; and that with an irritated vengeance. Thus may the militia be made the instruments of crushing the last efforts of expiring liberty, of riveting the chains of despotism on their fellow-citizens, and on one another. This power can be exercised not only without violating the Constitution, but in strict conformity with it; it is calculated for this express purpose, and will doubtless be executed accordingly.

As this government will not enjoy the confidence of the people, but be executed by force, it will be a very expensive and burdensome government. The standing army must be numerous, and as a further support, it wilt be the policy of this government to multiply officers in every department; judges, collectors, tax-gatherers, excisemen and the whole host of revenue officers,

will swarm over the land, devouring the hard earnings of the industrious like the locusts of old, impoverishing and desolating all before them. . .

Antifederalist No. 30-31 A VIRGINIA ANTIFEDERALIST ON THE ISSUE OF TAXATION

From The Freeman's Journal; or, The North-American Intelligencer, October 31, 1787.

. . . . It has been the language, since the peace, of the most virtuous and discerning men in America, that the powers vested in Congress were inadequate to the procuring of the benefits that should result from the union. It was found that our national character was sinking in the opinion of foreign nations, and that the selfish views of some of the states were likely to become the source of dangerous jealousy. The requisitions of Congress were set at naught; the government, that represented the union, had not a shilling in its treasury to enable it to pay off the federal debts, nor had it any method within its power to alter its situation. It could make treaties of commerce, but could not enforce the observance of them; and it was felt that we were suffering from the restrictions of foreign nations, who seeing the want of energy in our federal constitution, and the unlikelihood of cooperation in thirteen separate legislatures, had shackled our commerce, without any dread of recrimination on our part. To obviate these grievances, it was I believe the general opinion, that new powers should be vested in Congress to enable it, in the amplest manner, to regulate the commerce, to lay and collect duties on the imports of the United States. Delegates were appointed by most of them, for those purposes, to a convention to be held at Annapolis in the September before last. A few of them met, and without waiting for the others, who were coming on, they dissolved the convention-after resolving among themselves, that the powers vested in them were not sufficiently extensive; and that they would apply to the legislatures of the several states, which they represented, to appoint members to another convention, with powers to new model the federal constitution. This, indeed, it has now done in the most unequivocal manner; nor has it stopped here, for it has fairly annihilated the constitution of each individual state. It has proposed to you a high prerogative government, which, like Aaron's serpent, is to swallow up the rest. This is what the thinking people in America were apprehensive of. They knew how difficult it is to hit the golden mean, how natural the transition is from one extreme to another-from anarchy to tyranny, from the inconvenient laxity of thirteen separate governments to the too sharp and grinding one, before which our sovereignty, as a state, was to vanish.

In Art. I, Sect. 8, of the proposed constitution, it is said, "Congress shall have power to lay and collect taxes, duties, imposts, and excises." Are you then, Virginians, about to abandon your country to the depredations of excisemen, and the pressure of excise laws? Did it ever enter the mind of any one of you, that you could live to see the day, that any other government but the General Assembly of Virginia should have power of direct taxation in this state? How few of you ever expected to see excise laws, those instruments of tyranny, in force in your country? But who could imagine, that any man but a Virginian, were they found to be necessary, would ever have a voice towards enacting them? That any tribunal, but the courts of Virginia, would be allowed to take cognizance of disputes between her citizens and their tax gatherers and excisemen? And that, if ever it should be found necessary to curse this land with these hateful excisemen, any one, but a fellow citizen, should be entrusted with that office?

For my part, I cannot discover the necessity there was of allowing Congress to subject us to excise laws, unless-that considering the extensiveness of the single republic into which this constitution would collect all the others, and the well known difficulty of governing large republics with harmony and ease-it was thought expedient to bit our mouths with massive curbs, to break us, bridled with excise laws and managed by excisemen, into an uniform, sober pace, and thus, gradually, tame the troublesome mettle of freemen. This necessity could not, surely, arise from the desire of furnishing Congress with a sufficient revenue to enable it to exercise the prerogatives which every friend to America would wish to see vested in it. As it would, by unanimous consent, have the management of the impost, it could increase it to any amount, and this would fall sufficiently uniform on every one, according to his ability. Or, were this not found sufficient, could not the deficiency be made up by requisitions to the states? Could it not have been made an article of the federal constitution, that, if any of them refused their quota, Congress may be allowed to make it up by an increase of the impost on that particular state so refusing? This would, surely, be a sufficient security to Congress, that their requisitions would be punctually complied with.

In any dispute between you and the revenue officers and excisemen of Congress, it is true that it is provided the trial shall be in the first instance within the state, though before a federal tribunal. It is said in par. 3, sect. 2, art. 3, "The trial of all crimes except in cases of impeachments shall be by jury; and such trial shall be held in the state where the crime shall be committed." But what does this avail, when an appeal will lie against you to the supreme federal court. In the paragraph preceding the one just now quoted, it is said, "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make." But where is this Supreme Court to sit? Will it not be where Congress shall fix its residence? Thither then you will be carried for trial. Who are to be your jury? Is there any provision made that you shall have a Venire from your county, or even from your state, as they please to call it? Not You are to be tried within the territory of Congress, and Congress itself is to be a party. You are to be deprived of the benefit of a jury from your vicinage, that boast and birthright of a freeman.

Should it not at least have been provided, that those revenue officers and excisemen-against whom free governments have always justly entertained a jealousy-should be citizens of the state? Was it inadmissible that they should be endued with the bowels of fellow citizens? Are we not to expect that New England will now send us revenue officers instead of onions and apples? When you observe that the few places already under Congress in this state are in the hands of strangers, you will own that my suspicion is not without some foundation. And if the first cause of it be required, those who have served in Congress can tell you that the New England delegates to that assembly have always stood by each other, and have formed a firm phalanx, which the southern delegates have not; that, on the contrary, the maneuvers of the former have been commonly engaged, with success, in dividing the latter against each other.

CATO UTICENSIS

Antifederalist No. 32 FEDERAL TAXATION AND THE DOCTRINE OF IMPLIED POWERS (PART I)

A powerful rebuttal of Hamilton, the logic of Brutus can be found in a supreme Court decision of 1819, McCulloch v. Maryland. Taken from "Brutus" fifth essay, The New-York Journal of December 13, 1787.

This constitution considers the people of the several states as one body corporate, and is intended as an original compact; it will therefore dissolve all contracts which may be inconsistent with it. This not only results from its nature, but is expressly declared in the 6th article of it. The design of the constitution is expressed in the preamble, to be, "in order to form a more perfect union, to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and posterity." These are the ends this government is to accomplish, and for which it is invested with certain powers; among these is the power "to make all laws which are necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." It is a rule in construing a law to consider the objects the legislature had in view in passing it, and to give it such an explanation as to promote their intention. The same rule will apply in explaining a constitution. The great objects then are declared in this preamble in general and indefinite terms to be to provide for the common welfare, and an express power being vested in the legislature to make all laws which shall be necessary and proper for carrying into execution all the powers vested in the general government. The inference is natural that the legislature will have an authority to make all laws which they shall judge necessary for the common safety, and to promote the general welfare. This amounts to a power to make laws at discretion. No terms can be found more indefinite than these, and it is obvious, that the legislature alone must judge what laws are proper and necessary for the purpose. It may be said, that this way of explaining the constitution, is torturing and making it speak what it never intended. This is far from my intention, and I shall not even insist upon this implied power, but join issue with those who say we are to collect the idea of the powers given from the express words of the clauses granting them; and it will not be difficult to show that the same authority is expressly given which is supposed to be implied in the foregoing paragraphs.

In the lst article, 8th section, it is declared, "that Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense, and general welfare of the United States." In the preamble, the intent of the constitution, among other things, is declared to be to provide for the common defense, and promote the general welfare, and in this clause the power is in express words given to Congress "to provide for the common defense, and general welfare." And in the last paragraph of the same section there is an express authority to make all laws which shall be necessary and proper for carrying into execution this power. It is therefore evident, that the legislature under this constitution may pass any law which they may think proper. It is true the 9th section restrains their power with respect to certain subjects. But these restrictions are very limited, some of them improper, some unimportant, and others not easily understood, as I shall hereafter show. It has been urged that the meaning I give

to this part of the constitution is not the true one, that the intent of it is to confer on the legislature the power to lay and collect taxes, etc., in order to provide for the common defense and general welfare. To this I would reply, that the meaning and intent of the constitution is to be collected from the words of it, and I submit to the public, whether the construction I have given it is not the most natural and easy. But admitting the contrary opinion to prevail, I shall nevertheless, be able to show, that the same powers are substantially vested in the general government, by several other articles in the constitution. It invests the legislature with authority to lay and collect taxes, duties, imposts and excises, in order to provide for the common defense, and promote the general welfare, and to pass all laws which may be necessary and proper for carrying this power into effect. To comprehend the extent of this authority, it will be requisite to examine

1st. What is included in this power to lay and collect taxes, duties, imposts and excises.

2nd. What is implied in the authority, to pass all laws which shall be necessary and proper for carrying this power into execution.

3rd. What limitation, if any, is set to the exercise of this power by the constitution.

First. To detail the particulars comprehended in the general terms, taxes, duties, imposts and excises, would require a volume, instead of a single piece in a newspaper. Indeed it would be a task far beyond my ability, and to which no one can be competent, unless possessed of a mind capable of comprehending every possible source of revenue; for they extend to every possible way of raising money, whether by direct or indirect taxation. Under this clause may be imposed a poll tax, a land tax, a tax on houses and buildings, on windows and fireplaces, on cattle and on all kinds of personal property. It extends to duties on all kinds of goods to any amount, to tonnage and poundage on vessels, to duties on written instruments, newspapers, almanacks, and books. It comprehends an excise on all kinds of liquors, spirits, wines, cider, beer, etc., and indeed takes in duty or excise on every necessary or conveniency of life, whether of foreign or home growth or manufactory. In short, we can have no conception of any way in which a government can raise money from the people, but what is included in one or other of these general terms. We may say then that this clause commits to the hands of the general legislature every conceivable source of revenue within the United States, Not only are these terms very comprehensive, and extend to a vast number of objects, but the power to lay and collect has great latitude; it will lead to the passing a vast number of laws, which may affect the personal rights of the citizens of the states, expose their property to fines and confiscation, and put their lives in jeopardy. It opens a door to the appointment of a swarm of revenue and excise collectors to prey upon the honest and industrious part of the community, [and] eat up their substance. . . .

Second. We will next inquire into what is implied in the authority to pass all laws which shall be necessary and proper to carry this power into execution.

It is, perhaps, utterly impossible fully to define this power. The authority granted in the first clause can only be understood in its full extent, by descending to all the particular cases in which a revenue can be raised; the number and variety of these cases are so endless, and as it were infinite, that no man living has, as yet, been able to reckon them up. The greatest geniuses in the world have been for ages employed in the research, and when mankind had supposed that the

subject was exhausted they have been astonished with the refined improvements that have been made in modern times ' and especially in the English nation on the subject. If then the objects of this power cannot be comprehended, how is it possible to understand the extent of that power which can pass all laws which shall be necessary and proper for carrying it into executions It is truly incomprehensible. A case cannot be conceived of, which is not included in this power. It is well known that the subject of revenue is the most difficult and extensive in the science of government. It requires the greatest talents of a statesman, and the most numerous and exact provisions of the legislature. The command of the revenues 'Of a state gives the command of every thing in it. He that has the purse will have the sword, and they that have both, have everything; so that the legislature having every source from which money can be drawn under their direction, with a right to make all laws necessary and proper for drawing forth all the resource of the country, would have, in fact, all power.

Were I to enter into the detail, it would be easy to show how this power in its operation, would totally destroy all the powers of the individual states. But this is not necessary for those who will think for themselves, and it will be useless to such as take things upon trust; nothing will awaken them to reflection, until the iron hand of oppression compel them to it.

I shall only remark, that this power, given to the federal legislature, directly annihilates all the powers of the state legislatures. There cannot be a greater solecism in politics than to talk of power in a government, without the command of any revenue. It is as absurd as to talk of an animal without blood, or the subsistence of one without food. Now the general government having in their control every possible source of revenue, and authority to pass any law they may deem necessary to draw them forth, or to facilitate their collection, no source of revenue is therefore left in the hands 'Of any state. Should any state attempt to raise money by law, the general government may repeal or arrest it in the execution, for all their laws will be the supreme law of the land. If then any one can be weak enough to believe that a government can exist without having the authority to raise money to pay a door-keeper to their assembly, he may believe that the state government can exist, should this new constitution take place.

It is agreed by most of the advocates of this new system, that the government which is proper for the United States should be a confederated one; that the respective states ought to retain a portion of their sovereignty, and that they should preserve not only the forms of their legislatures, but also the power to conduct certain internal concerns. How far the powers to be retained by the states are to extend, is the question; we need not spend much time on this subject, as it respects this constitution, for a government without power to raise money is one only in name. It is clear that the legislatures of the respective states must be altogether dependent on the will of the general legislature, for the means of supporting their government. The legislatureof the United States will have a right to exhaust every source of revenue in every state, and to annul all laws of the states which may stand in the way of effecting it; unless therefore we can suppose the state governments can exist without money to support the officers who execute them, we must conclude they will exist no longer than the general legislatures choose they should. Indeed the idea of any government existing, in any respect, as an independent one, without any means of support in their own hands, is an absurdity. If therefore, this constitution has in view, what many of its framers and advocates say it has, to secure and guarantee to the separate states the exercise of certain powers of government, it certainly ought to have left in their hands some sources of

revenue. It should have marked the line in which the general government should have raised money, and set bounds over which they should not pass, leaving to the separate states other means to raise supplies for the support of their governments, and to discharge their respective debts. To this it is objected, that the general government ought to have power competent to the purposes of the union; they are to provide for the common defense, to pay the debts of the United States, support foreign ministers, and the civil establishment of the union, and to do these they ought to have authority to raise money adequate to the purpose. On this I observe, that the state governments have also contracted debts; they require money to support their civil officers; . . . if they give to the general government a power to raise money in every way in which it can possibly be raised, with . . . a control over the state legislatures as to prohibit them, whenever the general legislature may think proper, from raising any money, (the states will fail]. It is again objected that it is very difficult, if not impossible, to draw the line of distinction between the powers of the general and state governments on this subject. The first, it is said, must have the power to raise the money necessary for the purposes of the union; if they are limited to certain objects the revenue may fall short of a sufficiency for the public exigencies; they must therefore have discretionary power. The line may be easily and accurately drawn between the powers of the two governments on this head. The distinction between external and internal taxes, is not a novel one in this country. It is a plain one, and easily understood. The first includes impost duties on all imported goods; this species of taxes it is proper should be laid by the general government; many reasons might be urged to show that no danger is to be apprehended from their exercise of it. They may be collected in few places, and from few hands with certainty and expedition. But few officers are necessary to be employed in collecting them, and there is no danger of oppression in laying them, because if they are laid higher than trade will bear, the merchants will cease importing, or smuggle their goods. We have therefore sufficient security, arising from the nature of the thing, against burdensome, and intolerable impositions from this kind of tax. The case is far otherwise with regard to direct taxes; these include poll taxes, land taxes, excises, duties on written instruments, on everything we eat, drink, or wear; they take hold of every species of property, and come home to every man's house and pocket. These are often so oppressive, as to grind the face of the poor, and render the lives of the common people a burden to them. The great and only security the people can have against oppression from this kind of taxes, must rest in their representatives. If they are sufficiently numerous to be well informed of the circumstances, . . . and have a proper regard for the people, they will be secure. The general legislature, as I have shown in a former paper, will not be thus qualified,' and therefore, on this account, ought not to exercise the power of direct taxation. If the power of laying imposts will not be sufficient, some other specific mode of raising a revenue should have been assigned the general government; many may be suggested in which their power may be accurately defined and limited, and it would be much better to give them authority to lay and collect a duty on exports, not to exceed a certain rate per cent, than to have surrendered every kind of resource that the country has, to the complete abolition of the state governments, and which will introduce such an infinite number of laws and ordinances, fines and penalties, courts, and judges, collectors, and excisemen, that when a man can number them, he may enumerate the stars of Heaven.

BRUTUS

Antifederalist No. 33 FEDERAL TAXATION AND THE DOCTRINE OF IMPLIED POWERS (PART II)

The Federalist writers apparently never responded to "BRUTUS." The following "Brutus" article was extracted from his sixth essay, The New-York Journal of December 27, 1787.

.... The general government is to be vested with authority to levy and collect taxes, duties, and excises; the separate states have also power to impose taxes, duties, and excises, except that they cannot lay duties on exports and imports without the consent of Congress. Here then the two governments have concurrent jurisdiction; both may lay impositions of this kind. But then the general government have superadded to this power, authority to make all laws which shall be necessary and proper for carrying the foregoing power into execution. Suppose then that both governments should lay taxes, duties, and excises, and it should fall so heavy on the people that they would be unable, or be so burdensome that they would refuse to pay them both would it not be necessary that the general legislature should suspend the collection of the state tax? It certainly would. For, if the people could not, or would not pay both, they must be discharged from the tax to the state, or the tax to the general government could not be collected. The conclusion therefore is inevitable, that the respective state governments will not have the power to raise one shilling in any way, but by the permission of the Congress. I presume no one will pretend that the states can exercise legislative authority, or administer justice among their citizens for any length of time, without being able to raise a sufficiency to pay those who administer their governments.

If this be true, and if the states can raise money only by permission of the general government, it follows that the state governments will be dependent on the will of the general government for their existence.

What will render this power in Congress effectual and sure in its operation is that the government will have complete judicial and executive authority to carry all their laws into effect, which will be paramount to the judicial and executive authority of the individual states: in vain therefore will be all interference of the legislatures, courts, or magistrates of any of the states on the subject; for they will be subordinate to the general government, and engaged by oath to support it, and will be constitutionally bound to submit to their decisions.

The general legislature will be empowered to lay any tax they choose, to annex any penalties they please to the breach of their revenue laws; and to appoint as many officers as they may think proper to collect the taxes. They will have authority to farm the revenues and to vest the farmer general, with his subalterns, with plenary powers to collect them, in any way which to them may appear eligible, And the courts of law which they will be authorized to institute, will have cognizance of every case arising under the revenue laws, [and] the conduct of all the officers employed in collecting them; and the officers of these courts will execute their judgments. There is no way, therefore, of avoiding the destruction of the state governments, whenever the Congress please to do it, unless the people rise up, and, with a strong hand, resist and prevent the execution of constitutional laws. The fear of this will, it is presumed, restrain the general

government for some time, within proper bounds; but it will not be many years before they will have a revenue, and force, at their command, which will place them above any apprehensions on that score.

How far the power to lay and collect duties and excises, may operate to dissolve the state governments, and oppress the people, it is impossible to say. It would assist us much in forming a just opinion on this head, to consider the various objects to which this kind of taxes extend, in European nations, and the infinity of laws they have passed respecting them. Perhaps, it leisure will permit, this may be essayed in some future paper.

It was observed in my last number, that the power to lay and collect duties and excises, would invest the Congress with authority to impose a duty and excise on every necessary and convenience of life. As the principal object of the government, in laying a duty or excise, will be, to raise money, it is obvious, that they will fix on such articles as are of the most general use and consumption; because, unless great quantities of the article, on which the duty is laid, is used, the revenue cannot be considerable. We may therefore presume, that the articles which will be the object of this species of taxes will be either the real necessaries of life; or if not those, such as from custom and habit are esteemed so. I will single out a few of the productions of our own country, which may, and probably will, be of the number.

Cider is an article that most probably will be one of those on which an excise will be laid, because it is one, which this country produces in great abundance, which is in very general use, is consumed in great quantities, and which may be said not to be a real necessary of life. An excise on this would raise a large sum of money in the United States. How would the power, to lay and collect an excise on cider, and to pass all laws proper and necessary to carry it into execution, operate in its exercise? It might be necessary, in order to collect the excise on cider, to grant to one man, in each county, an exclusive right of building and keeping cider-mills, and oblige him to give bonds and security for payment of the excise; or, if this was not done, it might be necessary to license the mills, which are to make this liquor, and to take from them security, to account for the excise, or, if otherwise, a great number of officers must be employed, to take account of the cider made, and to collect the duties on it.

Porter, ale, and all kinds of malt- liquors, are articles that would probably be subject also to an excise. It would be necessary, in order to collect such an excise, to regulate the manufactory of these, that the quantity made might be ascertained, or other wise security could not be had for the payment of the excise, Every brewery must then be licensed, and officers appointed, to take account of its product, and to secure the payment of the duty, or excise, before it is sold. Many other articles might be named, which would be objects of this species of taxation, but I refrain from enumerating them. It will probably be said, by those who advocate this system, that the observations already made on this head, are calculated only to inflame the minds of the people, with the apprehension of dangers merely imaginary; that there is not the least reason to apprehend the general legislature will exercise their power in this manner. To this I would only say, that these kinds of taxes exist in Great Britain, and are severely felt. The excise on cider and perry, was imposed in that nation a few years ago, and it is in the memory of everyone, who read the history of the transaction, what great tumults it occasioned.

This power, exercised without limitation, will introduce itself into every corner of the city, and country-it will wait upon the ladies at their toilet, and will not leave them in any of their domestic concerns; it will accompany them to the ball, the play, and assembly; it will go with them when they visit, and will, on all occasions, sit beside them in their carriages, nor will it desert them even at church; it will enter the house of every gentleman, watch over his cellar, wait upon his cook in the kitchen, follow the servants into the parlor, preside over the table, and note down all he eats or drinks; it will attend him to his bedchamber, and watch him while he sleeps; it will take cognizance of the professional man in his office, or his study; it will watch the merchant in the counting-house, or in his store; it will follow the mechanic to his shop, and in his work, and will haunt him in his family, and in his bed; it will be a constant companion of the industrious farmer in all his labor, it will be with him in the house, and in the field, observe the toil of his hands, and the sweat of his brow; it will penetrate into the most obscure cottage; and finally, it will light upon the head of every person in the United States. To all these different classes of people, and in all these circumstances, in which it will attend them, the language in which it will address them, will be GIVE! GIVE! A power that has such latitude, which reaches every person in the community in every conceivable circumstance, and lays hold of every species of property they possess, and which has no bounds set to it, but the discretion of those who exercise it-I say, such a power must necessarily, from its very nature, swallow up all the power of the state governments. I shall add but one other observation on this head, which is this: It appears to me a solecism, for two men, or bodies of men, to have unlimited power respecting the same object. It contradicts the ... maxim, which saith, "no man can serve two masters," the one power or the other must prevail, or else they will destroy each other, and neither of them effect their purpose. It may be compared to two mechanic powers, acting upon the same body in opposite directions, the consequence would be, if the powers were equal, the body would remain in a state of rest, or if the force of the one was superior to that of the other, the stronger would prevail, and overcome the resistance of the weaker. But it is said, by some of the advocates of this system, that "the idea that Congress can levy taxes at pleasure is false, and the suggestion wholly unsupported. The preamble to the constitution is declaratory of the purposes of the [our] union, and the assumption of any power not necessary to establish justice, etc., provide for the common defense, etc., will be unconstitutional.

. . . Besides, in the very clause which gives the power of levying duties and taxes, the purposes to which the money shall be appropriated are specified, viz., to pay the debts and provide for the common defense and general welfare."' I would ask those, who reason thus, to define what ideas are included under the terms, to provide for the common defense and general welfare? Are these terms definite, and will they be understood in the same manner, and to apply to the same cases by everyone? No one will pretend they will. It will then be matter of opinion, what tends to the general welfare; and the Congress will be the only judges in the matter. To provide for the general welfare, is an abstract proposition, which mankind differ in the explanation of, as much as they do on any political or moral proposition that can be proposed; the most opposite measures may be pursued by different parties, and both may profess, that they have in view the general welfare and both sides may be honest in their professions, or both may have sinister views. Those who advocate this new constitution declare, they are influenced by a regard to the general welfare; those who oppose it, declare they are moved by the same principle; and I have no doubt but a number on both sides are honest in their professions; and yet nothing is more

certain than this, that to adopt this constitution, and not to adopt it, cannot both of them be promotive of the general welfare.

It is absurd to say, that the power of Congress is limited by these general expressions "to provide for the common safety, and general welfare," as it would be to say, that it would be limited, had the constitution said they should have power to lay taxes, etc. at will and pleasure. Were this authority given, it might be said, that under it the legislature could not do injustice, or pursue any measures, but such as were calculated to promote the public good, and happiness. For every man, rulers as well as others, are bound by the immutable laws of God and reason, always to will what is right. It is certainly right and fit, that the governors of every people should provide for the common defense and general welfare; every government, therefore, in the world, even the greatest despot, is limited in the exercise of his power. But however just this reasoning may be, it would be found, in practice, a most pitiful restriction. The government would always say, their measures were designed and calculated to promote the public good; and there being no judge between them and the people, the rulers themselves must, and would always, judge for themselves.

There are others of the favorers of this system, who admit, that the power of the Congress under it, with respect to revenue, will exist without limitation, and contend, that so it ought to be.

It is said, the power "to raise armies; to build and equip fleets; . . . [and] to provide for their support, . . . ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them."

This, it is said, "is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along with it.... It rests upon axioms as simple as they are universal; the means ought to be proportioned to the end; the persons, from whose agency the attainment of any end is expected, ought to possess the means by which it is to be attained."

This same writer insinuates, that the opponents to the plan promulgated by the convention, manifests a want of candor, in objecting to the extent of the powers proposed to be vested in this government; because he asserts, with an air of confidence, that the powers ought to be unlimited as to the object to which they extend; and that this position, if not self-evident, is at least clearly demonstrated by the foregoing mode of reasoning. But with submission to this author's better judgment, I humbly conceive his reasoning will appear, upon examination, more specious than solid. The means, says the gentleman, ought to be proportioned to the end. Admit the proposition to be true, it is then necessary to inquire, what is the end of the government of the United States, in order to draw any just conclusions from it. Is this end simply to preserve the general government, and to provide for the common defense and general welfare of the union only? Certainly not. For beside this, the state governments are to be supported, and provision made for the managing such of their internal concerns as are allotted to them. It is admitted "that the circumstances of our country are such as to demand a compound instead of a simple, a confederate instead of a sole, government," that the objects of each ought to be pointed out, and that each ought to possess ample authority to execute the powers committed to them. The government then, being complex in its nature, the end it has in view is so also; and it is as

necessary that the state governments should possess the means to attain the end expected from them, as for the general government. Neither the general government nor the state governments ought to be vested with all the powers proper to be exercised for promoting the ends of government. The powers are divided between them-certain ends are to be attained by the one, and certain ends by the other; and these, taken together, include all the ends of good government. This being the case, the conclusion follows, that each should be furnished with the means, to attain the ends, to which they are designed.

To apply this reasoning to the case of revenue, the general government is charged with the care of providing for the payment of the debts of the United States, supporting the general government, and providing for the defense of the union. To obtain these ends, they should be furnished with means. But does it thence follow, that they should command all the revenues of the United States? Most certainly it does not. For if so, it will follow, that no means will be left to attain other ends, as necessary to the happiness of the country, as those committed to their care. The individual states have debts to discharge; their legislatures and executives are to be supported, and provision is to be made for the administration of justice in the respective states. For these objects the general government has no authority to provide; nor is it proper it should. It is clear then, that the states should have the command of such revenues, as to answer the ends they have to obtain. To say, that "the circumstances that endanger the safety of nations are infinite,"" and from hence to infer, that all the sources of revenue in the states should be yielded to the general government, is not conclusive reasoning: for the Congress are authorized only to control in general concerns, and not regulate local and internal ones. . . The peace and happiness of a community is as intimately connected with the prudent direction of their domestic affairs, and the due administration of justice among themselves, as with a competent provision for their defense against foreign invaders, and indeed more so.

Upon the whole, I conceive, that there cannot be a clearer position than this, that the state governments ought to have an uncontrollable power to raise a revenue, adequate to the exigencies of their governments; and, I presume, no such power is left them by this constitution.

BRUTUS

Antifederalist No. 34 THE PROBLEM OF CONCURRENT TAXATION

The following speech by Patrick Henry was delivered to the Virginia ratifying convention, June 5, 1788.

I never will give up the power of direct taxation but for a scourge. I am willing to give it conditionally; that is, after non-compliance with requisitions. I will do more, sir, and what I hope will convince the most skeptical man that I am a lover of the American Union-that, in case Virginia shall not make punctual payment, the control of our custom-houses, and the whole regulation of trade, shall be given to Congress, and that Virginia shall depend on Congress even for passports, till Virginia shall have paid the last farthing, and furnished the last soldier. Nay, sir, there is another alternative to which I would consent; even that they should strike us out of the Union, and take away from us all federal privileges, till we comply with federal requisitions: but let it depend upon our own pleasure to pay our money in the most easy manner for our people. Were all the states, more terrible than the mother country, to join against us, I hope Virginia could defend herself; but, sir, the dissolution of the Union is most abhorrent to my mind. The first thing I have at heart is American liberty; the second thing is American union; and I hope the people of Virginia will endeavor to preserve that union. The increasing population of the Southern States is far greater than that of New England; consequently, in a short time, they will be far more numerous than the people of that country. Consider this, and you will find this state more particularly interested to support American liberty, and not bind our posterity by an improvident relinquishment of our rights. I would give the best security for a punctual compliance with requisitions; but I beseech gentlemen, at all hazards, not to give up this unlimited power of taxation. . . .

In this scheme of energetic government, the people will find two sets of taxgatherers-the state and the federal sheriffs. This, it seems to me, will produce such dreadful oppression as the people cannot possibly bear. The federal sheriff may commit what oppression, make what distresses, he pleases, and ruin you with impunity; for how are you to tie his hands? Have you any sufficiently decided means of preventing him from sucking your blood by speculations, commissions, and fees? Thus thousands of your people will be most shamefully robbed: our state sheriffs, those unfeeling blood-suckers, have, under the watchful eye of our legislature, committed the most horrid and barbarous ravages on our people. It has required the most constant vigilance of the legislature to keep them from totally ruining the people; a repeated succession of laws has been made to suppress their iniquitous speculations and cruel extortions; and as often has their nefarious ingenuity devised methods of evading the force of those laws: in the struggle they have generally triumphed over the legislature. It is a fact that lands have been sold for five shillings, which were worth one hundred pounds: if sheriffs, thus immediately under the eye of our state legislature and judiciary, have dared to commit these outrages, what would they not have done if their masters had been at Philadelphia or New York? If they perpetrate the most unwarrantable outrage on your person or property, you cannot get redress on this side of Philadelphia or New York; and how can you get it there? If your domestic avocations could permit you to go thither, there you must appeal to judges sworn to support this Constitution, in opposition to that of any

state, and who may also be inclined to favor their own officers. When these harpies are aided by excisemen, who may search, at any time, your houses, and most secret recesses, will the people bear it? If you think so, you differ from me. Where I thought there was a possibility of such mischiefs, I would grant power with a niggardly hand; and here there is a strong probability that these oppressions shall actually happen. I may be told that it is safe to err on that side, because such regulations may be made by Congress as shall restrain these officers, and because laws are made by our representatives, and judged by righteous judges: but, Sir, as these regulations may be made, so they may not; and many reasons there are to induce a belief that they will not, I shall therefore be an infidel on that point till the day of my death.

Antifederalist No. 35 FEDERAL TAXING POWER MUST BE RESTRAINED

George Mason of Virginia opposed the Constitution because it lacked a Bill of Rights, and centralized powers further than he felt it necessary. Mason delivered the following speech before the Virginia ratifying convention, June 4, 1788.

Mr. Chairman, whether the Constitution be good or bad, the present clause [Article 1, Section 2] clearly discovers that it is a national government, and no longer a Confederation. I mean that clause which gives the first hint of the general government laying direct taxes. The assumption of this power of laying direct taxes does, of itself, entirely change the confederation of the states into one consolidated government. This power, being at discretion, unconfined, and without any kind of control, must carry every thing before it. The very idea of converting what was formerly a confederation to a consolidated government is totally subversive of every principle which has hitherto governed us. This power is calculated to annihilate totally the state governments. Will the people of this great community [Virginia] submit to be individually taxed by two different and distinct powers? Will they suffer themselves to be doubly harassed? These two concurrent powers cannot exist long together; the one will destroy the other. The general government being paramount to, and in every respect more powerful than the state governments, the latter must give way to the former....

Requisitions [under the Articles of Confederation] have been often refused, sometimes from an impossibility of complying with them; often from that great variety of circumstances which retards the collection of moneys; and perhaps sometimes from a wilful design of procrastinating. But why shall we give up to the national government this power, so dangerous in its nature, and for which its members will not have sufficient information? Is it not well known that what would be a proper tax in one state would be grievous in another? The gentleman who has favored us with a eulogium in favor of this system [Wilson C. Nicholas], must, after all the encomiums he has been pleased to bestow upon it, acknowledge that our federal representatives must be unacquainted with the situation of their constituents. Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent. When a certain sum comes to be taxed, and the mode of levying to be fixed, they will lay the tax on that article which will be most productive and easiest in the collection, without consulting the real circumstances or convenience of a country, with which, in fact, they cannot be sufficiently acquainted.

The mode of levying taxes is of the utmost consequence; and yet here it is to be determined by those who have neither knowledge of our situation, nor a common interest with us, nor a fellow-feeling for us. The subject of taxation differs in three fourths, nay, I might say with truth, in four fifths of the states. If we trust the national government with an effectual way of raising the necessary sums, it is sufficient: everything we do further is trusting the happiness and rights of the people. Why, then, should we give up this dangerous power of individual taxation? Why leave the manner of laying taxes to those who, in the nature of things, cannot be acquainted with the situation of those on whom they are to impose them, when it can be done by those who are well acquainted with it? If, instead of giving this oppressive power, we give them such an

effectual alternative as will answer the purpose, without encountering the evil and danger that might arise from it, then I would cheerfully acquiesce; and would it not be far more eligible? I candidly acknowledge the inefficacy of the Confederation; but requisitions have been made which were impossible to be complied with- requisitions for more gold and silver than were in the United States. If we give the general government the power of demanding their quotas of the states, with an alternative of laying direct taxes in case of non-compliance, then the mischief would be avoided. And the certainty of this conditional power would, in all human probability, prevent the application, and the sums necessary for the Union would be then laid by the states, by those who know how it can best be raised, by those who have a fellow-feeling for us. Give me leave to say, that the sum raised one way with convenience and case, would be very oppressive another way. Why, then, not leave this power to be exercised by those who know the mode most convenient for the inhabitants, and not by those who must necessarily apportion it in such manner as shall be oppressive? . . . An indispensable amendment . . . is, that Congress shall not exercise the power of raising direct taxes till the states shall have refused to comply with the requisitions of Congress. On this condition it may be granted; but I see no reason to grant it unconditionally, as the states can raise the taxes with more case, and lay them on the inhabitants with more propriety, than it is possible for the general government to do. If Congress hath this power without control, the taxes will be laid by those who have no fellow- feeling or acquaintance with the people. This is my objection to the article now under consideration. It is a very great and important one. I therefore beg gentlemen to consider it. Should this power be restrained, I shall withdraw my objections to this part of the Constitution; but as it stands, it is an objection so strong in my mind, that its amendment is with me a sine qua non of its adoption. I wish for such amendments, and such only, as are necessary to secure the dearest rights of the people....

Antifederalist No. 36 REPRESENTATION AND INTERNAL TAXATION

Richard Henry Lee was arguably the best known Antifederalist writer. His pamphlets were widely distributed and reprinted in newspapers. Antifederalist Papers # 36/37 are excerpts from his first pamphlet. Antifederalist Nos. 41, 42, 43, 55, 56, 57, 58, 61, 63, 69, 76-77 are taken from his second pamphlet.

A power to lay and collect taxes at discretion, is, in itself, of very great importance. By means of taxes, the government may command the whole or any part of the subject's property. Taxes may be of various kinds; but there is a strong distinction between external and internal taxes. External taxes are import duties, which are laid on imported goods; they may usually be collected in a few seaport towns, and of a few individuals, though ultimately paid by the consumer; a few officers can collect them, and they can be carried no higher than trade will bear, or smuggling permit-that in the very nature of commerce, bounds are set to them. But internal taxes, as poll and land taxes, excises, duties on all written instruments, etc., may fix themselves on every person and species of property in the community; they may be carried to any lengths, and in proportion as they are extended, numerous officers must be employed to assess them, and to enforce the collection of them. In the United Netherlands the general government has complete powers, as to external taxation; but as to internal taxes, it makes requisitions on the provinces. Internal taxation in this country is more important, as the country is so very extensive As many assessors and collectors of federal taxes will be above three hundred miles from the seat of the federal government, as will be less. Besides, to lay and collect taxes, in this extensive country, must require a great number of congressional ordinances, immediately operating upon the body of the people; these must continually interfere with the state laws, and thereby produce disorder and general dissatisfaction, till the one system of laws or the other, operating on the same subjects, shall be abolished. These ordinances alone, to say nothing of those respecting the militia, coin, commerce, federal judiciary, etc., will probably soon defeat the operations of the state laws and governments.

Should the general government think it politic, as some administration (if not all) probably will, to look for a support in a system of influence, the government will take every occasion to multiply laws, and officers to execute them, considering these as so many necessary props for its own support. Should this system of policy be adopted, taxes more productive than the impost duties will, probably, be wanted to support the government, and to discharge foreign demands, without leaving anything for the domestic creditors. The internal sources of taxation then must be called into operation, and internal tax laws and federal assessors and collectors spread over this immense country. All these circumstances considered, is it wise, prudent, or safe, to vest the powers of laying and collecting internal taxes in the general government, while imperfectly organized and inadequate? And to trust to amending it hereafter, and making it adequate to this purpose? It is not only unsafe but absurd to lodge power in a government before it is fitted to receive it. It is confessed that this power and representation ought to go together. Why give the power first? Why give the power to the few, who, when possessed of it, may have address enough to prevent the increase of representation? Why not keep the power, and, when necessary, amend the constitution, and add to its other parts this power, and a proper increase of

representation at the same time? Then men who may want the power will be under strong inducements to let in the people, by their representatives, into the government, to hold their due proportion of this power. If a proper representation be impracticable, then we shall see this power resting in the states, where it at present ought to be, and not inconsiderately given up.

When I recollect how lately congress, conventions, legislatures, and people contended in the cause of liberty, and carefully weighed the importance of taxation, I can scarcely believe we are serious in proposing to vest the powers of laying and collecting internal taxes in a government so imperfectly organized for such purposes. Should the United States be taxed by a house of representatives of two hundred members, which would be about fifteen members for Connecticut, twenty-five for Massachusetts, etc., still the middle and lower classes of people could have no great share, in fact, in taxation. I am aware it is said, that the representation proposed by the new constitution is sufficiently numerous; it may be for many purposes; but to suppose that this branch is sufficiently numerous to guard the rights of the people in the administration of the government, in which the purse and sword is placed, seems to argue that we have forgot what the true meaning of representation is. . . .

In considering the practicability of having a full and equal representation of the people from all parts of the union, not only distances and different opinions, customs and views, common in extensive tracts of country, are to be taken into view, but many differences peculiar to Eastern, Middle, and Southern States. These differences are not so perceivable among the members of congress, and men of general information in the states, as among the men who would properly form the democratic branch. The Eastern states are very democratic, and composed chiefly of moderate freeholders; they have but few rich men and no slaves; the Southern states are composed chiefly of rich planters and slaves; they have but few moderate freeholders, and the prevailing influence in them is generally a dissipated aristocracy. The Middle states partake partly of the Eastern and partly of the Southern character. . . . I have no idea that the interests, feelings, and opinions of three or four millions of people, especially touching internal taxation, can be collected in such a house. In the nature of things, nine times in ten, men of the elevated classes in the community only can be chosen....

I am sensible also, that it is said that congress will not attempt to lay and collect internal taxes; that it is necessary for them to have the power, though it cannot probably be exercised. I admit that it is not probable that any prudent congress will attempt to lay and collect internal taxes, especially direct taxes: but this only proves, that the power would be improperly lodged in congress, and that it might be abused by imprudent and designing men.

I have heard several gentlemen, to get rid of objections to this part of the constitution, attempt to construe the powers relative to direct taxes, as those who object to it would have them; as to these, it is said, that congress will only have power to make requisitions, leaving it to the states to lay and collect them. I see but very little color for this construction, and the attempt only proves that this part of the plan cannot be defended. By this plan there can be no doubt, but that the powers of congress will be complete as to all kinds of taxes whatever. Further, as to internal taxes, the state governments will have concurrent powers with the general government, and both may tax the same objects in the same year; and the objection that the general government may

suspend a state tax, as a necessary measure for the promoting the collection of a federal tax, is not without foundation.

THE FEDERAL FARMER

Antifederalist No. 37 FACTIONS AND THE CONSTITUTION

.... To have a just idea of the government before us, and to show that a consolidated one is the object in view, it is necessary not only to examine the plan, but also its history, and the politics of its particular friends.

The confederation was formed when great confidence was placed in the voluntary exertions of individuals, and of the respective states; and the framers of it, to guard against usurpation, so limited, and checked the powers, that, in many respects, they are inadequate to the exigencies of the union. We find, therefore, members of congress urging alterations in the federal system almost as soon as it was adopted. It was early proposed to vest congress with powers to levy an impost, to regulate trade, etc., but such was known to be the caution of the states in parting with power, that the vestment even of these, was proposed to be under several checks and limitations. During the war, the general confusion, and the introduction of paper money, infused in the minds of the people vague ideas respecting government and credit. We expected too much from the return of peace, and of course we have been disappointed. Our governments have been new and unsettled; and several legislatures, by making tender, suspension, and paper money laws, have given just cause of uneasiness to creditors. By these and other causes, several orders of men in the community have been prepared, by degrees, for a change of government. And this very abuse of power in the legislatures, which in some cases has been charged upon the democratic part of the community, has furnished aristocratical men with those very weapons, and those very means, with which, in great measure, they are rapidly effecting their favorite object. And should an oppressive government be the consequence of the proposed change, posterity may reproach not only a few overbearing, unprincipled men, but those parties in the states which have misused their powers.

The conduct of several legislatures, touching paper money, and tender laws, has prepared many honest men for changes in government, which otherwise they would not have thought of-when by the evils, on the one hand, and by the secret instigations of artful men, on the other, the minds of men were become sufficiently uneasy, a bold step was taken, which is usually followed by a revolution, or a civil war. A general convention for mere commercial purposes was moved for-the authors of this measure saw that the people's attention was turned solely to the amendment of the federal system; and that, had the idea of a total change been started, probably no state would have appointed members to the convention. The idea of destroying ultimately, the state government, and forming one consolidated system, could not have been admitted-a convention, therefore, merely for vesting in congress power to regulate trade was proposed. This was pleasing to the commercial towns; and the landed people had little or no concern about it. In September, 1786, a few men from the middle states met at Annapolis, and hastily proposed a convention to be held in May, 1787, for the purpose, generally, of amending the confederation. This was done before the delegates of Massachusetts, and of the other states arrived-still not a word was said about destroying the old constitution, and making a new one. The states still unsuspecting, and not aware that they were passing the Rubicon, appointed members to the new convention, for the sole and express purpose of revising and amending the confederation-and, probably, not one man in ten thousand in the United States, till within these ten or twelve days,

had an idea that the old ship was to be destroyed, and be put to the alternative of embarking in the new ship presented, or of being left in danger of sinking. The States, I believe, universally supposed the convention would report alterations in the confederation, which would pass an examination in congress, and after being agreed to there, would be confirmed by all the legislatures, or be rejected. Virginia made a very respectable appointment, and placed at the head of it the first man in America. In this appointment there was a mixture of political characters; but Pennsylvania appointed principally those men who are esteemed aristocratical. Here the favorite moment for changing the government was evidently discerned by a few men, who seized it with address. Ten other states appointed, and tho' they chose men principally connected with commerce and the judicial department yet they appointed many good republican characters. Had they all attended we should now see, I am persuaded, a better system presented. The nonattendance of eight or nine men, who were appointed members of the convention, I shall ever consider as a very unfortunate event to the United States. Had they attended, I am pretty clear that the result of the convention would not have had that strong tendency to aristocracy now discernible in every part of the plan. There would not have been so great an accumulation of powers, especially as to the internal police of this country in a few hands as the constitution reported proposes to vest in them-the young visionary men, and the consolidating aristocracy, would have been more restrained than they have been. Eleven states met in the convention, and after four months close attention presented the new constitution, to be adopted or rejected by the people. The uneasy and fickle part of the community may be prepared to receive any form of government; but I presume the enlightened and substantial part will give any constitution presented for their adoption a candid and thorough examination.... We shall view the convention with proper respect-and, at the same time, that we reflect there were men of abilities and integrity in it, we must recollect how disproportionately the democratic and aristocratic parts of the community were represented. Perhaps the judicious friends and opposers of the new constitution will agree, that it is best to let it rely solely on its own merits, or be condemned for its own defects. . . .

This subject of consolidating the states is new. And because forty or fifty men have agreed in a system, to suppose the good sense of this country, an enlightened nation, must adopt it without examination, and though in a state of profound peace, without endeavoring to amend those parts they perceive are defective, dangerous to freedom, and destructive of the valuable principles of republican government -is truly humiliating. It is true there may be danger in delay; but there is danger in adopting the system in its present form.

And I see the danger in either case will arise principally from the conduct and views of two very unprincipled parties in the United States-two fires, between which the honest and substantial people have long found themselves situated. One party is composed of little insurgents, men in debt, who want no law, and who want a share of the property of others; these are called revellers, Shayites, etc. The other party is composed of a few, but more dangerous men, with their servile dependents; these avariciously grasp at all power and property; you may discover in all the actions of these men, an evident dislike to free and equal government, and they will go systematically to work to change, essentially, the forms of government in this country; these are called aristocrats, monarchists, etc. Between these two parties is the weight of the community; the men of middling property, men not in debt on the one hand, and men, on the other, content with republican governments, and not aiming at immense fortunes, offices, and power. In 1786,

the little insurgents, the revellers, came forth, invaded the rights of others, and attempted to establish governments according to their wills. Their movements evidently gave encouragement to the other party, which, in 1787, has taken the political field, and with its fashionable dependents, and the tongue and the pen, is endeavoring to establish in a great haste, a politer kind of government. These two parties, which will probably be opposed or united as it may suit their interests and views, are really insignificant, compared with the solid, free, and independent part of the community. It is not my intention to suggest, that either of these parties, and the real friends of the proposed constitution, are the same men. The fact is, these aristocrats support and hasten the adoption of the proposed constitution, merely because they think it is a stepping stone to their favorite object. I think I am well founded in this idea. I think the general politics of these men support it, as well as the common observation among them: That the proffered plan is the best that can be got at present, it will do for a few years, and lead to something better. The sensible and judicious part of the community will carefully weigh all these circumstances; they will view the late convention as a respectable body of men-America probably never will see an assembly of men, of a like number, more respectable. But the members of the convention met without knowing the sentiments of one man in ten thousand in these states respecting the new ground taken. Their doings are but the first attempts in the most important scene ever opened. Though each individual in the state conventions will not, probably, be so respectable as each individual in the federal convention, yet as the state conventions will probably consist of fifteen hundred or two thousand men of abilities, and versed in the science of government, collected from all parts of the community and from all orders of men, it must be acknowledged that the weight of respectability will be in them. In them will be collected the solid sense and the real political character of the country. Being revisers of the subject, they will possess peculiar advantages. To say that these conventions ought not to attempt, coolly and deliberately, the revision of the system, or that they cannot amend it, is very foolish or very assuming. . . .

THE FEDERAL FARMER

Antifederalist No. 38 SOME REACTIONS TO FEDERALIST ARGUMENTS

This was an essay by "BRUTUS JUNIOR" which appeared in The New-York Journal on November 8, 1787. Two articles by "A COUNTRYMAN" were written by DeWitt Clinton, and appeared also in the New York Journal on January 10 and February 14, 1788.

I have read with a degree of attention several publications which have lately appeared in favor of the new Constitution; and as far as I am able to discern, the arguments (if they can be so termed) of most weight, which are urged in its favor, may be reduced to the two following:

1st. That the men who formed it, were wise and experienced; that they were an illustrious band of patriots, and had the happiness of their country at heart; that they were four months deliberating on the subject, and therefore, it must be a perfect system.

2nd. That if the system be not received, this country will be without any government, and of consequence, will be reduced to a state of anarchy and confusion, and involved in bloodshed and carnage; and in the end, a government will be imposed upon us, not the result of reason and reflection, but of force and usurpation.

As I do not find ' that either Cato or the Centinel, Brutus, or the Old Whig, or any other writer against this constitution, have undertaken a particular refutation of this new species of reasoning, I take the liberty of offering to the public, through the channel of your paper, the few following animadversions on the subject; and, the rather, because I have discovered, that some of my fellow citizens have been imposed upon by it.

With respect to the first,-it will be readily perceived that it precludes all investigation of the merits of the proposed constitution, and leads to an adoption of the plan without inquiring whether it be good or bad. For if we are to infer the perfection of this system from the characters and abilities of the men who formed it, we may as well determine to accept it without any inquiry as with. A number of persons in this [New York] as well as the other states, have, upon this principle, determined to submit to it without even reading or knowing its contents.

But supposing the premises from which this conclusion is drawn to be just, it then becomes essential in order to give validity to the argument, to inquire into the characters of those who composed this body, that we may determine whether we can be justified in placing such unbounded confidence in them.

It is an invidious task, to call in question the characters of individuals, especially of such as are placed in illustrious stations. But when we are required implicitly to submit our opinions to those of others, from a consideration that they are so wise and good as not to be liable to err, and that too in an affair which involves in it the happiness of ourselves and our posterity, every honest man will justify a decent investigation of characters in plain language.

It is readily admitted that many individuals who composed this body were men of the first talents and integrity in the union. It is at the same time, well known to every man, who is but moderately acquainted with the characters of the members, that many of them are possessed of high aristocratic ideas, and the most sovereign contempt of the common people; that not a few were strongly disposed in favor of monarchy; that there were some of no small talents and of great influence, of consummate cunning and masters of intrigue, whom the war found poor or in embarrassed circumstances, and left with princely fortunes acquired in public employment. . . . that there were others who were young, ardent, and ambitious, who wished for a government corresponding with their feelings, while they were destitute of experience ... in political researches; that there were not a few who were gaping for posts of honor and emolument-these we find exulting in the idea of a change which will divert places of honor, influence and emolument, into a different channel, where the confidence of the people will not be necessary to their acquirement. It is not to be wondered at, that an assembly thus composed should produce a system liable to well founded objections, and which will require very essential alterations. We are told by one of themselves (Mr. [James] Wilson of Philadelphia) the plan was [a] matter of accommodation, and it is not unreasonable to suppose, that in this accommodation, principles might be introduced which would render the liberties of the people very insecure.

I confess I think it of no importance what are the characters of the framers of this government, and therefore should not have called them in question, if they had not been so often urged in print, and in conversation, in its favor. It ought to rest on its own intrinsic merit. If it is good, it is capable of being vindicated; if it is bad, it ought not to be supported. It is degrading to a freeman, and humiliating to a rational one, to pin his faith on the sleeve of any man, or body of men, in an affair of such momentous importance.

In answer to the second argument, I deny that we are in immediate danger of anarchy and commotions. Nothing but the passions of wicked and ambitious men will put us in the least danger on this head. Those who are anxious to precipitate a measure will always tell us that the present is the critical moment; now is the time, the crisis is arrived, and the present minute must be seized. Tyrants have always made use of this plea; but nothing in our circumstances can justify it.

The country is in profound peace, and we are not threatened by invasions from any quarter. The governments of the respective states are in the full exercise of their powers; and the lives, the liberty, and property of individuals are protected. All present exigencies are answered by them. It is true, the regulation of trade and a competent provision for the payment of the interest of the public debt is wanting; but no immediate commotion will arise from these; time may be taken for calm discussion and deliberate conclusions. Individuals are just recovering from the losses and embarrassment sustained by the late war. Industry and frugality are taking their station, and banishing from the community, idleness and prodigality. Individuals are lessening their private debts, and several millions of the public debt is discharged by the sale of the western territory. There is no reason, therefore, why we should precipitately and rashly adopt a system, which is imperfect or insecure. We may securely deliberate and propose amendments and alterations. I know it is said we cannot change for the worse; but if we act the part of wise men, we shall take care that we change for the better. It will be labor lost, if after all our pains we are in no better circumstances than we were before.

I have seen enough to convince me very fully, that the new constitution is a very bad one, and a hundred-fold worse than our present government. And I do not perceive that any of the writers in favor of it (although some of them use a vast many fine words, and show a great deal of learning) are able to remove any of the objections which are made against it. Mr. [James] Wilson, indeed, speaks very highly of it, but we have only his word for its goodness; and nothing is more natural than for a mother to speak well of her own bantling, however ordinary it may be. He seems, however, to be pretty honest in one thing-where he says, "It is the nature of man to pursue his own interest, in preference to the public good"'-for they tell me he is a lawyer, and his interest then makes him for the new government, for it will be a noble thing for lawyers. Besides, he appears to have an eye to some high place under it, since he speaks with great pleasure of the places of honor and emolument being diverted to a new channel by this change of system. As to Mr. Publius [The Federalist], I have read a great many of his papers, and I really cannot find out what he would be at. He seems to me as if he was going to write a history, so I have concluded to wait and buy one of his books, when they come out. The only thing I can understand from him, as far as I have read, is that it is better to be united than divided-that a great many people are stronger than a few-and that Scotland is better off since the union with England than before. And I think, he proves too, very clearly, that the fewer nations there are in the world, the fewer disputes [there] will be about the law of nations-and the greater number that are joined in one government, the abler will they be to raise ships and soldiers, and the less need for fighting. But I do not learn that any body denies these matters, or that they have any thin- to do with the new constitution, Indeed I am at a loss to know, whether Mr. Publius means to persuade us to return back to the old government, and make ourselves as happy as Scotland has by its union, or to accept of the new constitution, and get all the world to join with us, so as to make one large government. It would certainly, if what he says is true, be very convenient for Nova-Scotia and Canada, and, for ought I know, his advice will have great weight with them. I have also read several other of the pieces, which appear to be wrote by some other little authors, and by people of little consequence, though they seem to think themselves men of importance, and take upon them grand names such as . . . Caesar,' . . . Now Mr. Caesar do[es] not depend so much on reasoning as upon bullying. He abuses the people very much, and if he spoke in our neighborhood as impudently as he writes in the newspapers, I question whether he would come off with whole bones. From the manner he talks of the people, he certainly cannot be one of them himself. I imagine he has lately come over from some old country, where they are all Lords and no common people. If so, it would be as well for him to go back again as to meddle himself with our business, since he holds such a bad opinion of us.

A COUNTRYMAN

The Federalist, as be terms himself, or Publius, puts one in mind of some of the gentlemen of the long robe, when hard pushed, in a bad cause, with a rich client. They frequently say a great deal which does not apply; but yet, if it will not convince the judge nor jury, may, perhaps, help to make them forget some part of the evidence, embarrass their opponent, and make the audience stare, besides increasing the practice.

A COUNTRYMAN

Antifederalist No. 39 APPEARANCE AND REALITY-THE FORM IS FEDERAL; THE EFFECT IS NATIONAL

The following excerpt is from the essays of "A FARMER." It appeared in the Philadelphia Independent Gazetteer on April 15 and 22, 1788

. . . . The Freeman, in his second number, after mentioning in a very delusory manner diverse powers which remain with the states, says we shall find many other instances under the constitution which require or imply the existence or continuance of the sovereignty and severalty of the states. He, as well as all the advocates of the new system, take as their strong ground the election of senators by the state legislatures, and the special representation of the states in the federal senate, to prove that internal sovereignty still remains with the States. Therefore they say that the new system is so far from annihilating the state governments, that it secures them, that it cannot exist without them, that the existence of the one is essential to the existence of the other. It is true that this particular partakes strongly of that mystery which is characteristic of the system itself. But if I demonstrate that this particular, so far from implying the continuance of the state sovereignties, proves in the clearest manner the want of it, I hope the other particular powers will not be necessary to dwell upon.

The State legislatures do not choose senators by legislative or sovereign authority, but by a power of ministerial agency as mere electors or boards of appointment. They have no power to direct the senators how or what duties they shall perform; they have neither power to censure the senators, nor to supersede them for misconduct. It is not the power of choosing to office merely that designates sovereignty, or else corporations who appoint their own officers and make their own by-laws, or the heads of department who choose the officers under them, such as commanders of armies, etc., may be called sovereigns, because they can name men to office whom they cannot dismiss therefrom. The exercise of sovereignty does not consist in choosing masters, such as the senators would be, who, when chosen, would be beyond control, but in the power of dismissing, impeaching, or the like, those to whom authority is delegated. The power of instructing or superseding of delegates to Congress under the existing confederation has never been complained of, although the necessary rotation of members of Congress has often been censured for restraining the state sovereignties too much in the objects of their choice. As well may the electors who are to vote for the president under the new constitution, be said to be vested with the sovereignty, as the State legislatures in the act of choosing senators. The senators are not even dependent on the States for their wages, but in conjunction with the federal representatives establish their own wages. The senators do not vote by States, but as individuals. The representatives also vote as individuals, representing people in a consolidated or national government; they judge upon their own elections, and, with the Senate, have the power of regulating elections in time, place and manner, which is in other words to say, that they have the power of elections absolutely vested in them.

That the State governments have certain ministerial and convenient powers continued to them is not denied, and in the exercise of which they may support, but cannot control the general government, nor protect their own citizens from the exertion of civil or military tyranny-and this

ministerial power will continue with the States as long as two- thirds of Congress shall think their agency necessary. But even this will be no longer than two-thirds of Congress shall think proper to propose, and use the influence of which they would be so largely possessed to remove it.

But these powers of which the Freeman gives us such a profuse detail, and in describing which be repeats the same powers with only varying the terms, such as the powers of officering and training the militia, appointing State officers, and governing in a number of internal cases, do not any of them separately, nor all taken together, amount to independent sovereignty. They are powers of mere ministerial agency, which may, and in many nations of Europe are or have been vested, as before observed, in heads of departments, hereditary vassals of the crown, or in corporations; but not that kind of independent sovereignty which can constitute a member of a federal republic, which can enable a State to exist within itself if the general government should cease.

I have often wondered how any writer of sense could have the confidence to avow, or could suppose the people to be ignorant enough to believe that, when a State is deprived of the power not only of standing armies (this the members of a confederacy ought to be), but of commanding its own militia, regulating its elections, directing or superseding its representatives, or paying them their wages; who is, moreover, deprived of the command of any property, I mean source of revenue or taxation, or what amounts to the same thing, who may enact laws for raising revenue, but who may have these laws rendered nugatory, and the execution thereof superseded by the laws of Congress. [sic] This is not a strained construction, but the natural operation of the powers of Congress under the new constitution; for every object of revenues, every source of taxation, is vested in the general government. Even the power of making inspection laws, which, for obvious conveniency, is left with the several States, will be unproductive of the smallest revenue to the State governments; for, if any should arise, it is to be paid over to the officers of Congress. Besides, the words "to make all laws necessary and proper for carrying into execution the foregoing powers," etc., give, without doubt, the power of repelling or forbidding the execution of any tax law whatever, that may interfere with or impede the exercise of the general taxing power, and it would not be possible that two taxing powers should be exercised on the same sources of taxation without interfering with each other. May not the exercise of this power of Congress, when they think proper, operate not only to destroy those ministerial powers which are left with the States, but even the very forms? May they not forbid the state legislatures to levy a shilling to pay themselves, or those whom they employ, days' wages?

The State governments may contract for making roads (except post-roads), erecting bridges, cutting canals, or any other object of public importance; but when the contract is performed or the work done, may not Congress constitutionally prevent the payment? Certainly; they may do all this and much more, and no man would have a right to charge them with breaking the law of their appointment. It is an established maxim, that wherever the whole power of the revenue or taxation is vested, there virtually is the whole effective, influential, sovereign power, let the forms be what they may. By this armies are procured, by this every other controlling guard is defeated. Every balance or check in government is only so far effective as it has a control over the revenue.

The State governments are not only destitute of all sovereign command of, or control over, the revenue or any part of it, but they are divested of the power of commanding or prescribing the duties, wages, or punishments of their own militia, or of protecting their life, property or characters from the rigors of martial law. The power of making treason laws is both a power and an important defense of sovereignty; it is relative to and inseparable from it; to convince the States that they are consolidated into one national government, this power is wholly to be assumed by the general government. All the prerogatives, all the essential characteristics of sovereignty, both of the internal and external kind, are vested in the general government, and consequently the several States would not be possessed of any essential power or effective guard of sovereignty. Thus I apprehend, it is evident that the consolidation of the States into one national government (in contra- distinction from a confederacy) would be the necessary consequence of the establishment of the new constitution, and the intention of its framers-and that consequently the State sovereignties would be eventually annihilated, though the forms may long remain as expensive and burdensome remembrances of what they were in the days when (although laboring under many disadvantages) they emancipated this country from foreign tyranny, humbled the pride and tarnished the glory of royalty, and erected a triumphant standard to liberty and independence.

A FARMER

Antifederalist No. 40 ON THE MOTIVATIONS AND AUTHORITY OF THE FOUNDING FATHERS

Anti-Federalist #40 is a compilation of articles.

It was a common saying among many sensible men in Great Britain and Ireland, in the time of the war, that they doubted whether the great men of America, who had taken an active part in favor of independence, were influenced by pure patriotism; that it was not the love of their country they had so much at heart, as their own private, interest; that a thirst after dominion and power, and not to protect the oppressed from the oppressor, was the great operative principle that induced these men to oppose Britain so strenuously. This seemingly illiberal sentiment was, however, generally denied by the well-hearted and unsuspecting friends of American liberty in Europe, who could not suppose that men would engage in so noble a cause thro' such base motives. But alas! The truth of the sentiment is now indisputably confirmed; facts are stubborn things, and these set the matter beyond controversy. The new constitution and the conduct of its despotic advocates, show that these men's doubts were really well founded. Unparalleled duplicity! That men should oppose tyranny under a pretence of patriotism, that they might themselves become the tyrants. How does such villainy disgrace human nature! Ah, my fellow citizens, you have been strangely deceived indeed; when the wealthy of your own country assisted you to expel the foreign tyrant, only with a view to substitute themselves in his stead. . .

But the members of the Federal Convention were men w e been all tried in the field of action, say some; they have fought for American liberty. Then the more to their shame be it said; curse on the villain who protects virgin innocence only with a view that he may himself become the ravisher; so that if the assertion were true, it only turns to their disgrace; but as it happens it is not truth, or at least only so in part. This was a scheme taken by the despots and their sycophants to bias the public mind in favor of the constitution. For the convention was composed of a variety of characters: ambitious men, Jesuits, tories, lawyers, etc., formed the majority, whose similitude to each other, consisted only in their determination to lord it over their fellow citizens; like the rays that converging from every direction meet in a point, their sentiments and deliberations concentered in tyranny alone; they were unanimous in forming a government that should raise the fortunes and respectability of the well born few, and oppress the plebeians.

PHILADELPHIENSIS

Does our soil produce no more Washington's? Is there none who would oppose the attempt to establish a government by force? Can we not call from the fields, the counters, the bar, and mechanics' shops, any more Generals? Is our soil exhausted? And does any one suppose that the Americans, like the Romans, will submit to an army merely because they have conquered a foreign enemy? . . .

AN AMERICAN

I revere the characters of some of the gentlemen that composed the convention at Philadelphia, yet I think they were human, and subject to imposition and error, as well as the rest of mankind. You lost eight or ten years of your lives and labor by the last war, and you were left at last with your debts and encumbrances on you, and numbers of you were soon after the close of it, sued and harassed for them. Your persons have been put into a loathsome prison, and others of you have had your property sold for taxes, and sometimes for one tenth of its former and actual value and you now pay very grievous and heavy taxes, double and treble what you paid before the war; and should you adopt this new government, your taxes will be great, increased to support their . . . servants and retainers, who will be multiplied upon you to keep you in obedience, and collect their duties, taxes, impositions, and excises. Some of you may say the rich men were virtuous in the last war; yes, my countrymen, they had reason then to be so! Our liberty then was in dispute with a mighty and powerful tyrant, and it was for their interest to promote and carry on the opposition, as long as they could stay at home and send the common people into the field to fight their battles. After the war began, they could not with decency recede, for the sword and enemy were at the very entrance of their gates. The case is greatly altered now; you conquered the enemy, and the rich men now think to subdue you by their wiles and arts, or make you, or persuade you, to do it yourselves. Their aim, I perceive, is now to destroy that liberty which you set up as a reward for the blood and treasure you expended in the pursuit of and establishment of it. They well know that open force will not succeed at this time, and have chosen a safer method, by offering you a plan of a new Federal Government, contrived with great art, and shaded with obscurity, and recommended to you to adopt; which if you do, their scheme is completed, the yoke is -fixed on your necks, and you will be undone, perhaps for ever, and your boasted liberty is but a sound, Farewell! Be wise, be watchful, guard yourselves against the dangers that are concealed in this plan of a new Federal Government.

A FARMER AND PLANTER

Make the best of this new government-say it is composed of any thing but inspiration-you ought to be extremely cautious, watchful, jealous of your liberty; for, instead of securing your rights, you may lose them forever. If a wrong step be now made, the republic may be lost forever. If this new government will not come up to the expectation of the people, and they shall be disappointed, their liberty will be lost, and tyranny must and will arise. I repeat it again, and I beg gentlemen to consider, that a wrong step, made now, will plunge us into misery, and our republic will be lost. It will be necessary for this [Virginia Ratifying] Convention to have a faithful historical detail of the facts that preceded the session of the federal Convention, and the reasons that actuated its members in proposing an entire alteration of government, and to demonstrate the dangers that awaited us. If they were of such awful magnitude as to warrant a proposal so extremely perilous as this, I must assert, that this Convention has an absolute right to a thorough discovery of every circumstance relative to this great event. And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand: What right had they to say, We, the people? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask: Who authorized them to speak the language of, We, the people, instead of, We, the states? States

are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states. I have the highest respect for those gentlemen who formed the Convention, and, were some of them not here, I would express some testimonial of esteem for them. America had, on a former occasion, put the utmost confidence in them-a confidence which was well placed; and I am sure, sir, I would give up any thing to them; I would cheerfully confide in them as my representatives. But, sir, on this great occasion, I would demand the cause of their conduct. Even from that illustrious man who saved us by his valor, I would have a reason for his conduct. . . . That they exceeded their power is perfectly clear. . . . The federal Convention ought to have amended the old system; for this purpose they were solely delegated; the object of their mission extended to no other consideration. You must, therefore, forgive the solicitation of one unworthy member to know what danger could have arisen under the present Confederation, and what are the causes of this proposal to change our government.

PATRICK HENRY

What then are we to think of the motives and designs of those men who are urging the implicit and immediate adoption of the proposed government; are they fearful, that if you exercise your good sense and discernment, you will discover the masqued aristocracy, that they are attempting to smuggle upon you under the suspicious garb of republicanism? When we find that the principal agents in this business are the very men who fabricated the form of government, it certainly ought to be conclusive evidence of their invidious design to deprive us of our liberties. The circumstances attending this matter, are such as should in a peculiar manner excite your suspicion; it might not be useless to take a review of some of them.

In many of the states, particularly in this [Pennsylvania] and the northern states, there are aristocratic juntos of the well-horn few, who have been zealously endeavoring since the establishment of their constitutions, to humble that offensive upstart, equal liberty; but all their efforts were unavailing, the ill-bred churl obstinately kept his assumed station. . . .

A comparison of the authority under which the convention acted, and their form of government, will show that they have despised their delegated power, and assumed sovereignty; that they have entirely annihilated the old confederation, and the particular governments of the several States, and instead thereof have established one general government that is to pervade the union; constituted on the most unequal principles, destitute of accountability to its constituents, and as despotic in its nature, as the Venetian aristocracy; a government that will give full scope to the magnificent designs of the well-horn, a government where tyranny may glut its vengeance on the low-born, unchecked by an odious bill of rights. . . ; and yet as a blind upon the understandings of the people, they have continued the forms of the particular governments, and termed the whole a confederation of the United States, pursuant to the sentiments of that profound, but corrupt politician Machiavel, who advises any one who would change the constitution of a state to keep as much as possible to the old forms; for then the people seeing the same officers, the same formalities, courts of justice and other outward appearances, are insensible of the alteration, and believe themselves in possession of their old government. Thus Caesar, when he seized the Roman liberties, caused himself to be chosen dictator (which was an ancient office), continued the senate, the consuls, the tribunes, the censors, and all other offices and forms of the

commonwealth; and yet changed Rome from the most free, to the most tyrannical government in the world. . . .

The late convention, in the majesty of its assumed omnipotence, have not even condescended to submit the plan of the new government to the confederation of the people, the true source of authority; but have called upon them by their several constitutions, to 'assent to and ratify' in toto, what they have been pleased to decree; just as the grand monarch of France requires the parliament of Paris to register his edicts without revision or alteration, which is necessary previous to their execution. . . .

If you are in doubt about the nature and principles of the proposed government, view the conduct of its authors and patrons: that affords the best explanation, the most striking comment.

The evil genius of darkness presided at its birth, it came forth under the veil of mystery, its true features being carefully concealed, and every deceptive art has been and is practicing to have this spurious brat received as the genuine offspring of heaven-born liberty. So fearful are its patrons that you should discern the imposition, that they have hurried on its adoption, with the greatest precipitation. . .

After so recent a triumph over British despots, after such torrents of blood and treasure have been spent, after involving ourselves in the distresses of an arduous war, and incurring such a debt for the express purpose of asserting the rights of humanity; it is truly astonishing that a set of men among ourselves should have the effrontery to attempt the destruction of our liberties. But in this enlightened age to hope to dupe the people by the arts they are practicing is still more extraordinary. . .

The advocates of this plan have artfully attempted to veil over the true nature and principles of it with the names of those respectable characters that by consummate cunning and address they have prevailed upon to sign it; and what ought to convince the people of the deception and excite their apprehensions, is that with every advantage which education, the science of government and of law, the knowledge of history and superior talents and endowments, furnish the authors and advocates of this plan with, they have from its publication exerted all their power and influence to prevent all discussion of the subject, and when this could not be prevented they have constantly avoided the ground of argument and recurred to declamation, sophistry and personal abuse, but principally relied upon the magic of names. . . . Emboldened by the sanction of the august name of a Washington, that they have prostituted to their purpose, they have presumed to overleap the usual gradations to absolute power, and have attempted to seize at once upon the supremacy of dominion.

CENTINEL

. . . Another thing they tell us, that the constitution must be good, from the characters which composed the Convention that framed it. It is graced with the names of a Washington and a Franklin. Illustrious names, we know-worthy characters in civil society. Yet we cannot suppose them to be infallible guides; neither yet that a man must necessarily incur guilt to himself merely by dissenting from them in opinion. We cannot think the noble general has the same ideas with

ourselves, with regard to the rules of right and wrong. We cannot think he acts a very consistent part, or did through the whole of the contest with Great Britain. Notwithstanding he wielded the sword in defense of American liberty, yet at the same time was, and is to this day, living upon the labors of several hundreds of miserable Africans, as free born as himself; and some of them very likely, descended from parents who, in point of property and dignity in their own country, might cope with any man in America. We do not conceive we are to be overborne by the weight of any names, however revered. "ALL MEN ARE BORN FREE AND EQUAL".....

THE YEOMANRY OF MASSACHUSETTS

Antifederalist No. 41-43 (Part I) Richard Henry Lee "THE QUANTITY OF POWER THE UNION MUST POSSESS IS ONE THING; THE MODE OF EXERCISING THE POWERS GIVEN IS QUITE A DIFFERENT CONSIDERATION"

Taken from "THE FEDERAL FARMER,"

. . . . A federal republic in itself supposes state or local governments to exist, as the body or props, on which the federal bead rests, and that it cannot remain a moment after they cease. In erecting the federal government, and always in its councils, each state must be known as a sovereign body. But in erecting this government, I conceive, the legislature of the state, by the expressed or implied assent of the people, or the people of the state, under the direction of the government of it, may accede to the federal compact. Nor do I conceive it to be necessarily a part of a confederacy of states, that each have an equal voice in the general councils. A confederated republic being organized, each state must retain powers for managing its internal police, and all delegate to the union power to manage general concerns. The quantity of power the union must possess is one thing; the mode of exercising the powers given is quite a different consideration- and it is the mode of exercising them, that makes one of the essential distinctions between one entire or consolidated government, and a federal republic. That is, however the government may be organized, if the laws of the union, in most important concerns, as in levying and collecting taxes, raising troops, etc., operate immediately upon the persons and property of individuals, and not on states, extend to organizing the militia, etc., the government, as to its administration, as to making and executing laws, is not federal, but consolidated. To illustrate my idea: the union makes a requisition, and assigns to each state its quota of men or monies wanted; each state, by its own laws and officers, in its own way, furnishes its quota. Here the state governments stand between the union and individuals; the laws of the union operate only on states, as such, and federally. Here nothing can be done without the meetings of the state legislatures. But in the other case the union, though the state legislatures should not meet for years together, proceeds immediately by its own laws and officers to levy and collect monies of individuals, to enlist men, form armies, etc. Here the laws of the union operate immediately on the body of the people, on persons and property. In the same manner the laws of one entire consolidated government operate. These two modes are very distinct, and in their operation and consequences have directly opposite tendencies.... I am not for depending wholly on requisitions. Since the peace, and till the convention reported, the wisest men in the United States generally supposed that certain limited funds would answer the purposes of the union. And though the states are by no means in so good a condition as I wish they were, yet, I think, I may very safely affirm, they are in a better condition than they would be had congress always possessed the powers of taxation now contended for. The fact is admitted, that our federal government does not possess sufficient powers to give life and vigor to the political system; and that we experience disappointments, and several inconveniences. But we ought carefully to distinguish those which are merely the consequences of a severe and tedious war, from those which arise from defects in the federal system. There has been an entire revolution in the United States within thirteen years, and the least we can compute the waste of labor and property at, during that period, by the war, is three

hundred millions of dollars. Our people are like a man just recovering from a severe fit of sickness. It was the war that disturbed the course of commerce introduced floods of paper money, the stagnation of credit, and threw many valuable men out of steady business. From these sources our greatest evils arise. Men of knowledge and reflection must perceive it. But then, have we not done more in three or four years past, in repairing the injuries of the war, by repairing houses and estates, restoring industry, frugality, the fisheries, manufactures, etc., and thereby laying the foundation of good government, and of individual and political happiness, than any people ever did in a like time? We must judge from a view of the country and facts, and not from foreign newspapers, or our own, which are printed chiefly in the commercial towns, where imprudent living, imprudent importations, and many unexpected disappointments, have produced a despondency, and a disposition to view everything on the dark side. Some of the evils we feel, all will agree, ought to be imputed to the defective administration of the governments.

From these and various considerations, I am very clearly of opinion that the evils we sustain merely on account of the defects of the confederation, ar but as a feather in the balance against a mountain, compared with those which would infallibly be the result of the loss of general liberty, and that happiness men enjoy under a frugal, free, and mild government.

Heretofore we do not seem to have seen danger any where, but in giving power to congress, and now no where but in congress wanting powers; and without examining the extent of the evils to be remedied, by one step we ar for giving up to congress almost all powers of any importance without limitation. The defects of the confederation are extravagantly magnified, an every species of pain we feel imputed to them; and hence it is inferred, the must be a total change of the principles, as well as forms of government And in the main point, touching the federal powers, we rest all on a logical inference, totally inconsistent with experience and sound political reasoning.

It is said, that as the federal head must make peace and war, and provide for the common defense, it ought to possess all powers necessary to that end. That powers unlimited, as to the purse and sword, to raise men and monies and form the militia, are necessary to that end; and therefore, the federal head ought to possess them. This reasoning is far more specious than solid. It is necessary that these powers so exist in the body politic, as to be called into exercise whenever necessary for the public safety. But it is by no means true that the man, or congress of men, whose duty it more immediately is to provide for the common defense, ought to possess them without limitation. But clear it is, that if such men, or congress, be not in a situation to hold them without danger to liberty, he or they ought not to possess them. It has long been thought to be a well founded position, that the purse and sword ought not to be placed in the same hands in a free government. Our wise ancestors have carefully separated them-placed the sword in the hands of their king, even under considerable limitations, and the purse in the hands of the commons alone. Yet the king makes peace and war, and it is his duty to provide for the common defense of the nation. This authority at least goeth thus far-that a nation, well versed in the science of government, does not conceive it to be necessary or expedient for the man entrusted with the common defense and general tranquility, to possess unlimitedly the power in question, or even in any considerable degree. Could he, whose duty it is t defend the public, possess in himself independently, all the means of doing it consistent with the public good, it might be convenient. But the people o England know that their liberties and happiness would be in

infinitely great danger from the king's unlimited possession of these powers, than from al external enemies and internal commotions to which they might be exposed Therefore, though they have made it his duty to guard the empire, yet the have wisely placed in other hands, the hands of their representatives, the power to deal out and control the means. In Holland their high mightiness must provide for the common defense, but for the means they depend in considerable degree upon requisitions made on the state or local assemblies Reason and facts evince, that however convenient it might be for an executive magistrate, or federal head, more immediately charged with the national defense and safety, solely, directly, and independently to possess all the means, yet such magistrate or head never ought to possess them if thereby the public liberties shall be endangered. The powers in question never have been, by nations wise and free, deposited, nor can they ever be, with safety, any where out of the principal members of the national system. Where these form one entire government, as in Great Britain, they are separated and lodged in the principal members of it. But in a federal republic, there is quite a different organization; the people form this kind of government, generally, because their territories are too extensive to admit of their assembling in one legislature, or of executing the laws on free principles under one entire government. They Convene in their local assemblies, for local purposes, and for managing their internal concerns, and unite their states under a federal head for general purposes. It is the essential characteristic of a confederated republic, that this head be dependent on, and kept within limited bounds by the local governments; and it is because, in these alone, in fact, the people can be substantially assembled or represented. It is, therefore, we very universally see, in this kind of government, the congressional powers placed in a few hands, and accordingly limited, and specifically enumerated; and the local assemblies strong and well guarded, and composed of numerous members. Wise men will always place the controlling power where the people are substantially collected by their representatives. By the proposed system the federal head will possess, without limitation, almost every species of power that can, in its exercise, tend to change the government, or to endanger liberty; while in it, I think it has been fully shown, the people will have but the shadow of representation, and but the shadow of security for their rights and liberties. In a confederated republic, the division of representation, etc., in its nature, requires a correspondent division and deposit of powers, relative to taxes and military concerns. And I think the plan offered stands quite alone, in confounding the principles of governments in themselves totally distinct. I wish not to exculpate the states for their improper neglects in not paying their quotas of requisitions. But, in applying the remedy, we must be governed by reason and facts. It will not be denied that the people have a right to change the government when the majority choose it, if not restrained by some existing compact; that they have a right to displace their rulers, and consequently to determine when their measures are reasonable or not; and that they have a right, at any time, to put a stop to those measures they may deem prejudicial to them, by such forms and negatives as they may see fit to provide. From all these, and many other well founded considerations, I need not mention, a question arises, what powers shall there be delegated to the federal head, to insure safety, as well as energy, in the government? I think there is a safe and proper medium pointed out by experience, by reason, and facts. When we have organized the government, we ought to give power to the union, so far only as experience and present circumstances shall direct, with a reasonable regard to time to come. Should future circumstances, contrary to our expectations, require that further powers be transferred to the union, we can do it far more easily, than get back those we may now imprudently give. The system proposed is untried. Candid advocates and opposers admit, that it is in a degree, a mere experiment, and that its organization is weak and imperfect. Surely then,

the safe ground is cautiously to vest power in it, and when we are sure we have given enough for ordinary exigencies, to be extremely careful how we delegate powers, which, in common cases, must necessarily be useless or abused, and of very uncertain effect in uncommon ones. By giving the union power to regulate commerce, and to levy and collect taxes by imposts, we give it an extensive authority, and permanent productive funds, I believe quite as adequate to present demands of the union, as excises and direct taxes can be made to the present demands of the separate states. The state governments are now about four times as expensive as that of the union; and their several state debts added together, are nearly as large as that of the union. Our impost duties since the peace have been almost as productive as the other sources of taxation, and when under one general system of regulations, the probability is that those duties will be very considerably increased. Indeed the representation proposed will hardly justify giving to congress unlimited powers to raise taxes by imposts, in addition to the other powers the union must necessarily have. It is said, that if congress possess only authority to raise taxes by imposts, trade probably will be overburdened with taxes, and the taxes of the union be found inadequate to any uncommon exigencies. To this we may observe, that trade generally finds its own level, and will naturally and necessarily heave off any undue burdens laid upon it. Further, if congress alone possess the impost, and also unlimited power to raise monies by excises and direct taxes, there must be much more danger that two taxing powers, the union and states, will carry excises and direct taxes to an unreasonable extent, especially as these have not the natural boundaries taxes on trade have. However, it is not my object to propose to exclude congress from raising monies by internal taxes, except in strict conformity to the federal plan; that is, by the agency of the state governments in all cases, except where a state shall neglect, for an unreasonable time, to pay its quota of a requisition; and never where so many of the state legislatures as represent a majority of the people, shall formally determine an excise law or requisition is improper, in their next session after the same be laid before them. We ought always to recollect that the evil to be guarded against is found by our own experience, and the experience of others, to be mere neglect in the states to pay their quotas; and power in the union to levy and collect the neglecting states' quotas with interest, is fully adequate to the evil. By this federal plan, with this exception mentioned, we secure the means of collecting the taxes by the usual process of law, and avoid the evil of attempting to compel or coerce a state; and we avoid also a circumstance, which never yet could be, and I am fully confident never can be, admitted in a free federal republic-I mean a permanent and continued system of tax laws of the union, executed in the bowels of the states by many thousand officers, dependent as to the assessing and collecting federal taxes solely upon the union. On every principle, then, we ought to provide that the union render an exact account of all monies raised by imposts and other taxes whenever monies shall be wanted for the purposes of the union beyond the proceeds of the impost duties; requisitions shall be made on the states for the monies so wanted; and that the power of laying and collecting shall never be exercised, except in cases where a state shall neglect, a given time, to pay its quota. This mode seems to be strongly pointed out by the reason of the case, and spirit of the government; and I believe, there is no instance to be found in a federal republic, where the congressional powers ever extended generally to collecting monies by direct taxes or excises. Creating all these restrictions, still the powers of the union in matters of taxation will be too unlimited; further checks, in my mind, are indispensably necessary. Nor do I conceive, that as full a representation as is practicable in the federal government, will afford sufficient security. The strength of the government, and the confidence of the people, must be collected principally in the local assemblies. . . . A government possessed of more power than its constituent parts will justify,

will not only probably abuse it, but be unequal to bear its own burden; it may as soon be destroyed by the pressure of power, as languish and perish for want of it.

There are two ways further of raising checks, and guarding against -undue combinations and influence in a federal system. The first is-in levying taxes, raising and keeping up armies, in building navies, in forming plans for the militia, and in appropriating monies for the support of the military-to require the attendance of a large proportion of the federal representatives, as two-thirds or three-fourths of them; and in passing laws, in these important cases, to require the consent of two-thirds or three- fourths of the members present. The second is, by requiring that certain important laws of the federal head-as a requisition or a law for raising monies by excise-shall be laid before the state legislatures, and if disapproved of by a given number of them, say by as many of them as represent a majority of the people, the law shall have no effect. Whether it would be advisable to adopt both, or either of these checks, I will not undertake to determine. We have seen them both exist in confederated republics. The first exists substantially in the confederation, and will exist in some measure in the plan proposed, as in choosing a president by the house, or in expelling members; in the senate, in making treaties, and in deciding on impeachments; and in the whole, in altering the constitution. The last exists in the United Netherlands, but in a much greater extent. The first is founded on this principle, that these important measures may, sometimes, be adopted by a bare quorum of members, perhaps from a few states, and that a bare majority of the federal representatives may frequently be of the aristocracy, or some particular interests, connections, or parties in the community, and governed by motives, views, and inclinations not compatible with the general interest. The last is founded on this principle, that the people will be substantially represented, only in their state or local assemblies; that their principal security must be found in them; and that, therefore, they ought to have ultimately a constitutional control over such interesting measures.

THE FEDERAL FARMER

Antifederalist No. 41-43 (Part II) (Richard Henry Lee) "THE QUANTITY OF POWER THE UNION MUST POSSESS IS ONE THING; THE MODE OF EXERCISING THE POWERS GIVEN IS QUITE A DIFFERENT CONSIDERATION"

. . . In the present state of mankind, and of conducting war, the government of every nation must have power to raise and keep up regular troops. The question is, how shall this power be lodged? In an entire government, as in Great-Britain, where the people assemble by their representatives in one legislature, there is no difficulty; it is of course properly lodged in that legislature. But in a confederated republic, where the organization consists of a federal head, and local governments, there is no one part in which it can be solely, and safely lodged. By Art. 1., Sect. 8., "congress shall have power to raise and support armies," etc. By Art. I., Sect. 10., "no state, without the consent of congress, shall keep troops, or ships of war, in time of peace." It seems fit the union should direct the raising of troops, and the union may do it in two ways: by requisitions on the states, or by direct taxes. The first is most conformable to the federal plan, and safest; and it may be improved, by giving the union power, by its own laws and officers, to raise the state's quota that may neglect, and to charge it with the expense; and by giving a fixed quorum of the state legislatures power to disapprove the requisition. There would be less danger in this power to raise troops, could the state governments keep a proper control over the purse and over the militia. But after all the precautions we can take, without evidently fettering the union too much, we must give a large accumulation of powers to it, in these and other respects. There is one check, which, I think may be added with great propriety-that is, no land forces shall be kept up, but by legislative acts annually passed by congress, and no appropriation of monies for their support shall be for a longer term than one year. This is the constitutional practice in Great Britain, and the reasons for such checks in the United States appear to be much stronger. We may also require that these acts be passed by a special majority, as before mentioned. There is another mode still more guarded, and which seems to be founded in the true spirit of a federal system: it seems proper to divide those powers we can with safety, lodge them in no one member of the government alone; yet substantially to preserve their use, and to insure duration to the government by modifying the exercise of them-it is to empower congress to raise troops by direct levies, not exceeding a given number, say 2000 in time of peace, and 12,000 in a time of war, and for such further troops as may be wanted, to raise them by requisitions qualified ,as before mentioned. By the above recited clause no state shall keep troops, etc., in time of peace-this clearly implies it may do it in time of war. This must be on the principle that the union cannot defend all parts of the republic, and suggests an idea very repugnant to the general tendency of the system proposed, which is to disarm the state governments. A state in a long war may collect forces sufficient to take the field against the neighboring states. This clause was copied from the confederation, in which it was of more importance than in the plan proposed, because under this the separate states, probably, will have but small revenues.

By Article I., section 8., congress shall have power to establish uniform laws on the subject of bankruptcies throughout the United States. It is to be observed, that the separate states have ever been in possession of the power, and in the use of it, of making bankrupt-laws, militia laws, and

laws in some other cases, respecting which, the new constitution, when adopted, will give the union power to legislate, etc. But no words are used by the constitution to exclude the jurisdiction of the several states, and whether they will be excluded or not, or whether they and the union will have concurrent jurisdiction or not, must be determined by inference, and from the nature of the subject. If the power, for instance, to make uniform laws on the subject of bankruptcies, is in its nature indivisible, or incapable of being exercised by two legislatures independently, or by one in aid of the other, then the states are excluded, and cannot legislate at all on the subject, even though the union should neglect or find it impracticable to establish uniform bankrupt laws. How far the union will find it practicable to do this, time only can fully determine. When we consider the extent of the country, and the very different ideas of the different parts in it, respecting credit, and the mode of making men's property liable for paying their debts, we may, I think with some degree of certainty, conclude that the union never will be able to establish such laws. But if practicable, it does not appear to me, on further reflection, that the union ought to have the power. It does not appear to me to be a power properly incidental to a federal head, and, I believe, no one ever possessed it. It is a power that will immediately and extensively interfere with the internal police of the separate states, especially with their administering justice among their own citizens. By giving this power to the union, we greatly extend the jurisdiction of the federal judiciary, as all questions arising on bankrupt laws, being laws of the union . . .-[indeed], almost all civil causes-may be drawn into those courts. We must be sensible how cautious we ought to be in extending unnecessarily the jurisdiction of those courts for reasons I need not repeat. This article of power too, will considerably increase, in the hands of the union, an accumulation of powers, some of a federal and some of an unfederal nature, [already] too large without it. The constitution provides that congress shall have the sole and exclusive government of what is called the federal city, a place not exceeding ten miles square, and of all places ceded for forts, dock-yards, etc. I believe this is a novel kind of provision in a federal republic; it is repugnant to the spirit of such a government, and must be founded in an apprehension of a hostile disposition between the federal head and the state governments. And it is not improbable that the sudden retreat of congress from Philadelphia first gave rise to it. With this apprehension, we provide, the government of the union shall have secluded places, cities, and castles of defense, which no state laws whatever shall invade. When we attentively examine this provision in all its consequences, it opens to view scenes almost without bounds. A federal, or rather a national city, ten miles square, containing a hundred square miles, is about four times as large as London; and for forts, magazines, arsenals, dock yards, and other needful buildings, congress may possess a number of places or towns in each state. It is true, congress cannot have them unless the state legislatures cede them; but when once ceded, they never can be recovered. And though the general temper of the legislatures may be averse to such cessions, yet many opportunities and advantages may be taken of particular times and circumstances of complying assemblies, and of particular parties, to obtain them. it is not improbable, that some considerable towns or places, in some intemperate moments, or influenced by anti-republican principles, will petition to be ceded for the purposes mentioned in the provision. There are men, and even towns, in the best republics, which are often fond of withdrawing from the government of them, whenever occasion shall present. The case is still stronger. If the provision in question holds out allurements to attempt to withdraw, the people of a state must ever be subject to state as well as federal taxes; but the federal city and places will be subject only to the latter, and to them by no fixed proportion. Nor of the taxes raised in them, can the separate states demand any account of congress. These doors opened for withdrawing

from the state governments entirely, may, on other accounts, be very alluring and pleasing to those anti- republican men who prefer a place under the wings of courts.

If a federal town be necessary for the residence of congress and the public officers, it ought to be a small one, and the government of it fixed on republican and common law principles, carefully enumerated and established by the constitution. it is true, the states, when they shall cede places, may stipulate that the laws and government of congress in them shall always be formed on such principles. But it is easy to discern, that the stipulations of a state, or of the inhabitants of the place ceded, can be of but little avail against the power and gradual encroachments of the union. The principles ought to be established by the federal constitution, to which all states are parties; but in no event can there be any need of so large a city and places for forts, etc., totally exempted from the laws and jurisdictions of the state governments. If I understand the constitution, the laws of congress, constitutionally made, will have complete and supreme jurisdiction to all federal purposes, on every inch of ground in the United States, and exclusive jurisdiction on the high seas, and this by the highest authority, the consent of the people. Suppose ten acres at West-Point shall be used as a fort of the union, or a sea port town as a dockyard: the laws of the union, in those places, respecting the navy, forces of the union, and all federal objects, must prevail, be noticed by all judges and officers, and executed accordingly. And I can discern no one reason for excluding from these places, the operation of state laws, as to mere state purpose for instance, for the collection of state taxes in them; recovering debts; deciding questions of property arising within them on state laws; punishing, by state laws, theft, trespasses, and offenses committed in them by mere citizens against the state law.

The city, and all the places in which the union shall have this exclusive jurisdiction, will be immediately under one entire government, that of the federal head, and be no part of any state, and consequently no part of the United States. The inhabitants of the federal city and places, will be as much exempt from the laws and control of the state governments, as the people of Canada or Nova Scotia will be. Neither the laws of the states respecting taxes, the militia, crimes of property, will extend to them; nor is there a single stipulation in the constitution, that the inhabitants of this city, and these places, shall be governed by laws founded on principles of freedom. All questions, civil and criminal, arising on the laws of these places, which must be the laws of congress, must be decided in the federal courts; and also, all questions that may, by such judicial fictions as these courts may consider reasonable, be supposed to arise within this city, or any of these places, may be brought into these courts. By a very common legal fiction, any personal contract may be supposed to have been made in any place. A contract made in Georgia may be supposed to have been made in the federal city; the courts will admit the fiction. . . . Every suit in which an inhabitant of a federal district may be a party, of course may be instituted in the federal courts; also, every suit in which it may be alleged and not denied, that a party in it is an inhabitant of such a district; also, every suit to which a foreign state or subject, the union, a state, citizens of different states in fact, or by reasonable legal fictions, may be a party or parties. And thus, by means of bankrupt laws, federal districts, etc., almost all judicial business, I apprehend may be carried into the federal courts, without essentially departing from the usual course of judicial proceedings. The courts in Great Britain have acquired their powers, and extended very greatly their jurisdictions by such :fiction and suppositions as I have mentioned. The constitution, in these points, certainly involves in it principles, and almost hidden cases, which may unfold and in time exhibit consequences we hardly think of. The power of

naturalization, when viewed in connection with the judicial powers and cases, is, in my mind, of very doubtful extent. By the constitution itself, the citizens of each state will be naturalized citizens of every state, to the general purposes of instituting suits, claiming the benefits of the laws, etc. And in order to give the federal courts jurisdiction of an action, between citizens of the same state, in common acceptation-may not a court allow the plaintiff to say, he is a citizen of one state, and the defendant a citizen of another without carrying legal fictions so far, by any means, as they have been carried by the courts of King's Bench and Exchequer, in order to bring causes within their cognizance? Further, the federal city and districts, will be totally distinct from any state, and a citizen of a state will not of course be subject of any of them. And to avail himself of the privileges and immunities of them, must he not be naturalized by congress in them? And may not congress make any proportion of the citizens of the states naturalized subjects of the federal city and districts, and thereby entitle them to sue or defend, in all cases, in the federal courts? I have my doubts, and many sensible men, I find, have their doubts, on these points. And we ought to observe, they must be settled in the courts of law, by their rules, distinctions, and fictions. To avoid many of these intricacies and difficulties, and to avoid the undue and unnecessary extension of the federal judicial powers, it appears to me that no federal districts ought to be allowed, and no federal city or town-except perhaps a small town, in which the government shall be republican, but in which congress shall have no jurisdiction over the inhabitants of the states. Can the union want, in such a town, any thing more than a right to the soil to which it may set its buildings, and extensive jurisdiction over the federal buildings, and property, its own members, officers, and servants in it? As to all federal objects, the union will have complete jurisdiction over them of course any where, and every where. I still think that no actions ought to be allowed to be brought in the federal courts, between citizens of different states; at least, unless the cause be of very considerable importance. And that no action against a state government, by any citizen or foreigner, ought to be allowed; and no action, in which a foreign subject is party, at least, unless it be of very considerable importance, ought to be instituted in federal courts. I confess, I can see no reason whatever, for a foreigner, or for citizens of different states, carrying sixpenny causes into the federal courts. I think the state courts will be found by experience, to be bottomed on better principles, and to administer justice better than the federal courts. The difficulties and dangers I have supposed will result from so large a federal city, and federal districts, from the extension of the federal judicial powers, etc. are not, I conceive, merely possible, but probable. I think pernicious political consequences will follow from them, and from the federal city especially, for very obvious reasons, a few of which I will mention.

We must observe that the citizens of a state will be subject to state as well as federal taxes, and the inhabitants of the federal city and districts only to such taxes as congress may lay. We are not to suppose all our people are attached to free government, and the principles of the common law, but that many thousands of them will prefer a city governed not on republican principles. This city, and the government of it, must indubitably take their tone from the characters of the men, who from the nature of its situation and institution must collect there. This city will not be established for productive labor, for mercantile, or mechanic industry; but for the residence of government, its officers and attendants. If hereafter it should ever become a place of trade and industry, [yet] in the early periods of its existence, when its laws and government must receive their fixed tone, it must be a mere court, with its appendages-the executive, congress, the law courts, gentlemen of fortune and pleasure, with all the officers, attendants, suitors, expectants

and dependents on the whole. However brilliant and honorable this collection may be, if we expect it will have any sincere attachments to simple and frugal republicanism, to that liberty and mild government, which is dear to the laborious part of a free people, we must assuredly deceive ourselves. This early collection will draw to it men from all parts of the country, of a like political description. We see them looking towards the place already.

Such a city, or town, containing a hundred square miles, must soon be the great, the visible, and dazzling centre, the mistress of fashions, and the fountain of politics. There may be a free or shackled press in this city, and the streams which may issue from it may over flow the country, and they will be poisonous or pure, as the fountain may be corrupt or not. But not to dwell on a subject that must give pain to the virtuous friends of freedom, I will only add, can a free and enlightened people create a common head so extensive, so prone to corruption and slavery, as this city probably will be, when they have it in their power to form one pure and chaste, frugal and republican?

THE FEDERAL FARMER

Antifederalist No. 44 WHAT CONGRESS CAN DO; WHAT A STATE CAN NOT

"DELIBERATOR" appeared in The Freeman's Journal; or, The North-American Intelligencer, February 20, 1788.

A writer in the Pennsylvania Packet, under the signature of A Freeman, has lately entered the lists as another champion for the proposed constitution. Particularly he has endeavored to show that our apprehensions of this plan of government being a consolidation of the United States into one government, and not a confederacy of sovereign independent states, is entirely groundless; and it must be acknowledged that he has advocated this cause with as much show of reason, perhaps, as the subject will admit.

The words states, several states, and united states are, he observes, frequently mentioned in the constitution. And this is an argument that their separate sovereignty and independence cannot be endangered! He has enumerated a variety of matters which, he says, congress cannot do; and which the states, in their individual capacity, must or may do, and thence infers their sovereignty and independence. In some of these, however, I apprehend he is a little mistaken.

1. "Congress cannot train the militia." This is not strictly true. For by the 1st Article they are empowered "to provide for organizing, arming, and disciplining" them; and tho' the respective states are said to have the authority of training the militia, it must be "according to the discipline prescribed by Congress." In this business, therefore, they will be no other than subalterns under Congress, to execute their orders; which, if they shall neglect to do, Congress will have constitutional powers to provide for, by any other means they shall think proper. They shall have power to declare what description of persons shall compose the militia; to appoint the stated times and places for exercising them; to compel personal attendance, whether when called for into actual service, or on other occasions, under what penalties they shall think proper, without regard to scruples of conscience or any other consideration. Their executive officer may march and countermarch them from one extremity of the state to the other-and all this without so much as consulting the legislature of the particular states to which they belong! Where then is that boasted security against the annihilation of the state governments, arising from "the powerful military support" they will have from their militia?

2. "Congress cannot enact laws for the inspection of the produce of the country." Neither is this strictly true. Their power "to regulate commerce with foreign nations and among the several states, and to make all laws which shall be necessary and proper for carrying this power (among others vested in them by the constitution) into execution," most certainly extends to the enacting of inspection laws. The particular states may indeed propose such laws to them; but it is expressly declared, in the lst article, that "all such laws shall be subject to the revision and control of the Congress."

3. "The several states can prohibit or impose duties on the importation of slaves into their own ports." Nay, not even this can they do, "without the consent of Congress," as is expressly

declared in the close of the lst article. The duty which Congress may, and it is probable will lay on the importation of slaves, will form a branch of their revenue. But this impost, as well as all others, "must be uniform throughout the United States." Congress therefore cannot consent that one state should impose an additional duty on this article of commerce, unless all other states should do the same; and it is not very likely that some of the states will ever ask this favor.

4. "Congress cannot interfere with the opening of rivers and canals; the making or regulation of roads, except post roads; building bridges; erecting ferries; building lighthouses, etc." In one case, which may very frequently happen, this proposition also fails. For if the river, canal, road, bridge, ferry, etc., be common to two states, or a matter in which they may be both concerned, and consequently must both concur, then the interference and consent of Congress becomes absolutely necessary, since it is declared in the constitution that "no state shall, without the consent of Congress, enter into any agreement or compact with another state."

5. "The elections of the President, Vice President, senators and representatives are exclusively in the hands of the states-even as to filling vacancies." This, in one important part, is not true. For, by the 2d article, "in case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, etc., both of the President and Vice President, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected." But no such election is provided for by the constitution, till the return of the periodical election at the expiration of the four years for which the former president was chosen. And thus may the great powers of this supreme magistrate of the United States be exercised, for years together, by a man who, perhaps, never had one vote of the people for any office of government in his life.

6. "Congress cannot interfere with the constitution of any state." This has been often said, but alas, with how little truth-since it is declared in the 6th article that "this constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties, etc., shall be the supreme law of the land, and every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

But, sir, in order to form a proper judgment of the probable effects of this plan of general government on the sovereignties of the several states, it is necessary also to take a view of what Congress may, constitutionally, do and of what the states may not do. This matter, however, the above writer has thought proper to pass over in silence. I would therefore beg leave in some measure, to supply this omission; and if in anything I should appear to be mistaken I hope he will take the same liberty with me that I have done with him-he will correct my mistake.

1. Congress may, even in time of peace, raise an army of 100,000 men, whom they may canton through the several states, and billet out on the inhabitants, in order to serve as necessary instruments in executing their decrees.

2. Upon the inhabitants of any state proving refractory to the will of Congress, or upon any other pretense whatsoever, Congress may can out even all the militia of as many states as they think

proper, and keep them in actual service, without pay, as long as they please, subject to the utmost rigor of military discipline, corporal punishment, and death itself not excepted.

3. Congress may levy and collect a capitation or poll tax, to what amount they shall think proper; of which the poorest taxable in the state must pay as much as the richest.

4. Congress may, under the sanction of that clause in the constitution which empowers them to regulate commerce, authorize the importation of slaves, even into those states where this iniquitous trade is or may be prohibited by their laws or constitutions.

5. Congress may, under the sanction of that clause which empowers them to lay and collect duties (as distinct from imposts and excises) impose so heavy a stamp duty on newspapers and other periodical publications, as shall effectually prevent all necessary information to the people through these useful channels of intelligence.

6. Congress may, by imposing a duty on foreigners coming into the country, check the progress of its population. And after a few years they may prohibit altogether, not only the emigration of foreigners into our country, but also that of our own citizens to any other country.

7. Congress may withhold, as long as they think proper, all information respecting their proceedings from the people.

8. Congress may order the elections for members of their own body, in the several states, to be held at what times, in what places, and in what manner they shall think proper. Thus, in Pennsylvania, they may order the elections to be held in the middle of winter, at the city of Philadelphia; by which means the inhabitants of nine-tenths of the state will be effectually (tho' constitutionally) deprived of the exercise of their right of suffrage.

9. Congress may, in their courts of judicature, abolish trial by jury in civil cases altogether; and even in criminal cases, trial by a jury of the vicinage is not secured by the constitution. A crime committed at Fort Pitt may be tried by a jury of the citizens of Philadelphia.

10. Congress may, if they shall think it for the "general welfare," establish an uniformity in religion throughout the United States. Such establishments have been thought necessary, and have accordingly taken place in almost all the other countries in the world, and will no doubt be thought equally necessary in this.

11. Though I believe it is not generally so understood, yet certain it is, that Congress may emit paper money, and even make it a legal tender throughout the United States; and, what is still worse, may, after it shall have depreciated in the hands of the people, call it in by taxes, at any rate of depreciation (compared with gold and silver) which they may think proper. For though no state can emit bills of credit, or pass any law impairing the obligation of contracts, yet the Congress themselves are under no constitutional restraints on these points.

12. The number of representatives which shall compose the principal branch of Congress is so small as to occasion general complaint. Congress, however, have no power to increase the number of representatives, but may reduce it even to one fifth part of the present arrangement.

13. On the other hand, no state can call forth its militia even to suppress any insurrection or domestic violence which may take place among its own citizens. This power is, by the constitution, vested in Congress.

14. No state can compel one of its own citizens to pay a debt due to a citizen of a neighboring state. Thus a Jersey-man will be unable to recover the price of a turkey sold in the Philadelphia market, if the purchaser shall be inclined to dispute, without commencing an action in one of the federal courts.

15. No state can encourage its own manufactures either by prohibiting or even laying a duty on the importation of foreign articles.

16. No state can give relief to insolvent debtors, however distressing their situation may be, since Congress will have the exclusive right of establishing uniform laws on the subject of bankruptcies throughout the United States; and the particular states are expressly prohibited from passing any law impairing the obligation of contracts.

DELIBERATOR

Antifederalist No. 45 POWERS OF NATIONAL GOVERNMENT DANGEROUS TO STATE GOVERNMENTS; NEW YORK AS AN EXAMPLE

Robert Yates, a delegate to the 1787 convention from New York, left on July 10, 1787. He became an Antifederalist leader. Under the nome de plume "Sydney" he wrote in the New York Daily Patriotic Register, June 13 and 14, 1788.

TO THE CITIZENS OF THE STATE OF NEW YORK.

Although a variety of objections to the proposed new constitution for the government of the United States have been laid before the public by men of the best abilities, I am led to believe that representing it in a point of view which has escaped their observation may be of use, that is, by comparing it with the constitution of the State of New York.

The following contrast is therefore submitted to the public, to show in what instances the powers of the state government will be either totally or partially absorbed, and enable us to determine whether the remaining powers will, from those kind of pillars, be capable of supporting the mutilated fabric of a government which even the advocates for the new constitution admit excels "the boasted models of Greece or Rome, and those of all other nations, in having precisely marked out the power of the government and the rights of the people."

It may be proper to premise that the pressure of necessity and distress (and not corruption) had a principal tendency to induce the adoption of the state constitutions and the existing confederation; that power was even then vested in the rulers with the greatest caution; and that, as from every circumstance we have reason to infer that the Dew constitution does not originate from a pure source, we ought deliberately to trace the extent and tendency of the trust we are about to repose, under the conviction that a reassumption of that trust will at least be difficult, if not impracticable. If we take a retrospective view of the measures of Congress. . . . we can scarcely entertain a doubt but that a plan has long since been framed to subvert the confederation; that that plan has been matured with the most persevering industry and unremitted attention; and that the objects expressed in the preamble to the constitution, that is "to promote the general welfare and secure the blessings of liberty to ourselves and our posterity," were merely the ostensible, and not the real reasons of its framers. . .

The state governments are considered in . . . [the new constitution] as mere dependencies, existing solely by its toleration, and possessing powers of which they may be deprived whenever the general government is disposed so to do. If then the powers of the state governments are to be totally absorbed, in which all agree, and only differ as to the mode-whether it will be effected by a rapid progression, or by as certain, but slower, operations-what is to limit the oppression of the general government? Where are the rights, which are declared to be incapable of violation? And what security have people against the wanton oppression of unprincipled governors? No constitutional redress is pointed out, and no express declaration is contained in it, to limit the

boundaries of their rulers. Beside which the mode and period of their being elected tends to take away their responsibility to the people over whom they may, by the power of the purse and the sword, domineer at discretion. Nor is there a power on earth to tell them, What dost thou? or, Why dost thou so? I shall now proceed to compare the constitution of the state of New York with the proposed federal government, distinguishing the paragraphs in the former, which are rendered nugatory by the latter; those which are in a great measure enervated, and such as are in the discretion of the general government to permit or not....

1 & 37

The 1st "Ordains, determines, and declares that no authority shall on any pretence whatever be exercised over the people or the members of this State, but such as shall be derived from and granted by them."

The 37th, "That no purchases or contracts for the sale of lands with or of the Indians within the limits of this state, shall be binding on the Indians, or deemed valid, unless made under the authority and with the consent of the legislature of this state."

. . . What have we reasonably to expect will be their conduct [i.e., the new national government] when possessed of the powers "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," when they are armed with legislative, executive, and judicial powers, and their laws the supreme laws of the land. And when the states are prohibited, without the consent of Congress, to lay any "imposts or duties on imports," and if they do they shall be for the use of the Treasury of the United States-and all such laws subject to the revision and control of Congress.

It is . . . evident that this state, by adopting the new government, will enervate their legislative rights, and totally surrender into the hands of Congress the management and regulation of the Indian trade to an improper government, and the traders to be fleeced by iniquitous impositions, operating at one and the same time as a monopoly and a poll-tax. . . .

The 2nd provides "that the supreme legislative power within this state shall be vested in two separate and distinct bodies of men, the one to be called the assembly, and the other to be called the senate of the state of New York, who together shall form the legislature."

The 3rd provides against laws that may be hastily and inadvertently passed, inconsistent with the spirit of the constitution and the public good, and that "the governor, the chancellor and judges of the supreme court, shall revise all bills about to be passed into laws, by the legislature."

The 9th provides "that the assembly shall be the judge of their own members, and enjoy the same privileges, and proceed in doing business in like manner as the assembly of the colony of New York of right formerly did."

The 12th provides "that the senate shall, in like manner, be judges of their own members," etc.

The 31st describes even the style of laws-that the style of alt laws shall be as follows: "Be it enacted by the people of the state of New York represented in senate and assembly," and that all writs and proceedings shall run in the name of the people of the state of New York, and tested in the name of the chancellor or the chief judge from whence they shall issue.

The powers vested in the legislature of this state by these paragraphs will be weakened, for the proposed new government declares that "all legislative powers therein granted shall be vested in a congress of the United States, which shall consist of a senate and a house of representatives," and it further prescribes, that "this constitution and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shalt be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding; and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution."

Those who are full of faith, suppose that the words "in pursuance thereof" are restrictive, but if they reflect a moment and take into consideration the comprehensive expressions of the instrument, they will find that their restrictive construction is unavailing, and this is evidenced by 1st art., 8th sect., where this government has a power "to lay and collect all taxes, duties, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States," and also "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this constitution in the government of the United States, or in any department or office thereof."

. . . . To conclude my observation on this head, it appears to me as impossible that these powers in the state constitution and those in the general government can exist and operate together, as it would be for a man to serve two masters whose interests clash, and secure the approbation of both. Can there at the same time and place be and operate two supreme legislatures, executives, and judicials? Will a "guarantee of a republican form of government to every state in the union" be of any avail, or secure the establishment and retention of state rights?

If this guarantee had remained, as it was first reported by the committee of the whole house, to wit, "that a republican constitution, and its existing laws, ought to be guaranteed to each state by the United States," it would have been substantial; but the changing the word constitution into the word form bears no favorable appearance. . . .

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By the 13th paragraph "no member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to the subjects of the State by the constitution, unless by the law of the land, or judgment of its peers."

The 35th adopts, under certain exceptions and modifications, the common law of England, the statute law of England and Great Britain, and the acts of the legislature of the colony, which together formed the law on the 19th of April, 1775.

The 41st provides "that the trial by jury remain inviolate forever; that no acts of attainder shall be passed by the legislature of this State for crimes other than those committed before the termination of the present war. And that the legislature shall at no time hereafter institute any new courts but such as shall proceed according to the course of the common law.

There can be no doubt that if the new government be adopted in all its latitude, every one of these paragraphs will become a dead letter. Nor will it solve any difficulties, if the United States guarantee "to every state in the union a republican form of government;" we may be allowed the form and not the substance, and that it was so intended will appear from the changing the word constitution to the word form and the omission of the words, and its existing laws. And I do not even think it uncharitable to suppose that it was designedly done; but whether it was so or not, by leaving out these words the jurisprudence of each state is left to the mercy of the new government....

17, 18, 19, 20, 21, 27, 40

The 17th orders "That the supreme executive power and authority of this State shall be vested in a governor."

By the 18th he is commander- in-chief of the militia and admiral of the navy of the State; may grant pardons to all persons convicted of crimes; he may suspend the execution of the sentence in treason or murder.

By the 19th paragraph he is to see that the laws and resolutions of the legislature be faithfully executed.

The 20th and 21st paragraphs give the lieutenant-governor, on the death, resignation, removal from office, or impeachment of the governor, all the powers of a governor.

By the 27th he [the Governor] is president of the council of appointment, and has a casting vote and the commissioning of all officers.

The 40th paragraph orders that the militia at all times, both in peace and war, shall be armed and disciplined, and kept in readiness; in what manner the Quakers shall be excused; and that a magazine of warlike stores be forever kept at the expense of the State, and by act of the legislature, established, maintained, and continued in every county in the State.

Whoever considers the following powers vested in the [national] government, and compares them with the above, must readily perceive they are either all enervated or annihilated.

By the 1st art., 8th sec., 15th, 16th and 17th clauses, Congress will be empowered to call forth the militia to execute the laws of the union, suppress insurrections and repel invasions; to provide for organizing, arming and disciplining the militia, for the governing such part of them as may be employed in the service of the United States, and for the erection of forts, magazines, etc.

And by the 2nd art., 2nd sec., "The president shall be commander- in-chief of the army and navy of the United States, and of the militia of the several States when called into actual service of the United States. . . . except in cases of impeachment."

And by the 6th art., "The members of the several state legislatures, and all the executive and judicial officers; both of the United States, and of the several states, shall be bound by oath or affirmation to support the constitution."

Can this oath be taken by those who have already taken one under the constitution of this state? ... From these powers lodged in Congress and the powers vested in the states, it is clear that there must be a government within a government; two legislative, executive, and judicial powers. The power of raising an army in time of peace, and to command the militia, will give the president ample means to enforce the supreme laws of the land. . . .

This paragraph provides "that it shalt be in the discretion of the legislature to naturalize all such persons and in such manner as they shall think proper."

The 1st art., 8th sec., 4th clause, give to the new government power to establish a uniform rule of naturalization. And by the 4th art., 2nd sec., "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states," whereby the clause is rendered entirely nugatory.

From this contrast it appears that the general government, when completely organized, will absorb all those powers of the state which the framers of its constitution had declared should be only exercised by the representatives of the people of the state; that the burdens and expense of supporting a state establishment will be perpetuated; but its operations to ensure or contribute to any essential measures promotive of the happiness of the people may be totally prostrated, the general government arrogating to itself the right of interfering in the most minute objects of internal police, and the most trifling domestic concerns of every state, by possessing a power of passing laws "to provide for the general welfare of the United States," which may affect life, liberty and property in every modification they may think expedient, unchecked by cautionary reservations, and unrestrained by a declaration of any of those rights which the wisdom and prudence of America in the year 1776 held ought to be at all events protected from violation.

In a word, the new constitution will prove finally to dissolve all the power of the several state legislatures, and destroy the rights and liberties of the people; for the power of the first will be all in all, and of the latter a mere shadow and form without substance, and if adopted we may (in imitation of the Carthagenians) say, Delenda vit America.

SYDNEY

Antifederalist No. 46 "WHERE THEN IS THE RESTRAINT?"

This essay by "AN OLD WHIG" (see AFP #'s Nos. 18-20, 49, 50, and 70) appeared in the Maryland Gazette and Baltimore Advertiser on Nov. 2, 1788.

Let us look to the first article of the proposed new constitution, which treats of the legislative powers of Congress; and to the eighth section, which pretends to define those powers. We find here that the Congress in its legislative capacity, shall have the power to lay and collect taxes, duties, and excises; to borrow money; to regulate commerce; to fix the rule for naturalization and the laws of bankruptcy; to coin money; to punish counterfeiters; to establish post offices and post roads; to secure copy rights to authors; to constitute tribunals; to define and punish piracies; to declare war; to raise and support armies; to provide and support a navy; to call forth the militia; to organize, arm and discipline the militia; to exercise absolute power over a district ten miles square, independent of all the State legislatures, and to be alike absolute over all forts, magazines, arsenals, dock-yards, and other needful buildings thereunto belonging. This is a short abstract of the powers given to Congress. These powers are very extensive, but I shall not stay at present to inquire whether these express powers were necessary to be given to Congress? Whether they are too great or too small?

My object is to consider that undefined, unbounded and immense power which is comprised in the following clause - "And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States; or in any department or offices thereof." Under such a clause as this, can anything be said to be reserved and kept back from Congress? Can it be said that the Congress have no power but what is expressed? "To make all laws which shall be necessary and proper" - or, in other words, to make all such laws which the Congress shall think necessary and proper - for who shalt judge for the legislature what is necessary and proper? Who shall set themselves above the sovereign? What inferior legislature shall set itself above the supreme legislature? To me it appears that no other power on earth can dictate to them, or control them, unless by force; and force, either internal or external, is one of those calamities which every good man would wish his country at all times to be delivered from. This generation in America have seen enough of war, and its usual concomitants, to prevent all of us from wishing to see any more of it-all except those who make a trade of war. But to the question - without force what can restrain the Congress from making such laws as they please? What limits are there to their authority? I fear none at all. For surely it cannot be justly said that they have no power but what is expressly given to them, when by the very terms of their creation they are vested with the powers of making laws in all cases -necessary and proper; when from the nature of their power, they must necessarily be the judges what laws are necessary and proper.

The British act of Parliament, declaring the power of Parliament to make laws to bind America in all cases whatsoever, was not more extensive. For it is as true as a maxim, that even the British Parliament neither could nor would pass any law in any case in which they did not either deem it necessary and proper to make such a law, or pretend to deem it so. And in such cases it is not of a farthing consequence whether they really are of opinion that the law is necessary and proper, or only pretend to think so, for who can overrule their pretensions? No one; unless we had a Bill of

Rights, to which we might appeal and under which we might contend against any assumption of undue power, and appeal to the judicial branch of the government to protect us by their judgments. This reasoning, I fear, is but too just. And yet, if any man should doubt the truth of it, let me ask him one other question: What is the meaning of the latter part of the clause which vests the Congress with the authority of making all laws which shall be necessary and proper for carrying into execution all other powers (besides the foregoing powers vested, etc., etc.)? Was it thought that the foregoing powers might perhaps admit of some restraint, in their construction as to what was necessary and proper to carry them into execution? Or was it deemed right to add still further that they should not be restrained to the powers already named? Besides the powers already mentioned, other powers may be assumed hereafter as contained by implication in this constitution. The Congress shall judge of what is necessary and proper in all these cases, and in all other cases-in short, in all cases whatsoever.

Where then is the restraint? How are Congress bound down to the powers expressly given? What is reserved, or can be reserved? Yet even this is not all. As if it were determined that no doubt should remain, by the sixth article of the Constitution it is declared that "this Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shalt be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the Constitutions or laws of any State to the contrary notwithstanding." The Congress are therefore vested with the supreme legislative power, without control. In giving such immense, such unlimited powers, was there no necessity of a Bill of Rights, to secure to the people their liberties?

Is it not evident that we are left wholly dependent on the wisdom and virtue of the men who shall from time to time be the members of Congress? And who shall be able to say seven years hence, the members of Congress will be wise and good men, or of the contrary character?

Antifederalist No. 47 "BALANCE" OF DEPARTMENTS NOT ACHIEVED UNDER NEW CONSTITUTION

This essay is made up of of excerpts from "CENTINEL's," letters of October 5 and 24, 1787. Taken from The Independent Gazetteer,

I am fearful that the principles of government inculcated in Mr. [John] Adams' treatise [Defence of the Constitutions of Government of the United States of America], and enforced in the numerous essays and paragraphs in the newspapers, have misled some well designing members of the late Convention. But it will appear in the sequel, that the construction of the proposed plan of government is infinitely more extravagant.

I have been anxiously expecting that some enlightened patriot would, ere this, have taken up the pen to expose the futility, and counteract the baneful tendency of such principles. Mr. Adams' sine qua non of a good government is three balancing powers; whose repelling qualities are to produce an equilibrium of interests, and thereby promote the happiness of the whole community. He asserts that the administrators of every government, will ever be actuated by views of private interest and ambition, to the prejudice of the public good; that therefore the only effectual method to secure the rights of the people and promote their welfare, is to create an opposition of interests between the members of two distinct bodies, in the exercise of the powers of government, and balanced by those of a third. This hypothesis supposes human wisdom competent to the task of instituting three co-equal orders in government, and a corresponding weight in the community to enable them respectively to exercise their several parts, and whose views and interests should be so distinct as to prevent a coalition of any two of them for the destruction of the third. Mr. Adams, although he has traced the constitution of every form of government that ever existed, as far as history affords materials, has not been able to adduce a single instance of such a government. He indeed says that the British constitution is such in theory, but this is rather a confirmation that his principles are chimerical and not to be reduced to practice. If such an organization of power were practicable, how long would it continue? Not a day-for there is so great a disparity in the talents, wisdom and industry of mankind, that the scale would presently preponderate to one or the other body, and with every accession of power the means of further increase would be greatly extended. The state of society in England is much more favorable to such a scheme of government than that of America. There they have a powerful hereditary nobility, and real distinctions of rank and interests; but even there, for want of that perfect equality of power and distinction of interests in the three orders of government, they exist but in name. The only operative and efficient check upon the conduct of administration, is the sense of the people at large.

Suppose a government could be formed and supported on such principles, would it answer the great purposes of civil society? If the administrators of every government are actuated by views of private interest and ambition, how is the welfare and happiness of the community to be the result of such jarring adverse interests?

Therefore, as different orders in government will not produce the good of the whole, we must recur to other principles. I believe it will be found that the form of government, which holds

those entrusted with power in the greatest responsibility to their constituents, the best calculated for freemen. A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided. In such a government the people are the sovereign and their sense or opinion is the criterion of every public measure. For when this ceases to be the case, the nature of the government is changed, and an aristocracy, monarchy or despotism will rise on its ruin. The highest responsibility is to be attained in a simple structure of government, for the great body of the people never steadily attend to the operations of government, and for want of due information are liable to be imposed on. If you complicate the plan by various orders, the people will be perplexed and divided in their sentiment about the source of abuses or misconduct; some will impute it to the senate, others to the house of representatives, and so on, that the interposition of the people may be rendered imperfect or perhaps wholly abortive. But if, imitating the constitution of Pennsylvania, you vest all the legislative power in one body of men (separating the executive and judicial) elected for a short period, and necessarily excluded by rotation from permanency, and guarded from precipitancy and surprise by delays imposed on its proceedings, you will create the most perfect responsibility. For then, whenever the people feel a grievance, they cannot mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election. This tie of responsibility will obviate all the dangers apprehended from a single legislature, and will the best secure the rights of the people.

Having premised this much, I shall now proceed to the examination of the proposed plan of government, and I trust, shall make it appear to the meanest capacity, that it has none of the essential requisites of a free government; that it is neither founded on those balancing restraining powers, recommended by Mr. Adams and attempted in the British constitution, or possessed of that responsibility to its constituents, which, in my opinion, is the only effectual security for the liberties and happiness of the people. But on the contrary, that it is a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed....

Thus we see, the house of representatives are on the part of the people to balance the senate, who I suppose will be composed of the better sort, the well born, etc. The number of the representatives (being only one for every 30,000 inhabitants) appears to be too few, either to communicate the requisite information of the wants, local circumstances and sentiments of so extensive an empire, or to prevent corruption and undue influence, in the exercise of such great powers; the term for which they are to be chosen, too long to preserve a due dependence and accountability to their constituents; and the mode and places of their election not sufficiently ascertained, for as Congress have the control over both, they may govern the choice, by ordering the representatives of a whole State, to be elected in one place, and that too may be the most inconvenient.

The senate, the great efficient body in this plan of government, is constituted on the most unequal principles. The smallest State in the Union has equal weight with the great States of Virginia, Massachusetts, or Pennsylvania. The senate, besides its legislative functions, has a very considerable share in the executive; none of the principal appointments to office can be made without its advice and consent. The terin and mode of its appointment will lead to permanency. The members are chosen for six years, the mode is under the control of Congress, and as there is no exclusion by rotation, they may be continued for life, which, from their extensive means of

influence, would follow of course. The President, who would be a mere pageant of State, unless he coincides with the views of the senate, would either become the bead of the aristocratic junto in that body, or its minion; besides, their influence being the most predominant, could the best secure his re-election to office. And from his power of granting pardons, he might screen from punishment the most treasonable attempts on the liberties of the people, when instigated by the senate....

Mr. [James] Wilson asserts that never was charge made with less reason, than that which predicts the institution of a baneful aristocracy in the federal Senate.' In my first number, I stated that this body would be a very unequal representation of the several States, that the members being appointed for the long term of six years, and there being no exclusion by rotation, they might be continued for life, which would follow of course from their extensive means of influence, and that possessing a considerable share in the executive as well as the legislative, it would become a permanent aristocracy, and swallow up the other orders in the government.

That these fears are not imaginary, a knowledge of the history of other nations, where the powers of government have been injudiciously placed, will fully demonstrate. Mr. Wilson says, "the senate branches into two characters; the one legislative and the other executive. In its legislative character it can effect no purpose, without the co-operation of the house of representatives, and in its executive character it can accomplish no object without the concurrence of the president. Thus fettered, I do not know any act which the senate can of itself perform, and such dependence necessarily precludes every idea of influence and superiority." This I confess is very specious, but experience demonstrates that checks in government, unless accompanied with adequate power and independently placed, prove merely nominal, and will be inoperative. Is it probable, that the President of the United States, limited as he is in power, and dependent on the will of the senate, in appointments to office, will either have the firmness or inclination to exercise his prerogative of a conditional control upon the proceedings of that body, however injurious they may be to the public welfare? It will be his interest to coincide with the views of the senate, and thus become the head of the aristocratic junto. The king of England is a constituent part in the legislature, but although an hereditary monarch, in possession of the whole executive power, including the unrestrained appointment to offices, and an immense revenue, enjoys but in name the prerogative of a negative upon the parliament. Even the king of England, circumstanced as he is, has not dared to exercise it for near a century past. The check of the house of representatives upon the senate will likewise be rendered nugatory for want of due weight in the democratic branch, and from their constitution they may become so independent of the people as to be indifferent of its interests. Nay, as Congress would have the control over the mode and place of their election, by ordering the representatives of a whole state to be elected at one place, and that too the most inconvenient, the ruling powers may govern the choice, and thus the house of representatives may be composed of the creatures of the senate. Still the semblance of checks may remain, but without operation.

This mixture of the legislative and executive moreover highly tends to corruption. The chief improvement in government, in modern times, has been the complete separation of the great distinctions of power; placing the legislative in different hands from those which hold the executive; and again severing the judicial part from the ordinary administrative. "When the

legislative and executive powers (says Montesquieu) are united in the same person or in the same body of magistrates, there can be no liberty."

CENTINEL

Antifederalist No. Antifederalist No. 48 NO SEPARATION OF DEPARTMENTS RESULTS IN NO RESPONSIBILITY

"LEONIDAS," from London, obviously did not understand Article II Section I of the proposed new Constitution. But his works were welcomed in the London Times, and either The Freeman's Journal, or The North-American Intelligencer on July 30, 1788.

In the new constitution for the future government of the thirteen United States of America, the President and Senate have all the executive and two thirds of the Legislative power.

This is a material deviation from those principles of the English constitution, for which they fought with us; and in all good governments it should be a fundamental maxim, that, to give a proper balance to the political system, the different branches of the legislature should be unconnected, and the legislative and executive powers should be separate. By the new constitution of America this union of the executive and legislative bodies operates in the most weighty matters of the state. They jointly make all treaties; they jointly appoint all officers civil and military; and, they jointly try all impeachments, either of their own members, or the officers appointed by themselves.

In this formidable combination of power, there is no responsibility. And where there is power without responsibility, how can there be liberty?

The president of the United States is elected for four years, and each of the thirteen states has one vote at his election; which vote is not of the people, but of electors two degrees from the people.

The senate is a body of six years duration; and as in the choice of presidents, the largest state has but one vote, so it is in the choice of senators. Now this shows, that responsibility is as little to be apprehended from amenability to constituents, as from the terror of impeachment; for to the members of the senate it is clear, that trial by impeachment is nothing but parade.

From such an union in governments, it requires no great depth of political knowledge to prophesy, that monarchy or aristocracy must be generated, and perhaps of the most grievous kind. The only check in favor of the democratic principle is the house of representatives; but its smallness of number, and great comparative disparity of power, render that house of little effect to promote good or restrain bad government.

The power given to this ill- constructed senate is, to judge of what may be for the general welfare; and such engagements, when made the acts of Congress, become the supreme laws of the land.

This is a power co-extensive with every possible object of human legislation. Yet there is no restraint, no charter of rights, no residuum of human privileges, not intended to be given up to society. The rights of conscience, the freedom of the press, and trial by jury, are at the mercy of this senate. Trial by jury has been already materially injured. The trial in criminal cases is not by twelve men of the vicinage, or of the county, but of the state; and the states are from fifty to

seven hundred miles in extent! In criminal cases this new system says, the trial shall be by jury. On civil cases it is silent. There it is fair to infer, that as in criminal cases it has been materially impaired, in civil cases it may be altogether omitted. But it is in truth, strongly discountenanced in civil cases; for this new system gives the supreme court in matters of appeal, jurisdiction both of law and fact.

This being the beginning of American freedom, it is very clear the ending will be slavery, for it cannot be denied that this constitution is, in its first principles, highly and dangerously oligarchical; and it is every where agreed, that a government administered by a few, is, of all governments, the worst.

LEONIDAS

Antifederalist No. 49 ON CONSTITUTIONAL CONVENTIONS (PART I)

The following essay is in two parts: the first is by "MASSACHUSETTENSIS," and is reprinted from The Massachusetts Gazette of January 29, 1788; the second part was written by "AN OLD WHIG," and is taken from The New-York Journal of November 27, 1787.

That the new constitution cannot make a union of states, but only of individuals, and purposes the beginning of one new society, one new government in all matters, is evident from these considerations, viz: It marks no line of distinction between separate state matters, and what would of right come under the control of the powers ordained in a union of states. To say that no line could be drawn, is giving me the argument. For what can be more absurd than to say, that states are united where a general power is established that extends to all objects of government, i.e., all that exist among the people who make the compact? And is it not clear that Congress have the right (by the constitution), to make general laws for proving all acts, records, proceedings, and the effect thereof, in what are now called the states? Is it possible after this that any state act can exist, or any public business be done, without the direction and sanction of Congress, or by virtue of some subordinate authority? If not, how in the nature of things can there be a union of states? Does not the uniting of states, as states, necessarily imply the existence of separate state powers?

Again, the constitution makes no consistent, adequate provision for amendments to be made to it by states, as states. Not they who drew up the amendments (should any be made), but they who ratify them, must be considered as making them. Three fourths of the legislatures of the several states, as they are now called, may ratify amendments-that is, if Congress see fit, but not without. Where is then any independent state authority recognized in the plan? And if there is no independent state authority, how can there be a union of states? But is it not a question of importance why the states in their present capacity, cannot ratify the original? I mean, why the legislatures of the several states cannot do this business? I wish to be informed where to find the regular exercise and legal sanction of state power, if the legislative authority of the state is set aside. Have the people some other constitutional means by which they can give their united voice in state affairs? This leads me to observe, that should the new constitution be received as it stands, it can never be proved that it originated from any proper state authority; because there is no such authority recognized either in the form of it, or in the mode fixed upon for its ratification. It says, "We the people of the United States," etc., make this constitution; but does this phrase, "We the people of the United States," prove that the people are acting in state character, or that the several states must of necessity exist with separate governments? Who that understands the subject will believe either? ...

The plan does not acknowledge any constitutional state authority as necessary in the ratification of it. This work is to be done by a mere convention, only in consequence of mere recommendation; which does by no means amount to a proper state act. As no state act can exist independent of the supreme authority of the state, and this authority is out of the question in the ratification of the new constitution, it clearly follows that the ratifying of it, by a mere convention, is no proper state business. To conclude, the people may make the original, but the

people have no right to alter it. Congress may order this matter just as they please, and consequently have whom they please elected for governors or representatives, not of the states but of the people; and not of the people as men but as property. . . .

MASSACHUSETTENSIS

It appears to me that I was mistaken in supposing that we could so very easily make trial of this constitution, and again change it at our pleasure. The conventions of the several states cannot propose any alterations-they are only to give their assent and ratification. And after the constitution is once ratified, it must remain fixed until two thirds of both the houses of Congress shall deem it necessary to propose amendments; or the legislatures of two thirds of the several states shall make application to Congress for the calling a convention for proposing amendments - which amendments shall not be valid until they are ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as one or the other mode of ratification may be proposed by Congress. This appears to me to be only a cunning way of saying that no alteration shall ever be made; so that whether it is a good constitution or a bad constitution, it will remain forever unamended. Lycurgus, when he promulgated his laws to the Spartans, made them swear that they would make no alterations in them until he should return from a journey which he was then about to undertake. He chose never to return, and therefore no alteration could be made in his laws. The people were made to believe that they could make trial of his laws for a few months or years, during his absence, and as soon as he returned they could continue to observe them or reject at pleasure. Thus this celebrated republic was in reality established by a trick. In like manner the proposed constitution holds out a prospect of being subject to be changed if it be found necessary or convenient to change it; but the conditions upon which an alteration can take place, are such as in all probability will never exist. The consequence will be that when the constitution is once established it never can be altered or amended without some violent convulsion or civil war.

The conditions, I say, upon which any alterations can take place, appear to me to be such as never will exist. Two thirds of both houses of congress, or the legislatures of two thirds of the states, must agree in desiring a convention to be called. This will probably never happen. But if it should happen, then the convention may agree to the amendments or not, as they think right; and after all three fourths of the states must ratify the amendments. Before all this labyrinth can be traced to a conclusion, ages will revolve, and perhaps the great principles upon which our late glorious revolution was founded, will be totally forgotten. If the principles of liberty are not firmly fixed and established in the present constitution, in vain may we hope for retrieving them hereafter. People once possessed of power are always loathe to part with it; and we shall never find two thirds of a Congress voting or proposing anything which shall derogate from their own authority and importance, or agreeing to give back to the people any part of those privileges which they have once parted with-so far from it, that the greater occasion there may be for a reformation, the less likelihood will there be of accomplishing it. The greater the abuse of power, the more obstinately is it always persisted in. As to any expectation of two thirds of the legislatures concurring in such a request, it is if possible still more remote. The legislatures of the states will be but forms and shadows, and it will be the height of arrogance and presumption in them, to turn their thoughts to such high subjects. After this constitution is once established, it is too evident that we shall be obliged to fill up the offices of assemblymen and councillors, as we

do those of constables, by appointing men to serve whether they will or not, and fining them if they refuse. The members thus appointed, as soon as they can hurry through a law or two for repairing highways, or impounding cattle, will conclude the business of their sessions as suddenly as possible, that they may return to their own business. Their heads will not be perplexed with the great affairs of state. We need not expect two thirds of them ever to interfere in so momentous a question as that of calling a continental convention. The different legislatures will have no communication with one another, from the time of the new constitution being ratified to the end of the world. Congress will be the great focus of power as well as the great and only medium of communication from one state to another. The great and the wise and the mighty will be in possession of places and offices; they will oppose all changes in favor of liberty; they will steadily pursue the acquisition of more and more power to themselves and their adherents....

AN OLD WHIG

Antifederalist No. 50 ON CONSTITUTIONAL CONVENTIONS (PART II)

Antifederalists sought a second constitutional convention immediately after conclusion of the first. This essay by "AN OLD WHIG," is from either The Freeman's Journal or The North-American Intelligencer, of November 28, 1787.

It is true that the Continental Convention have directed their proposed constitution to be laid before a Convention of Delegates to be chosen in each state "for their assent and ratification," which seems to preclude the idea of any power in the several Conventions of proposing any alterations; or, indeed, even of rejecting the plan proposed if they should disapprove of it. Still, however, the question recurs, what authority the late Convention had to bind the people of the United States to any particular form of government, or to forbid them to adopt such form of government, as they should think fit. I know it is a language frequent in the mouths of some heaven-born Phaetons among us-who, like the son of Apollo, think themselves entitled to guide the chariot of the sun-that common people have no right to judge of the affairs of government; that they are not fit for it; that they should leave these matters to their superiors. This, however, is not the language of men of real understanding, even among the advocates for the proposed Constitution; but these still recognize the authority of the people, and will admit, at least in words, that the people have a right to be consulted. Then I ask, if the people in the different states have a right to be consulted in the new form of continental government, what authority could the late Convention have to preclude them from proposing amendments to the plan they should offer? Had the Convention any right to bind the people to the form of government they should propose? Let us consider this matter.

The late Convention were chosen by the General Assembly of each state. They had the sanction of Congress. For what? To consider what alterations were necessary to be made in the articles of Confederation. What have they done? They have made a new Constitution for the United States. I will not say that in doing so they have exceeded their authority; but, on the other hand, I trust that no man of understanding among them will pretend to say that anything they did, or could do, was of the least avail to lessen the right of the people to judge for themselves in the last resort. This right is perhaps unalienable; but, at all events, there is no pretense for saying that this right was ever meant to be surrendered up into the hands of the late Continental Convention. The people have an undoubted right to judge of every part of the government which is offered to them. No power on earth has a right to preclude them; and they may exercise this choice either by themselves or their delegates legally chosen in the state Convention. I venture to say that no man, reasoning upon Revolution principles, can possibly controvert this right.

Indeed, very few go so far as to controvert the right of the people to propose amendments. But we are told the thing is impracticable; that if we begin to propose amendments there will be no end to them; that the several states will never agree in their amendments; that we shall never unite in any plan; that if we reject this, we shall either have a worse one or none at all; that we ought therefore to adopt this at once without alteration or amendment. Now, these are very kind gentlemen who insist upon doing so much good for us, whether we will or not. Idiots and maniacs ought certainly to be restrained from doing themselves mischief, and ought to be

compelled to that which is for their own good. Whether the people of America are to be considered in this light and treated accordingly, is a question which deserves, perhaps, more consideration than it has yet received. A contest between the patients and their doctors, which are mad or which are fools, might possibly be a very unhappy one. I hope at least that we shall be able to settle this important business without so preposterous a dispute. What then would you have us do, it may be asked? Would you have us adopt the proposed constitution or reject it? The method I would propose is this:

1. Let the conventions of each state, as they meet, after considering the proposed constitution, state their objections and propose their amendments. So far from these objections and amendments clashing with each other in irreconcilable discord, as it has too often been suggested they would do, that from what has been hitherto published in the different states in opposition to the proposed constitution we have a right to expect that they will harmonize in a very great degree. The reason I say so is that about the same time, in very different parts of the continent, the very same objections have been made, and the very same alterations proposed by different writers, who I verily believe know nothing at all of each other and were very far from acting by a premeditated concert; and that others who have not appeared as writers in the newspapers in the different states, have appeared to act and speak in perfect unison with those objections and amendments, particularly in the article of a bill of rights; that in short, the very same sentiments seem to have been echoed from the different parts of the continent by the opposers of the proposed constitution. And these sentiments have been very little contradicted by its friends, otherwise than by suggesting their fears that by opposing the constitution at present proposed, we might be disappointed of any federal government, or receive a worse one than the present. It would be a most delightful surprise to find ourselves all of one opinion at last. And I cannot forbear hoping that when we come fairly to compare our sentiments, we shalt find ourselves much more nearly agreed, than in the hurry and surprise in which we have been involved on this subject, we ever suffered ourselves to imagine.

2. When the conventions have stated these objections and amendments, let them transmit them to congress, and adjourn, praying that congress will direct another convention to be called from the different states, to consider of these objections and amendments, and pledging themselves to abide by whatever decision shall be made by such future convention on the subject whether it be to amend the proposed constitution or to reject any alterations, and ratify it as it stands.

3. If a new convention of the United States should meet, and revise the proposed constitution, let us agree to abide by their decision. It is past a doubt that every good citizen of America pants for an efficient federal government. T have no doubt we shall concur at last in some plan of continental government, even if many people could imagine exceptions to it. But if the exceptions which are made at present shall be maturely considered, and even be pronounced by our future representatives as of no importance (which I trust they will not), even in that case I have no doubt that almost every man will give up his own private opinion and concur in that decision.

4. If, by any means, another continental convention should fail to meet, then let the conventions of the several states again assemble and at last decide the great solemn question, whether we shall adopt the constitution now proposed or reject it. And whenever it becomes necessary to

decide upon this point one, at least, who from the beginning has been invariably anxious for the liberty and independence of this country, will concur in adopting and supporting this constitution, rather than none; though, I confess, I could easily imagine some other form of confederation which I should think better entitled to my hearty approbation, and indeed I am not afraid of a worse.

AN OLD WHIG

Antifederalist No. 51 DO CHECKS AND BALANCES REALLY SECURE THE RIGHTS OF THE PEOPLE?

This satire is from a pamphlet of "ARISTOCROTIS," The Government of Nature Delineated; Or An Exact Picture of the New Federal Constitution (Carlisle, PA, 1788)

The present is an active period. Europe is in a ferment breaking their constitutions; America is in a similar state, making a constitution. For this valuable purpose a convention was appointed, consisting of such as excelled in wisdom and knowledge, who met in Philadelphia last May. For my own part, I was so smitten with the character of the members, that I had assented to their production, while it was yet in embryo. And I make no doubt but every good republican did so too. But how great was my surprise, when it appeared with such a venerable train of names annexed to its tail, to find some of the people under different signatures-such as Centinel, Old Whig, Brutus, etc. - daring to oppose it, and that too with barefaced arguments, obstinate reason and stubborn truth. This is certainly a piece of the most extravagant impudence to presume to contradict the collected wisdom of the United States; or to suppose a body, who engrossed the whole wisdom of the continent, was capable of erring. I expected the superior character of the convention would have secured it from profane sallies of a plebeian's pen; and its inherent infallibility debarred the interference of impertinent reason or truth. It was too great an act of condescension to permit the people, by their state conventions, "to assent and ratify," what the grand convention prescribed to them; but to inquire into its principles, or investigate its properties, was a presumption too daring to escape resentment. Such licentious conduct practised by the people, is a striking proof of our feeble governments, and calls aloud for the pruning knife, i.e., the establishment of some proper plan of discipline. This the convention, in the depth of their united wisdom hath prescribed, which when established, will certainly put a stop to the growing evil. A consciousness of this, is, no doubt, the cause which stimulates the people to oppose it with so much vehemence. They deprecate the idea of being confined within their proper sphere; they cannot endure the thought of being obliged to mind their own business, and leave the affairs of government to those whom nature hath destined to rule. I say nature, for it is a fundamental principle, as clear as an axiom, that nature hath placed proper degrees and subordinations amongst mankind and ordained a few(1) to rule, and many to obey. I am not obliged to prove this principle because it would be madness in the extreme to attempt to prove a self- evident truth.

(1) If any person is so stupidly dull as not to discern who these few are, I would refer such to nature herself for information. Let them observe her ways and be wise. Let them mark those men whom she hath endued with the necessary qualifications of authority; such as the dictatorial air, the magisterial voice, the imperious tone, the haughty countenance, the lofty look, the majestic mien. Let them consider those whom she hath taught to command with authority, but comply with disgust; to be fond of sway, but impatient of control; to consider themselves as Gods, and all the rest of mankind as two legged brutes. Now it is evident that the possessors of these divine qualities must have been ordained by nature to dominion and empire; for it would be blasphemy against her supreme highness to suppose that she confers her gifts in vain. Fortune hath also distinguished those upon whom nature hath imprinted the lineaments of authority. She hath heaped her favors and lavished her gifts upon those very persons whom nature delighteth to

honor. Indeed, instinct hath taught those men that authority is their natural right, and therefore they grasp at it with an eagerness bordering on rapacity.

But with all due submission to the infallible wisdom of the grand convention, let me presume to examine whether they have not, in the new plan of government, inviolably adhered to this supreme principle. . . .

In article first, section first, of the new plan, it is declared that "all legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate"-very right, quite agreeable to nature and House of Representatives"-not quite so right. This is a palpable compliance with the humors and corrupt practices of the times. But what follows in section 2 is still worse: "The House of Representatives shall be composed of members chosen every second year by the people of the several states." This is a most dangerous power, and must soon produce fatal and pernicious consequences, were it not circumscribed and poised by proper checks and balances. But in this is displayed the unparalleled sagacity of the august convention: that when such bulwarks of prejudice surrounded the evil, so as to render it both difficult and dangerous to attack it by assault and storm, they have invested and barricaded it so closely as will certainly deprive it of its baneful influence and prevent its usual encroachments. They have likewise stationed their miners and sappers so judiciously, that they will certainly, in process of time, entirely reduce and demolish this obnoxious practice of popular election. There is a small thrust given to it in the body of the conveyance itself. The term of holding elections is every two years; this is much better than the detestable mode of annual elections, so fatal to energy. However, if nothing more than this were done, it would still remain an insupportable inconvenience. But in section 4 it is provided that congress by law may alter and make such regulations with respect to the times, places, and manner of holding elections, as to them seemeth fit and proper. This is certainly a very salutary provision, most excellently adapted to counterbalance the great and apparently dangerous concessions made to the plebeians in the first and second sections. With such a prudent restriction as this they are quite harmless: no evil can arise from them if congress have only the sagacity and fortitude to avail themselves of the power they possess by this section. For when the stated term (for which the primary members was elected) is nigh expired, congress may appoint [the] next election to be held in one place in each state; and so as not to give the rabble needless disgust, they may appoint the most central place for that purpose. They can never be at a loss for an ostensible reason to vary and shift from place to place until they may fix it at any extremity of the state it suits. This will be the business of the senate, to observe the particular places in each state, where their influence is most extensive, and where the inhabitants are most obsequious to the will of their superiors, and there appoint the elections to be held. By this means, such members will be returned to the house of representatives (as it is called) as the president and senate shall be pleased to recommend; and they no doubt will recommend such gentlemen only as are distinguished by some peculiar federal feature-so that unanimity and concord will shine conspicuous through every branch of government. This section is ingeniously calculated, and must have been intended by the convention, to exterminate electioneering entirely. For by putting the time of election in the hands of congress they have thereby given them a power to perpetuate themselves when they shall find it safe and convenient to make the experiment. For though a preceding clause says, "that representatives shall be chosen for two years, and senators for six years," yet this clause being subsequent annuls the former, and puts it in the power of congress, (when some favorable

juncture intervenes) to alter the time to four and twelve years. This cannot be deemed an unconstitutional stretch of power, for the constitution in express terms puts the time of holding elections in their power, and certainly they are the proper judges when to exert that power. Thus by doubling the period from time to time, its extent will soon be rendered coeval with the life of man. And it is but a very short and easy transition from this to hereditary succession, which is most agreeable to the institutions of nature, who in all her works, hath ordained the descendant of every species of beings to succeed its immediate progenitor, in the same actions, ends and order.

The indefatigable laborious ass never aspires to the honors, nor assumes the employment of the sprightly warlike steed, nor does he ever pretend that it is his right to succeed him in all his offices and dignities, because he bears some resemblance to the defunct in his figure and nature. The llama, though useful enough for the purposes for which he was intended by nature, is every way incompetent to perform the offices of the elephant; nor does he ever pretend to usurp his elevated station. Every species of beings, animate and inanimate, seem fully satisfied with the station assigned them by nature. But perverse, obstinate man, he alone spurns at her institutions, and inverts her order.' He alone repines at his situation, and endeavors to usurp the station of his superiors. But this digression has led me from the subject in hand. . . .

(2) This is only to be understood of the inferior class of mankind. The superior order have aspiring feelings given them by nature, such as ambition, emulation, etc., which makes it their duty to persevere in the pursuit of gratifying these refined passions.

The next object that presents itself is the power which the new constitution gives to congress to regulate the manner of elections. The common practice of voting at present is by ballot. By this mode it is impossible for a gentleman to know how he is served by his dependent, who may be possessed of a vote. Therefore this mode must be speedily altered for that viva voce, which will secure to a rich man all the votes of his numerous dependents and friends and their dependents. By this means he may command any office in the gift of the people, which he pleases to set up for. This will answer a good end while electioneering exists; and will likewise contribute something towards its destruction. A government founded agreeable to nature must be entirely independent; that is, it must be beyond the reach of annoyance or control from every power on earth, Now in order to render it thus, several things are necessary.

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2dly. It will create and diffuse a spirit of industry among the people. They will then be obliged to labor for money to pay their taxes. There will be no trifling from time to time, as is done now. The new government will have energy sufficient to compel immediate payment.

3dly. This will make the people attend to their own business, and not be dabbling in politics - things they are entirely ignorant of; nor is it proper they should understand. But it is very probable that the exercise of this power may be opposed by the refractory plebeians, who (such is the perverseness of their natures) often refuse to comply with what is manifestly for their advantage. But to prevent all inconvenience from this quarter the congress have power to raise and support armies. This is the second thing necessary to render government independent. The creatures who compose these armies are a species of animals, wholly at the disposal of government; what others call their natural rights they resign into the hands of their superiors- even the right of self-preservation (so precious to all other beings) they entirely surrender, and put their very lives in the power of their masters. Having no rights of their own to care for, they become naturally jealous and envious of those possessed by others. They are therefore proper instruments in the hands of government to divest the people of their usurped rights. But the capital business of these armies will be to assist the collectors of taxes, imposts, and excise, in raising the revenue; and this they will perform with the greatest alacrity, as it is by this they are supported; but for this they would be in a great measure useless; and without this they could not exist. . . .

From these remarks, I think it is evident, that the grand convention hath dexterously provided for the removal of every thing that hath ever operated as a restraint upon government in any place or age of the world. But perhaps some weak heads may think that the constitution itself will be a check upon the new congress. But this I deny, for the convention has so happily worded themselves, that every part of this constitution either bears double meaning, or no meaning at all; and if any concessions are made to the people in one place, it is effectually cancelled in another- so that in fact this constitution is much better and gives more scope to the rulers than they durst safely take if there was no constitution at all. For then the people might contend that the power was inherent in them, and that they had made some implied reserves in the original grant. But now they cannot, for every thing is expressly given away to government in this plan. Perhaps some people may think that power which the house of representatives possesses, of impeaching the officers of government, will be a restraint upon them. But this entirely vanishes, when it is considered that the senate hath the principal say in appointing these officers, and that they are the sole judges of all impeachments. Now it would be absurd to suppose that they would remove their own servants for performing their secret orders. . . . For the interest of rulers and the ruled will then be two distinct things. The mode of electing the president is another excellent regulation, most wisely calculated to render him the obsequious machine of congress. He is to be chosen by electors appointed in such manner as the state legislators shall direct. But then the highest in votes cannot be president, without he has the majority of all the electors; and if none have this majority, then the congress is to choose the president out of the five highest on the return. By this means the congress will always have the making of the president after the first election. So that if the reigning president pleases his masters, he need be under no apprehensions of being turned out for any severities used to the people, for though the congress may not have influence enough to procure him the majority of the votes of the electoral college, yet they will always be able to prevent any other from having such a majority; and to have him returned

among the five highest, so that they may have the appointing of him themselves. All these wise regulations, prove to a demonstration, that the grand convention was infallible. The congress having thus disentangled themselves from all popular checks and choices, and being supported by a well disciplined army and active militia, will certainly command dread and respect abroad, obedience and submission at home. They will then look down with awful dignity and tremendous majesty from the pinnacle of glory to which fortune has raised them upon the insignificant creatures, their subjects, whom they have reduced to that state of vassalage and servile submission, for which they were primarily destined by nature. America will then be great amongst the nations(3) and princess amongst the provinces. Her fleets will cover the deserts of the ocean and convert it into a popular city; and her invincible armies overturn the thrones of princes. The glory of Britain (4) shall fall like lightning before her puissant arm; when she ariseth to shake the nations, and take vengeance on all who dare oppose her. O! thou most venerable and august congress! with what astonishing ideas my mind is ravished! when I contemplate thy rising grandeur, and anticipate thy future glory! Happy thy servants! happy thy vassals! and happy thy slaves, which fit under the shade of thy omnipotent authority, and behold the glory of thy majesty! for such a state who would not part with ideal blessings of liberty? who would not cheerfully resign the nominal advantages of freedom? the dazzling splendor of Assyrian, Persian, Macedonian and Roman greatness will then be totally eclipsed by the radiant blaze of this glorious western luminary! These beautiful expressions, aristocracy, and oligarchy, upon which the popular odium hath fixed derision and contempt, will then resume their natural emphasis; their genuine signification will be perfectly understood, and no more perverted or abused.

ARISTOCROTIS

(3) That is, if we may credit the prognostications with which our federal news-papers and pamphlets daily teem.

(4) Britain once the supreme ruler of this country, but her authority was rejected. Not, as a great many believe, because her claims were tyrannical and oppressive, but because her dominion excluded those from monopolizing the government into their own hands, whom nature had qualified to rule. It is certainly no more than the natural right of rulers "to bind their subjects, in all cases whatsoever." This power is perfectly synonymous with that clause in the constitution which invests congress with power to make all laws which shall be "necessary and proper for carrying into execution the foregoing powers and all other powers," etc., and that which says "the constitution, laws, and treaties of congress shall be the supreme law of the land; any thing in the constitutions or laws of any of the states to the contrary notwithstanding." But nothing less would satisfy Britain, than a power to bind the natural rulers as well as subjects.

Antifederalist No. 52 ON THE GUARANTEE OF CONGRESSIONAL BIENNIAL ELECTIONS

The following essay was signed by Consider Arms, Malichi Maynard, and Samuel Field. It was taken from The Hampshire Gazette of April 9, 1788.

We the subscribers being of the number, who did not assent to the ratification of the federal constitution, under consideration in the late state convention, held at Boston, to which we were called by the suffrages of the corporations to which we respectively belong-beg leave, through the channel of your paper, to lay before the public in general, and our constituents in particular, the reasons of our dissent, and the principles which governed us in our decision of this important question.

Fully convinced, ever since the late revolution, of the necessity of a firm, energetic government, we should have rejoiced in an opportunity to have given our assent to such a one; and should in the present case, most cordially have done it, could we at the same time been happy to have seen the liberties of the people and the rights of mankind properly guarded and secured. We conceive that the very notion of government carries along with it the idea of justice and equity, and that the whole design of instituting government in the world, was to preserve men's properties from rapine, and their bodies from violence and bloodshed.

These propositions being established, we conceive must of necessity produce the following consequence: That every constitution or system, which does not quadrate with this original design, is not government, but in fact a subversion of it.

Having premised thus much, we proceed to mention some things in this constitution to which we object, and to enter into an inquiry, whether, and how far they coincide with those simple and original notions of government before mentioned.

In the first place, as direct taxes are to be apportioned according to the numbers in each state, and as Massachusetts has none in it but what are declared free men, so the whole, blacks as well as whites, must be numbered; this must therefore operate against us, as two-fifths of the slaves in the southern states are to be left out of the numeration. Consequently, three Massachusetts infants will increase the tax equal to five sturdy full-grown Negroes of theirs, who work every day in the week for their masters, saving the Sabbath, upon which they are allowed to get something for their own support. We can see no justice in this way of apportioning taxes. Neither can we see any good reason why this was consented to on the part of our delegates.

We suppose it next to impossible that every individual in this vast continental union, should have his wish with regard to every single article composing a frame of government. And therefore, although we think it More agreeable to the principles of republicanism, that elections should be annual, yet as the elections in our own state government are so, we did not view it so dangerous to the liberties of the people, that we should have rejected the constitution merely on account of the biennial elections of the representatives-had we been sure that the people have any security even of this. But this we could not find. For although it is said, that "the House of

Representatives shall be chosen every second year, by the people of the several states," etc., and that "the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof," yet all this is wholely superseded by a subsequent provision, which empowers Congress at any time to enact a law, whereby such regulations may be altered, except as to the places of choosing senators. Here we conceive the people may be very materially injured, and in time reduced to a state of as abject vassalage as any people were under the control of the most mercenary despot that ever tarnished the pages of history. The depravity of human nature, illustrated by examples from history, will warrant us to say, it may be possible, if not probable, that the congress may be composed of men, who will wish to burden and oppress the people. In such case, will not their inventions be fruitful enough to devise occasions for postponing the elections? And if they can do this once, they can twice; if they can twice, they can thrice, so by degrees render themselves absolute and perpetual. Or, if they choose, they have another expedient. They can alter the place of holding elections. They can say, whatever the legislature of this state may order to the contrary, that all the elections of our representatives shall be made at Mechias, or at Williamstown. Consequently, nine- tenths of the people will never vote. And if this should be thought a measure favorable to their reelection, or the election of some tool for their mercenary purposes, we doubt not it will be thus ordered. But says the advocates for the constitution, "it is not likely this will ever happen; we are not to expect our rulers will ever proceed to a wanton exercise of the powers given them." But what reason have we more than past ages, to expect that we shall be blessed with impeccable rulers? We think not any. Although it has been said that every generation grows wiser and wiser, yet we have no reason to think they grow better and better. And therefore the probability lies upon the dark side. Does not the experience of past ages leach, that men have generally exercised all the powers they had given them, and even have usurped upon them, in order to accomplish their own sinister and avaricious designs, whenever they thought they could do it with impunity? This we presume will not be denied. And it appeared to us that the arguments made use of by the favorers of the constitution, in the late convention at Boston, proceeded upon the plan of righteousness in those who are to rule over us, by virtue of this new form of government. But these arguments, we confess, could have no weight with us, while we judge them to be founded altogether upon a slippery perhaps.

We are sensible, that in order to the due administration of government, it is necessary that certain powers should be delegated to the rulers from the people. At the same time, we think they ought carefully to guard against giving so much as will enable those rulers, by that means, at once, or even in process of time, to render themselves absolute and despotic. This we think is the case with the form of government lately submitted to our consideration. We could not, therefore, acting uprightly, consulting our own good and the good of our constituents, give our assent unto it. We could not then and we still cannot see, that because people are many times guilty of crimes and deserving of punishment, that it from thence follows the authority ought to have power to punish them when they are not guilty, or to punish the innocent with the guilty without discrimination, which amounts to the same thing. But this we think in fact to be the case as to this federal constitution. For the congress, whether they have provocation or not, can at any time order the elections in any or all the states to be conducted in such manner as wholely to defeat and render entirely nugatory the intention of those elections, and convert that which was considered and intended to be the palladium of the liberties of the people-the grand bulwark against any invasion upon them-into a formidable engine, by which to overthrow them all, and

thus involve them in the depth of misery and distress. But it was pled by some of the ablest advocates of the constitution, that if congress should exercise such powers to the prejudice of the people (and they did not deny but they could if they should be disposed) they (the people) would not suffer it. They would have recourse to the ultima ratio, the dernier resort of the oppressed-the sword.

But it appeared to us a piece of superlative incongruity indeed, that the people, whilst in the full and indefeasible possession of their liberties and privileges, should be so very profuse, so very liberal in the disposal of them, as consequently to place themselves in a predicament miserable to an extreme. So wretched indeed, that they may at once be reduced to the sad alternative of yielding themselves vassals into the hands of a venal and corrupt administration, whose only wish may be to aggrandize themselves and families-to wallow in luxury and every species of dissipation, and riot upon the spoils of the community; or take up the sword and involve their country in all the horrors of a civil war-the consequences of which, we think, we may venture to augur will more firmly rivet their shackles and end in the entailment of vassalage to their posterity. We think this by no means can fall within the description of government before mentioned. Neither can we think these suggestions merely chimerical, or that they proceed from an overheated enthusiasm in favor of republicanism; neither yet from an illplaced detestation of aristocracy; but from the apparent danger the people are in by establishing this constitution. When we take a forward view of the proposed congress-seated in the federal city, ten miles square, fortified and replenished with all kinds of military stores and every implement; with a navy at command on one side, and a land army on the other-we say, when we view them thus possessed of the sword in one hand and the purse strings of the people in the other, we can see no security left for them in the enjoyment of their liberties, but what may proceed from the bare possibility that this supreme authority of the nation may be possessed of virtue and integrity sufficient to influence them in the administration of equal justice and equity among those whom they shall govern. But why should we voluntarily choose to trust our all upon so precarious a tenure as this? We confess it gives us pain to anticipate the future scene: a scene presenting to view miseries so complicated and extreme, that it may be part of the charms of eloquence to extenuate, or the power of art to remove.

CONSIDER ARMS
MALICHI MAYNARD
SAMUEL FIELD

Antifederalist No. 53 A PLEA FOR THE RIGHT OF RECALL

"AMICUS" appeared in the Columbian Herald, August 28, 1788.

Some time before a Convention of the United States was held, I mentioned in a paragraph which was published in one of the Charlestown papers, that it would be acting wisely in the formation of a constitution for a free government, to enact, that the electors should recall their representatives when they thought proper, although they should be chosen for a certain term of years; as a right to appoint (where the right of appointing originates with the appointees) implies a right to recall. As the persons appointed are meant to act for the benefit of the appointees, as well as themselves, they, if they mean to act for their mutual benefit, can have no objection to a proposal of this kind. But if they have any sinister designs, they will certainly oppose it, foreseeing that their electors will displace them as soon as they begin to act contrary to their interest. I am therefore glad to find that the state of New York has proposed an amendment of this kind to the federal constitution, viz: That the legislatures of the respective states may recall their senators, or either of them, and elect others in their stead, to serve the remainder of the time for which the senators so recalled were appointed. I wish this had been extended to the representatives in both houses, as it is as prudent to have a check over the members of one house as of the other.

Some persons as object to this amendment, in fact say, that it is safer to give a man an irrevocable power of attorney, than a revocable one; and that it is right to let a representative ruin us, rather than recall him and put a real friend of his country, and a truly honest man in his place, who would rather suffer ten thousand deaths than injure his country, or sully his honor and reputation. Such persons seem to say, that power ought not to originate with the people (which is the wish, I fear, of some among us); and also that we are not safe in trusting our own legislature with the power of recalling such senators as will not abide by such instructions - as shall be either given them, when chosen, or sent to them afterwards, by the legislature of this or any other state, or by the electors that chose them, although they should have met together in a body for the purpose of instructing or sending them instructions on a matter on which the salvation of the state depends. That we should insist on the amendment respecting this matter taking place, which the state of New York has proposed, appears to me to be absolutely necessary, the security of each state may be almost said to rest on it. For my own part, I would rather that this amendment should take place and give the new government unlimited powers to act for the public good, than give them limited powers, and at the same time put it out of our power, for a certain term of years, to recall our representatives, although we saw they were exceeding their powers, and were bent on making us miserable and themselves, by means of a standing army-a perpetual and absolute government. For power is a very intoxicating thing, and has made many a man do unwarrantable actions, which before he was invested with it, he had no thoughts of doing. I hope by what I have said I shall not be thought to cast even the shadow of a reflection on the principles of either of the members of the federal convention-it is far from being my intention. I wish for nothing more than a good government and a constitution under which our liberties will be perfectly safe. To preserve which, I think the wisest conduct will be to keep the staff of power in our own hands as much as possible, and not wantonly and inconsiderately give up a greater

share of our liberties with a view of contributing to the public good, than what the necessity of the case requires.

For our own sakes we shall keep in power those persons whose conduct pleases us as long as we can, and shall perhaps sometimes wish (when we meet with a person of an extra worthy character and abilities) that we could keep him in power for life. On the other hand, we shall dismiss from our employ as soon as possible, such persons as do not consult our interest and will not follow our instructions. For there are, I fear, a few persons among us, so wise in their own eyes, that they would if they could, pursue their own will and inclinations, in opposition to the instructions of their constituents. In so doing, they may perhaps, once in a hundred times, act for the interest of those they represent, more than if they followed the instructions given them. But I wish that we would never suffer any person to continue our representative that obeyed not our instructions, unless something unforeseen and unknown by us turned up, which he knew would alter our sentiments, if we were made acquainted with it; and which would make his complying with our will highly imprudent. In every government matter, on which our representatives were not instructed, we should leave them to act agreeable to their own judgment; on which account we should always choose men of integrity, honor and abilities to represent us. But when we did instruct them, as they are our representatives and agents, we should insist on their acting and voting conformable to our directions. But as they would each of them be a member of the community, they should have a right to deliver to the houses of representatives of which they were members, their own private sentiments so that if their private sentiments contained cogent reasons for acting contrary to the instructions given them-the other members of said houses who would not be bound by said instructions, would be guided by them; in which case, that would take place which would be most for the public good, which ought to be the wish of all of us.

AMICUS

Antifederalist No. 54 APPORTIONMENT AND SLAVERY: NORTHERN AND SOUTHERN VIEWS

This four part essay shows both northern and southern dissatisfaction with "the Great Compromise"

The first is taken from the third essay of "BRUTUS."

The second: from the speeches of Rawlins Lowndes to the South Carolina ratifying convention on January 16, 17, and 18, 1788.

The third: from the sixth essay by "CATO."

The fourth: from an essay by "A GEORGIAN," appearing in The Gazette of the State of Georgia on November 15, 1787.

"Representatives and direct taxes shall be apportioned among the several States, which may be included in this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons." What a strange and unnecessary accumulation of words are here used to conceal from the public eye what might have been expressed in the following concise manner: Representatives are to be proportioned among the States respectively, according to the number of freemen and slaves inhabiting them, counting five slaves for three freemen.

"In a free State," says the celebrated Montesquieu, "every man, who is supposed to be a free agent, ought to be concerned in his own government, therefore the legislature should reside in the whole body of the people, or their representatives." But it has never been alleged that those who are not free agents can, upon any rational principle, have anything to do in government, either by themselves or others. If they have no share in government, why is the number of members in the assembly to be increased on their account? Is it because in some of the States, a considerable part of the property of the inhabitants consists in a number of their fellow-men, who are held in bondage, in defiance of every idea of benevolence, justice and religion, and contrary to all the principles of liberty which have been publicly avowed in the late Glorious Revolution? If this be a just ground for representation, the horses in some of the States, and the oxen in others, ought to be represented-for a great share of property in some of them consists in these animals; and they have as much control over their own actions as these poor unhappy creatures, who are intended to be described in the above recited clause, by the words, "all other persons." By this mode of apportionment, the representatives of the different parts of the Union will be extremely unequal; in some of the Southern States the slaves are nearly equal in number to the free men; and for all these slaves they will be entitled to a proportionate share in the legislature; this will give them an unreasonable weight in the government, which can derive no additional strength, protection, nor defense from the slaves, but the contrary. Why, then, should they be represented? What adds to the evil is, that these States are to be permitted to continue the inhuman traffic of importing slaves until the year 1808-and for every cargo of these unhappy

people which unfeeling, unprincipled, barbarous and avaricious wretches may tear from their country, friends and tender connections, and bring into those States, they are to be rewarded by having an increase of members in the General Assembly....

BRUTUS

. . . . six of the Eastern States formed a majority in the House of Representatives. In the enumeration he passed Rhode Island, and included Pennsylvania. Now, was it consonant with reason, with wisdom, with policy, to suppose, in a legislature where a majority of persons sat whose interests were greatly different from ours, that we had the smallest chance of receiving adequate advantages? Certainly not. He believed the gentlemen that went from this state, to represent us in Convention, possessed as much integrity, and stood as high in point of character, as any gentlemen that could have been selected; and he also believed that they had done every thing in their power to procure for us a proportionate share in this new government; but the very little they had gained proved what we may expect in future-that the interest of the Northern States would so predominate as to divest us of any pretensions to the title of a republic. In the first place, what cause was there for jealousy of our importing Negroes? Why confine us to twenty years, or rather why limit us at all? For his part, he thought this trade could be justified on the principles of religion, humanity, and justice; for certainly to translate a set of human beings from a bad country to a better, was fulfilling every part of these principles. But they don't like our slaves, because they have none themselves, and therefore want to exclude us from this great advantage. Why should the Southern States allow of this, without the consent of nine states? . . .

We had a law prohibiting the importation of Negroes for three years, a law he greatly approved of; but there was no reason offered why the Southern States might not find it necessary to alter their conduct, and open their ports.

Without Negroes, this state would degenerate into one of the most contemptible in the Union; and he cited an expression that fell from General Pinckney on a former debate, that whilst there remained one acre of swampland in South Carolina, he should raise his voice against restricting the importation of Negroes. Even in granting the importation for twenty years, care had been taken to make us pay for this indulgence, each negro being liable, on importation, to pay a duty not exceeding ten dollars; and, in addition to this, they were liable to a capitation tax. Negroes were our wealth, our only natural resource; yet behold how our kind friends in the north were determined soon to tie up our hands, and drain us of what we had! The Eastern States drew their means of subsistence, in a great measure, from their shipping; and, on that head, they had been particularly careful not to allow of any burdens: they were not to pay tonnage or duties; no, not even the form of clearing out: all ports were free and open to them! Why, then, call this a reciprocal bargain, which took all from one party, to bestow it on the other!

Major [Pierce] BUTLER observed, that they were to pay five per cent impost.

This, Mr. LOWNDES proved, must fall upon the consumer. They are to be the carriers; and, we being the consumers, therefore all expenses would fall upon us. A great number of gentlemen were captivated with this new Constitution, because those who were in debt would be compelled to pay; others pleased themselves with the reflection that no more confiscation laws would be

passed; but those were small advantages, in proportion to the evils that might be apprehended from the laws that might be passed by Congress, whenever there was a majority of representatives from the Eastern States, who were governed by prejudices and ideas extremely different from ours. . . .

Great stress was laid on the admirable checks which guarded us, under the new Constitution, from the encroachments of tyranny; but too many checks in a political machine must produce the same mischief as in a mechanical one-that of throwing all into confusion. But supposing we considered ourselves so much aggrieved as to reduce us to the necessity of insisting on redress, what probability had we of relief? Very little indeed. In the revolving on misfortune, some little gleams of comfort resulted from a hope of being able to resort to an impartial tribunal for redress; but pray what reason was there for expectancy that, in Congress, the interest of five Southern States would be considered in a preferable point of view to the nine Eastern ones?

.... the mode of legislation in the infancy of free communities was by the collective body, and this consisted of free persons, or those whose age admitted them to the right of mankind and citizenship, whose sex made them capable of protecting the state, and whose birth may be denominated Free Born; and no traces can be found that ever women, children, and slaves, or those who were not sui juris, in the early days of legislation, met with the free members of the community to deliberate on public measures; hence is derived this maxim in free governments, that representation ought to bear a proportion to the number of free inhabitants in a community; this principle your own state constitution, and others, have observed in the establishment of a future census, in order to apportion the representatives, and to increase or diminish the representation to the ratio of the increase or diminution of electors. But, what aid can the community derive from the assistance women, infants and slaves, in their deliberation, or in their defense? What motives, therefore, could the convention have in departing from just and rational principle of representation, which is the governing prince of this state and of all America?

CATO

Article 1, section 2. This section mentions that, within three years after the first meeting of the Congress of the United States, an enumeration shall take place, the number of representatives not to exceed one member for every 30,000. This article I believe to be inadmissable. First, it affords to small a representation, (supposing 48 at the highest calculation) and especially in the southern states, their climate, soil, and produce, . . . not being capable of that population as in the northern states. Would it not therefore be better to increase the number of representatives, say one member for every 20,000 for the states north of Virginia, and one for every 15,000 south of the said state, itself included? Or, secondly, divide the states into districts which shall choose the representatives, by which every part of a state will have an equal chance, without being liable to parties or factions? Should it be said it will increase the expense, it will be money well laid out, and the more so if we retain the paying them out of our own bands. And, supposing the voting in the house of representatives was continued as heretofore by states, would it not be more equal still? At any rate I would strenuously recommend to vote by states, and not individually, as it will be accommodating the idea of equality, which should ever be observed in a republican form of government. Or, thirdly, if it was in proportion to the quotas of the states, as rated in taxation, then the number of members would increase with the proportion of tax, and at that rate there

would always be an equality in the quota of tax as well as representation; for what chance of equality according to the constitution in question, can a state have that has only one or two votes, when others have eight or ten, (for it is evident that each representative, as well as senator, is meant to have a vote, as it mentions no other mode but in choosing the president), and as it is generally allowed that the United States are divided into two natural divisions, the northern as far as Virginia, the latter included forms the southern? This produces a wide difference in climate, soil, customs, manners of living, and the produce of the land, as well as trade, also in population, to which it is well observed the latter is not so favorable as the former, and never can nor will be, nature itself being the great obstacle. And when taxation is in agitation, as also many other points, it must produce differences in sentiments; and, in such dispute, how is it likely to be decided? According to the mode of voting, the number of members north of Virginia the first three years is 42, and the southern, Virginia included, 23....

Is human nature above self interest? If the northern states do not horde the southern in taxation, it would appear then really that they are more disinterested men than we know of.

Antifederalist No. 55 WILL THE HOUSE OF REPRESENTATIVES BE GENUINELY REPRESENTATIVE? (PART I)

Following are four essays by "THE FEDERAL FARMER"

.... It being impracticable for the people to assemble to make laws, they must elect legislators, and assign men to the different departments of the government. In the representative branch we must expect chiefly to collect the confidence of the people, and in it to find almost entirely the force of persuasion. In forming this branch, therefore, several important considerations must be attended to. It must possess abilities to discern the situation of the people and of public affairs, a disposition to sympathize with the people, and a capacity and inclination to make laws congenial to their circumstances and condition. It must afford security against interest combinations, corruption and influence. It must possess the confidence, and have the voluntary support of the people.

I think these positions will not be controverted, nor the one I formerly advanced, that a fair and equal representation is that in which the interests, feelings, opinions and views of the people are collected, in such manner as they would be were the people all assembled. Having made these general observations, I shall proceed to consider further my principal position, viz. that there is no substantial representation of the people provided for in a government, in which the most essential powers, even as to the internal police of the country, are proposed to be lodged; and to propose certain amendments as to the representative branch....

The representation is insubstantial and ought to be increased. In matters where there is much room for opinion, you will not expect me to establish my positions with mathematical certainty; you must only expect my observations to be candid, and such as are well founded in the mind of the writer. I am in a field where doctors disagree; and as to genuine representation, though no feature in government can be more important, perhaps, no one has been less understood, and no one that has received so imperfect a consideration by political writers. The ephori in Sparta, and the tribunes in Rome, were but the shadow; the representation in Great Britain is unequal and insecure. In America we have done more in establishing this important branch on its true principles, than, perhaps, all the world besides. Yet even here, I conceive, that very great improvements in representation may be made. In fixing this branch, the situation of the people must be surveyed, and the number of representatives and forms of election apportioned to that situation. When we find a numerous people settled in a fertile and extensive country, possessing equality, and few or none of them oppressed with riches or wants, it ought to be the anxious care of the constitution and laws, to arrest them from national depravity, and to preserve them in their happy condition. A virtuous people make just laws, and good laws tend to preserve unchanged a virtuous people. A virtuous and happy people by laws uncongenial to their characters, may easily be gradually changed into servile and depraved creatures. Where the people, or their representatives, make the laws, it is probable they will generally be fitted to the national character and circumstances, unless the representation be partial, and the imperfect substitute of the people. However the people may be electors, if the representation be so formed as to give one

or more of the natural classes of men in society an undue ascendancy over others, it is imperfect; the former will gradually become masters, and the latter slaves. It is the first of all among the political balances, to preserve in its proper station each of these classes. We talk of balances in the legislature, and among the departments of government; we ought to carry them to the body of the people. Since I advanced the idea of balancing the several orders of men in a community, in forming a genuine representation, and seen that idea considered as chimerical, I have been sensibly struck with a sentence in the Marquis Beccaria's treatise. This sentence was quoted by Congress in 1774, and is as follows:-"In every society there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the others to the extreme of weakness and misery; the intent of good laws is to oppose this effort, and to diffuse their influence universally and equally." Add to this Montesquieu's opinion, that "in a free state every man, who is supposed to be a free agent, ought to be concerned in his own government: therefore, the legislative should reside in the whole body of the people, or their representatives." It is extremely clear that these writers had in view the several orders of men in society, which we call aristocratical, democratical, mercantile, mechanics etc., and perceived the efforts they are constantly, from interested and ambitious views, disposed to make to elevate themselves and oppress others. Each order must have a share in the business of legislation actually and efficiently. It is deceiving a people to tell them they are electors, and can choose their legislators, if they cannot, in the nature of things, choose men from among themselves, and genuinely like themselves. I wish you to take another idea along with you. We are not only to balance these natural efforts, but we are also to guard against accidental combinations; combinations founded in the connections of offices and private interests, both evils which are increased in proportion as the number of men, among which the elected must be, are decreased. To set this matter in a proper point of view, we must form some general ideas and descriptions of the different classes of men, as they may be divided by occupation and politically. The first class is the aristocratical. There are three kinds of aristocracy spoken of in this country-the first is a constitutional one, which does not exist in the United States in our common acceptation of the word. Montesquieu, it is true, observes that where part of the persons in a society, for want of property, age, or moral character, are excluded any share in the government, the others, who alone are the constitutional electors and elected, form this aristocracy. This, according to him, exists in each of the United States, where a considerable number of persons, as all convicted of crimes, under age, or not possessed of certain property, are excluded any share in the government. The second is an aristocratic faction, a junto of unprincipled men, often distinguished for their wealth or abilities, who combine together and make their object their private interests and aggrandizement. The existence of this description is merely accidental, but particularly to be guarded against. The third is the natural aristocracy; this term we use to designate a respectable order of men, the line between whom and the natural democracy is in some degree arbitrary. We may place men on one side of this line, which others may place on the other, and in all disputes between the few and the many, a considerable number are wavering and uncertain themselves on which side they are, or ought to be. In my idea of our natural aristocracy in the United States, I include about four or five thousand men; and among these I reckon those who have been placed in the offices of governors, of members of Congress, and state senators generally, in the principal officers of the army and militia, the superior judges, the most eminent professional men, etc., and men of large property. The other persons and orders in the community form the natural democracy; this includes in general, the yeomanry, the subordinate officers, civil and military, the fishermen, mechanics and traders, many of the merchants and professional men. It is easy to perceive that

men of these two classes, the aristocratical and democratical, with views equally honest, have sentiments widely different, especially respecting public and private expenses, salaries, taxes, etc. Men of the first class associate more extensively, have a high sense of honor, possess abilities, ambition, and general knowledge; men of the second class are not so much used to combining great objects; they possess less ambition, and a larger share of honesty; their dependence is principally on middling and small estates, industrious pursuits, and hard labor, while that of the former is principally on the emoluments of large estates, and of the chief offices of government. Not only the efforts of these two great parties are to be balanced, but other interests and parties also, which do not always oppress each other merely for want of power, and for fear of the consequences; though they, in fact, mutually depend on each other. Yet such are their general views, that the merchants alone would never fail to make laws favorable to themselves and oppressive to the farmers. The farmers alone would act on like principles; the former would tax the land, the latter the trade. The manufacturers are often disposed to contend for monopolies; buyers make every exertion to lower prices; and sellers to raise them. Men who live by fees and salaries endeavor to raise them; and the part of the people who pay them, endeavor to lower them; the public creditors to augment the taxes, and the people at large to lessen them. Thus, in every period of society, and in all the transactions of men, we see parties verifying the observation made by the Marquis; and those classes which have not their centinels in the government, in proportion to what they have to gain or lose, must infallibly be ruined.

Efforts among parties are not merely confined to property. They contend for rank and distinctions; all their passions in turn are enlisted in political controversies. Men, elevated in society, are often disgusted with the changeableness of the democracy, and the latter are often agitated with the passions of jealousy and envy. The yeomanry possess a large share of property and strength, are nervous and firm in their opinions and habits; the mechanics of towns are ardent and changeable-honest and credulous, they are inconsiderable for numbers, weight and strength, not always sufficiently stable for supporting free governments; the fishing interest partakes partly of the strength and stability of the landed, and partly of the changeableness of the mechanic interest. As to merchants and traders, they are our agents in almost all money transactions, give activity to government, and possess a considerable share of influence in it. It has been observed by an able writer, that frugal industrious merchants are generally advocates for liberty. It is an observation, I believe, well founded, that the schools produce but few advocates for republican forms of government. Gentlemen of the law, divinity, physic, etc., probably form about a fourth part of the people; yet their political influence, perhaps, is equal to that of all the other descriptions of men. If we may judge from the appointments to Congress, the legal characters will often, in a small representation, be the majority; but the more the representatives are increased, the more of the farmers, merchants, etc., will be found to be brought into the government.

These general observations will enable you to discern what I intend by different classes, and the general scope of my ideas, when I contend for uniting and balancing their interests, feelings, opinions, and views in the legislature. We may not only so unite and balance these as to prevent a change in the government by the gradual exaltation of one part to the depression of others, but we may derive many other advantages from the combination and full representation. A small representation can never be well informed as to the circumstances of the people. The members of it must be too far removed from the people, in general, to sympathize with them, and too few to

communicate with them. A representation must be extremely imperfect where the representatives are not circumstanced to make the proper communications to their constituents, and where the constituents in turn cannot, with tolerable convenience, make known their wants, circumstances, and opinions to their representatives. Where there is but one representative to 30,000 or 40,000 inhabitants, it appears to me, he can only mix and be acquainted with a few respectable characters among his constituents. Even double the general representation, and then there must be a very great distance between the representatives and the people in general represented. On the proposed plan, the state of Delaware, the city of Philadelphia, the state of Rhode Island, the province of Maine, the county of Suffolk in Massachusetts, will have one representative each. There can be but little personal knowledge, or but few communications, between him and the people at large of either of those districts. It has been observed that mixing only with the respectable men, he will get the best information and ideas from them; he will also receive impressions favorable to their purposes particularly....

Could we get over all our difficulties respecting a balance of interests and party efforts, to raise some and oppress others, the want of sympathy, information and intercourse between the representatives and the people, an insuperable difficulty will still remain. I mean the constant liability of a small number of representatives to private combinations. The tyranny of the one, or the licentiousness of the multitude, are, in my mind, but small evils, compared with the factions of the few. It is a consideration well worth pursuing, how far this house of representatives will be liable to be formed into private juntos, how far influenced by expectations of appointments and offices, how far liable to be managed by the president and senate, and how far the people will have confidence in them....

THE FEDERAL FARMER

Antifederalist No. 56 WILL THE HOUSE OF REPRESENTATIVES BE GENUINELY REPRESENTATIVE? (PART II)

. . . . Why in England have the revolutions always ended in stipulations in favor of general liberty, equal laws, and the common rights of the people, and in most other countries in favor only of a few influential men? The reasons, in my mind, are obvious. In England the people have been substantially represented in many respects; in the other countries it has not been so. Perhaps a small degree of attention to a few simple facts will illustrate this. In England, from the oppressions of the Norman Kings to the revolution in 1688, during which period of two or three hundred years, the English liberties were ascertained and established, the aristocratic part of that nation was substantially represented by a very large number of nobles, possessing similar interests and feelings with those they represented. The body of the people, about four or five millions, then mostly a frugal landed people, were represented by about five hundred representatives, taken not from the order of men which formed the aristocracy, but from the body of the people, and possessed of the same interests and feelings. De Lolme, speaking of the British representation, expressly founds all his reasons on this union; this similitude of interests, feelings, views and circumstances. He observes the English have preserved their liberties, because they and their leaders or representatives have been strictly united in interests, and in contending for general liberty. Here we see a genuine balance founded in the actual state of things. The whole community, probably, not more than two-fifths more numerous than we now are, were represented by seven or eight hundred men; the barons stipulated with the common people, and the king with the whole. Had the legal distinction between lords and commons been broken down, and the people of that island been called upon to elect forty-five senators, and one hundred and twenty representatives, about the proportion we propose to establish, their whole legislature evidently would have been of the natural aristocracy, and the body of the people would not have had scarcely a single sincere advocate. Their interests would have been neglected, general and equal liberty forgot, and the balance lost. Contests and conciliations, as in most other countries, would have been merely among the few, and as it might have been necessary to serve their purposes, the people at large would have been flattered or threatened, and probably not a single stipulation made in their favor. In Rome the people were miserable, though they bad three orders, the consuls, senators, and tribunes, and approved the laws, and all for want of a genuine representation. The people were too numerous to assemble, and do any thing properly themselves. The voice of a few, the dupes of artifice, was called the voice of the people. It is difficult for the people to defend themselves against the arts and intrigues of the great, but by selecting a suitable number of men fixed to their interests to represent them, and to oppose ministers and senators. . . . [Much] depends on the number of the men selected, and the manner of doing it. To be convinced of this, we need only attend to the reason of the case, the conduct of the British commons, and of the Roman tribunes. Equal liberty prevails in England, because there was a representation of the people, in fact and reality, to establish it. Equal liberty never prevailed in Rome because there was but the shadow of a representation. There were consuls in Rome annually elected to execute the laws; several hundred senators represented the great families; the body of the people annually chose tribunes from among themselves to defend them and to secure their rights; I think the number of tribunes annually chosen never exceeded

ten. This representation, perhaps, was not proportionally so numerous as the representation proposed in the new plan; but the difference will not appear to be so great, when it shall be recollected, that these tribunes were chosen annually, that the great patrician families were not admitted to these offices of tribunes, and that the people of Italy who elected the tribunes were a long while, if not always, a small people compared with the people of the United States. What was the consequence of this trifling representation? The people of Rome always elected for their tribunes men conspicuous for their riches, military commands, professional popularity, etc., great commoners, between whom and the noble families there was only the shadowy difference of legal distinction. Among all the tribunes the people chose for several centuries, they had scarcely five real friends to their interests. These tribunes lived, felt and saw, not like the people, but like the great patrician families, like senators and great officers of state, to get into which it was evident by their conduct, was their sole object. These tribunes often talked about the rights and prerogatives of the people, and that was all; for they never even attempted to establish equal liberty. So far from establishing the rights of the people, they suffered the senate, to the exclusion of the people, to engross the powers of taxation; those excellent and almost only real weapons of defense even the people of England possess. The tribunes obtained that the people should be eligible to some of the great offices of state, and marry, if they pleased, into the noble families; these were advantages in their nature, confined to a few elevated commoners, and of trifling importance to the people at large. Nearly the same observations may be made as to the ephori of Sparta.

We may amuse ourselves with names; but the fact is, men will be governed by the motives and temptations that surround their situation. Political evils to be guarded against are in the human character, and not in the name of patrician or plebeian. Had the people of Italy, in the early period of the republic, selected yearly or biennially, four or five hundred of their best informed men, emphatically from among themselves, these representatives would have formed an honest respectable assembly, capable of combining in them the views and exertions of the people and their respectability would have procured them honest and able leaders, and we should have seen equal liberty established. True liberty stands in need of a fostering band,- from the days of Adam she has found but one temple to dwell in securely. She has laid the foundation of one, perhaps her last in America; whether this is to be completed and have duration, is yet a question. Equal liberty never yet found many advocates among the great. It is a disagreeable truth that power perverts men's views in a greater degree than public employments inform their understandings. They become hardened in certain maxims, and more lost to fellow feelings. Men may always be too cautious to commit alarming and glaring iniquities; but they, as well as systems, are liable to be corrupted by slow degrees. Junius well observes, we are not only to guard against what men will do, but even against what they may do. Men in high public offices are in stations where they gradually lose sight of the people, and do not often think of attending to them, except when necessary to answer private purposes.

The body of the people must have this true representative security placed some where in the nation. And in the United States, or in any extended empire, I am fully persuaded [it] can be placed no where, but in the forms of a federal republic, where we can divide and place it in several state or district legislatures, giving the people in these the means of opposing heavy internal taxes and oppressive measures in the proper stages. A great empire contains the amities and animosities of a world within itself. We are not like the people of England, one people

compactly settled on a small island, with a great city filled with frugal merchants, serving as a common centre of liberty and union. We are dispersed, and it is impracticable for any but the few to assemble in one place. The few must be watched, checked, and often resisted. Tyranny has ever shown a predilection to be in close amity with them, or the one man. Drive it from kings and it flies to senators, to decemviri, to dictators, to tribunes, to popular leaders, to military chiefs, etc.

De Lolme well observes, that in societies, laws which were to be equal to all are soon warped to the private interests of the administrators, and made to defend the usurpations of a few. The English, who had tasted the sweets of equal laws, were aware of this, and though they restored their king, they carefully delegated to parliament the advocates of freedom.

I have often lately heard it observed that it will do very well for a people to make a constitution and ordain that at stated periods they will choose, in a certain manner, a first magistrate, a given number of senators and representatives, and let them have all power to do as they please. This doctrine, however it may do for a small republic-as Connecticut, for instance, where the people may choose so many senators and representatives to assemble in the legislature, [representing] in an eminent degree, the interests, the views, feelings, and genuine sentiments of the people themselves - can never be admitted in an extensive country. And when this power is lodged in the hands of a few, not to limit the few is but one step short of giving absolute power to one man. In a numerous representation the abuse of power is a common injury, and has no temptation; among the few, the abuse of power may often operate to the private emolument of those who abuse it.

THE FEDERAL FARMER

Antifederalist No. 57 WILL THE HOUSE OF REPRESENTATIVES BE GENUINELY REPRESENTATIVE? (PART III)

. . . . But "the people must elect good men." Examine the system-is it practicable for them to elect fit and proper representatives where the number is so small? "But the people may choose whom they please." This is an observation, I believe, made without due attention to facts and the state of the community, To explain my meaning, I will consider the descriptions of men commonly presented to the people as candidates for the offices of representatives. We may rank them in three classes.

1. The men who form the natural aristocracy, as before defined.

2. Popular demagogues-these men also are often politically elevated, so as to be seen by the people through the extent of large districts; they often have some abilities, fare] without principle, and rise into notice by their noise and arts.

3. The substantial and respectable part of the democracy- they are a numerous and valuable set of men, who discern and judge well, but from being generally silent in public assemblies are often overlooked. They are the most substantial and best informed men in the several towns, who occasionally fill the middle grades of offices, etc., who hold not a splendid, but respectable rank in private concerns. These men are extensively diffused through all the counties, towns and small districts in the union; even they, and their immediate connections, are raised above the majority of the people, and as representatives are only brought to a level with a more numerous part of the community, the middle orders, and a degree nearer the mass of the people. Hence it is, that the best practical representation, even in a small state, must be several degrees more aristocratical than the body of the people. A representation so formed as to admit but few or none of the third class, is in my opinion, not deserving of the name. Even in armies, courts-martial are so formed as to admit subaltern officers into them. The true idea is, so to open and enlarge the representation as to let in a due proportion of the third class with those of the first. Now, my opinion is, that the representation proposed is so small as that ordinarily very few or none of them can be elected. And, therefore, after all the parade of words and forms, the government must possess the soul of aristocracy, or something worse, the spirit of popular leaders.

I observed in a former letter, that the state of Delaware, of Rhode Island, the Province of Maine, and each of the great counties in Massachusetts, etc., would have one member, and rather more than one when the representatives shall be increased to one for each 30,000 inhabitants. In some districts the people are more dispersed and unequal than in others. In Delaware they are compact, in the Province of Maine dispersed; how can the elections in either of those districts be regulated so that a man of the third class can be elected? Exactly the same principles and motives, the same uncontrollable circumstances, must govern the elections as in the choice of the governors. Call upon the people of either of those districts to choose a governor, and it will probably never happen that they will not bestow a major part, or the greatest number, of their votes on some very conspicuous or very popular character. A man that is known among a few thousands of people,

may be quite unknown among thirty or forty thousand. On the whole it appears to me to be almost a self- evident position, that when we call on thirty or forty thousand inhabitants to unite in giving their votes for one man it will be uniformly impracticable for them to unite in any men, except those few who have become eminent for their civil or military rank, or their popular legal abilities. It will be found totally impracticable for men in the private walks of life, except in the profession of the law, to become conspicuous enough to attract the notice of so many electors and have their suffrages.

But if I am right, it is asked why so many respectable men advocate the adoption of the proposed system. Several reasons may be given. Many of our gentlemen are attached to the principles of monarchy and aristocracy; they have an aversion to democratic republics. The body of the people have acquired large powers and substantial influence by the revolution. In the unsettled state of things, their numerous representatives, in some instances, misused their powers, and have induced many good men suddenly to adopt ideas unfavorable to such republics, and which ideas they will discard on reflection. Without scrutinizing into the particulars of the proposed system, we immediately perceive that its general tendency is to collect the powers of government, now in the body of the people in reality, and to place them in the higher orders and fewer hands; no wonder then that all those of and about these orders are attached to it. They feel there is something in this system advantageous to them. On the other hand, the body of the people evidently feel there is something wrong and disadvantageous to them. Both descriptions perceive there is something tending to bestow on the former the height of power and happiness, and to reduce the latter to weakness, insignificance, and misery. The people evidently feel all this though they want expressions to convey their ideas. Further, even the respectable part of the democracy have never yet been able to distinguish clearly where the fallacy lies. They find there are defects in the confederation; they see a system presented; they think something must be done; and, while their minds are in suspense, the zealous advocates force a reluctant consent. Nothing can be a stronger evidence of the nature of this system, than the general sense of the several orders in the community respecting its tendency. The parts taken generally by them proves my position, that notwithstanding the parade of words and forms, the government must possess the soul of aristocracy.

Congress, heretofore, have asked for moderate additional powers. The cry was give them-be federal. But the proper distinction between the cases that produce this disposition, and the system proposed, has not been fairly made and seen in all its consequences. We have seen some of our state representations too numerous and without examining a medium we run to the opposite extreme. It is true, the proper number of federal representatives, is matter of opinion in some degree; but there are extremes which we immediately perceive, and others which we clearly discover on examination. We should readily pronounce a representative branch of 15 members small in a federal government, having complete powers as to taxes, military matters, commerce, the coin, etc. On the other hand, we should readily pronounce a federal representation as numerous as those of the several states, consisting of about 1,500 representatives, unwieldy and totally improper. It is asked, has not the wisdom of the convention found the medium? Perhaps not. The convention was divided on this point of numbers. At least some of its ablest members urged, that instead of 65 representatives there ought to be 130 in the first instance. They fixed one representative for each 40,000 inhabitants, and at the close of the work, the president suggested that the representation appeared to be too small and without debate, it was put at, not

exceeding one for each 30,000. I mention these facts to show, that the convention went on no fixed data. In this extensive country it is difficult to get a representation sufficiently numerous. Necessity, I believe, will oblige us to sacrifice in some degree the true genuine principles of representation. But this sacrifice ought to be as little as possible. How far we ought to increase the representation I will not pretend to say; but that we ought to increase it very considerably, is clear-to double it at least, making full allowances for the state representations. And this we may evidently do and approach accordingly towards safety and perfection without encountering any inconveniences. It is with great difficulty the people can unite these different interests and views even tolerably, in the state senators, who are more than twice as numerous as the federal representatives, as proposed by the convention; even these senators are considered as so far removed from the people, that they are not allowed immediately to hold their purse strings. The principal objections made to the increase of the representation are, the expense and difficulty in getting the members to attend. The first cannot be important; the last, if founded, is against any federal government. As to the expense, I presume the house of representatives will not be in sessions more than four months in the year. We find by experience that about two-thirds of the members of representative assemblies usually attend; therefore, of the representation proposed by the convention, about forty-five members probably will attend. Doubling their number, about 90 will probably attend. Their pay, in one case, at four dollars a day each (which is putting it high enough) will amount to, yearly, 21,600 dollars; in the other case, 43,200 dollars-[a] difference [of] 21,600 dollars. Reduce the state representatives from 1,500 down to 1,000 and thereby save the attendance of two-thirds of the 500, say three months in a year, at one dollar and a quarter a day each [would amount to] 37,125 dollars. Thus we may leave the state representations sufficient large, and yet save enough by the reduction nearly to support exceeding well the whole federal representation I propose. Surely we -never can be so unwise as to sacrifice, essentially, the all- important principles of representation for so small a sum as 21,600 dollars a year for the United States. A single company of soldiers would cost this sum. It is a fact that can easily be shown, that we expend three times this sum every year upon useless inferior offices and very trifling concerns. It is also a fact which can be shown that the United States in the late war suffered more by a faction in the federal government, then the pay of the federal representation will amount to for twenty years.

As to the attendance-can we be so unwise as to establish an unsafe and inadequate representative branch, and give it as a reason, that we believe only a few members will be induced to attend? We ought certainly to establish an adequate representative branch, and adopt measures to induce an attendance. I believe that a due proportion of 130 or 140 members may be induced to attend. There are various reasons for the non-attendance of the members of the present congress; it is to be presumed that these will not exist under the new system...

In the second place, it is said the members of congress must return home, and share in the burdens they may impose; and, therefore, private motives will induce them to make mild laws, to support liberty, and ease the burdens of the people, This brings us to a mere question of interest under this head. I think these observations will appear, on examination, altogether fallacious; because this individual interest, which may coincide with the rights and interests of the people, will be far more than balanced by opposite motives and opposite interests. If, on a fair calculation, a man will gain more by measures oppressive to others than he will lose by them, he is interested in their adoption. It is true, that those who govern generally, by increasing the public

burdens, increase their own share of them; but by this increase they may, and often do, increase their salaries, fees, and emoluments, in a tenfold proportion, by increasing salaries, forming armies and navies, and by making offices. If it shall appear the members of congress will have these temptations before them, the argument is on my side. They will view the account, and be induced continually to make efforts advantageous to themselves and connections, and oppressive to others.

We must examine facts. Congress, in its present form, have but few offices to dispose of worth the attention of the members, or of men of the aristocracy. Yet from 1774 to this time, we find a large proportion of those offices assigned to those who were or had been members of congress; and though the states choose annually sixty or seventy members, many of them have been provided for. But few men are known to congress in this extensive country, and, probably, but few will be to the president and senate, except those who have or shall appear as members of congress, or those whom the members may bring forward. The states may now choose yearly ninety-one members of congress; under the new constitution they will have it in their power to choose exactly the same number, perhaps afterwards, one hundred and :fifteen, but these must be chosen once in two and six years. So that, in the course of ten years together, not more than two-thirds so many members of congress will be elected and brought into view, as there now are under the confederation in the same term of time. But at least there will be five, if not ten times, as many offices and places worthy of the attention of the members, under the new constitution, as there are under the confederation. Therefore, we may fairly presume, that a very great proportion of the members of congress, especially the influential ones, instead of returning to private life, will be provided for with lucrative offices, in the civil or military department; and not only the members, but many of their sons, friends, and connections. These offices will be in the constitutional disposition of the president and senate, and, corruption out of the question, what kind of security can we expect in a representation so many of the members of which may rationally feel themselves candidates for these offices? Let common sense decide. It is true, that members chosen to offices must leave their seats in congress; and to some few offices they cannot be elected till the time shall be expired for which they were elected members. But this scarcely will effect the bias arising from the hopes and expectations of office....

But it is asked how shall we remedy the evil, so as to complete and perpetuate the temple of equal laws and equal liberty? Perhaps we never can do it. Possibly we never may be able to do it in this immense country, under any one system of laws however modified. Nevertheless, at present, I think the experiment worth making. I feel an aversion to the disunion of the states, and to separate confederacies; the states have fought and bled in a common cause, and great dangers too may attend these confederacies. I think the system proposed capable of very considerable degrees of perfection, if we pursue first principles. I do not think that De Lolme, or any writer I have seen, has sufficiently pursued the proper inquiries and efficient means for making representation and balances in government more perfect. It is our task to do this in America. Our object is equal liberty, and equal laws diffusing their influence among all orders of men. To obtain this we must guard against the bias of interest and passions, against interested combinations, secret or open. We must aim at a balance of efforts and strength.

Clear it is, by increasing the representation we lessen the prospects of each member of congress being provided for in public offices. We proportionably lessen official influence, and strengthen

his prospects of becoming a private citizen, subject to the common burdens, without the compensation of the emoluments of office. By increasing the representation we make it more difficult to corrupt and influence the members. We diffuse them more extensively among the body of the people, perfect the balance, multiply information, strengthen the confidence of the people, and consequently support the laws on equal and free principles. There are two other ways, I think, of obtaining in some degree the security we want; the one is, by excluding more extensively the members from being appointed to offices; the other is, by limiting some of their powers. These two I shall examine hereafter.

THE FEDERAL FARMER

Antifederalist No. 58 WILL THE HOUSE OF REPRESENTATIVES BE GENUINELY REPRESENTATIVE? (PART IV)

It is said that our people have a high sense of freedom, possess power, property, and the strong arm; meaning, I presume, that the body of the people can take care of themselves, and awe their rulers; and, therefore, particular provision in the constitution for their security may not be essential. When I come to examine these observations, they appear to me too trifling and loose to deserve a serious answer.

To palliate for the smallness of the representation, it is observed, that the state governments in which the people are fully represented, necessarily form a part of the system. This idea ought to be fully examined. We ought to inquire if the convention have made the proper use of these essential parts. The state governments then, we are told, will stand between the arbitrary exercise of power and the people. True they may, but armless and helpless, perhaps, with the privilege of making a noise when hurt. This is no more than individuals may do. Does the constitution provide a single check for a single measure by which the state governments can constitutionally and regularly check the arbitrary measures of congress? Congress may raise immediately fifty thousand men and twenty millions of dollars in taxes, build a navy, model the militia, etc., and all this constitutionally. Congress may arm on every point, and the state governments can do no more than an individual, by petition to congress, suggest their measures are alarming and not right.

I conceive the position to be undeniable, that the federal government will be principally in the hands of the natural aristocracy, and the state governments principally in the hands of the democracy, the representatives of the body of the people. These representatives in Great Britain hold the purse, and have a negative upon all laws. We must yield to circumstances and depart something from this plan, and strike out a new medium so as to give efficacy to the whole system, supply the wants of the union, and leave the several states, or the people assembled in the state legislatures, the means of defense.

It has been often mentioned that the objects of congress will be few and national, and require a small representation; that the objects of each state will be many and local, and require a numerous representation. This circumstance has not the weight of a feather in my mind. It is certainly inadvisable to lodge in 65 representatives, and 26 senators, unlimited power to establish systems of taxation, armies, navies, model the militia, and to do every thing that may essentially tend soon to change, totally, the affairs of the community; and to assemble 1500 state representatives, and 160 senators, to make fence laws and laws to regulate the descent and conveyance of property, the administration of justice between man and man, to appoint militia officers, etc.

It is not merely the quantity of information I contend for. Two taxing powers may be inconvenient; but the point is, congress, like the senate of Rome, will have taxing powers, and the people no check. When the power is abused, the people may complain and grow angry, so

may the state governments; they may remonstrate and counteract, by passing laws to prohibit the collection of congressional taxes. But these will be acts of the people, acts of sovereign power, the dernier resort unknown to the constitution; acts operating in terrorum, acts of resistance, and not the exercise of any constitutional power to stop or check a measure before matured. A check properly is the stopping, by one branch in the same legislature, a measure proposed by the other in it. In fact the constitution provides for the states no check, properly speaking, upon the measures of congress. Congress can immediately enlist soldiers, and apply to the pockets of the people.

These few considerations bring us to the very strong distinction between the plan that operates on federal principles, and the plan that operates on consolidated principles. A plan may be federal or not as to its organization each state may retain its vote or not; the sovereignty of the state may be represented, or the people of it. A plan may be federal or not as to its operation-federal when it requires men and monies of the states, and the states as such make the laws for raising the men and monies; not federal when it leaves the states' governments out of the question, and operates immediately upon the persons and property of the citizens. The first is the case with the confederation; the second with the new plan. In the first the state governments may be [a] check; in the last none at all. . . .

It is also said that the constitution gives no more power to congress than the confederation, respecting money and military matters; that congress under the confederation, may require men and monies to any amount, and the states are bound to comply. This is generally true; but, I think . . . that the states have well founded checks for securing their liberties. I admit the force of the observation that all the federal powers, by the confederation, are lodged in a single assembly. However, I think much more may be said in defense of the leading principles of the confederation. I do not object to the qualifications of the electors of representatives, and I fully agree that the people ought to elect one branch.

Further, it may be observed, that the present congress is principally an executive body, which ought not to be numerous; that the house of representatives will be a mere legislative branch, and being the democratic on ought to be numerous. It is one of the greatest advantages of a government of different branches, that each branch may be conveniently made conformable to the nature of the business assigned it, and all be made conformable to the condition of the several orders of the people. After all the possible checks and limitations we can devise, the powers of the union must be very extensive; the sovereignty of the nation cannot produce the object in view, the defense and tranquility of the whole, without such powers, executive and judicial. I dislike the present congress-a single assembly-because it is impossible to fit it to receive those powers. The executive and judicial powers, in the nature of things, ought to be lodged in a few hands; the legislature in many hands. Therefore, want of safety and unavoidable hasty measures out of the question, they never can all be lodged in one assembly properly-it, in its very formation, must imply a contradiction.

In objection to increasing the representation, it has also been observed that it is difficult to assemble a hundred men or more without making the tumultuous and a mere mob. Reason and experience do not support this observation. The most respectable assemblies we have any knowledge of and the wisest, have been those, each of which consisted of several hundred

members - as the senate of Rome, of Carthage, of Venice, the British Parliament, etc. I think I may, without hazarding much, affirm that our more numerous state assemblies and conventions have universally discovered more wisdom, and as much order, as the less numerous ones. There must be also a very great difference between the characters of two or three hundred men assembled from a single state, and the characters of that number or half the number assembled from all the united states.

It is added, that on the proposed plan the house of representatives in fifty or a hundred years will consist of several hundred members. The plan will begin with sixty-five, and we have no certainty that the number ever will increase, for this plain reason-that all that combination of interests and influence which has produced this plan, and supported [it] so far, will constantly oppose the increase of the representation, knowing that thereby the government will become more free and democratic. But admitting, after a few years, there will be a member for each 30,000 inhabitants, the observation is trifling; the government is in a considerable measure to take its tone from its early movements, and by means of a small representation it may in half of 50 or 100 years, get moved from its basis, or at least so far as to be incapable of ever being recovered. We ought, therefore, . . . now to fix the government on proper principles, and fit to our present condition. When the representation shall become too numerous, alter it. Or we may now make provision, that when the representation shall be increased to a given number, that then there shall be one for each given number of inhabitants, etc.

Another observation is, that congress will have no temptations to do wrong. The men that make it must be very uninformed, or suppose they are talking to children. In the first place, the members will be governed by all those motives which govern the conduct of men, and have before them all the allurements of offices and temptations to establish unequal burdens, before described. In the second place, they and their friends, probably, will find it for their interests to keep up large armies, navies, salaries, etc., and in laying adequate taxes. In the third place, we have no good grounds to presume, from reason or experience, that it will be agreeable to their characters or views, that the body of the people should continue to have power effectually to interfere in the affairs of government. But it is confidently added, that congress will not have it in their power to oppress or enslave the people; that the people will not bear it. It is not supposed that congress will act the tyrant immediately, and in the face of daylight. It is not supposed congress will adopt important measures without plausible pretenses, especially those which may tend to alarm or produce opposition. We are to consider the natural progress of things-that men unfriendly to republican equality will go systematically to work, gradually to exclude the body of the people from any share in the government, first of the substance, and then of the forms. The men who will have these views will not be without their agents and supporters. When we reflect, that a few years ago we established democratic republics, and fixed the state governments as the barriers between congress and the pickets of the people, what great progress has been made in less than seven years to break down those barriers, and essentially to change the principles of our governments, even by the armless few-is it chimerical to suppose that in fifteen or twenty years to come, that much more can be performed, especially after the adoption of the constitution, when the few will be so much better armed with power and influence, to continue the struggle? Probably they will be wise enough never to alarm, but gradually prepare the minds of the people for one specious change after another, till the final object shall be obtained. Say the advocates, these are only possibilities. They are probabilities a wise people ought to guard against; and the

address made use of to keep the evils out of sight, and the means to prevent them, confirm my opinion.

But to obviate all objections to the proposed plan in the last resort, it is said our people will be free, so long as they possess the habits of freemen, and when they lose them, they must receive some other forms of government. To this I shall only observe, that this is very humiliating language, and can, I trust, never suit a manly people who have contended nobly for liberty, and declared to the world they will be free.

THE FEDERAL FARMER

Antifederalist No. 59 THE DANGER OF CONGRESSIONAL CONTROL OF ELECTIONS

Alexander Hamilton, in Federalist #59, addresses this same topic from an opposing viewpoint. This essay was written anonymously by "VOX POPULI," and appeared in The Massachusetts Gazette on October 30, 1787.

. . I beg leave to Jay before the candid public the first clause in the fourth section of the first article of the proposed Constitution:

"The times, places and manner of holding elections, for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations except as to the places of choosing senators."

By this clause, the time, place and manner of choosing representatives is wholly at the disposal of Congress.

Why the Convention who formed the proposed Constitution wished to invest Congress with such a power, I am by no means capable of saying; or why the good people of this commonwealth [Massachusetts] should delegate such a power to them, is no less hard to determine. But as the subject is open for discussion, I shall make a little free inquiry into the matter.

And, first. What national advantage is there to be acquired by giving them such a power?

The only advantage which I have heard proposed by it is, to prevent a partial representation of the several states in Congress; "for if the time, manner and place were left wholly in the hands of the state legislatures, it is probable they would not make provision by appointing time, manner and place for an election; in which case there could be no election, and consequently the federal government weakened."

But this provision is by no means sufficient to prevent an evil of that nature. For will any reasonable man suppose-that when the legislature of any state, who are annually chosen, are so corrupt as to break thro' that government which they have formed, and refuse to appoint time, place and manner of choosing representatives-I say, can any person suppose, that a state so corrupt would not be full as likely to neglect, or even refuse, to choose representatives at the time and place and in the manner prescribed by Congress? Surely they would. So it could answer no good national purpose on that account; and I have not heard any other national advantage proposed thereby.

We will now proceed, in the next place, to consider why the people of this commonwealth should vest Congress with such a power.

No one proposes that it would be any advantage to the people of this state. Therefore, it must be considered as a matter of indifference, except there is an opportunity for its operating to their disadvantage-in which case, I conceive it ought to be disapprobated.

Whether there is danger of its operating to the good people's disadvantage, shall now be the subject of our inquiry.

Supposing Congress should direct, that the representatives of this commonwealth should be chosen all in one town, (Boston, for instance) on the first day of March - would not that be a very injurious institution to the good people of this commonwealth? Would not there be at least nine-tenths of the landed interest of this commonwealth entirely unrepresented? Surely one may reasonably imagine there would. What, then, would be the case if Congress should think proper to direct, that the elections should be held at the north-west, south-west, or north-east part of the state, the last day of March? How many electors would there attend the business? And it is a little remarkable, that any gentleman should suppose, that Congress could possibly be in any measure as good judges of the time, place and manner of elections as the legislatures of the several respective states.

These as objections I could wish to see obviated. And I could wish the public inquiry might extend to a consideration, whether or not it would not be more conducive, to prevent a partial representation, to invest Congress with power to levy such a fine as they might think proper on states not choosing representatives, than by giving them this power of appointing time, manner and place.

It is objected by some, that Congress could not levy, or at least, could not collect, such a fine of a delinquent state. If that is the case, Congress could not collect any tax they might think proper to levy, nor execute any order whatever; but at any time any state might break through the national compact, dissolve the federal constitution, and set the whole structure afloat on the ocean of chaos.

It is, therefore, proposed to the public to consider, whether the said clause in the fourth section of the first article can answer the only purposes for which it is said to have been provided, or any other which will prove any advantage either to the nation or state.

VOX POPULI

Antifederalist No. 60 WILL THE CONSTITUTION PROMOTE THE INTERESTS OF FAVORITE CLASSES?

John F. Mercer of Maryland was the author of this essay, taken from his testimony to members of the ratifying conventions of New York and Virginia, 1788, (From the Etting Collection of the Historical Society of Pennsylvania.)

We have not that permanent and fixed distinction of ranks or orders of men among us, which unalterably separating the interests and views, produces that division in pursuits which is the great security of the mixed Government we separated from and which we now seem so anxiously to copy. If the new Senate of the United States will be really opposite in their pursuits and views from the Representatives, have they not a most dangerous power of interesting foreign nations by Treaty [to] support Their views?-for instance, the relinquishment of the navigation of [the] Mississippi-and yet where Treaties are expressly declared paramount to the Constitutions of the several States, and being the supreme law, [the Senate] must of course control the national legislature, if not supersede the Constitution of the United States itself. The check of the President over a Body, with which he must act in concert-or his influence and power be almost annihilated-can prove no great constitutional security. And even the Representative body itself . . . are not sufficiently numerous to secure them from corruption. For all governments tend to corruption, in proportion as power concentrating in the hands of the few, tenders them objects of corruption to Foreign Nations and among themselves.

For these and many other reasons we are for preserving the rights of the State governments, where they must not be necessarily relinquished for the welfare of the Union. And, where so relinquished, the line should be definitely drawn. If under the proposed Constitution the States exercise any power, it would seem to be at the mercy of the General Government. For it is remarkable that the clause securing to them those rights not expressly relinquished in the old Confederation, is left out in the new Constitution. And we conceive that there is no power which Congress may think necessary to exercise for the general welfare, which they may not assume under this Constitution. And this Constitution, and the laws made under it, are declared paramount even to the unalienable rights which have heretofore been secured to the citizens of these States by their constitutional compacts. . . .

Moreover those very powers, which are to be expressly vested in the new Congress, are of a nature most liable to abuse. They are those which tempt the avarice and ambition of men to a violation of the rights of their fellow citizens, and they will be screened under the sanction of an undefined and unlimited authority. Against the abuse and improper exercise of these special powers, the people have a right to be secured by a sacred Declaration, defining the rights of the individual, and limiting by them the extent of the exercise. The people were secured against the abuse of those powers by fundamental laws and a Bill of Rights, under the government of Britain and under their own Constitution. That government which permits the abuse of power, recommends it, and will deservedly experience the tyranny which it authorizes; for the history of mankind establishes the truth of this political adage-that in government what may be done will be done.

The most blind admirer of this Constitution must in his heart confess that it is as far inferior to the British Constitution, of which it is an imperfect imitation, as darkness is to light. In the British Constitution the rights of men, the primary object of the social compact, are fixed on an immoveable foundation and clearly defined and ascertained by their Magna Charta, their Petition of Rights, their Bill of Rights, and their effective administration by ostensible Ministers secures responsibility. In this new Constitution a complicated system sets responsibility at defiance and the rights of men neglected and undefined are left at the mercy of events. We vainly plume ourselves on the safeguard alone of representation, forgetting that it will be a representation on principles inconsistent with true and just representation; that it is but a delusive shadow of representation, proffering in theory what can never be fairly reduced to practice. And, after all, government by representation (unless confirmed in its views and conduct by the constant inspection, immediate superintendence, and frequent interference and control of the people themselves on one side, or an hereditary nobility on the other, both of which orders have fixed and permanent views) is really only as one of perpetual rapine and confusion. Even with the best checks it has failed in all the governments of Europe, of which it was once the basis, except that of England.

When we turn our eyes back to the zones of blood and desolation which we have waded through to separate from Great Britain, we behold with manly indignation that our blood and treasure have been wasted to establish a government in which the interest of the few is preferred to the rights of the many. When we see a government so every way inferior to that we were born under, proposed as the reward of our sufferings in an eight years calamitous war, our astonishment is only equaled by our resentment. On the conduct of Virginia and New York, two important States, the preservation of liberty in a great measure depends. The chief security of a Confederacy of Republics was boldly disregarded, and the Confederation violated, by requiring 9 instead of 13 voices to alter the Constitution. But still the resistance of either of these States in the present temper of America (for the late conduct of the party here [Maryland] must open the eyes of the people in Massachusetts with respect to the fate of their amendment) will secure all that we mean to contend for-the natural and unalienable rights of men in a constitutional manner.

At the distant appearance of danger to these, we took up arms in the late Revolution. And may we never have cause to look back with regret on that period when connected with the Empire of Great Britain, we were happy, secure and free.

Antifederalist No. 61 QUESTIONS AND COMMENTS ON THE CONSTITUTIONAL PROVISIONS REGARDING THE ELECTION OF CONGRESSMEN

. . . . It is well observed by Montesquieu, that in republican governments the forms of elections are fundamental; and that it is an essential part of the social compact, to ascertain by whom, to whom, when, and in what manner, suffrages are to be given. Wherever we find the regulation of elections have not been carefully fixed by the constitution, or the principles of them, we constantly see new legislatures modifying . . . [their] own form, and changing the spirit of the government to answer partial purposes.

By the proposed plan it is -fixed, that the qualifications of the electors of the federal representatives shall be the same as those of the electors of state representatives; though these vary some in the several states the electors are fixed and designated.

The qualifications of the representatives are also fixed and designated, and no person under 25 years of age, not an inhabitant of the state, and not having been seven years a citizen of the United States, can be elected. The clear inference is, that all persons 25 years of age, and upwards, inhabitants of the state, and having been, at any period or periods, seven years citizens of the United States, may be elected representatives. They have a right to be elected by the constitution, and the electors have a right to choose them. This is fixing the federal representation, as to the elected, on a very broad basis. It can be no objection to the elected, that they are Christians, Pagans, Mahometans, or Jews; that they are of any color, rich or poor, convict or not. Hence many men may be elected, who cannot be electors. Gentlemen who have commented so largely upon the wisdom of the constitution, for excluding from being elected young men under a certain age, would have done well to have recollected, that it positively makes pagans, convicts, etc., eligible. The people make the constitution; they exclude a few persons, by certain descriptions, from being elected, and all not thus excluded are clearly admitted. Now a man 25 years old, an inhabitant of the state, and having been a citizen of the states seven years, though afterwards convicted, may be elected, because not within any of the excluding clauses; the same of a beggar, an absentee, etc.

The right of the electors, and eligibility of the elected, being fixed by the people, they cannot be narrowed by the state legislatures, or congress. It is established, that a man being (among other qualifications) an inhabitant of the state, shall be eligible. Now it would be narrowing the right of the people to confine them in their choice to a man, an inhabitant of a particular county or district in the state. Hence it follows, that neither the state legislatures nor congress can establish district elections; that is, divide the state into districts, and confine the electors of each district to the choice of a man resident in it. If the electors could be thus limited in one respect, they might in another be confined to choose a man of a particular religion, of certain property, etc., and thereby half of the persons made eligible by the constitution be excluded. All laws, therefore, for regulating elections must be made on the broad basis of the constitution.

Next, we may observe, that representatives are to be chosen by the people of the state. What is a choice by the people of the state? If each given district in it choose one, will that be a choice within the meaning of the constitution? Must the choice be by plurality of votes, or a majority? In connection with these questions, we must take the 4th Sect., Art I., where it is said the state legislatures shall prescribe the times, places, and manner of holding elections; but congress may make or alter such regulations. By this clause, I suppose, the electors of different towns and districts in the state may be assembled in different places, to give their votes; but when so assembled, by another clause they cannot, by congress or the state legislatures, be restrained from giving their votes for any man an inhabitant of the state, and qualified as to age, and having been a citizen the time required. But I see nothing in the constitution by which to decide, whether the choice shall be by a plurality or a majority of votes. This, in my mind, is by far the most important question in the business of elections. When we say a representative shall be chosen by the people, it seems to imply that he shall be chosen by a majority of them; but states which use the same phraseology in this respect, practice both ways. I believe a majority of the states choose by pluralities; and, I think it probable, that the federal house of representatives will decide that a choice of its members by pluralities is constitutional. A man who has the most votes is chosen in Great Britain. It is this, among other things, that gives every man fair play in the game of influence and corruption. I believe that not much stress was laid upon the objection that congress may assemble the electors at some out of the way place. However, the advocates seem to think they obtain a victory of no small glory and importance, when they can show, with some degree of color, that the evil is rather a possibility than a probability. . .

It is easy to perceive that there is an essential difference between elections by pluralities and by majorities, between choosing a man in a small or limited district, and choosing a number of men promiscuously by the people of a large state. And while we are almost secure of judicious unbiased elections by majorities in such districts, we have no security against deceptions, influence and corruption in states or large districts in electing by pluralities. When a choice is made by a plurality of votes, it is often made by a very small part of the electors, who attend and give their votes; when by a majority, never by so few as one half of them. The partialities and improprieties attending the former mode may be illustrated by a case that lately happened in one of the middle states. Several representatives were to be chosen by a large number of inhabitants compactly settled, among whom there were four or five thousand voters. Previous to the time of election a number of lists of candidates were published, to divide and distract the voters in general. About half a dozen men of some influence, who had a favorite list to carry, met several times, fixed their list, and agreed to hand it about among all who could probably be induced to adopt it, and to circulate the other lists among their opponents, to divide them. The poll was opened, and several hundred electors, suspecting nothing, attended and put in their votes. The list of the half dozen was carried, and men were found to be chosen, some of whom were very disagreeable to a large majority of the electors. Though several hundred electors voted, men on that list were chosen who had only 45, 43, 44, etc., votes each. They had a plurality, that is, more than any other persons. The votes generally were scattered, and those who made even a feeble combination succeeded in placing highest upon the list several very unthought of and very unpopular men. This evil never could have happened in a town where all the voters meet in one place, and consider no man as elected unless he have a majority, or more than half of all the votes. Clear it is, that the man on whom thus but a small part of the votes are bestowed cannot possess the confidence of the people, or have any considerable degree of influence over them.

But as partial, as liable to secret influence, and corruption as the choice by pluralities may be, I think, we cannot avoid it, without essentially increasing the federal representation, and adopting the principle of district elections. There is but one case in which the choice by the majority is practicable, and that is, where districts are formed of such moderate extent that the electors in each can conveniently meet in one place, and at one time, and proceed to the choice of a representative; when, if no man have a majority or more than half of all the votes the first time, the voters may examine the characters of those brought forward, accommodate, and proceed to repeat their votes till some one shall have that majority. This, I believe, cannot be a case under the constitution proposed in its present form. To explain my ideas, take Massachusetts, for instance. She is entitled to eight representatives. She has 370,000 inhabitants, about 46,000 to one representative. If the elections be so held that the electors throughout the state meet in their several towns or places, and each elector puts in his vote for eight representatives, the votes of the electors will ninety-nine times in a hundred, be so scattered that on collecting the votes from the several towns or places, no men will be found, each of whom have a majority of the votes, and therefore the election will not be made .... I might add many other observations to evince the superiority and solid advantages of proper district elections, and a choice by a majority, and to prove that many evils attend the contrary practice. These evils we must encounter as the constitution now stands. I see no way to fix elections on a proper footing, and to render tolerably equal and secure the federal representation, but by increasing the representation, so as to have one representative for each district in which the electors may conveniently meet in one place, and at one time, and choose by a majority. Perhaps this might be effected pretty generally, by fixing one representative for each twelve thousand inhabitants; dividing, or fixing the principles for dividing the states into proper districts; and directing the electors of each district to the choice, by a majority, of some men having a permanent interest and residence in it. I speak of a representation tolerably equal, etc., because I am still of opinion, that it is impracticable in this extensive country to have a federal representation sufficiently democratic, or substantially drawn from the body of the people. The principles just mentioned may be the best practical ones we can expect to establish. By thus increasing the representation we not only make it more democratical and secure, strengthen the confidence of the people in it, and thereby render it more nervous and energetic; but it will also enable the people essentially to change, for the better, the principles and forms of elections. To provide for the people's wandering throughout the state for a representative may sometimes enable them to elect a more brilliant or an abler man, than by confining them to districts; but generally this latitude will be used to pernicious purposes, especially connected with the choice by plurality-when a man in the remote part of the state, perhaps obnoxious at home, but ambitious and intriguing, may be chosen to represent the people in another part of the state far distant, and by a small part of them, or by a faction, or by a combination of some particular description of men among them. This has been long the case in Great Britain; it is the case in several states; nor do I think that such pernicious practices will be merely possible in our federal concerns, but highly probable. By establishing district elections, we exclude none of the best men from being elected; and we fix what, in my mind, is of far more importance than brilliant talents-I mean a sameness, as to residence and interests, between the representative and his constituents. And by the election by a majority, he is sure to be the man, the choice of more than half of them....

THE FEDERAL FARMER

Antifederalist No. 62 ON THE ORGANIZATION AND POWERS OF THE SENATE (PART I)

Taken from the 16th essay of "Brutus" from The New York Journal of April 10, 1788.

The following things may be observed with respect to the constitution of the Senate.

1st. They are to be elected by the legislatures of the States and not by the people, and each State is to be represented by an equal number.

2d. They are to serve for six years, except that one third of those first chosen are to go out of office at the expiration of two years, one third at the expiration of four years, and one third at the expiration of six years, after which this rotation is to be preserved, but still every member will serve for the term of six years.

3d. If vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive is authorised to make temporary appointments until the next meeting of the legislature.

4. No person can be a senator who had not arrived to the age of thirty years, been nine years a citizen of the United States, and who is not at the time he is elected an inhabitant of the State for which he is elected.

The apportionment of members of the Senate among the States is not according to numbers, or the importance of the States, but is equal. This, on the plan of a consolidated government, is unequal and improper; but is proper on the system of confederation - on this principle I approve of it. It is indeed the only feature of any importance in the constitution of a confederated government. It was obtained after a vigorous struggle of that part of the Convention who were in favor of preserving the state governments. It is to be regretted that they were not able to have infused other principles into the plan, to have secured the government of the respective states, and to have marked with sufficient precision the line between them and the general government.

The term for which the senate are to be chosen, is in my judgment too long, and no provision being made for a rotation will, I conceive, be of dangerous consequence.

It is difficult to fix the precise period for which the senate should be chosen. It is a matter of opinion, and our sentiments on the matter must be formed, by attending to certain principles. Some of the duties which are to be performed by the Senate, seem evidently to point out the propriety of their term of service being extended beyond the period of that of the assembly. Besides, as they are designed to represent the aristocracy of the country, it seems fit they should possess more stability, and so continue a longer period then that branch who represent the democracy. The business of making treaties and some other which it will be proper to commit to the senate, requires that they should have experience, and therefore that they should remain some time in office to acquire it. But still it is of equal importance that they should not be so long in office as to be likely to forget the hand that formed them, or be insensible of their interests. Men

long in office are very apt to feel themselves independent; to form and pursue interests separate from those who appointed them. And this is more likely to be the case with the senate, as they will for the most part of the time be absent from the state they represent, and associate with such company as will possess very little of the feelings of the middling class of people. For it is to be remembered that there is to be a federal city, and the inhabitants of it will be the great and the mighty of the earth. For these reasons I would shorten the term of their service to four years. Six years is a long period for a man to be absent from his home; it would have a tendency to wean him from his constituents.

A rotation in the senate would also in my opinion be of great use. It is probable that senators once chosen for a state will, as the system now stands, continue in office for life. The office will be honorable if not lucrative. The persons who occupy it will probably wish to continue in it, and therefore use all their influence and that of their friends to continue in office. Their friends will be numerous and powerful, for they will have it in their power to confer great favors-, besides it will before long be considered as disgraceful not to be reelected. It will therefore be considered as a matter of delicacy to the character of the senator not to return him again. Everybody acquainted with public affairs knows how difficult it is to remove from office a person who is long been in it. It is seldom done except in cases of gross misconduct. It is rare that want of competent ability procures it. To prevent this inconvenience I conceive it would be wise to determine, that a senator should not be eligible after he had served for the period assigned by the constitution for a certain number of years; perhaps three would be sufficient. A further benefit would be derived from such an arrangement; it would give opportunity to bring forward a greater number of men to serve their country, and would return those, who had served, to their state, and afford them the advantage of becoming better acquainted with the condition and politics of their constituents. It further appears to me proper, that the legislatures should retain the right which they now hold under the confederation, of recalling their members. It seems an evident dictate of reason that when a person authorises another to do a piece of business for him, he should retain the power to displace him, when he does not conduct according to his pleasure. This power in the state legislatures, under confederation, has not been exercised to the injury of the government, nor do I see any danger of its being so exercised under the new system. It may operate much to the public benefit.

These brief remarks are all I shall make on the organization of the senate. The powers with which they are invested will require a more minute investigation.

This body will possess a strange mixture of legislative, executive, and judicial powers, which in my opinion will in some cases clash with each other.

1. They are one branch of the legislature, and in this respect will possess equal powers in all cases with the house of representatives; for I consider the clause which gives the house of representatives the right of originating bills for raising a revenue as merely nominal, seeing the senate . . . [has the power] to propose or concur with amendments.

2. They are a branch of the executive in the appointment of ambassadors and public ministers, and in the appointment of all other officers, not otherwise provided for. Whether the forming of

treaties, in which they are joined with the president, appertains to the legislative or the executive part of the government, or to neither, is not material.

3. They are a part of the judicial, for they form the court of impeachments.

It has been a long established maxim, that the legislative, executive and judicial departments in government should be kept distinct. It is said, I know, that this cannot be done. And therefore that this maxim is not just, or at least that it should only extend to certain leading features in a government. I admit that this distinction cannot be perfectly preserved. In a due balanced government, it is perhaps absolutely necessary to give the executive qualified legislative powers, and the legislative or a branch of them judicial powers in the last resort. It may possibly also, in some special cases, be advisable to associate the legislature, or a branch of it, with the executive, in the exercise of acts of great national importance. But still the maxim is a good one, and a separation of these powers should be sought as far as is practicable. I can scarcely imagine that any of the advocates of the system will pretend, that it was necessary to accumulate all these powers in the senate. There is a propriety in the senate's possessing legislative powers. This is the principal end which should be held in view in their appointment. I need not here repeat what has so often and ably been advanced on the subject of a division of the legislative power into two branches. The arguments in favor of it I think conclusive. But I think it equally evident, that a branch of the legislature should not be invested with the power of appointing officers. This power in the senate is very improperly lodged for a number of reasons - These shall be detailed in a future number.

BRUTUS

Antifederalist No. 63 ON THE ORGANIZATION AND POWERS OF THE SENATE (PART II)

. . . . The senate is an assembly of 26 members, two from each state; though the senators are apportioned on the federal plan, they will vote individually. They represent the states, as bodies politic, sovereign to certain purposes. The states being sovereign and independent, are all considered equal, each with the other in the senate. In this we are governed solely by the ideal equalities of sovereignties; the federal and state governments forming one whole, and the state governments an essential part, which ought always to be kept distinctly in view, and preserved. I feel more disposed, on reflection, to acquiesce in making them the basis of the senate, and thereby to make it the interest and duty of the senators to preserve distinct, and to perpetuate the respective, sovereignties they shall represent. . . .

The senate, as a legislative branch, is not large, but as an executive branch quite too numerous. It is not to be presumed that we can form a genuine senatorial branch in the United States, a real representation of the aristocracy and balance in the legislature, any more than we can form a genuine representation of the people. Could we separate the aristocratical and democratical interest, compose the senate of the former, and the house of assembly of the latter, they are too unequal in the United States to produce a balance. Form them on pure principles, and leave each to be supported by its real weight and connections, the senate would be feeble and the house powerful. I say, on pure principles; because I make a distinction between a senate that derives its weight and influence from a pure source-its numbers and wisdom, its extensive property, its extensive and permanent connections -and a senate composed of a few men, possessing small property, and small and unstable connections, that derives its weight and influence from a corrupt or pernicious source: that is, merely from the power given it by the constitution and laws, to dispose of the public offices, and the annexed emoluments, and by those means to interest officers, and the hungry expectants of offices, in support of its measures. I wish the proposed senate may not partake too much of the latter description.

To produce a balance and checks, the constitution proposes two branches in the legislature. But they are so formed, that the members of both must generally be the same kind of men-men having similar interests and views, feelings and connections - men of the same grade in society, and who associate on all, occasions (probably, if there be any difference, the senators will be the most democratic.) Senators and representatives thus circumstanced, as men, though convened in two rooms to make laws, must be governed generally by the same motives and views, and therefore pursue the same system of politics. The partitions between the two branches will be merely those of the building in which they fit. There will not be found in them any of those genuine balances and checks, among the real different interests, and efforts of the several classes of men in the community we aim at. Nor can any such balances and checks be formed in the present condition of the United States in any considerable degree of perfection. . .

Though I conclude the senators and representatives will not form in the legislature those balances and checks which correspond with the actual state of the people, yet I approve of two branches,

because we may notwithstanding derive several advantages from them. The senate, from the mode of its appointment, will probably be influenced to support the state governments; and, from its periods of service will produce stability in legislation, while frequent elections may take place in the other branch. There is generally a degree of competition between two assemblies even composed of the same kind of men; and by this, and by means of every law passing a revision in the second branch, caution, coolness, and deliberation are produced in the business of making laws. By means of a democratic branch we may particularly secure personal liberty; and by means of a senatorial branch we may particularly protect property. By the division, the house becomes the proper body to impeach all officers for misconduct in office, and the senate the proper court to try them; and in a country where limited powers must be lodged in the first magistrate, the senate, perhaps, may be the most proper body to be found to have a negative upon him in making treaties, and managing foreign affairs.

Though I agree the federal senate, in the form proposed, may be useful to many purposes, and that it is not very necessary to alter the organization, modes of appointment, and powers of it in several respects; yet, without alterations in others, I sincerely believe it will, in a very few years, become the source of the greatest evils. Some of these alterations, I conceive, to be absolutely necessary and some of them at least advisable.

1. By the confederation the members of congress are chosen annually. By Art. 1. Sect. 2. of the constitution, the senators shall be chosen for six years. As the period of service must be, in a considerable degree, matter of opinion on this head, I shall only make a few observations, to explain why I think it more advisable to limit it to three or four years.

The people of this country have not been accustomed to so long appointments in their state governments. They have generally adopted annual elections. The members of the present congress are chosen yearly, who, from the nature and multiplicity of their business, ought to be chosen for longer periods than the federal senators. Men six years in office absolutely contract callous habits, and cease, in too great a degree, to feel their dependence, and for the condition of their constituents. Senators continued in offices three or four years, will be in them longer than any popular erroneous opinions will probably continue to actuate their electors. Men appointed for three or four years will generally be long enough in office to give stability, and amply to acquire political information. By a change of legislators, as often as circumstances will permit, political knowledge is diffused more extensively among the people, and the attention of the electors and elected more constantly kept alive-circumstances of infinite importance in a free country. Other reasons might be added, but my subject is too extensive to admit of my dwelling upon less material points.

2. When the confederation was formed, it was considered essentially necessary that the members of congress should at any time be recalled by their respective states, when the states should see fit, and others be sent in their room. I do not think it is less necessary that this principle should be extended to the members of congress under the new constitution, and especially to the senators. I have had occasion several times to observe, that let us form a federal constitution as extensively, and on the best principles in our power, we must, after all, trust a vast deal to a few men, who, far removed from their constituents, will administer the federal government. There is but little danger these men will feel too great a degree of dependence. The necessary and important object

to be attended to, is to make them feel dependent enough. Men elected for several years, several hundred miles distant from their states, possessed of very extensive powers, and the means of paying themselves, will not, probably, be oppressed with a sense of dependence and responsibility.

The senators will represent sovereignties, which generally have, and always ought to retain, the power of recalling their agents. The principle of responsibility is strongly felt in men who are liable to be recalled and censured for their misconduct; and, if we may judge from experience, the latter will not abuse the power of recalling their members; to possess it will at least be a valuable check. It is in the nature of all delegated power, that the constituents should retain the right to judge concerning the conduct of their representatives. They must exercise the power, and their decision itself, their approving or disapproving that conduct implies a right, a power to continue in office, or to remove from it. But whenever the substitute acts under a constitution, then it becomes necessary that the power of recalling him be expressed. The reasons for lodging a power to recall are stronger, as they respect the senate, than as they respect the representatives. The latter will be more frequently elected, and changed of course, and being chosen by the people at large, it would be more difficult for the people than for the legislatures to take the necessary measures for recalling. But even the people, if the powers will be more beneficial to them than injurious, ought to possess it. The people are not apt to wrong a man who is steady and true to their interests. They may for a while be misled by party representations, and leave a good man out of office unheard; but every recall supposes a deliberate decision, and a fair hearing. And no man who believes his conduct proper, and the result of honest views, will be the less useful in his public character on account of the examination his actions may be liable to. A man conscious of the contrary conduct ought clearly to be restrained by the apprehensions of a trial. I repeat it, it is interested combinations and factions we are particularly to guard against in the federal government, and all the rational means that can be put into the hands of the people to prevent them ought to be provided and furnished for them. Where there is a power to recall, trusty sentinels among the people, or in the state legislatures will have a fair opportunity to become useful. If the members in congress from the states join in such combinations, or favor them, or pursue a pernicious line of conduct, the most attentive among the people or in the state legislatures may formally charge them before their constituents. The very apprehensions of such constitutional charge may prevent many of the evils mentioned; and the recalling the members of a single state, a single senator or representative, may often prevent many more. Nor do 1, at present, discover any danger in such proceedings, as every man who shall move for a recall will put his reputation at stake, to show he has reasonable grounds for his motion. It is not probable such motions will be made unless there be good apparent grounds for succeeding. Nor can the charge or motion be anything more than the attack of an individual or individuals unless a majority of the constituents shall see cause to go into the inquiry. Further, the circumstances of such a power being lodged in the constituents will tend continually to keep up their watchfulness, as well as the attention and dependence of the federal senators and representatives.

3. By the confederation it is provided, that no delegate shall serve more than three years in any term of six years; and thus, by the forms of the government a rotation of members is produced. A like principle has been adopted in some of the state governments, and also in some ancient and modern republics. Whether this exclusion of a man for a given period, after he shall have served a given time, ought to be ingrafted into a constitution or not is a question, the proper decision [of

which] materially depends upon the leading features of the government. Some governments are so formed as to produce a sufficient fluctuation and change of members; in the ordinary course of elections proper numbers of new members are from time to time brought into the legislature, and a proportionate number of old ones go out, mix, and become diffused among the people. This is the case with all numerous representative legislatures, the members of which are frequently elected, and constantly within the view of their constituents. This is the case with our state governments, and in them a constitutional rotation is unimportant. But in a government consisting of but a few members, elected for long periods, and far removed from the observation of the people, but few changes in the ordinary course of elections take place among the members. They become in some measure a fixed body, and often inattentive to the public good, callous, selfish, and the fountain of corruption. To prevent these evils, and to force a principle of pure animation into the federal government, which will be formed much in this last manner mentioned, and to produce attention, activity, and a diffusion of knowledge in the community, we ought to establish among others the principle of rotation. Even good men in office, in time, imperceptibly lose sight of the people, and gradually fall into measures prejudicial to them. It is only a rotation among the members of the federal legislature I shall contend for. Judges and officers at the heads of the judicial and executive departments are in a very different situation. Their offices and duties require the information and studies of many years for performing them in a manner advantageous to the people. These judges and officers must apply their whole time to the detail business of their offices, and depend on them for their support. Then, they always act under masters or superiors, and may be removed from office for misconduct. They pursue a certain round of executive business; their offices must be in all societies confined to a few men, because but few can become qualified to fill them. And were they, by annual appointments, open to the people at large, they are offices of such a nature as to be of no service to them. They must leave these offices in the possession of the few individuals qualified to fill them, or have them badly filled. In the judicial and executive departments also, the body of the people possess a large share of power and influence, as jurors and subordinate officers, among whom there are many and frequent rotations. But in every free country the legislatures are all on a level, and legislation becomes partial whenever, in practice, it rests for any considerable time in a few hands. It is the true republican principle to diffuse the power of making the laws among the people and so to modify the forms of the government as to draw in turn the well informed of every class into the legislature. To determine the propriety or impropriety of this rotation, we must take the inconveniencies as well as the advantages attending it into view. On the one hand by this rotation, we may sometimes exclude good men from being elected. On the other hand, we guard against those pernicious connections, which usually grow up among men left to continue long periods in office. We increase the number of those who make the laws and return to their constituents; and thereby spread information, and preserve a spirit of activity and investigation among the people. Hence a balance of interests and exertions are preserved, and the ruinous measures of actions rendered more impracticable. I would not urge the principle of rotation, if I believed the consequence would be an uninformed federal legislature; but I have no apprehension of this in this enlightened country. The members of congress, at any one time, must be but very few compared with the respectable well informed men in the United States; and I have no idea there will be any want of such men for members of congress, though by a principle of rotation the constitution should exclude from being elected for two years those federal legislators, who may have served the four years immediately preceding, or any four years in the six preceding years. If we may judge from experience and fair calculations, this principle will

never operate to exclude at any one period a fifteenth part even of those men who have been members of congress. Though no man can sit in congress by the confederation more than three years in any term of six years, yet not more than three, four, or five men in any one state have been made ineligible at any one period. And if a good man happens to be excluded by this rotation, it is only for a short time. All things considered, the inconveniencies of the principle must be very inconsiderable compared with the many advantages of it. It will generally be expedient for a man who has served four years in congress to return home, mix with the people, and reside some time with them. This will tend to reinstate him in the interests, feelings, and views similar to theirs, and thereby confirm in him the essential qualifications of a legislator. Even in point of information, it may be observed, the useful information of legislators is not acquired merely in studies in offices, and in meeting to make laws from day to day. They must learn the actual situation of the people by being among them, and when they have made laws, return home and observe how they operate. Thus occasionally to be among the people, is not only necessary to prevent or banish the callous habits and self-interested views of office in legislators, but to afford them necessary information, and to render them useful. Another valuable end is answered by it, sympathy, and the means of communication between them and their constituents, is substantially promoted. So that on every principle legislators, at certain periods, ought to live among their constituents. Some men of science are undoubtedly necessary in every legislature; but the knowledge, generally, necessary for men who make laws, is a knowledge of the common concerns, and particular circumstances of the people. In a republican government seats in the legislature are highly honorable. I believe but few do, and surely none ought to, consider them as places of profit and permanent support. Were the people always properly attentive, they would, at proper periods, call their lawmakers home, by sending others in their room. But this is not often the case; and therefore, in making constitutions, when the people are attentive, they ought cautiously to provide for those benefits, those advantageous changes in the administration of their affairs, which they are often apt to be inattentive to in practice. On the whole, to guard against the evils, and to secure the advantages I have mentioned, with the greatest degree of certainty, we ought clearly in my opinion, to increase the federal representation, to secure elections on proper principles, to establish a right to recall members, and a rotation among them.

THE FEDERAL FARMER

Antifederalist No. 64 ON THE ORGANIZATION AND POWERS OF THE SENATE (PART III)

Taken from the New York Journal, Nov. 22, 1787 by "CINCINNATUS" It appears to have been written in answer to James Wilson's Antifederalist # 12)

I come now, sir, to the most exceptionable part of the Constitution-the Senate. In this, as in every other part, you [James Wilson of Pennsylvania] are in the line of your profession Law], and on that ground assure your fellow citizens, that-"perhaps there never was a charge made with less reason, than that which predicts the institution of a baneful aristocracy in the Federal Senate." And yet your conscience smote you, sir, at the beginning, and compelled you to prefix a perhaps to this strange assertion. The senate, you say, branches into two characters-the one legislative and the other executive. This phraseology is quaint, and the position does not state the whole truth. I am very sorry, sir, to be so often obliged to reprehend the suppression of information at the moment that you stood forth to instruct your fellow citizens, in what they were supposed not to understand. In this character, you should have abandoned your professional line, and told them, not only the truth, but the whole truth. The whole truth then is, that the same body, called the senate, is vested with legislative, executive and judicial powers. The two first you acknowledge; the last is conveyed in these words, sec. 3d.: "The Senate shall have the sole power to try all impeachments." On this point then we are to come to issue-whether a senate so constituted is likely to produce a baneful aristocracy, which will swallow up the democratic rights and liberties of the nation. To judge on this question, it is proper to examine minutely into the constitution and powers of the senate; and we shall then see with what anxious and subtle cunning it is calculated for the proposed purpose. 1st. It is removed from the people, being chosen by the legislatures-and exactly in the ratio of their removal from the people do aristocratic principles constantly infect the minds of man. 2nd. They endure, two thirds for four, and one third for six years, and in proportion to the duration of power, the aristocratic exercise of it and attempts to extend it, are invariably observed to increase. 3rd. From the union of the executive with the legislative functions, they must necessarily be longer together, or rather constantly assembled; and in proportion to their continuance together, they will be able to form effectual schemes for extending their own power, and reducing that of the democratic branch. If any one would wish to see this more fully illustrated, let him turn to the history of the Decemviri in Rome. 4th. Their advice and consent being necessary to the appointment of all the great officers of state, both at home and abroad, will enable them to win over any opponents to their measures in the house of representatives, and give them the influence which, we see, accompanies this power in England; and which, from the nature of man, must follow it every where. 5th. The sole power of impeachment being vested in them, they have it in their power to control the representative in this democratic right; to screen from punishment, or rather from conviction, all high offenders, being their creatures, and to keep in awe all opponents to their power in high office. 6th. The union established between them and the vice president, who is made one of the corps, and will therefore be highly animated with the aristocratic spirit of it, furnishes them a powerful shield against popular suspicion and inquiry, he being the second man in the United States who stands highest in the confidence and estimation of the people. And lastly, the right of altering or amending money-bills, is a high additional power given them as a branch of the legislature, which their analogous branch, in the English parliament, could never

obtain because it has been guarded by the representatives of the people there, with the most strenuous solicitude as one of the vital principles of democratic liberty.

Is a body so vested with means to soften and seduce-so armed with power to screen or to condemn-so fortified against suspicion and inquiry-so largely trusted with legislative powers-so independent of and removed from the people-so tempted to abuse and extend these powers-is this a body which freemen ought ever to create, or which freemen can ever endure? Or is it not a monster in the political creation, which we ought to regard with horror? Shall we thus forget our own fetters? Shall we set up the idol, before which we shall soon be obliged, however reluctantly, to bow? Shall we consent to see a proud aristocracy erect his domineering crest in triumph over our prostrate liberties?

But we shall yet see more clearly, how highly favored this senate has been, by taking a similar view of the representative body. This body is the true representative of the democratic part of the system; the shield and defense of the people. . . . Its transcendent and incommunicable power of impeachment-that high source of its dignity and control-in which alone the majesty of the people feels his sceptre, and bears aloft his fasces-is rendered ineffectual, by its being triable before its rival branch, the senate, the patron and prompter of the measures against which it is to sit in judgment. It is therefore most manifest, that from the very nature of the constitution the right of impeachment apparently given, is really rendered ineffectual. And this is contrived with so much art, that to discover it you must bring together various and distant parts of the constitution, or it will not strike the examiner, that the same body that advises the executive measures of government which are usually the subject of impeachment, are the sole judges on such impeachments. They must therefore be both party and judge, and must condemn those who have executed what they advised. Could such a monstrous absurdity have escaped men who were not determined, at all events, to vest all power in this aristocratic body? Is it not plain, that the senate is to be exalted by the humiliation of the democracy? A democracy which, thus bereft of its powers, and shorn of its strength, will stand a melancholy monument of popular impotence. . . .

"When the legislative and executive powers are united in the same person, or in the same corps," [says Montesquieu] "there can be no liberty. Because, it may be feared, that the same monarch or senate will make tyrannical laws, that they may execute them tyrannically." I am aware that this great man is speaking of a senate being the whole legislature; whereas the one before us is but a branch of the proposed legislature. But still the reason applies, inasmuch as the legislative power of the senate will enable it to negative all bills that are meant to control the executive; and from being secure of preventing any abridgment, they can watch every pliant hour of the representative body to promote an enlargement of the executive powers. One thing at least is certain, that by making this branch of the legislature participant in the executive, you not only prevent the legislature from being a check upon the executive, but you inevitably prevent its being checked or controlled by the other branch.

To the authority of Montesquieu, I shall add that of Mr. De Lolme, whose disquisition on government is allowed to be deep, solid, and ingenious. . . . "It is not only necessary," [says he] "to take from the legislature the executive power which would exempt them from the laws; but they should not have even a hope of being ever able to arrogate to themselves that power." To remove this hope from their expectation, it would have been proper, not only to have previously

laid down, in a declaration of rights, that these powers should be forever separate and incommunicable; but the frame of the proposed constitution should have had that separation religiously in view, through all its parts. It is manifest this was not the object of its framers; but, that on the contrary there is a studied mixture of them in the senate as necessary to erect it into that potent aristocracy which it must infallibly produce. In pursuit of this daring object, than which no greater calamity can be brought upon the people, another egregious error in constitutional principles is committed. I mean that of dividing the executive powers between the senate and president. Unless more harmony and less ambition should exist between these two executives than ever yet existed between men in power, or than can exist while human nature is as it is, this absurd division must be productive of constant contentions for the lead, must clog the execution of government to a mischievous, and sometimes to a disgraceful degree; and if they should unhappily harmonize in the same objects of ambition, their number and their combined power would preclude all fear of that responsibility, which is one of the great securities of good, and restraints on bad governments. Upon these principles Mr. DeLolme has foreseen that "the effect of a division of the executive power is the establishment of absolute power in one of continual contention;" he therefore lays it down, as a general rule . . . "for the tranquility of the state it is necessary that the executive power should be in one." I will add, that this singlehood of the executive is indispensably necessary to effective execution, as well as to the responsibility and rectitude of him to whom it is entrusted.

By this time I hope it is evident from reason and authority, that in the constitution of the senate there is much cunning and little wisdom; that we have much to fear from it, and little to hope, and then it must necessarily produce a baneful aristocracy, by which the democratic rights of the people will be overwhelmed.

It was probably upon this principle that a member of the convention, of high and unexceeded reputation for wisdom and integrity, is said to have emphatically declared, that he would sooner lose his right hand, than put his name to such a constitution.

CINCINNATUS

Antifederalist No. 65 ON THE ORGANIZATION AND POWERS OF THE SENATE (PART IV)

(by Gilbert Livingston and John Lansing delivered on June 24, 1788 to the New York ratifying convention)

Mr. G[ilbert] LIVINGSTON rose, and addressed the chair.

He, in the first place, considered the importance of the Senate as a branch of the legislature, in three points of view:-

First, they would possess legislative powers coextensive with those of the House of Representatives except with respect to originating revenue laws; which, however, they would have power to reject or amend, as in the case of other bills. Secondly, they would have an importance, even exceeding that of the representative house, as they would be composed of a smaller number, and possess more firmness and system. Thirdly, their consequence and dignity would still further transcend those of the other branch, from their longer continuance in office. These powers, Mr. Livingston contended, rendered the Senate a dangerous body.

He went on, in the second place, to enumerate and animadvert on the powers with which they were clothed in their judicial capacity, and in their capacity of council to the President, and in the forming of treaties. In the last place, as if too much power could not be given to this body, they were made, he said, a council of appointment, by whom ambassadors and other officers of state were to be appointed. These are the powers, continued he, which are vested in this small body of twenty-six men; in some cases, to be exercised by a bare quorum, which is fourteen; a majority of which number, again, is eight. What are the checks provided to balance this great mass of power? Our present Congress cannot serve longer than three years in six: they are at any time subject to recall. These and other checks were considered as necessary at a period which I choose to honor with the name of virtuous. Sir, I venerate the spirit with which every thing was done at the trying time in which the Confederation was formed. America had then a sufficiency of this virtue to resolve to resist perhaps the first nation in the universe, even unto bloodshed. What was her aim? Equal liberty and safety. What ideas had she of this equal liberty? Read them in her Articles of Confederation. True it is, sir, there are some powers wanted to make this glorious compact complete. But, sir, let us be cautious that we do not err more on the other hand, by giving power too profusely, when, perhaps, it will be too late to recall it. Consider, sir, the great influence which this body, armed at all points, will have. What will be the effect of this? Probably a security of their reelection, as long as they please. Indeed, in my view, it will amount nearly to an appointment for life. What will be their situation in a federal town? Hallowed ground! Nothing so unclean as state laws to enter there, surrounded, as they will be, by an impenetrable wall of adamant and gold, the wealth of the whole country flowing into it. [Here a member, who did not fully understand, called out to know what WALL the gentleman meant; on which be turned, and replied, "A wall of gold-of adamant, which will flow in from all parts of the continent." At which flowing metaphor, a great laugh in the house.] The gentleman continued: Their attention to their various business will probably require their constant attendance. In this Eden will they reside with their families, distant from the observation of the people. In such a

situation, men are apt to forget their dependence, lose their sympathy, and contract selfish habits. Factions are apt to be formed, if the body becomes permanent. The senators will associate only with men of their own class, and thus become strangers to the condition of the common people. They should not only return, and be obliged to live with the people, but return to their former rank of citizenship, both to revive their sense of dependence, and to gain a knowledge of the country. This will afford opportunity to bring forward the genius and information of the states, and will be a stimulus to acquire political abilities. It will be the means of diffusing a more general knowledge of the measures and spirit of the administration. These things will confirm the people's confidence in government. When they see those who have been high in office residing among them as private citizens, they will feel more forcibly that the government is of their own choice. The members of this branch having the idea impressed on their minds, that they are soon to return to the level whence the suffrages of the people raised them,-this good effect will follow: they will consider their interests as the same with those of their constituents, and that they legislate for themselves as well as others. They will not conceive themselves made to receive, enjoy, and rule, nor the people solely to earn, pay, and submit.

Mr. Chairman, I have endeavored, with as much perspicuity and candor as I am master of, shortly to state my objections to this clause. I would wish the committee to believe that they are not raised for the sake of opposition, but that I am very sincere in my sentiments in this important investigation. The Senate, as they are now constituted, have little or no check on them. Indeed, sir, too much is put into their hands. When we come to that part of the system which points out their powers, it will be the proper time to consider this subject more particularly.

I think, sir, we must relinquish the idea of safety under this government, if the time for services is not further limited, and the power of recall [not] given to the state legislatures. I am strengthened in my opinion by an observation made yesterday, by an honorable member from New York, to this effect"that there should be no fear of corruption of the members in the House of Representatives; especially as they are, in two years, to return to the body of the people." I therefore move that the committee adopt the following resolution, as an amendment to this clause:-

"Resolved, That no person shall be eligible as a senator for more than six years in any term of twelve years, and that it shall be in the power of the legislatures of the several states to recall their senators, or either of them, and to elect others in their stead, to serve for the remainder of the time for which such senator or senators, so recalled, were appointed."

Hon. Mr. [John] LANSING. I beg the indulgence of the committee, while I offer some reasons in support of the motion just made; in doing which, I shall confine myself to the point, and shall hear with attention, and examine with candor, the objections which may be opposed to it. . .

Sir, I am informed by gentlemen who have been conversant in public affairs, and who have had seats in Congress, that there have been, at different times, violent parties in that body-an evil that a change of members has contributed, more than any other thing, to remedy. If, therefore, the power of recall should be never exercised, if it should have no other force than that of a check to the designs of the bad, and to destroy party spirit, certainly no harm, but much good, may result from adopting the amendment. If my information be true, there have been parties in Congress

which would have continued to this day, if the members had not been removed. No inconvenience can follow from placing the powers of the Senate on such a foundation as to make them feel their dependence. It is only a check calculated to make them more attentive to the objects for which they were appointed. Sir, I would ask, Is there no danger that the members of the Senate will sacrifice the interest of their state to their own private views? Every man in the United States ought to look with anxious concern to that body. Their number is so exceedingly small, that they may easily feel their interests distinct from those of the community. This smallness of number also renders them subject to a variety of accidents, that may be of the highest disadvantage. If one of the members is sick, or if one or both are prevented occasionally from attending, who are to take care of the interests of their state?

Sir, we have frequently observed that deputies have been appointed for certain purposes, who have not punctually attended to them, when it was necessary. Their private concerns may often require their presence at home. In what manner is this evil to be corrected? The amendment provides a remedy. It is the only thing which can give the states a control over the Senate. It will be said, there is a power in Congress to compel the attendance of absent members; but will the members from the other states be solicitous to compel such attendance, except to answer some particular view, or promote some interest of their own? If it be the object of the senators to protect the sovereignty of their several states, and if, at any time, it be the design of the other states to make encroachments on the sovereignty of any one state, will it be for their interest to compel the members from this state to attend, in order to oppose and check them? This would be strange policy indeed....

Sir, it is true there have been no instances of the success of corruption under the old Confederation; and may not this be attributed to the power of recall, which has existed from its first formation? It has operated effectually, though silently. It has never been exercised, because no great occasion has offered. The power has by no means proved a discouragement to individuals, in serving their country. A seat in Congress has always been considered a distinguished honor, and a favorite object of ambition. I believe no public station has been sought with more avidity. If this power has existed for so many years, and through so many scenes of difficulty and danger, without being exerted, may it not be rationally presumed that it never will be put in execution, unless the indispensable interest of a state shall require it? I am perfectly convinced that, in many emergencies, mutual concessions are necessary and proper; and that, in some instances, the smaller interests of the states should be sacrificed to great national objects. But when a delegate makes such sacrifices as tend to political destruction or to reduce sovereignty to subordination, his state ought to have the power of defeating his design, and reverting to the people. It is observed, that the appropriation of money is not in the power of the Senate alone; but, sir, the exercise of certain powers, which constitutionally and necessarily involve the disposal of money, belongs to the Senate. They have, therefore, a right of disposing of the property of the United States. If the Senate declare war, the lower house must furnish the supplies.

It is further objected to this amendment, that it will restrain the people from choosing those who are most deserving of their suffrages, and will thus be an abridgment of their rights. I cannot suppose this last inference naturally follows. The rights of the people will be best supported by checking, at a certain point, the current of popular favor, and preventing the establishment of an

influence which may leave to elections little more than the form of freedom. The Constitution of this state says, that no man shall hold the office of sheriff or coroner beyond a certain period. Does any one imagine that the rights of the people are infringed by this provision? The gentlemen, in their reasoning on the subject of corruption, seem to set aside experience and to consider the Americans as exempt from the common vices and frailties of human nature. It is unnecessary to particularize the numerous ways in which public bodies are accessible to corruption. The poison always finds a channel, and never wants an object. Scruples would be impertinent arguments would be in vain, checks would be useless, if we were certain our rulers would be good men; but for the virtuous government is not instituted. Its object is to restrain and punish vice; and all free constitutions are for with two views-to deter the governed from crime, and the governors from tyranny.

Antifederalist No. 66 From North Carolina

Mr. JOSEPH TAYLOR objected to the provision made for impeaching. He urged that there could be no security from it, as the persons accused were triable by the Senate, who were a part of the legislature themselves; that, while men were fallible, the senators were liable to errors, especially in a case where they were concerned themselves. . . .

Mr. [Timothy] BLOODWORTH wished to be informed, whether this sole power of impeachment, given to the House of Representatives, deprived the state of the power of impeaching any of its members. . . .

Mr. JOSEPH TAYLOR. Mr. Chairman, the objection is very strong. If there be but one body to try, where are we? If any tyranny or oppression should arise, how are those who perpetrated such oppression to be tried and punished? By a tribunal consisting of the very men who assist in such tyranny. Can any tribunal be found, in any community, who will give judgment against their own actions? Is it the nature of man to decide against himself? I am obliged to the worthy member from New Hanover for assisting me with objections. None can impeach but the representatives; and the impeachments are to be determined by the senators, who are one of the branches of power which we dread under this Constitution.... the words "sole power of impeachment" were so general, and might admit of such a latitude of construction, as to extend to every legislative member upon the continent, so as to preclude the representatives of the different states from impeaching....

Mr. [William] PORTER wished to be informed, if every officer, who was a creature of that Constitution, was to be tried by the Senate-whether such officers, and those who had complaints against them, were to go from the extreme parts of the continent to the seat of government, to adjust disputes. . . .

Mr. J. TAYLOR. Mr. Chairman, I conceive that, if this Constitution be adopted, we shall have a large number of officers in North Carolina under the appointment of Congress. We shall undoubtedly, for instance, have a great number of tax-gatherers. If any of these officers shall do wrong, when we come to fundamental principles, we find that we have no way to punish them but by going to Congress, at an immense distance, whither we must carry our witnesses. Every gentlemen must see, in these cases, that oppressions will arise. I conceive that they cannot be tried elsewhere. I consider that the Constitution will be explained by the word "sole." If they did not mean to retain a general power of impeaching, there was no occasion for saying the "sole power." I consider therefore that oppressions will arise. If I am oppressed, I must go to the House of Representatives to complain. I consider that, when mankind are about to part with rights, they ought only to part with those rights which they can with convenience relinquish, and not such as must involve them in distresses....

I observe that, when these great men are met in Congress, in consequence of this power, they will have the power of appointing all the officers of the United States. My experience in life shows me that the friends of the members of the legislature will get the offices. These senators and members of the House of Representatives will appoint their friends to all offices. These

officers will be great men, and they will have numerous deputies under them. The receiver-general of the taxes of North Carolina must be one of the greatest men in the country. Will he come to me for his taxes? No. He will send his deputy, who will have special instructions to oppress me. How am I to be redressed? I shall be told that I must go to Congress, to get him impeached. This being the case, whom am I to impeach? A friend of the representatives of North Carolina. For, unhappily for us, these men will have too much weight for us; they will have friends in the government who will be inclined against us, and thus we may be oppressed with impunity.

Antifederalist No. 67 VARIOUS FEARS CONCERNING THE EXECUTIVE DEPARTMENT

From the "CATO" letters of George Clinton, taken from The New-York Journal of November 8, 1787.

I shall begin with observations on the executive branch of this new system; and though it is not the first in order, as arranged therein, yet being the chief, is perhaps entitled by the rules of rank to the first consideration. The executive power as described in the 2d article, consists of a president and vice- president, who are to hold their offices during the term of four years; the same article has marked the manner and time of their election, and established the qualifications of the president; it also provides against the removal, death, or inability of the president and vice-president - regulates the salary of the president, delineates his duties and powers; and, lastly, declares the causes for which the president and vice-president shall be removed from office.

Notwithstanding the great learning and abilities of the gentlemen who composed the convention, it may be here remarked with deference, that the construction of the first paragraph of the first section of the second article is vague and inexplicit, and leaves the mind in doubt as to the election of a president and vice-president, after the expiration of the election for the first term of four years; in every other case, the election of these great officers is expressly provided for; but there is no explicit provision for their election which is to set this political machine in motion; no certain and express terms as in your state constitution, that statedly once in every four years, and as often as these offices shall become vacant, by expiration or otherwise, as is therein expressed, an election shall be held as follows, etc.; this inexplicitness perhaps may lead to an establishment for life.

It is remarked by Montesquieu, in treating of republics, that in all magistracies, the greatness of the power must be compensated by the brevity of the duration, and that a longer time than a year would be dangerous. It is, therefore, obvious to the least intelligent mind to account why great power in the hands of a magistrate, and that power connected with considerable duration, may be dangerous to the liberties of a republic. The deposit of vast trusts in the hands of a single magistrate enables him in their exercise to create a numerous train of dependents. This tempts his ambition, which in a republican magistrate is also remarked, to be pernicious, and the duration of his office for any considerable time favors his views, gives him the means and time to perfect and execute his designs; he therefore fancies that he may be great and glorious by oppressing his fellow citizens, and raising himself to permanent grandeur on the ruins of his country. And here it may be necessary to compare the vast and important powers of the president, together with his continuance in office, with the foregoing doctrine-his eminent magisterial situation will attach many adherents to him, and he will be surrounded by expectants and courtiers. His power of nomination and influence on all appointments; the strong posts in each state comprised within his superintendence, and garrisoned by troops under his direction; his control over the army, militia, and navy; the unrestrained power of granting pardons for treason, which may be used to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt; his duration in office for four years-these, and various other

principles evidently prove the truth of the position, that if the president is possessed of ambition, he has power and time sufficient to ruin his country.

Though the president, during the sitting of the legislature, is assisted by the senate, yet he is without a constitutional council in their recess. He will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites, or a council of state will grow out of the principal officers of the great departments, the most dangerous council in a free country. . . . The language and the manners of this court will be what distinguishes them from the rest of the community, not what assimilates them to it; and in being remarked for a behavior that shows they are not meanly born, and in adulation to people of fortune and power.

The establishment of a vice-president is as unnecessary as it is dangerous. This officer, for want of other employment, is made president of the senate, thereby blending the executive and legislative powers, besides always giving to some one state, from which he is to come, an unjust pre-eminence.

It is a maxim in republics that the representative of the people should be of their immediate choice; but by the manner in which the president is chosen, he arrives to this office at the fourth or fifth hand. Nor does the highest vote, in the way he is elected, determine the choice-for it is only necessary that he should be taken from the highest of five, who may have a plurality of votes. . . .

And wherein does this president, invested with his powers and prerogatives, essentially differ from the king of Great Britain (save as to name, the creation of nobility, and some immaterial incidents, the offspring of absurdity and locality)? The direct prerogatives of the president, as springing from his political character, are among the following: It is necessary, in order to distinguish him from the rest of the community, and enable him to keep, and maintain his court, that the compensation for his services, or in other words, his revenue, should be such as to enable him to appear with the splendor of a prince. He has the power of receiving ambassadors from, and a great influence on their appointments to foreign courts; as also to make treaties, leagues, and alliances with foreign states, assisted by the Senate, which when made becomes the supreme law of land. He is a constituent part of the legislative power, for every bill which shall pass the House of Representatives and Senate is to be presented to him for approbation. If he approves of it he is to sign it, if he disapproves he is to return it with objections, which in many cases will amount to a complete negative; and in this view he will have a great share in the power of making peace, coining money, etc., and all the various objects of legislation, expressed or implied in this Constitution. For though it may be asserted that the king of Great Britain has the express power of making peace or war, yet he never thinks it prudent to do so without the advice of his Parliament, from whom be is to derive his support -and therefore these powers, in both president and king, are substantially the same. He is the generalissimo of the nation, and of course has the command and control of the army, navy and militia; he is the general conservator of the peace of the union-he may pardon all offenses, except in cases of impeachment, and the principal fountain of all offices and employments. Will not the exercise of these powers therefore tend either to the establishment of a vile and arbitrary aristocracy or monarchy? The safety of the people in a republic depends on the share or proportion they have in the government; but experience ought to teach you, that when a man is at the head of an elective government invested

with great powers, and interested in his re-election, in what circle appointments will be made; by which means an imperfect aristocracy bordering on monarchy may be established. You must, however, my countrymen, beware that the advocates of this new system do not deceive you by a fallacious resemblance between it and your own state government [New York] which you so much prize; and, if you examine, you will perceive that the chief magistrate of this state is your immediate choice, controlled and checked by a just and full representation of the people, divested of the prerogative of influencing war and peace, making treaties, receiving and sending embassies, and commanding standing armies and navies, which belong to the power of the confederation, and will be convinced that this government is no more like a true picture of your own than an Angel of Darkness resembles an Angel of Light.

CATO

Antifederalist No. 68 ON THE MODE OF ELECTING THE PRESIDENT

From a speech by William Grayson given to the Virginia ratifying convention on June 18, 1788.

Mr. [William] GRAYSON. Mr. Chairman, one great objection with me is this: If we advert to..... [the] democratical, aristocratical, or executive branch, we shall find their powers are perpetually varying and fluctuating throughout the whole. Perhaps the democratic branch would be well constructed, were it not for this defect. The executive is still worse, in this respect, than the democratic branch. He is to be elected by a number of electors in the country; but the principle is changed when no person has a majority of the whole number of electors appointed, or when more than one have such a majority, and have an equal number of votes; for then the lower house is to vote by states. It is thus changing throughout the whole. It seems rather founded on accident than any principle of government I ever heard of. We know that there scarcely ever was an election of such an officer without the interposition of foreign powers. Two causes prevail to make them intermeddle in such cases:-one is, to preserve the balance of power; the other, to preserve their trade. These causes have produced interferences of foreign powers in the election of the king of Poland. All the great powers of Europe have interfered in an election which took place not very long ago, and would not let the people choose for themselves. We know how much the powers of Europe have interfered with Sweden. Since the death of Charles XII, that country has been a republican government. Some powers were willing it should be so; some were willing her imbecility should continue; others wished the contrary; and at length the court of France brought about a revolution, which converted it into an absolute government. Can America be free from these interferences? France, after losing Holland, will wish to make America entirely her own. Great Britain will wish to increase her influence by a still closer connection. It is the interest of Spain, from the contiguity of her possessions in the western hemisphere to the United States, to be in an intimate connection with them, and influence their deliberations, if possible. I think we have every thing, to apprehend from such interferences. It is highly probable the President will be continued in office for life. To gain his favor, they will support him. Consider the means of importance he will have by creating officers. If he has a good understanding with the Senate, they will join to prevent a discovery of his misdeeds. . . .

This quadrennial power cannot be justified by ancient history. There is hardly an instance where a republic trusted its executive so long with much power; nor is it warranted by modern republics. The delegation of power is, in most of them, only for one year.

When you have a strong democratical and a strong aristocratical branch, you may have a strong executive. But when those are weak, the balance will not be preserved, if you give the executive extensive powers for so long a time. As this government is organized, it would be dangerous to trust the President with such powers. How will you punish him if he abuse his power? Will you call him before the Senate? They are his counsellors and partners in crime. Where are your checks? We ought to be extremely cautious in this country. If ever the government be changed, it will probably be into a despotism. The first object in England was to destroy the monarchy; but the aristocratic branch restored him, and of course the government was organized on its ancient principles. But were a revolution to happen here, there would be no means of restoring the

government to its former organization. This is a caution to us not to trust extensive powers. I have an extreme objection to the mode of his election. I presume the seven Eastern States will always elect him. As he is vested with the power of making treaties, and as there is a material distinction between the carrying and productive states, the former will be disposed to have him to themselves. He will accommodate himself to their interests in forming treaties, and they will continue him perpetually in office. Thus mutual interest will lead them reciprocally to support one another. It will be a government of a faction, and this observation will apply to every part of it; for, having a majority, they may do what they please. I have made an estimate which shows with what facility they will be able to reelect him. The number of electors is equal to the number of representatives and senators; viz., ninety-one. They are to vote for two persons. They give, therefore, one hundred and eighty-two votes. Let there be forty-five votes for four different candidates, and two for the President. He is one of the five highest, if he have but two votes, which he may easily purchase. In this case, by the 3d clause of the lst section of the 2d article, the election is to be by the representatives, according to states. Let New Hampshire be for him,-a majority of its . . . . .

	3	representatives is	2
Rhode Island	1		1
Connecticut	5		3
New Jersey	4		3
Delaware	1		1
Georgia	3		2
North Carolina	5		3
A majority of seven states is		15	
Thus the majority of seven states is but 15, while the minority amounts to 50.			
The total number of voices (91 electors and 65 representatives) is . .			156
Voices in favor of the President are, 2 state electors and 15 representatives			17
			139

So that the President may be reelected by the voices of 17 against 139.

It may be said that this is an extravagant case, and will never happen. In my opinion, it will often happen. A person who is a favorite of Congress, if he gets but two votes of electors, may, by the subsequent choice of 15 representatives, be elected President. Surely the possibility of such a case ought to be excluded.

Antifederalist No. 69 THE CHARACTER OF THE EXECUTIVE OFFICE

by Richard Henry Lee

The great object is, in a republican government, to guard effectually against perpetuating any portion of power, great or small, in the same man or family. This perpetuation of power is totally uncongenial to the true spirit of republican governments. On the one hand the first executive magistrate ought to remain in office so long as to avoid instability in the execution of the laws; on the other, not so long as to enable]him to take any measures to establish himself. The convention, it seems, first agreed that the president should be chosen for seven years, and never after to be eligible. Whether seven years is a period too long or not, is rather a matter of opinion; but clear it is, that this mode is infinitely preferable to the one finally adopted. When a man shall get the chair, who may be reelected from time to time, for life, his greatest object will be to keep it; to gain friends and votes, at any rate; to associate some favorite son with himself, to take office after him. Whenever he shall have any prospect of continuing the office in himself and family, he will spare no artifice, no address, and no exertions, to increase the powers and importance of it. The servile supporters of his wishes will be placed in all offices, and tools constantly employed to aid his views and sound his praise. A man so situated will have no permanent interest in the government to lose, by contests and convulsions in the state; but always much to gain, and frequently the seducing and flattering hope of succeeding. If we reason at all on the subject, we must irresistibly conclude that this will be the case with nine tenths of the presidents. We may have, for the first president, and perhaps, one in a century or two afterwards (if the government should withstand the attacks of others) a great and good man, governed by superior motives; but these are not events to be calculated upon in the present state of human nature. A man chosen to this important office for a limited period and always afterwards rendered, by the constitution, ineligible, will be governed by very different considerations. He can have no rational hopes or expectations of retaining his office after the expiration of a known limited time, or of continuing the office in his family, as by the constitution there must be a constant transfer of it from one man to another, and consequently from one family to another. No man will wish to be a mere cypher at the bead of the government. The great object of each president then will be to render his government a glorious period in the annals of his country. When a man constitutionally retires from office, he retires without pain; he is sensible he retires because the laws direct it, and not from the success of his rivals, nor with that public disapprobation which being left out, when eligible, implies. It is said that a man knowing that at a given period he must quit his office, will unjustly attempt to take from the public, and lay in store the means of support and splendor in his retirement. There can, I think, be but very little in this observation. The same constitution that makes a man eligible for a given period only, ought to make no man eligible till he arrive to the age of forty or forty-five years. If he be a man of fortune, be will retire with dignity to his estate; if not, he may, like the Roman consuls, and other eminent characters in republics, find an honorable support and employment in some respectable office. A man who must, at all events, thus leave his office, will have but few or no temptations to fill its dependent offices with his tools, or any particular set of men; whereas the man constantly looking forward to his future elections, and perhaps, to the aggrandizement of his family, will have every inducement before him to fill all places with his own props and

dependents. As to public monies, the president need handle none of them, and he may always rigidly be made to account for every shilling he shall receive.

On the whole, it would be, in my opinion, almost as well to create a limited monarchy at once, and give some family permanent power and interest in the community, and let it have something valuable to itself to lose in convulsions in the state, and in attempts of usurpation, as to make a first magistrate eligible for life, and to create hopes and expectations in him and his family of obtaining what they have not. In the latter case, we actually tempt them to disturb the state, to foment struggles and contests, by laying before them the flattering prospect of gaining much without risking anything.

The constitution provides only that the president shall hold his office during the term of four years; that, at most, only implies, that one shall be chosen every fourth year. It also provides that in case of the removal, death, resignation, or inability, both of the president and vice-president, congress may declare what officer shall act as president; and that such officers shall act accordingly, until the disability be removed, or a president shall be elected. It also provides that congress may determine the time of choosing electors, and the day on which they shall give their votes. Considering these clauses together, I submit this question-whether in case of a vacancy in the office of president, by the removal, death, resignation, or inability of the president and vice president, and congress should declare that a certain officer, as secretary of foreign affairs, for instance, shall act as president, and suffer such officer to continue several years, or even for his life, to act as president, by omitting to appoint the time for choosing electors of another president, it would be any breach of the constitution? There appears to me to be an intended provision for supplying the office of president-not only for any remaining portion of the four years, but in cases of emergency-until another president shall be elected. . . . [But] we do not know that it is impossible; we do not know that it is improbable, in case a popular officer should thus be declared the acting president, that he might continue for life, and without any violent act, but merely by neglects and delays on the part of congress. . .

THE FEDERAL FARMER

Antifederalist No. 70 THE POWERS AND DANGEROUS POTENTIALS OF HIS ELECTED MAJESTY

"AN OLD WHIG's" essay from The New-York Journal of December 11, 1787.

.... In the first place the office of president of the United States appears to me to be clothed with such powers as are dangerous. To be the fountain of all honors in the United States-commander in chief of the army, navy, and militia; with the power of making treaties and of granting pardons; and to be vested with an authority to put a negative upon all laws, unless two thirds of both houses shall persist in enacting it, and put their names down upon calling the yeas and nays for that purpose-is in reality to be a king, as much a king as the king of Great Britain, and a king too of the worst kind: an elective king. If such powers as these are to be trusted in the hands of any man, they ought, for the sake of preserving the peace of the community, at once to be made hereditary. Much as I abhor kingly government, yet I venture to pronounce, where kings are admitted to rule they should most certainly be vested with hereditary power. The election of a king whether it be in America or Poland, will be a scene of horror and confusion; and I am perfectly serious when I declare, that, as a friend to my country, I shall despair of any happiness in the United States until this office is either reduced to a lower pitch of power, or made perpetual and hereditary. When I say that our future president will be as much a king as the king of Great Britain, I only ask of my readers to look into the constitution of that country, and then tell me what important prerogative the king of Great Britain is entitled to which does not also belong to the president during his continuance in office. The king of Great Britain, it is true, can create nobility which our president cannot; but our president will have the power of making all the great men, which comes to the same thing. All the difference is, that we shall be embroiled in contention about the choice of the man, while they are at peace under the security of an hereditary succession. To be tumbled headlong from the pinnacle of greatness and be reduced to a shadow of departed royalty, is a shock almost too great for human nature to endure. It will cost a man many struggles to resign such eminent powers, and ere long, we shall find some one who will be very unwilling to part with them. Let us suppose this man to be a favorite with his army, and that they are unwilling to part with their beloved commander in chief-or to make the thing familiar, let us suppose a future president and commander in chief adored by his army and the militia to as great a degree as our late illustrious commander in chief; and we have only to suppose one thing more, that this man is without the virtue, the moderation and love of liberty which possessed the mind of our late general-and this country will be involved at once in war and tyranny. So far is it from its being improbable that the man who shall hereafter be in a situation to make the attempt to perpetuate his own power, should want the virtues of General Washington, that it is perhaps a chance of one hundred millions to one that the next age will not furnish an example of so disinterested a use of great power. We may also suppose, without trespassing upon the bounds of probability, that this man may not have the means of supporting, in private life, the dignity of his former station; that like Caesar, he may be at once ambitious and poor, and deeply involved in debt. Such a man would die a thousand deaths rather than sink from the heights of splendor and power, into obscurity and wretchedness. We are certainly about giving our president too much or too little; and in the course of less than twenty years we shall find that we have given him enough to enable him to take all. It would be infinitely more prudent to give him at once as much as would content him, so that we might be able to retain the rest in

peace, for if once power is seized by violence, not the least fragment of liberty will survive the shock. I would therefore advise my countrymen seriously to ask themselves this question: Whether they are prepared to receive a king? If they are, to say so at once, and make the kingly office hereditary; to frame a constitution that should set bounds to his power, and, as far as possible, secure the liberty of the subject. If we are not prepared to receive a king, let us call another convention to revise the proposed constitution, and form it anew on the principles of a confederacy of free republics; but by no means, under pretense of a republic, to lay the foundation for a military government, which is the worst of all tyrannies.

AN OLD WHIG

Antifederalist No. 71 THE PRESIDENTIAL TERM OF OFFICE

Part 1: Luther Martin, The Genuine Information
Part 2: An excerpt from the 18th letter of "AGRIPPA" appearing in The Massachusetts Gazette on February 5, 1788.
Part 3: From by "A CUSTOMER" in the Maine Cumberland Gazette, March 13, 1788.

.... The second article relates to the executive-his mode of election, his powers, and the length of time he should continue in office.

On this subject there was a great diversity of sentiment [at the Philadelphia constitutional convention]. Many of the members were desirous that the President should be elected for seven years, and not to be eligible a second time. Others proposed that he should not be absolutely ineligible, but that he should not be capable of being chosen a second time, until the expiration of a certain number of years. The supporters of the above proposition went upon the idea that the best security for liberty was a limited duration, and a rotation of office, in the chief executive department.

There was a party who attempted to have the President appointed during good behavior, without any limitation as to time; and, not being able to succeed in that attempt, they then endeavored to have him reeligible without any restraint. It was objected that the choice of a President to continue in office during good behavior, would at once be rendering our system an elective monarchy; and that, if the President was to be reeligible without any interval of disqualification, it would amount nearly to the same thing, since, from the powers that the President is to enjoy, and the interests and influence with which they will be attended, he will be almost absolutely certain of being reelected from time to time, as long as he lives. As the propositions were reported by the committee of the whole house, the President was to be chosen for seven years, and not to be eligible at any time after. In the same manner, the proposition was agreed to in Convention; and so it was reported by the committee of detail, although a variety of attempts were made to alter that part of the system by those who were of a contrary opinion, in which they repeatedly failed; but, sir, by never losing sight of their object, and choosing a proper time for their purpose, they succeeded, at length, in obtaining the alteration, which was not made until within the last twelve days before the Convention adjourned....

Resolved, that the constitution lately proposed for the United States be received only upon the following conditions. . . .

The president shall be chosen annually and shall serve but one year, and shall be chosen successively from the different states, changing every year....

AGRIPPA

I have one difficulty in my mind respecting our admirable Constitution, which I hope somebody will attempt to remove. Art. 3, sect. 1: "The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years." Here is no

declaration that a new one shall be chosen at the expiration of that time. "Congress may determine the time of choosing the electors; and the day on which they shall give their votes." But suppose they should think it for the public good, after the first election, to appoint the first Tuesday of September, in the year two thousand, for the purpose of choosing the second President; and by law empower the Chief Justice of the Supreme Judicial Court to act as President until that time. However disagreeable it might be to the majority of the States, I do not see but that they are left without a remedy, provided four States should be satisfied with the measure. The President elected is not to receive any other emolument; yet the Chief Justice is not disqualified as a Judge. Why did our worthy Chief Justice, at Cambridge the year past, in his address to the Grand Jury, call upon them to support "that free and excellent Constitution, which it has cost the blood of thousands of our friends and fellow citizens to establish; that Constitution which has carefully separated and distinguished the principal departments of power, that they might never combine against the liberty of the subject"-if it is not a necessary article in a constitution? If necessary in a State constitution, why not in one for the whole people? Was it not as easy to have said the President should be chosen every fourth year, as to have said the Representatives shall be chosen every second year? The celebrated Mr. King observes that this is not a confederation of States-for the style is in the name of the people. Therefore, it appears to me, the rights of the people should be as well guarded, on this point, here, as in the constitution of a State....

A CUSTOMER

Antifederalist No. 72 ON THE ELECTORAL COLLEGE; ON REELIGIBILITY OF THE PRESIDENT

By an anonymous writer "REPUBLICUS," appearing in The Kentucky Gazette on March 1, 1788.

. . I go now to Art. 2, Sec. 1, which vest the supreme continental executive power in a president- in order to the choice of whom, the legislative body of each state is empowered to point out to their constituents some mode of choice, or (to save trouble) may choose themselves, a certain number of electors, who shall meet in their respective states, and vote by ballot, for two persons, one of whom, at least, shall not be an inhabitant of the same state with themselves. Or in other words, they shall vote for two, one or both of whom they know nothing of. An extraordinary refinement this, on the plain simple business of election; and of which the grand convention have certainly the honor of being the first inventors; and that for an officer too, of so much importance as a president - invested with legislative and executive powers; who is to be commander in chief of the army, navy, militia, etc.; grant reprieves and pardons; have a temporary negative on all bills and resolves; convene and adjourn both houses of congress; be supreme conservator of laws; commission all officers; make treaties; and who is to continue four years, and is only removable on conviction of treason or bribery, and triable only by the senate, who are to be his own council, whose interest in every instance runs parallel with his own, and who are neither the officers of the people, nor accountable to them.

Is it then become necessary, that a free people should first resign their right of suffrage into other hands besides their own, and then, secondly, that they to whom they resign it should be compelled to choose men, whose persons, characters, manners, or principles they know nothing of? And, after all (excepting some such change as is not likely to happen twice in the same century) to intrust Congress with the final decision at last? Is it necessary, is it rational, that the sacred rights of mankind should thus dwindle down to Electors of electors, and those again electors of other electors? This seems to be degrading them even below the prophetical curse denounced by the good old patriarch, on the offspring of his degenerate son: "servant of servants". . .

Again I would ask (considering how prone mankind are to engross power, and then to abuse it) is it not probable, at least possible, that the president who is to be vested with all this demiomnipotence - who is not chosen by the community; and who consequently, as to them, is irresponsible and independent-that he, I say, by a few artful and dependent emissaries in Congress, may not only perpetuate his own personal administration, but also make it hereditary? By the same means, he may render his suspensive power over the laws as operative and permanent as that of G. the 3d over the acts of the British parliament; and under the modest title of president, may exercise the combined authority of legislation and execution, in a latitude yet unthought of. Upon his being invested with those powers a second or third time, he may acquire such enormous influence-as, added to his uncontrollable power over the army, navy, and militia; together with his private interest in the officers of all these different departments, who are all to be appointed by himself, and so his creatures, in the true political sense of the word; and more especially when added to all this, he has the power of forming treaties and alliances, and calling

them to his assistance-that he may, I say, under all these advantages and almost irresistible temptations, on some pretended pique, haughtily and contemptuously, turn our poor lower house (the only shadow of liberty we shall have left) out of doors, and give us law at the bayonet's point. Or, may not the senate, who are nearly in the same situation, with respect to the people, from similar motives and by similar means, erect themselves easily into an oligarchy, towards which they have already attempted so large a stride? To one of which channels, or rather to a confluence of both, we seem to be fast gliding away; and the moment we arrive at it-farewell liberty. . . .

To conclude, I can think of but one source of right to government, or any branch of it-and that is THE PEOPLE. They, and only they, have a right to determine whether they will make laws, or execute them, or do both in a collective body, or by a delegated authority. Delegation is a positive actual investiture. Therefore if any people are subjected to an authority which they have not thus actually chosen-even though they may have tamely submitted to it-yet it is not their legitimate government. They are wholly passive, and as far as they are so, are in a state of slavery. Thank heaven we are not yet arrived at that state. And while we continue to have sense enough to discover and detect, and virtue en(>ugh to detest and oppose every attempt, either of force or fraud, either from without or within, to bring us into it, we never will.

Let us therefore continue united in the cause of rational liberty. Let unity and liberty be our mark as well as our motto. For only such an union can secure our freedom; and division will inevitably destroy it. Thus a mountain of sand may peace meal [sic] be removed by the feeble hands of a child; but if consolidated into a rock, it mocks the united efforts of mankind, and can only fall in a general wreck of nature.

REPUBLICUS

Antifederalist No. 73 DOES THE PRESIDENTIAL VETO POWER INFRINGE ON THE SEPARATION OF DEPARTMENTS?

"WILLIAM PENN," an anonymous writer appeared in the [Philadelphia] Independent Gazetteer on January 3, 1788.

. . . I believe that it is universally agreed upon in this enlightened country, that all power residing originally in the people, and being derived from them, they ought to be governed by themselves only, or by their immediate representatives. I shall not spend any time in explaining a principle so well and so generally understood, but I shall proceed immediately to that which I conceive to be the next in order.

The next principle, without which it must be clear that no free government can ever subsist, is the DIVISION OF POWER among those who are charged with the execution of it. It has always been the favorite maxim of princes, to divide the people, in order to govern them. It is now time that the people should avail themselves of the same maxim, and divide powers among their rulers, in order to prevent their abusing it. The application of this great political truth, has long been unknown to the world, and yet it is grounded upon a very plain natural principle. If, says Montesquieu, the same man, or body of men, is possessed both of the legislative and executive power, there is NO LIBERTY, because it may be feared that the same monarch, or the same senate, will enact tyrannical laws, in order to execute them in a tyrannical manner. Nothing can be clearer, and the natural disposition of man to ambition and power makes it probable that such would be the consequence. Suppose for instance, that the same body, which has the power of raising money by taxes, is also entrusted with the application of that money, they will very probably raise large sums, and apply them to their own private uses. If they are empowered to create offices, and appoint the officers, they will take that opportunity of providing for themselves, and their friends, and if they have the power of inflicting penalties for offenses, and of trying the offenders, there will be no bounds to their tyranny. Liberty therefore can only subsist, where the powers of government are properly divided, and where the different jurisdictions are inviolably kept distinct and separate.

(1) I shall illustrate this doctrine by an example. A burgher of a certain borough of Switzerland was elected Bailiff, or Chief Magistrate, for one year, according to the constitution of the place. Shortly after his appointment, he sent for one of his neighbors, and ordered him to pull off his boots. The honest neighbor was astonished, and attempted to remonstrate, but the bailiff was determined to exert his authority, and threatened to send him to jail, if he did not yield him an immediate obedience. The poor man was forced to comply, for the bailiff was vested with power, both legislative and executive. He pulled off his worship's boots, but said to him, "When I am appointed bailiff in my turn, you shall pull off my boots and clean them too."

The first and most natural division of the powers of government are into the legislative and executive branches. These two should never be suffered to have the least share of each other's jurisdiction, or to intermeddle with it in any manner. For whichever of the two divides its power

with the other, will certainly be subordinate to it; and if they both have a share of each other's authority, they will be in fact but one body. Their interest as well as their powers will be the same, and they will combine together against the people.

It is therefore a political error of the greatest magnitude, to allow the executive power a negative, or in fact any kind of control over the proceedings of the legislature. The people of Great Britain have been so sensible of this truth, that since the days of William III, no king of England has dared to exercise the negative over the acts of the two houses of parliament, to which he is clearly entitled by his prerogative.

This doctrine is not novel in America; it seems on the contrary to be everywhere well understood and admitted beyond controversy. In the bills of rights or constitutions of New-Hampshire, Massachusetts, Maryland, Virginia, North- Carolina and Georgia, it is expressly declared, "That the legislative, executive and judicial departments, shall be forever separate and distinct from each other." In Pennsylvania and Delaware, they are effectually separated without any particular declaration of the principle. In the other states indeed, the executive branch possesses more or less of the executive power. And here it must appear singular that the state of Massachusetts- where the doctrine of a separate jurisdiction is most positively established, and in whose bill of rights these remarkable words are to be found, "The executive shall never exercise the legislative and judicial powers, or either of them, to the end it may be a government of laws and not of men" (sect. 30) -yet in that commonwealth and New-Hampshire, the executive branch, which consists of a single magistrate, has more control over the legislature than in any other state. For there, if the governor refuses his assent to a bill, it cannot be passed into a law, unless two thirds of the house afterwards concur. In New York the same power is given to a Council of Revision, consisting of the Governor, the Chancellor and judges of the Supreme Court, or any three of them, of which the Governor is to be one. In Rhode-Island and Connecticut, whose governments were established before the revolution, the Governor has a single vote as a member of the upper house, and New Jersey has adopted this part of their constitution. In Georgia the laws are to be revised by the Governor and Council, but they can do no more than give their opinion upon them. In Maryland the bills are to be signed by the Governor before they can be enacted; and in South-Carolina they are to be sealed with the great sea], which is in the Governor's custody. But in the first of these states, the constitution prescribes that the Governor shall sign the bills; and in the latter, a joint committee of both houses of legislature is to wait upon the chief magistrate to receive and return the great seat, which implies that he is bound to deliver it to them, for the special purpose of affixing it to the laws of the state. Pennsylvania has proceeded upon a much more rational ground, their legislature having a particular seal of their own, and their laws requiring only to be signed by the speaker. It in Maryland or South-Carolina a difference should ever arise between the legislature and the Governor, and the latter should refuse to sign the laws, or to deliver the great seal, the most fatal consequences might ensue.

Here then we see the great leading principle of the absolute division of the legislative from the executive jurisdiction, admitted in almost every one of the American states as a fundamental maxim in the politics of a free country. The theory of this general doctrine is everywhere established, though a few states have somewhat swerved from it in the practice. From whence we must conclude, that even the knowledge and full conviction of a new political truth will not always immediately conquer inveterate habits and prejudices. The idea of the negative, which the

constitution of England gives to the monarch over the proceedings of the other branches of parliament, although it has so long become obsolete, has had an effect upon timid minds, and upon the minds of those who could not distinguish between the form and spirit of the British constitution. They would not grant to the executive branch an absolute negative over the legislature, but yet they tried every method to introduce something similar to it. They reprobated the doctrine in the most express words, and yet they could not bear to part entirely with it. It is curious to observe how many different ways they have endeavored to conciliate truth with prejudice. Of those states who have allowed the executive branch to intermeddle with the proceedings of the legislature, no two (New Hampshire and Massachusetts excepted) have done it exactly in the same manner. They have tried every possible medium, but having lost sight of the original principle which they had already established, and which alone could have been their safest guide, they groped about in the dark, and could not find any solid ground on which to establish a general rule. Like Noah's dove, being once out of the ark of truth, they could not find elsewhere a place to rest their feet.

These facts will no doubt afford an interesting page in the history of the contradictions of the human mind. Unfortunately, they do not stand single, and this is not the only instance that we find in the constitutions of the different states, of a general principle being expressly declared as a part of the natural rights of the citizens, and afterwards being as expressly contradicted in the practice. Thus we find it declared in every one of our bills of rights, "that there shall be a perfect liberty of conscience, and that no sect shall ever be entitled to a preference over the others." Yet in Massachusetts and Maryland, all the officers of government, and in Pennsylvania the members of the legislature, are to be of the Christian religion; in New-Jersey, North-Carolina, and Georgia, the Protestant, and in Delaware, the trinitarian sects, have an exclusive right to public employment; and in South-Carolina the constitution goes so far as to declare the creed of the established church. Virginia and New-York are the only states where there is a perfect liberty of conscience. I cannot say any thing as to Connecticut and Rhode-Island, as their constitutions are silent on the subject, and I have not been informed of their practice.

Whether these religious restrictions are right or wrong, it is not my intention, nor is it my object to examine in the course of these disquisitions. I only meant to show, that in laying down a political system it is safer to rely on principles than upon precedents, because the former are - fixed and immutable, while the latter vary with men, places, times and circumstances.

WILLIAM PENN

Antifederalist No. 74 THE PRESIDENT AS MILITARY KING

"PHILADELPHIENSIS," who was influenced by Thomas Paine (in "Common Sense), wrote the following selection. It is taken from 3 essays which appearing February 6 & 20, and April 9 of 1788 in either The Freeman's Journal or, The North-American Intelligencer.

Before martial law is declared to be the supreme law of the land, and your character of free citizens be changed to that of the subjects of a military king-which are necessary consequences of the adoption of the proposed constitution - let me admonish you in the name of sacred liberty, to make a solemn pause. Permit a freeman to address you, and to solicit your attention to a cause wherein yourselves and your posterity are concerned. The sun never shone upon a more important one. It is the cause of freedom of a whole continent of yourselves and of your fellow men. . . .

A conspiracy against the freedom of America, both deep and dangerous, has been formed by an infernal junto of demagogues. Our thirteen free commonwealths are to be consolidated into one despotic monarchy. Is not this position obvious? Its evidence is intuitive . . . . Who can deny but the president general will be a king to all intents and purposes, and one of the most dangerous kind too-a king elected to command a standing army. Thus our laws are to be administered by this tyrant; for the whole, or at least the most important part of the executive department is put in his hands.

A quorum of 65 representatives, and of 26 senators, with a king at their head, are to possess powers that extend to the lives, the liberties, and property of every citizen of America. This novel system of government, were it possible to establish it, would be a compound of monarchy and aristocracy, the most accursed that ever the world witnessed. About 50 (these being a quorum) of the well born, and a military king, with a standing army devoted to his will, are to have an uncontrolled power. . . .

There is not a tincture of democracy in the proposed constitution, except the nominal elections of the president general and the illustrious Congress be supposed to have some color of that nature. But this is a mere deception, invented to gull the people into its adoption. Its framers were well aware that some appearance of election ought to be observed, especially in regard to the first Congress; for without such an appearance there was not the smallest probability of their having it organized and set in operation. But let the wheels of this government be once cleverly set in motion, and I'll answer for it, that the people shall not be much troubled with future elections, especially in choosing their king-the standing army will do that business for them.

The thoughts of a military officer possessing such powers, as the proposed constitution vests in the president general, are sufficient to excite in the mind of a freeman the most alarming apprehensions; and ought to rouse him to oppose it at all events. Every freeman of America ought to hold up this idea to himself: that he has no superior but God and the laws. But this tyrant will be so much his superior, that he can at any time he thinks proper, order him out in the militia to exercise, and to march when and where he pleases. His officers can wantonly inflict the

most disgraceful punishment on a peaceable citizen, under pretense of disobedience, or the smallest neglect of militia duty. . . .

The President-general, who is to be our king after this government is established, is vested with powers exceeding those of the most despotic monarch we know of in modern times. What a handsome return have these men [the authors of the Constitution made to the people of America for their confidence! Through the misconduct of these bold conspirators we have lost the most glorious opportunity that any country ever had to establish a free system of government. America under one purely democratical, would be rendered the happiest and most powerful nation in the universe. But under the proposed one composed of an elective king and a standing army, officered by his sycophants, the starvelings of the Cincinnati, and an aristocratical Congress of the well-born-an iota of happiness, freedom, or national strength cannot exist. What a pitiful figure will these ungrateful men make in history; who, for the hopes of obtaining some lucrative employment, or of receiving a little more homage from the rest of their fellow creatures, framed a system of oppression that must involve in its consequences the misery of their own offspring....

Some feeble attempts have been made by the advocates of this system of tyranny, to answer the objections made to the smallness of the number of representatives and senators, and the improper powers delegated to them. But, as far as I recollect, no one has been found bold enough to stand forth in defense of that dangerous and uncontrolled officer, the President-General, or more properly, our new King.

A few pieces under the signature of An American Citizen' were published immediately after the Constitution broke the shell, and the hydra made its way from the dark conclave into the open light. In the first number the writer, in touching on the President, endeavored to conceal his immense powers, by representing the King of Great Britain as possessed of many hereditary prerogatives, rights and powers that he was not possessed of; that is, he shows what he is not, but neglects to show what he really is. But so flimsy a palliative could scarce escape the censure of the most ignorant advocate for such an officer; and since [then] we hear of no further attempts to prove the necessity of a King being set over the freemen of America.

The writer of these essays has clearly proven, that the President is a King to all intents and purposes, and at the same time one of the most dangerous kind too - an elective King, the commander in chief of a standing army, etc. And to those add, that he has a negative power over the proceedings of both branches of the legislature. And to complete his uncontrolled sway, he is neither restrained nor assisted by a privy council, which is a novelty in government. I challenge the politicians of the whole continent to find in any period of history a monarch more absolute. . . .

PHILADELPHIENSIS

Antifederalist No. 75 A NOTE PROTESTING THE TREATY-MAKING PROVISIONS OF THE CONSTITUTION

The following essay was penned anonymously by "HAMPDEN," and it appeared in The Pittsburgh Gazette on February 16, 1788.

.... It may be freely granted, that from a mistaken zeal in favor of that political liberty which was so recently purchased at so costly a rate, even good men may give it [the constitution] unreasonable opposition; but such men cannot be reasonably charged with sordid personal interest as their motive-because it is great and sudden changes which produces opportunities of preferment. But that class of men-who either prompted by their own ambition or desperate fortunes, are expecting employments under the proposed plan; or those weak and ardent men who always expect to be gainers by revolutions, and who are never contented, but always hastening from one difficulty to another- may be expected to ascribe every excellence to the proposed system, and to urge a thousand reasons for our real or supposed distresses, to induce our adopting thereof. Such characters may also be expected to promise us such extravagantly flattering advantages to arise from it, as if it was accompanied with such miraculous divine energy as divided the Red Sea, and spoke with thunder on Mount Sinai. . . .

The first clause of the constitution assures us, that the legislative powers shall be vested in a Congress, which shall consist of a senate and house of representatives; and in the second clause of the second article, it is declared that the president, by and with the consent of the senate, is to make treaties. Here the supreme executive magistrate is officially connected with the highest branch of the legislature. And in article sixth, clause second, we find that all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. When we consider the extent of treaties-that in filing the tariff of trade, the imposts and port duties generally are or may be fixed by a large construction which interested rulers are never at a less to give to any constitutional power-treaties may be extended to almost every legislative object of the general government. Who is it that does not know, that by treaties in Europe the succession and constitution of many sovereign states, has been regulated. The partition treaty, and the war of the grand alliance, respecting the government of Spain, are well remembered; nor is it long since three neighboring powers established a nobleman of that nation upon the throne and regulated and altered the fundamental laws of that country, as well as divided the territory thereof, and all this was done by treaty. And from this power of making treaties, the house of representatives, which has the best chance of possessing virtue, and public confidence, is entirely excluded. Indeed, I see nothing to hinder the president and senate, at a convenient crisis, to declare themselves hereditary and supreme, and the lower house altogether useless, and to abolish what shadow of the state constitutions remain by this power alone; and as the president and senate have all that influence which arises from the creating and appointing of all offices and officers, who can doubt but at a proper occasion they will succeed in such an attempt? And who can doubt but that men will arise who will attempt it? Will the doing so be a more flagrant breach of trust, or a greater degree of violence and perfidy, than has already been practised in order to introduce the proposed plan? . . . Of the same kind, and full as inconsistent and dangerous, is the first clause of the second article, compared with the

second clause of the second section. We first find the president fully and absolutely vested with the executive power, and presently we find the most important and most influential portion of the executive power-e.g., the appointment of all officers-vested in the senate, with whom the president only acts as a nominating member. It is on this account that I have said above, that the greatest degree of virtue may be expected in the house of representatives; for if any considerable part of the executive power be joined with the legislature, it will as surely corrupt that branch with which it is combined, as poison will the human body. Therefore, though the small house of representatives will consist of the natural aristocracy of the country, as well as the senate, yet not being dangerously combined with the executive branch, it has not such certain influential inducements to corruption. . .

It will be asked, no doubt, who is this that dares so boldly to arraign the conduct and censure the production of a convention composed of so chosen a band of patriots? To this I answer, that I am a freeman, and it is the character of freemen to examine and judge for themselves. They know that implicit faith respecting politics is the handmaid to slavery; and that the greatness of those names who frame a government, cannot sanctify its faults, nor prevent the evils that result from its imperfections. . . .

With respect to the majority, I do not doubt the testimony of a dignified supporter of the system, that they were all, or nearly all, eminent lawyers; but I do doubt the patriotism and political virtue of several of the most eminently active of them. But it is not with the men, but with the plan to which they gave birth, we have to contend, and to contend with such a degree of moderation and firmness, as will best promote political security, shall be the endeavor of

HAMPDEN

Antifederalist No. 76-77 AN ANTIFEDERALIST VIEW OF THE APPOINTING POWER UNDER THE CONSTITUTION

by Richard Henry Lee

. . . . In contemplating the necessary officers of the union, there appear to be six different modes in which, in whole or in part, the appointments may be made. 1. by the legislature; 2. by the president and the senate; 3. by the president and an executive council; 4. by the president alone; 5. by the heads of the departments; 6. by the state governments. Among all these, in my opinion, there may be an advantageous distribution of the power of appointments.

In considering the legislators, in relation to the subject before us, two interesting questions particularly arise: 1. whether they ought to be eligible to hold any offices whatever during the period for which they shall be elected to serve, and even for some time afterwards. 2. how far they ought to participate in the power of appointments. As to the first, it is true that legislators in foreign countries, or in our state governments, are not generally made ineligible to office. There are good reasons for it. In many countries the people have gone on without ever examining the principles of government. There have been but few countries in which the legislators have been a particular set of men periodically chosen. But the principal reason is, that which operates in the several states, viz., the legislators are so frequently chosen, and so numerous, compared with the number of offices for which they can reasonably consider themselves as candidates, that the chance of any individual member's being chosen, is too small to raise his hopes or expectations, or to have any considerable influence upon his conduct. Among the state legislators, one man in twenty may be appointed in some committee business, etc., for a month or two; but on a fair computation, not one man in a hundred sent to the state legislatures is appointed to any permanent office of profit. Directly the reverse of this will evidently be found true in the federal administration. Throughout the United States, about four federal senators, and thirty-three representatives, averaging the elections, will be chosen in a year. These few men may rationally consider themselves as the fairest candidates for a very great number of lucrative offices, which must become vacant in the year; and pretty clearly a majority of the federal legislators, if not excluded, will be mere expectants for public offices. I need not adduce further arguments to establish a position so clear. I need only call to your recollection my observations in a former letter, wherein I endeavored to show the fallacy of the argument, that the members must return home and mix with the people. It is said, that men are governed by interested motives, and will not attend as legislators, unless they can, in common with others, be eligible to offices of honor and profit. This will undoubtedly be the case with some men, but I presume only with such men as never ought to be chosen legislators in a free country. An opposite principle will influence good men. Virtuous patriots, and generous minds, will esteem it a higher honor to be selected as the guardians of a free people. They will be satisfied with a reasonable compensation for their time and service; nor will they wish to be within the vortex of influence. The valuable effects of this principle of making legislators ineligible to offices for a given time, has never yet been sufficiently attended to or considered. I am assured that it was established by the convention after long debate, and afterwards, on an unfortunate change of a few members, altered. Could the federal legislators be excluded in the manner proposed, I think it would be an important point gained; as to themselves, they would be left to act much more from motives consistent with the

public good. In considering the principle of rotation I had occasion to distinguish the condition of a legislator from that of a mere official man. We acquire certain habits, feelings, and opinions, as men and citizens-others, and very different ones, from a long continuance in office. It is, therefore, a valuable observation in many bills of rights, that rulers ought frequently to return and mix with the people. A legislature, in a free country, must be numerous; it is in some degree a periodical assemblage of the people, frequently formed. The principal officers in the executive and judicial departments must have more permanency in office. Hence it may be inferred, that the legislature will remain longer uncorrupted and virtuous; longer congenial to the people, than the officers of those departments. If it is not, therefore in our power to preserve republican principles for a series of ages, in all the departments of government, we may a long while preserve them in a well formed legislature. To this end we ought to take every precaution to prevent legislators becoming mere office-men; choose them frequently, make them recallable, establish rotation among them, make them ineligible to offices, and give them as small a share as possible in the disposal of them. Add to this, a legislature in the nature of things is not formed for the detail business of appointing officers, there is also generally an impropriety in the same men making offices and filling them, and a still greater impropriety in their impeaching and trying the officers they appoint. For these and other reasons, I conclude the legislature is not a proper body for the appointment of officers in general. But having gone through with the different modes of appointment, I shall endeavor to show what share in the distribution of the power of appointments the legislature must, from necessity, rather than from propriety, take.

2. Officers may be appointed by the president and senate. This mode, for general purposes, is clearly not defensible. All the reasoning touching the legislature will apply to the senate. The senate is a branch of the legislature, which ought to be kept pure and unbiased. It has a part in trying officers for misconduct, and in creating offices it is too numerous for a council of appointment, or to feel any degree of responsibility. If it has an advantage of the legislature, in being the least numerous, it has a disadvantage in being more unsafe; add to this, the senate is to have a share in the important branch of power respecting treaties. Further, this sexennial senate of 26 members, representing 13 sovereign states, will not in practice be found to be a body to advise, but to order and dictate in fact; and the president will be a mere primus inter pares. The consequence will be that the senate, with these efficient means of influence, will not only dictate, probably, to the president, but manage the house, as the constitution now stands; and under appearances of a balanced system, in reality govern alone. There may also, by this undue connection, be particular periods when a very popular president may have a very improper influence upon the senate and upon the legislature. A council of appointment must very probably sit all, or near all, the year. The senate will be too important and too expensive a body for this. By giving the senate, directly or indirectly, an undue influence over the representatives, and the improper means of fettering, embarrassing, or controlling the president or executive, we give the government in the very outset a fatal and pernicious tendency to . . . aristocracy. When we, as a circumstance not well to be avoided, admit the senate to a share of power in making treaties, and in managing foreign concerns, we certainly progress full far enough towards this most undesirable point in government. For with this power, also, I believe, we must join that of appointing ambassadors, other foreign ministers, and consuls, being powers necessarily connected. In every point of view, in which I can contemplate this subject, it appears extremely clear to me, that the senate ought not generally to be a council of appointment. The legislature, after the people, is the great fountain of power, and ought to be kept as pure and uncorrupt as

possible, from the hankerings, biases, and contagion of offices. Then the streams issuing from it will be less tainted with those evils. It is not merely the number of impeachments, that are to be expected to make public officers honest and attentive in their business. A general opinion must pervade the community, that the house, the body to impeach them for misconduct, is disinterested, and ever watchful for the public good; and that the judges who shall try impeachments, will not feel a shadow of bias. Under such circumstances men will not dare transgress, who, not deterred by such accusers and judges, would repeatedly misbehave. We have already suffered many and extensive evils, owing to the defects of the confederation, in not providing against the misconduct of public officers. When we expect the law to be punctually executed, not one man in ten thousand will disobey it. It is the probable chance of escaping punishment that induces men to transgress. It is one important means to make the government just and honest, rigidly and constantly to hold before the eyes of those who execute it, punishment and dismissal from office for misconduct. These are principles no candid man who has just ideas of the essential features of a free government will controvert. They are, to be sure, at this period, called visionary, speculative and anti-governmental-but in the true style of courtiers, selfish politicians, and flatterers of despotism. Discerning republican men of both parties see their value. They are said to be of no value by empty boasting advocates for the constitution, who, by their weakness and conduct, in fact, injure its cause much more than most of its opponents. From their high sounding promises, men are led to expect a defense of it, and to have their doubts removed. When a number of long pieces appear, they, instead of the defense, etc., they expected, see nothing but a parade of names; volumes written without ever coming to the point; cases quoted between which and ours there is not the least similitude; and partial extracts made from histories and governments, merely to serve a purpose. Some of them, like the true admirers of royal and senatorial robes, would fain prove, that nations who have thought like free-men and philosophers about government, and endeavored to be free, have often been the most miserable. If a single riot in the course of five hundred years happened in a free country; if a salary or the interest of a public or private debt was not paid at the moment-they seem to lay more stress upon these trifles (for trifles they are in a free and happy country), than upon the oppressions of despotic government for ages together. As to the lengthy writer in New York, I have attentively examined his pieces. He appears to be a candid good hearted man, to have a good style and some plausible ideas. But when we carefully examine his pieces, to see where the strength of them lies-when the mind endeavors to fix on those material parts, which ought to be the essence of all voluminous productions-we do not find them. The writer appears constantly to move on a smooth surface, the part of his work like the parts of a cob-house, are all equally strong and all equally weak, and all like those works of the boys, without an object. His pieces appear to have but little relation to the great question, whether the constitution is fitted to the condition and character of this people or not.

But to return. 3. Officers may be appointed by the president and an executive council. When we have assigned to the legislature the appointment of a few important officers; to the president and senate the appointment of those concerned in managing foreign affairs; to the state governments the appointment of militia officers; and authorise the legislature, by legislative acts, to assign to the president alone, to the heads of the departments, and courts of law respectively, the appointment of many inferior officers-we shall then want to lodge some where a residuum of power, a power to appoint all other necessary officers, as established by law. The fittest receptacle for this residuary power is clearly, in my opinion, the first executive magistrate,

advised and directed by an executive council of seven or nine members, periodically chosen from such proportional districts as the union may for the purpose be divided into. The people may give their votes for twice the number of counsellors wanted, and the federal legislature take twice the number also from the highest candidates, and from among them choose the seven or nine, or number wanted. Such a council may be rationally formed for the business of appointments; whereas the senate, created for other purposes, never can be. Such councils form a feature in some of the best executives in the union. They appear to be essential to every first magistrate, who may frequently want advice.

To authorise the president to appoint his own council would be unsafe. To give the sole appointment of it to the legislature would confer an undue and unnecessary influence upon that branch. Such a council for a year would be less expensive than the senate for four months. The president may nominate, and the counsellors always be made responsible for their advice and opinions, by recording and signing whatever they advise to be done. They and the president, to many purposes, will properly form an independent executive branch; have an influence unmixed with the legislative, which the executive never can have while connected with a powerful branch of the legislature. And yet the influence arising from the power of appointments be less dangerous, because in less dangerous hands-hands properly adequate to possess it. Whereas the senate, from its character and situation, will add a dangerous weight to the power itself, and be far less capable of responsibility, than the council proposed. There is another advantage: the residuum of power as to appointments, which the president and council need possess, is less than that the president and senate must have. And as such a council would render the sessions of the senate unnecessary many months in the year, the expenses of the government would not be increased, if they would not be lessened by the institution of such a council. I think I need not dwell upon this article, as the fitness of this mode of appointment will perhaps amply appear by the evident unfitness of the others.

4. Officers may be appointed by the president alone. It has been almost universally found, when a man has been authorized to exercise power alone, he has never done it alone; but, generally, [was] aided [in] his determinations by, and rested on the advice and opinions of others. And it often happens when advice is wanted, the worst men, the most interested creatures obtrude themselves, the worst advice is at hand, and misdirects the mind of him who would be informed and advised. It is very seldom we see a single executive depend on accidental advice and assistance; but each single executive has, almost always, formed to itself a regular council, to be assembled and consulted on important occasions. This proves that a select council, of some kind is, by experience, generally found necessary and useful. But in a free country, the exercise of any considerable branch of power ought to be under some checks and controls. As to this point, I think the constitution stands well. The legislature may, when it shall deem it expedient, from time to time, authorise the president alone to appoint particular inferior officers; and when necessary, to take back the power. His power, therefore, in this respect, may always be increased or decreased by the legislature, as experience, the best instructor, shall direct-always keeping him, by the constitution, within certain bounds. Officers, in the fifth place, may be appointed by the heads of departments or courts of law. Art. 2., Sect. 2., respecting appointments, goes on- "But congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments." The probability is, as the constitution now stands, that the Senate, a branch of the legislature, will be tenacious of the

power of appointment, and much too sparingly part with a share of it to the courts of law, and heads of departments. Here again the impropriety appears of the senate's having, generally, a share in the appointment of officers. We may fairly assume, that the judges and principal officers in the departments will be able well informed men in their respective branches of business; that they will, from experience, be best informed as to proper persons to fill inferior offices in them; that they will feel themselves responsible for the execution of their several branches of business, and for the conduct of the officers they may appoint therein. From these, and other considerations, I think we may infer, that impartial and judicious appointments of subordinate officers will, generally, be made by the courts of law, and the heads of departments. This power of distributing appointments, as circumstances may require, into several hands, in a well formed disinterested legislature, might be of essential service not only in promoting beneficial appointments, but also in preserving the balance in government. A feeble executive may be strengthened and supported by placing in its hands more numerous appointments; an executive too influential may be reduced within proper bounds, by placing many of the inferior appointments in the courts of law, and heads of departments; nor is there much danger that the executive will be wantonly weakened or strengthened by the legislature by thus shifting the appointments of inferior officers. Since all must be done by legislative acts which cannot be passed without the consent of the executive, or the consent of two- thirds of both branches, a good legislature will use this power to preserve the balance and perpetuate the government. Here again we are brought to our ultimatum-is the legislature so constructed as to deserve our confidence?

6. Officers may be appointed by the state governments. By Art. 1., Sect. S., the respective states are authorised exclusively to appoint the militia officers. This not only lodges the appointments in proper places, but it also tends to distribute and lodge in different executive hands the powers of appointing to offices, so dangerous when collected into the hands of one or a few men.

It is a good general rule, that the legislative, executive, and judicial powers, ought to be kept distinct. But this, like other general rules, has its exceptions; and without these exceptions we cannot form a good government, and properly balance its parts. And we can determine only from reason, experience and a critical inspection of the parts of the government, how far it is proper to intermix those powers. Appointments, I believe, in all mixed governments, have been assigned to different hands-some are made by the executive, some by the legislature, some by the judges, and some by the people. It has been thought advisable by the wisest nations-that the legislature should so far exercise executive and judicial powers as to appoint some officers judge of the elections of its members, and impeach and try officers for misconduct; that the executive should have a partial share in legislation; and that judges should appoint some subordinate officers, and regulate so far as to establish rules for their own proceedings. Where the members of the government, as the house, the senate, the executive, and judiciary, are strong and complete, each in itself, the balance is naturally produced; each party may take the powers congenial to it, and we have less need to be anxious about checks, and the subdivision of powers.

If after making the deductions already alluded to, from the general power to appoint federal officers, the residuum shall be thought to be too large and unsafe, and to place an undue influence in the hands of the president and council, a further deduction may be made, with many advantages and perhaps with but a few inconveniencies-and that is, by giving the appointment of

a few great officers to the legislature-as of the commissioners of the treasury, of the comptroller, treasurer, master coiner, and some of the principal officers in the money department; of the sheriffs or marshalls of the United States; of states attorneys, secretary of the home department, and secretary of war; perhaps of the judges of the supreme court; of major generals and admirals. The appointments of these officers, who may be at the heads of the great departments of business, in carrying into execution the national system, involve in them a variety of considerations. They will not often occur and the power to make them ought to remain in safe hands. Officers of the above description are appointed by the legislatures in some of the states, and in some not. We may, I believe, presume that the federal legislature will possess sufficient knowledge and discernment to make judicious appointments. However, as these appointments by the legislature tend to increase a mixture of power, to lessen the advantages of impeachments and responsibility, I would by no means contend for them any further than it may be necessary for reducing the power of the executive within the bounds of safety.

THE FEDERAL FARMER

Antifederalist No. 78-79 THE POWER OF THE JUDICIARY (PART I)

Part I is taken from the first part of the "Brutus's" 15th essay of The New-York Journal on March 20, 1788;
Part II is part one of his 16th of the New York Journal of April 10, 1788.

The supreme court under this constitution would be exalted above all other power in the government, and subject to no control. The business of this paper will be to illustrate this, and to show the danger that will result from it. I question whether the world ever saw, in any period of it, a court of justice invested with such immense powers, and yet placed in a situation so little responsible. Certain it is, that in England, and in the several states, where we have been taught to believe the courts of law are put upon the most prudent establishment, they are on a very different footing.

The judges in England, it is true, hold their offices during their good behavior, but then their determinations are subject to correction by the house of lords; and their power is by no means so extensive as that of the proposed supreme court of the union. I believe they in no instance assume the authority to set aside an act of parliament under the idea that it is inconsistent with their constitution. They consider themselves bound to decide according to the existing laws of the land, and never undertake to control them by adjudging that they are inconsistent with the constitution-much less are they vested with the power of giv[ing an] equitable construction to the constitution.

The judges in England are under the control of the legislature, for they are bound to determine according to the laws passed under them. But the judges under this constitution will control the legislature, for the supreme court are authorised in the last resort, to determine what is the extent of the powers of the Congress. They are to give the constitution an explanation, and there is no power above them to set aside their judgment. The framers of this constitution appear to have followed that of the British, in rendering the judges independent, by granting them their offices during good behavior, without following the constitution of England, in instituting a tribunal in which their errors may be corrected; and without adverting to this, that the judicial under this system have a power which is above the legislative, and which indeed transcends any power before given to a judicial by any free government under heaven.

I do not object to the judges holding their commissions during good behavior. I suppose it a proper provision provided they were made properly responsible. But I say, this system has followed the English government in this, while it has departed from almost every other principle of their jurisprudence, under the idea, of rendering the judges independent; which, in the British constitution, means no more than that they hold their places during good behavior, and have fixed salaries . . . [the authors of the constitution] have made the judges independent, in the fullest sense of the word. There is no power above them, to control any of their decisions. There is no authority that can remove them, and they cannot be controlled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of

heaven itself. Before I proceed to illustrate the truth of these reflections, I beg liberty to make one remark. Though in my opinion the judges ought to hold their offices during good behavior, yet I think it is clear, that the reasons in favor of this establishment of the judges in England, do by no means apply to this country.

The great reason assigned, why the judges in Britain ought to be commissioned during good behavior, is this, that they may be placed in a situation, not to be influenced by the crown, to give such decisions as would tend to increase its powers and prerogatives. While the judges held their places at the will and pleasure of the king, on whom they depended not only for their offices, but also for their salaries, they were subject to every undue influence. If the crown wished to carry a favorite point, to accomplish which the aid of the courts of law was necessary, the pleasure of the king would be signified to the judges. And it required the spirit of a martyr for the judges to determine contrary to the king's will. They were absolutely dependent upon him both for their offices and livings. The king, holding his office during life, and transmitting it to his posterity as an inheritance, has much stronger inducements to increase the prerogatives of his office than those who hold their offices for stated periods or even for life. Hence the English nation gained a great point, in favor of liberty, when they obtained the appointment of the judge, during good behavior. They got from the crown a concession which deprived it of one of the most powerful engines with which it might enlarge the boundaries of the royal prerogative and encroach on the liberties of the people. But these reasons do not apply to this country. We have no hereditary monarch; those who appoint the judges do not hold their offices for life, nor do they descend to their children. The same arguments, therefore, which will conclude in favor of the tenure of the judge's offices for good behavior, lose a considerable part of their weight when applied to the state and condition of America. But much less can it be shown, that the nature of our government requires that the courts should be placed beyond all account more independent, so much so as to be above control.

I have said that the judges under this system will be independent in the strict sense of the word. To prove this I will show that there is no power above them that can control their decisions, or correct their errors. There is no authority that can remove them from office for any errors or want of capacity, or lower their salaries, and in many cases their power is superior to that of the legislature.

1st. There is no power above them that can correct their errors or control their decisions. The adjudications of this court are final and irreversible, for there is no court above them to which appeals can lie, either in error or on the merits. In this respect it differs from the courts in England, for there the house of lords is the highest court, to whom appeals, in error, are carried from the highest of the courts of law.

2nd. They cannot be removed from office or suffer a diminution of their salaries, for any error in judgment [due] to want of capacity. It is expressly declared by the constitution, "That they shall at stated times receive a compensation for their services which shall not be diminished during their continuance in office."

The only clause in the constitution which provides for the removal of the judges from offices, is that which declares, that "the president, vice- president, and all civil officers of the United States,

shall be removed from office, on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." By this paragraph, civil officers, in which the judges are included, are removable only for crimes. Treason and bribery are named, and the rest are included under the general terms of high crimes and misdemeanors. Errors in judgment, or want of capacity to discharge the duties of the office, can never be supposed to be included in these words, high crimes and misdemeanors. A man may mistake a case in giving judgment, or manifest that he is incompetent to the discharge of the duties of a judge, and yet give no evidence of corruption or want of integrity. To support the charge, it will be necessary to give in evidence some facts that will show, that the judges committed the error from wicked and corrupt motives.

3d. The power of this court is in many cases superior to that of the legislature. I have showed, in a former paper, that this court will be authorised to decide upon the meaning of the constitution; and that, not only according to the natural and obvious meaning of the words, but also according to the spirit and intention of it. In the exercise of this power they will not be subordinate to, but above the legislature. For all the departments of this government will receive their powers, so far as they are expressed in the constitution, from the people immediately, who are the source of power. The legislature can only exercise such powers as are given them by the constitution; they cannot assume any of the rights annexed to the judicial; for this plain reason, that the same authority which vested the legislature with their powers, vested the judicial with theirs. Both are derived from the same source; both therefore are equally valid, and the judicial hold their powers independently of the legislature, as the legislature do of the judicial. The supreme court then have a right, independent of the legislature, to give a construction to the constitution and every part of it, and there is no power provided in this system to correct their construction or do it away. If, therefore, the legislature pass any laws, inconsistent with the sense the judges put upon the constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature. In England the judges are not only subject to have their decisions set aside by the house of lords, for error, but in cases where they give an explanation to the laws or constitution of the country contrary to the sense of the parliament -though the parliament will not set aside the judgment of the court-yet, they have authority, by a new law, to explain the former one, and by this means to prevent a reception of such decisions. But no such power is in the legislature. The judges are supreme and no law, explanatory of the constitution, will be binding on them.

When great and extraordinary powers are vested in any man, or body of men, which in their exercise, may operate to the oppression of the people, it is of high importance that powerful checks should be formed to prevent the abuse of it.

Perhaps no restraints are more forcible, than such as arise from responsibility to some superior power. Hence it is that the true policy of a republican government is, to frame it in such manner, that all persons who are concerned in the government, are made accountable to some superior for their conduct in office. This responsibility should ultimately rest with the people. To have a government well administered in all its parts, it is requisite the different departments of it should be separated and lodged as much as may be in different hands. The legislative power should be in one body, the executive in another, and the judicial in one different from either. But still each of these bodies should be accountable for their conduct. Hence it is impracticable, perhaps, to maintain a perfect distinction between these several departments. For it is difficult, if not

impossible, to call to account the several officers in government, without in some degree mixing the legislative and judicial. The legislature in a free republic are chosen by the people at stated periods, and their responsibility consists, in their being amenable to the people. When the term for which they are chosen shall expire, who [the people) will then have opportunity to displace them if they disapprove of their conduct. But it would be improper that the judicial should be elective, because their business requires that they should possess a degree of law knowledge, which is acquired only by a regular education; and besides it is fit that they should be placed, in a certain degree in an independent situation, that they may maintain firmness and steadiness in their decisions. As the people therefore ought not to elect the judges, they cannot be amenable to them immediately, some other mode of amenability must therefore be devised for these, as well as for all other officers which do not spring from the immediate choice of the people. This is to be effected by making one court subordinate to another, and by giving them cognizance of the behavior of all officers. But on this plan we at last arrive at some supreme, over whom there is no power to control but the people themselves. This supreme controlling power should be in the choice of the people, or else you establish an authority independent, and not amenable at all, which is repugnant to the principles of a free government. Agreeable to these principles I suppose the supreme judicial ought to be liable to be called to account, for any misconduct, by some body of men, who depend upon the people for their places; and so also should all other great officers in the State, who are not made amenable to some superior officers....

BRUTUS

Antifederalist No. 80 THE POWER OF THE JUDICIARY (PART II)

From the 11th essay of "Brutus" taken from The New-York Journal, January 31, 1788.

The nature and extent of the judicial power of the United States, proposed to be granted by the constitution, claims our particular attention.

Much has been said and written upon the subject of this new system on both sides, but I have not met with any writer who has discussed the judicial powers with any degree of accuracy. And yet it is obvious, that we can gain but very imperfect ideas of the manner in which this government will work, or the effect it will have in changing the internal police and mode of distributing justice at present subsisting in the respective states, without a thorough investigation of the powers of the judiciary and of the manner in which they will operate. This government is a complete system, not only for making, but for executing laws. And the courts of law, which will be constituted by it, are not only to decide upon the constitution and the laws made in pursuance of it, but by officers subordinate to them to execute all their decisions. The real effect of this system of government, will therefore be brought home to the feelings of the people, through the medium of the judicial power. It is, moreover, of great importance, to examine with care the nature and extent of the judicial power, because those who are to be vested with it, are to be placed in a situation altogether unprecedented in a free country. They are to be rendered totally independent, both of the people and the legislature, both with respect to their offices and salaries. No errors they may commit can be corrected by any power above them, if any such power there be, nor can they be removed from office for making ever so many erroneous adjudications.

The only causes for which they can be displaced, is, conviction of treason, bribery, and high crimes and misdemeanors.

This part of the plan is so modelled, as to authorize the courts, not only to carry into execution the powers expressly given, but where these are wanting or ambiguously expressed, to supply what is wanting by their own decisions.

That we may be enabled to form a just opinion on this subject, I shall, in considering it, lst. Examine the nature and extent of the judicial powers, and 2nd. Inquire, whether the courts who are to exercise them, are so constituted as to afford reasonable ground of confidence, that they will exercise them for the general good.

With a regard to the nature and extent of the judicial powers, I have to regret my want of capacity to give that full and minute explanation of them that the subject merits. To be able to do this, a man should be possessed of a degree of law knowledge far beyond what I pretend to. A number of hard words and technical phrases are used in this part of the system, about the meaning of which gentlemen learned in the law differ. Its advocates know how to avail themselves of these phrases. In a number of instances, where objections are made to the powers given to the judicial, they give such an explanation to the technical terms as to avoid them.

Though I am not competent to give a perfect explanation of the powers granted to this department of the government, I shall yet attempt to trace some of the leading features of it, from which I presume it will appear, that they will operate to a total subversion of the state judiciaries, if not to the legislative authority of the states.

In article 3d, sect. 2d, it is said, "The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, etc." The first article to which this power extends is, all cases in law and equity arising under this constitution.

What latitude of construction this clause should receive, it is not easy to say. At first view, one would suppose, that it meant no more than this, that the courts under the general government should exercise, not only the powers of courts of law, but also that of courts of equity, in the manner in which those powers are usually exercised in the different states. But this cannot be the meaning, because the next clause authorises the courts to take cognizance of all cases in law and equity arising under the laws of the United States; this last article, I conceive, conveys as much power to the general judicial as any of the state courts possess.

The cases arising under the constitution must be different from those arising under the laws, or else the two clauses mean exactly the same thing. The cases arising under the constitution must include such, as bring into question its meaning, and will require an explanation of the nature and extent of the powers of the different departments under it. This article, therefore, vests the judicial with a power to resolve all questions that may arise on any case on the construction of the constitution, either in law or in equity.

lst. They are authorised to determine all questions that may arise upon the meaning of the constitution in law. This article vests the courts with authority to give the constitution a legal construction, or to explain it according to the rules laid down for construing a law. These rules give a certain degree of latitude of explanation. According to this mode of construction, the courts are to give such meaning to the constitution as comports best with the common, and generally received acceptation of the words in which it is expressed, regarding their ordinary and popular use, rather than their grammatical propriety. Where words are dubious, they will be explained by the context. The end of the clause will be attended to, and the words will be understood, as having a view to it; and the words will not be so understood as to bear no meaning or a very absurd one.

2nd. The judicial are not only to decide questions arising upon the meaning of the constitution in law, but also in equity. By this they are empowered, to explain the constitution according to the reasoning spirit of it, without being confined to the words or letter. "From this method of interpreting laws (says Blackstone) by the reason of them, arises what we call equity"; which is thus defined by Grotius, "the correction of that, wherein the law, by reason of its universality, is deficient; for since in laws all cases cannot be foreseen, or expressed, it is necessary, that when the decrees of the law cannot be applied to particular cases, there should somewhere be a power vested of defining those circumstances, which had they been foreseen the legislator would have expressed. . . ." The same learned author observes, "That equity, thus depending essentially upon

each individual case, there can be no established rules and fixed principles of equity laid down, without destroying its very essence, and reducing it to a positive law."

From these remarks, the authority and business of the courts of law, under this clause, may be understood.

They [the courts] will give the sense of every article of the constitution, that may from time to time come before them. And in their decisions they will not confine themselves to any fixed or established rules, but will determine, according to what appears to them, the reason and spirit of the constitution. The opinions of the supreme court, whatever they may be, will have the force of law; because there is no power provided in the constitution that can correct their errors, or control their adjudications. From this court there is no appeal. And I conceive the legislature themselves, cannot set aside a judgment of this court, because they are authorised by the constitution to decide in the last resort. The legislature must be controlled by the constitution, and not the constitution by them. They have therefore no more right to set aside any judgment pronounced upon the construction of the constitution, than they have to take from the president, the chief command of the army and navy, and commit it to some other person. The reason is plain; the judicial and executive derive their authority from the same source, that the legislature do theirs; and therefore in all cases, where the constitution does not make the one responsible to, or controllable by the other, they are altogether independent of each other.

The judicial power will operate to effect, in the most certain, but yet silent and imperceptible manner, what is evidently the tendency of the constitution: I mean, an entire subversion of the legislative, executive and judicial powers of the individual states. Every adjudication of the supreme court, on any question that may arise upon the nature and extent of the general government, will affect the limits of the state jurisdiction. In proportion as the former enlarge the exercise of their powers, will that of the latter be restricted.

That the judicial power of the United States, will lean strongly in favor of the general government, and will give such an explanation to the constitution, as will favor an extension of its jurisdiction, is very evident from a variety of considerations.

lst. The constitution itself strongly countenances such a mode of construction. Most of the articles in this system, which convey powers of any considerable importance, are conceived in general and indefinite terms, which are either equivocal, ambiguous, or which require long definitions to unfold the extent of their meaning. The two most important powers committed to any government, those of raising money, and of raising and keeping up troops, have already been considered, and shown to be unlimited by any thing but the discretion of the legislature. The clause which vests the power to pass all laws which are proper and necessary, to carry the powers given into execution, it has been shown, leaves the legislature at liberty, to do everything, which in their judgment is best. It is said, I know, that this clause confers no power on the legislature, which they would not have had without it-though I believe this is not the fact, Yet, admitting it to be, it implies that the constitution is not to receive an explanation strictly according to its letter; but more power is implied than is expressed. And this clause, if it is to be considered as explanatory of the extent of the powers given, rather than giving a new power, is to be understood as declaring that in construing any of the articles conveying power, the spirit,

intent and design of the clause should be attended to, as welt as the words in their common acceptation.

This constitution gives sufficient color for adopting an equitable construction, if we consider the great end and design it professedly has in view. These appear from its preamble to be, "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and posterity." The design of this system is here expressed, and it is proper to give such a meaning to the various parts, as will best promote the accomplishment of the end; this idea suggests itself naturally upon reading the preamble, and will countenance the court in giving the several articles such a sense, as will the most effectually promote the ends the constitution had in view. How this manner of explaining the constitution will operate in practice, shall be the subject of future inquiry.

2nd. Not only will the constitution justify the courts in inclining to this mode of explaining it, but they will be interested in using this latitude of interpretation. Every body of men invested with office are tenacious of power; they feel interested, and hence it has become a kind of maxim, to hand down their offices, with all its rights and privileges, unimpaired to their successors. The same principle will influence them to extend their power, and increase their rights; this of itself will operate strongly upon the courts to give such a meaning to the constitution in all cases where it can possibly be done, as will enlarge the sphere of their own authority. Every extension of the power of the general legislature, as well as of the judicial powers, will increase the powers of the courts; and the dignity and importance of the judges, will be in proportion to the extent and magnitude of the powers they exercise. I add, it is highly probable the emolument of the judges will be increased, with the increase of the business they will have to transact and its importance. From these considerations the judges will be interested to extend the powers of the courts, and to construe the constitution as much as possible, in such a way as to favor it; and that they will do it, appears probable.

3rd. Because they [the courts] will have precedent to plead, to justify them in it [extending their powers]. It is well known, that the courts in England, have by their authority, extended their jurisdiction far beyond the limits set them in their original institution, and by the laws of the land.

The court of exchequer is a remarkable instance of this. It was originally intended principally to recover the king's debts, and to order the revenues of the crown. It had a common law jurisdiction, which was established merely for the benefit of the king's accountants. We learn from Blackstone, that the proceedings in this court are grounded on a writ called quo minus, in which the plaintiff suggests, that he is the king's farmer or debtor, and that the defendant hath done him the damage complained of, by which he is less able to pay the king. These suits, by the statute of Rutland, are expressly directed to be confined to such matters as specially concern the king, or his ministers in the exchequer. And by the articuli super cartas, it is enacted, that no common pleas be thenceforth held in the exchequer contrary to the form of the great charter. But now any person may sue in the exchequer. The surmise of being debtor to the king being matter of form, and mere words of course, the court is open to all the nation.

When the courts will have a precedent before them of a court which extended its jurisdiction in opposition to an act of the legislature, is it not to be expected that they will extend theirs, especially when there is nothing in the constitution expressly against it? And they are authorised to construe its meaning, and are not under any control.

This power in the judicial, will enable them to mould the government, into any shape they please. The manner in which this may be effected we will hereafter examine.

BRUTUS

Antifederalist No. 81 THE POWER OF THE JUDICIARY (PART III)

Part I: from the 12th essay by "Brutus" from the February 7th & 14th (1788) issues of The New-York Journal
Part II: Taken from the first half of the 14th essay February 28, 1788.

In my last, I showed, that the judicial power of the United States under the first clause of the second section of article eight, would be authorised to explain the constitution, not only according to its letter, but according to its spirit and intention; and having this power, they would strongly incline to give it such a construction as to extend the powers of the general government, as much as possible, to the diminution, and finally to the destruction, of that of the respective states.

I shall now proceed to show how this power will operate in its exercise to effect these purposes. . . . First, let us inquire how the judicial power will effect an extension of the legislative authority.

Perhaps the judicial power will not be able, by direct and positive decrees, ever to direct the legislature, because it is not easy to conceive how a question can be brought before them in a course of legal discussion, in which they can give a decision, declaring, that the legislature have certain powers which they have not exercised, and which, in consequence of the determination of the judges, they will be bound to exercise. But it is easy to see, that in their adjudication they may establish certain principles, which being received by the legislature will enlarge the sphere of their power beyond all bounds.

It is to be observed, that the supreme court has the power, in the last resort, to determine all questions that may arise in the course of legal discussion, on the meaning and construction of the constitution. This power they will hold under the constitution, and independent of the legislature. The latter can no more deprive the former of this right, than either of them, or both of them together, can take from the president, with the advice of the senate, the power of making treaties, or appointing ambassadors.

In determining these questions, the court must and will assume certain principles, from which they will reason, in forming their decisions. These principles, whatever they may be, when they become fixed by a course of decisions, will be adopted by the legislature, and will be the rule by which they will explain their own powers. This appears evident from this consideration, that if the legislature pass laws, which, in the judgment of the court, they are not authorised to do by the constitution, the court will not take notice of them; for it will not be denied, that the constitution is the highest or supreme law. And the courts are vested with the supreme and uncontrollable power, to determine in all cases that come before them, what the constitution means. They cannot, therefore, execute a law, which in their judgment, opposes the constitution, unless we can suppose they can make a superior law give way to an inferior. The legislature, therefore, will not go over the limits by which the courts may adjudge they are confined. And there is little room to doubt but that they will come up to those bounds, as often as occasion and opportunity may offer, and they may judge it proper to do it. For as on the one hand, they will not readily

pass taws which they know the courts will not execute, so on the other, we may be sure they will not scruple to pass such as they know they will give effect, as often as they may judge it proper.

From these observations it appears, that the judgment of the judicial, on the constitution, will become the rule to guide the legislature in their construction of their powers.

What the principles are, which the courts will adopt, it is impossible for us to say. But taking up the powers as I have explained them in my last number, which they will possess under this clause, it is not difficult to see, that they may, and probably will, be very liberal ones.

We have seen, that they will be authorized to give the constitution a construction according to its spirit and reason, and not to confine themselves to its letter.

To discover the spirit of the constitution, it is of the first importance to attend to the principal ends and designs it has in view. These are expressed in the preamble, in the following words, viz., "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution," etc. If the end of the government is to be learned from these words, which are clearly designed to declare it, it is obvious it has in view every object which is embraced by any government. The preservation of internal peace-the due admission of justice-and to provide for the defense of the community-seems to include all the objects of government. But if they do not, they are certainly comprehended in the words, "to provide for the general welfare." If it be further considered, that this constitution, if it is ratified, will not be a compact entered into by states, in their corporate capacities, but an agreement of the people of the United States as one great body politic, no doubt can remain but that the great end of the constitution, if it is to be collected from the preamble, in which its end is declared, is to constitute a government which is to extend to every case for which any government is instituted, whether external or internal. The courts, therefore, will establish this as a principle in expounding the constitution, and will give every part of it such an explanation as will give latitude to every department under it, to take cognizance of every matter, not only that affects the general and national concerns of the union, but also of such as relate to the administration of private justice, and to regulating the internal and local affairs of the different parts.

Such a rule of exposition is not only consistent with the general spirit of the preamble, but it will stand confirmed by considering more minutely the different clauses of it.

The first object declared to be in view, is "To form a more perfect union." It is to be observed, it is not an union of states or bodies corporate; had this been the case the existence of the state governments might have been secured. But it is a union of the people of the United States considered as one body, who are to ratify this constitution if it is adopted. Now to make a union of this kind perfect, it is necessary to abolish all inferior governments, and to give the general one complete legislative, executive and judicial powers to every purpose. The courts therefore will establish it as a rule in explaining the constitution; to give it such a construction as will best tend to perfect the union or take from the state governments every power of either making or executing laws. The second object is "to establish justice." This must include not only the idea of

instituting the rule of justice, or of making laws which shall be the measure or rule of right, but also of providing for the application of this rule or of administering justice under it. And under this the courts will in their decisions extend the power of the government to all cases they possibly can, or otherwise they will be restricted in doing what appears to be the intent of the constitution they should do, to wit, pass laws and provide for the execution of them, for the general distribution of justice between man and man. Another end declared is "to insure domestic tranquility." This comprehends a provision against all private breaches of the peace, as well as against all public commotions or general insurrections; and to attain the object of this clause fully, the government must exercise the power of passing laws in these subjects, as well as of appointing magistrates with authority to execute them. And the courts will adopt these ideas in their expositions. I might proceed to the other clause, in the preamble, and it would appear by a consideration of all of them separately, as it does by taking them together, that if the spirit of this system is to be known from its declared end and design in the preamble, its spirit is to subvert and abolish all the powers of the state governments, and to embrace every object to which any government extends.

As it sets out in the preamble with this declared intention, so it proceeds in the different parts with the same idea. Any person, who will peruse the 5th section with attention, in which most of the powers are enumerated, will perceive that they either expressly or by implication extend to almost every thing about which any legislative power can be employed. If this equitable mode of construction is applied to this part of the constitution, nothing can stand before it.

This will certainly give the first clause in that article a construction which I confess I think the most natural and grammatical one, to authorise the Congress to do any thing which in their judgment will tend to provide for the general welfare, and this amounts to the same thing as general and unlimited powers of legislation in all cases.

This same manner of explaining the constitution, will fix a meaning, and a very important one too, to the 12th clause of the same section, which authorises the Congress to make all laws which shall be proper and necessary for carrying into effect the foregoing powers, etc. A voluminous writer in favor of this system, has taken great pains to convince the public, that this clause means nothing: for that the same powers expressed in this, are implied in other parts of the constitution. Perhaps it is so, but still this will undoubtedly be an excellent auxiliary to assist the courts to discover the spirit and reason of the constitution, and when applied to any and every of the other clauses granting power, will operate powerfully in extracting the spirit from them.

I might instance a number of clauses in the constitution, which, if explained in an equitable manner, would extend the powers of the government to every case, and reduce the state legislatures to nothing. But, I should draw out my remarks to an undue length, and I presume enough has been said to show, that the courts have sufficient ground in the exercise of this power, to determine, that the legislature have no bounds set to them by this constitution, by any supposed right the legislatures of the respective states may have to regulate any of their local concerns.

I proceed, 2nd, to inquire, in what manner this power will increase the jurisdiction of the courts.

I would here observe, that the judicial power extends, expressly, to all civil cases that may arise save such as arise between citizens of the same state, with this exception to those of that description, that the judicial of the United States have cognizance of cases between citizens of the same state, claiming lands -under grants of different states. Nothing more, therefore, is necessary to give the courts of law, under this constitution, complete jurisdiction of all civil causes, but to comprehend cases between citizens of the same state not included in the foregoing exception.

I presume there will be no difficulty in accomplishing this. Nothing more is necessary than to set forth in the process, that the party who brings the suit is a citizen of a different state from the one against whom the suit is brought and there can be little doubt but that the court will take cognizance of the matter. And if they do, who is to restrain them? Indeed, I will freely confess, that it is my decided opinion, that the courts ought to take cognizance of such causes under the powers of the constitution. For one of the great ends of the constitution is, "to establish justice." This supposes that this cannot be done under the existing governments of the states; and there is certainly as good reason why individuals, living in the same state, should have justice, as those who live in different states. Moreover, the constitution expressly declares, that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states," It will therefore be no fiction, for a citizen of one state to set forth, in a suit, that he is a citizen of another; for he that is entitled to all the privileges and immunities of a country, is a citizen of that country. And in truth, the citizen of one state will, under this constitution, be a citizen of every state....

It is obvious that these courts will have authority to decide upon the validity of the laws of any of the states, in all cases where they come in question before them. Where the constitution gives the general government exclusive jurisdiction, they will adjudge all laws made by the states, in such cases, void ab inilio. Where the constitution gives them concurrent jurisdiction, the laws of the United States must prevail, because they are the supreme law. In such cases, therefore, the laws of the state legislatures must be repealed, restricted, or so construed, as to give full effect to the laws of the union on the same subject. From these remarks it is easy to see, that in proportion as the general government acquires power and jurisdiction, by the liberal construction which the judges may give the constitution, those of the states will lose their rights, until they become so trifling and unimportant, as not to be worth having. I am much mistaken, if this system will not operate to effect this with as much celerity, as those who have the administration of it will think prudent to suffer it. The remaining objections of the judicial power shall be considered in a future paper.

The second paragraph of sect. 2, art. 3, is in these words: "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

Although it is proper that the courts of the general government should have cognizance of all matters affecting ambassadors, foreign ministers, and consuls, yet I question much the propriety of giving the supreme court original jurisdiction in all cases of this kind.

Ambassadors, and other public ministers, claim, and are entitled by the law of nations, to certain privileges, and exemptions, both for their persons and their servants. The meanest servant of an ambassador is exempted by the law of nations from being sued for debt. Should a suit be brought against such an one by a citizen, through inadvertency or want of information, he will be subject to an action in the supreme court. All the officers concerned in issuing or executing the process will be liable to like actions. Thus may a citizen of a state be compelled, at great expense and inconveniency, to defend himself against a suit, brought against him in the supreme court, for inadvertently commencing an action against the most menial servant of an ambassador for a just debt.

The appellate jurisdiction granted to the supreme court, in this paragraph, has justly been considered as one of the most objectionable parts of the constitution. Under this power, appeals may be had from the inferior courts to the supreme, in every case to which the judicial power extends, except in the few instances in which the supreme court will have original jurisdiction.

By this article, appeals will lie to the supreme court, in all criminal as well as civil causes. This I know, has been disputed by some; but I presume the point will appear clear to any one, who will attend to the connection of this paragraph with the one that precedes it. In the former, all the cases, to which the power of the judicial shall extend, whether civil or criminal, are enumerated. There is no criminal matter, to which the judicial power of the United States will extend, but such as are included under some one of the cases specified in this section. For this section is intended to define all cases, of every description, to which the power of the judicial shall reach. But in all these cases it is declared, the supreme court shall have appellate jurisdiction, except in those which affect ambassadors, other public ministers and consuls, and those in which a state shall be a party. If then this section extends the power of the judicial, to criminal cases, it allows appeals in such cases. If the power of the judicial is not extended to criminal matters by this section, I ask, by what part of this system does it appear, that they have any cognizance of them?

I believe it is a new and unusual thing to allow appeals in criminal matters. It is contrary to the sense of our laws, and dangerous to our lives and liberties. . . . As our taw now stands, a person charged with a crime has a right to a fair and impartial trial by a jury of his country, and their verdict is final. If be is acquitted no other court can call upon him to answer for the same crime. But by this system, a man may have had ever so fair a trial, have been acquitted by ever so respectable a jury of his country, and still the officer of the government who prosecutes may appeal to the supreme court. The whole matter may have a second hearing. By this means, persons who may have disobliged those who execute the general government, may be subjected to intolerable oppression. They may be kept in long and ruinous confinement, and exposed to heavy and insupportable charges, to procure the attendance of witnesses, and provide the means of their defense, at a great distance from their places of residence.

I can scarcely believe there can be a considerate citizen of the United States that will approve of this appellate jurisdiction, as extending to criminal cases, if they will give themselves time for reflection.

Whether the appellate jurisdiction as it respects civil matters, will not prove injurious to the rights of the citizens, and destructive of those privileges which have ever been held sacred by

Americans, and whether it will not render the administration of justice intolerably burdensome, intricate, and dilatory, will best appear, when we have considered the nature and operation of this power.

It has been the fate of this clause, as it has of most of those against which unanswerable objections have been offered, to be explained different ways, by the advocates and opponents to the constitution. I confess I do not know what the advocates of the system would make it mean, for I have not been fortunate enough to see in any publication this clause taken up and considered. It is certain however, they do not admit the explanation which those who oppose the constitution give it, or otherwise they would not so frequently charge them with want of candor, for alleging that it takes away the trial by jury. Appeals from an inferior to a superior court, as practised in the civil law courts, are well understood. In these courts, the judges determine both on the law and the fact; and appeals are allowed from the inferior to the superior courts, on the whole merits; the superior tribunal will re-examine all the facts as well as the law, and frequently new facts will be introduced, so as many times to render the cause in the court of appeals very different from what it was in the court below.

If the appellate jurisdiction of the supreme court, be understood in the above sense, the term is perfectly intelligible. The meaning then is, that in an the civil case enumerated, the supreme court shall have authority to reexamine the whole merits of the case, both with respect to the facts and the law which may arise under it, without the intervention of a jury; that this is the sense of this part of the system appears to me clear, from the express words of it, "in all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, etc." Who are the supreme court? Does it not consist of the judges? . . . They will therefore have the same authority to determine the fact as they will have to determine the law, and no room is left for a jury on appeals to the supreme court.

If we understand the appellate jurisdiction in any other way, we shall be left utterly at a loss to give it a meaning. The common law is a, stranger to any such jurisdiction: no appeals can lie from any of our common law courts, upon the merits of the case. The only way in which they can go up from an inferior to a superior tribunal is by habeas corpus before a hearing, or by certiorari, or writ of error, after they are determined in the subordinate courts. But in no case, when they are carried up, are the facts re-examined, but they are always taken as established in the inferior court.

BRUTUS

Antifederalist No. 82 THE POWER OF THE JUDICIARY (PART IV)

Part I: Part II of "Brutus'" 14th essay (from the March 6, 1788, New-York Journal)
Part II: The final segment of the 15th essay (March 20, 1788 New York Journal)

It may still be insisted that this clause [on appellate jurisdiction] does not take away the trial by jury on appeals, but that this may be provided for by the legislature, under that paragraph which authorises them to form regulations and restrictions for the court in the exercise of this power.

The natural meaning of this paragraph seems to be no more than this, that Congress may declare, that certain cases shall not be subject to the appellate jurisdiction, and they may point out the mode in which the court shall proceed in bringing up the causes before them, the manner of their taking evidence to establish the facts, and the method of the court's proceeding. But I presume they cannot take from the court the right of deciding on the fact, any more than they can deprive them of the right of determining on the law, when a cause is once before them; for they have the same jurisdiction as to fact, as they have as to the law. But supposing the Congress may under this clause establish the trial by jury on appeals. It does not seem to me that it will render this article much less exceptionable. An appeal from one court and jury, to another court and jury, is a thing altogether unknown in the laws of our state [New York], and in most of the states in the union. A practice of this kind prevails in the eastern states: actions are there commenced in the inferior courts, and an appeal lies from them on the whole merits to the superior courts. The consequence is well known. Very few actions are determined in the lower courts; it is rare that a case of any importance is not carried by appeal to the supreme court, and the jurisdiction of the inferior courts is merely nominal; this has proved so burdensome to the people in Massachusetts, that it was one of the principal causes which excited the insurrection in that state, in the year past. [There are] very few sensible and moderate men in that state but what will admit, that the inferior courts are almost entirely useless, and answer very little purpose, save only to accumulate costs against the poor debtors who are already unable to pay their just debts.

But the operation of the appellate power in the supreme judicial of the United States, would work infinitely more mischief than any such power can do in a single state.

The trouble and expense to the parties would be endless and intolerable. No man can say where the supreme court are to hold their sessions; the presumption is, however, that it must be at the seat of the general government. In this case parties must travel many hundred miles, with their witnesses and lawyers, to prosecute or defend a suit. No man of middling fortune, can sustain the expense of such a law suit, and therefore the poorer and middling class of citizens will be under the necessity of submitting to the demands of the rich and the lordly, in cases that will come under the cognizance of this court. If it be said, that to prevent this oppression, the supreme court will sit in different parts of the union, it may be replied, that this would only make the oppression somewhat more tolerable, but by no means so much as to give a chance of justice to the poor and middling class. It is utterly impossible that the supreme court can move into so many different parts of the Union, as to make it convenient or even tolerable to attend before them with witnesses to try causes from every part of the United States. If to avoid the expense and

inconvenience of calling witnesses from a great distance, to give evidence before the supreme court, the expedient of taking the deposition of witnesses in writing should be adopted, it would not help the matter. It is of great importance in the distribution of justice that witnesses should be examined face to face, that the parties should have the fairest opportunity of cross examining them in order to bring out the whole truth. There is something in the manner in which a witness delivers his testimony which can not be committed to paper, and which yet very frequently gives a complexion to his evidence, very different from what it would bear if committed to writing. Besides, the expense of taking written testimony would be, enormous. Those who are acquainted with the costs that arise in the courts, where all the evidence is taken in writing, well know that they exceed beyond all comparison those of the common law courts, where witnesses are examined viva voce.

The costs accruing in courts generally advance with the grade of the courts. Thus the charges attending a suit in our common pleas, is much less than those in the supreme court, and these are much lower than those in the court of chancery. Indeed, the costs in the last mentioned court, are in many cases so exorbitant and the proceedings so dilatory that the suitor had almost as well give up his demand as to prosecute his suit. We have just reason to suppose, that the costs in the supreme general court will exceed either of our courts. The officers of the general court will be more dignified than those of the states, the lawyers of the most ability will practice in them, and the trouble and expense of attending them will be greater. From all these considerations, it appears, that the expense attending suits in the supreme court will be so great, as to put it out of the power of the poor and middling class of citizens to contest a suit in it.

From these remarks it appears, that the administration of justice under the powers of the judicial will be dilatory; that it will be attended with such an heavy expense as to amount to little short of a denial of justice to the poor and middling class of people who in every government stand most in need of the protection of the law; and that the trial by jury, which has so justly been the boast of our forefathers as well as ourselves is taken away under them.

These extraordinary powers in this court are the more objectionable, because there does not appear the least necessity for them, in order to secure a due and impartial distribution of justice.

The want of ability or integrity, or a disposition to render justice to every suitor, has not been objected against the courts of the respective states. So far as I have been informed, the courts of justice in all the states have ever been found ready to administer justice with promptitude and impartiality according to the laws of the land. It is true in some of the states, paper money has been made, and the debtor authorised to discharge his debts with it, at a depreciated value; in others, tender laws have been passed, obliging the creditor to receive on execution other property than money in discharge of his demand; and in several of the states laws have been made unfavorable to the creditor and tending to render property insecure.

But these evils have not happened from any defect in the judicial departments of the states. The courts indeed are bound to take notice of these laws, and so will the courts of the general government be under obligation to observe the laws made by the general legislature not repugnant to the constitution. But so far have the judicial been from giving undue latitude of construction to laws of this kind, that they have invariably strongly inclined to the other side. All

the acts of our legislature, which have been charged with being of this complexion, have uniformly received the strictest construction by the judges, and have been extended to no cases but to such as came within the strict letter of the law. In this way, have our courts, I will not say evaded the law, but so limited its operation as to work the least possible injustice. The same thing has taken place in Rhode-Island, which has justly rendered herself infamous, by tenaciously adhering to her paper money system. The judges there gave a decision, in opposition to the words of the statute, on this principle: that a construction according to the words of it would contradict the fundamental maxims of their laws and constitution.

No pretext therefore can be formed, from the conduct of the judicial courts [of the states], which will justify giving such powers to the supreme general court. For their decisions have been such as to give just ground of confidence in them, that they will finally adhere to the principles of rectitude; and there is no necessity of lodging these powers in the [federal] courts, in order to guard against the evils justly complained of, on the subject of security of property under this constitution. For it has provided, "that no state shall emit bills of credit, or make any thing but gold and silver coin a tender in payment of debts." It has also declared, that "no state shall pass any law impairing the obligation of contracts." These prohibitions give the most perfect security against those attacks upon property which I am sorry to say some of the states have but too wantonly made, . . . For "this constitution will be the supreme law of the land, and the judges in every state will be bound thereby; any thing in the constitution and laws of any state to the contrary notwithstanding."

The courts of the respective states might therefore have been securely trusted with deciding all cases between man and man, whether citizens of the same state or of different states, or between foreigners and citizens. Indeed, for ought I see, every case that can arise under the constitution or laws of the United States ought in the first instance to be tried in the court of the state, except those which might arise b@tween states, such as respect ambassadors, or other public ministers, and perhaps such as call in question the claim of lands under grants from different states. The state courts would be under sufficient control, if writs of error were allowed from the state courts to the supreme court of the union, according to the practice of the courts in England and of this state, on all cases in which the laws of the union are concerned, and perhaps to all cases in which a foreigner is a party.

This method would preserve the good old way of administering justice, would bring justice to every man's door, and preserve the inestimable right of trial by jury. It would be following, as near as our circumstances will admit, the practice of the courts in England, which is almost the only thing I would wish to copy in their government.

But as this system now stands, there is to be as many inferior courts as Congress may see fit to appoint, who are to be authorised to originate and in the first instance to try all the cases falling under the description of this article. There is no security that a trial by jury shall be had in these courts, but the trial here will soon become, as it is in Massachusetts' inferior courts, [a] mere matter of form; for an appeal may be had to the supreme court on the whole merits. This court is to have power to determine in law and in equity, on the law and the fact, and this court is exalted above all other power in the government, subject to no control; and so fixed as not to be removable, but upon impeachment, which is much the same thing as not to be removable at all.

To obviate the objections made to the judicial power, it has been said, that the Congress, in forming the regulations and exceptions which they are authorised to make respecting the appellate jurisdiction, will make provision against all the evils which are apprehended from this article. On this I would remark, that this way of answering the objection made to the power, implies an admission that the power is in itself improper without restraint; and if so, why not restrict it in the first instance.

The just way of investigating any power given to a government, is to examine its operation supposing it to be put in exercise. If upon inquiry, it appears that the power, if exercised, would be prejudicial, it ought not to be given. For to answer objections made to a power given to a government, by saying it will never be exercised, is really admitting that the power ought not to be exercised, and therefore ought not to be granted.

I have, in the course of my observation on this constitution, affirmed and endeavored to show, that it was calculated to abolish entirely the state governments, and to melt down the states into one entire government, for every purpose as well internal and local, as external and national. In this opinion the opposers of the system have generally agreed - and this has been uniformly denied by its advocates in public. Some individuals indeed, among them, will confess that it has this tendency, and scruple not to say it is what they wish; and I will venture to predict, without the spirit of prophecy, that if it is adopted without amendments, or some such precautions as will insure amendments immediately after its adoption, that the same gentlemen who have employed their talents and abilities with such success to influence the public mind to adopt this plan, will employ the same to persuade the people, that it will be for their good to abolish the state governments as useless and burdensome.

Perhaps nothing could have been better conceived to facilitate the abolition of the state governments than the constitution of the judicial. They will be able to extend the limits of the general government gradually, and by insensible degrees, and to accommodate themselves to the temper of the people. Their decisions on the meaning of the constitution will commonly take place in cases which arise between individuals, with which the public will not be generally acquainted. One adjudication will form a precedent to the next, and this to a following one. These cases will immediately affect individuals only, so that a series of determinations will probably take place before even the people will be informed of them. In the meantime all the art and address of those who wish for the change will be employed to make converts to their opinion. The people will be told that their state officers, and state legislatures, are a burden and expense without affording any solid advantage; that all the laws passed by them might be equally well made by the general legislature. If to those who will be interested in the change, be added those who will be under their influence, and such who will submit to almost any change of government which they can be persuaded to believe will ease them of taxes, it is easy to see the party who will favor the abolition of the state governments would be far from being inconsiderable. In this situation, the general legislature might pass one law after another, extending the general and abridging the state jurisdictions, and to sanction their proceedings would have a course of decisions of the judicial to whom the constitution has committed the power of explaining the constitution. If the states remonstrated, the constitutional mode of deciding upon the validity of the law is with the supreme court; and neither people, nor state legislatures, nor the general legislature can remove them or reverse their decrees. Had the

construction of the constitution been less [more?] with the legislature, they would have explained it at their peril. If they exceed[ed] their powers, or sought to find in the spirit of the constitution, more than was expressed in the letter, the people from whom they derived their power could remove them, . . . Indeed, I can see no other remedy that the people can have against their rulers for encroachments of this nature. A constitution is a compact of a people with their rulers; if the rulers break the compact, the people have a right and ought to remove them and do themselves justice. But in order to enable them to do this with the greater facility, those whom the people choose at stated periods should have the power in the last resort to determine the sense of the compact. If they determine contrary to the understanding of the people, an appeal will lie to the people at the period when the rulers are to be elected, and they will have it in their power to remedy the evil. But when this power is lodged in the hands of men independent of the people, and of their representatives, and who are not constitutionally accountable for their opinions, no way is left to control them but with a high hand and an outstretched arm.

BRUTUS

Antifederalist No. 83 THE FEDERAL JUDICIARY AND THE ISSUE OF TRIAL BY JURY

by Luther Martin of Maryland

. . . . in all those cases, where the general government has jurisdiction in civil questions, the proposed Constitution not only makes no provision for the trial by jury in the first instance, but, by its appellate jurisdiction, absolutely takes away that inestimable privilege, since it expressly declares the Supreme Court shall have appellate jurisdiction both as to law and fact. Should, therefore, a jury be adopted in the inferior court, it would only be a needless expense, since, on an appeal, the determination of that jury, even on questions of fact, however honest and upright, is to be of no possible effect. The Supreme Court is to take up all questions of fact; to examine the evidence relative thereto; to decide upon them, in the same manner as if they had never been tried by a jury. Nor is trial by jury secured in criminal cases. It is true that, in the first instance, in the inferior court, the trial is to be by jury. In this, and in this only, is the difference between criminal and civil cases. But, sir, the appellate jurisdiction extends, as I have observed, to cases criminal, as well as civil, and on the appeal the court is to decide not only on the law but on the fact. If, therefore, even in criminal cases, the general government is not satisfied with the verdict of the jury, its officer may remove the prosecution to the Supreme Court; and there the verdict of the jury is to be of no effect, but the judges of this court are to decide upon the fact as well as the law, the same as in civil cases.

Thus, sir, jury trials, which have ever been the boast of the English constitution-which have been by our several state constitutions so cautiously secured to us-jury trials, which have so long been considered the surest barrier against arbitrary power, and the palladium of liberty, with the loss of which the loss of our freedom may be dated, are taken away by the proposed form of government, not only in a great variety of questions between individual and individual, but in every case, whether civil or criminal, arising under the laws of the United States, or the execution of those laws. It is taken away in those very cases where, of all others, it is most essential for our liberty to have it sacredly guarded and preserved: in every case, whether civil or criminal, between government and its officers on the one part, and the subject or citizen on the other. Nor was this the effect of inattention, nor did it arise from any real difficulty in establishing and securing jury trials by the proposed Constitution if the Convention had wished to do so; but the same reason influenced here as in the case of the establishment of the inferior courts. As they could not trust state judges, so would they not confide in state juries. They alleged that the general government and the state governments would always be at variance-that the citizens of the different states would enter into the views and interests of their respective states, and therefore ought not to be trusted in determining causes in which the general government was any way interested, without giving the general government an opportunity, if it disapproved the verdict of the jury, to appeal, and to have the facts examined into again, and decided upon by its own judges, on whom it was thought a reliance might be had by the general government, they being appointed under its authority. Thus, sir, in consequence of this appellate jurisdiction, and its extension to facts as well as to law, every arbitrary act of the general government, and every oppression of all that variety of officers appointed under its authority for the collection of taxes, duties, impost, excise, and other purposes, must be submitted to by the

individual, or must be opposed with little prospect of success, and almost a certain prospect of ruin, at least in those cases where the middle and common class of citizens are interested. Since, to avoid that oppression, or to obtain redress, the application must be made to one of the courts of the United States-by good fortune, should this application be in the first instance attended with success, and should damages be recovered equivalent to the injury sustained, an appeal lies to the Supreme Court, in which case the citizen must at once give up his cause, or he must attend to it at the distance, perhaps, of more than a thousand miles from the place of his residence, and must take measures to procure before that court, on the appeal, all the evidence necessary to support his action, which, even if ultimately prosperous, must be attended with a loss of time, a neglect of business, and an expense, which will be greater than the original grievance, and to which men in moderate circumstances would be utterly unequal.

Antifederalist No. 84 ON THE LACK OF A BILL OF RIGHTS

By "BRUTUS"

When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The Constitution proposed to your acceptance is designed, not for yourselves alone, but for generations yet unborn. The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made. But on this subject there is almost an entire silence.

If we may collect the sentiments of the people of America, from their own most solemn declarations, they hold this truth as self-evident, that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows. The origin of society, then, is to be sought, not in any natural right which one man has to exercise authority over another, but in the united consent of those who associate. The mutual wants of men at first dictated the propriety of forming societies: and when they were established, protection and defense pointed out the necessity of instituting government. In a state of nature every individual pursues his own interest; in this pursuit it frequently happened, that the possessions or enjoyments of one were sacrificed to the views and designs of another; thus the weak were a prey to the strong, the simple and unwary were subject to impositions from those who were more crafty and designing. In this state of things, every individual was insecure; common interest, therefore, directed that government should be established, in which the force of the whole community should be collected, and under such directions, as to protect and defend every one who composed it. The common good, therefore, is the end of civil government, and common consent, the foundation on which it is established. To effect this end, it was necessary that a certain portion of natural liberty should be surrendered, in order that what remained should be preserved. How great a proportion of natural freedom is necessary to be yielded by individuals, when they submit to government, I shall not inquire. So much, however, must be given, as will be sufficient to enable those to whom the administration of the government is committed, to establish laws for the promoting the happiness of the community, and to carry those laws into effect. But it is not necessary, for this purpose, that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, etc. Others are not necessary to be resigned in order to attain the end for which government is instituted; these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good. From these observations it appears, that in forming a government on its true principles, the foundation should be laid in the manner I before stated, by expressly reserving to the people such of their essential rights as are not necessary to be parted with. The same reasons which at first induced mankind to associate and institute government, will operate to influence them to observe this precaution. If they had been disposed to conform themselves to the rule of immutable righteousness, government would not have been requisite. It was because one part exercised fraud, oppression and violence, on the other, that men came together, and agreed that certain rules should be formed to regulate the conduct of all, and the power of the whole community lodged in the hands of rulers to enforce an obedience to them. But rulers have the same propensities as other men; they are as likely to use the power

with which they are vested, for private purposes, and to the injury and oppression of those over whom they are placed, as individuals in a state of nature are to injure and oppress one another. It is therefore as proper that bounds should be set to their authority, as that government should have at first been instituted to restrain private injuries.

This principle, which seems so evidently founded in the reason and nature of things, is confirmed by universal experience. Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments of their rulers. The country from which we have derived our origin, is an eminent example of this. Their magna charta and bill of rights have long been the boast, as well as the security of that nation. I need say no more, I presume, to an American, than that this principle is a fundamental one, in all the Constitutions of our own States; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them. From this it appears, that at a time when the pulse of liberty beat high, and when an appeal was made to the people to form Constitutions for the government of themselves, it was their universal sense, that such declarations should make a part of their frames of government. It is, therefore, the more astonishing, that this grand security to the rights of the people is not to be found in this Constitution.

It has been said, in answer to this objection, that such declarations of rights, however requisite they might be in the Constitutions of the States, are not necessary in the general Constitution, because, "in the former case, every thing which is not reserved is given; but in the latter, the reverse of the proposition prevails, and every thing which is not given is reserved." It requires but little attention to discover, that this mode of reasoning is rather specious than solid. The powers, rights and authority, granted to the general government by this Constitution, are as complete, with respect to every object to which they extend, as that of any State government-it reaches to every thing which concerns human happiness-life, liberty, and property are under its control. There is the same reason, therefore, that the exercise of power, in this case, should be restrained within proper limits, as in that of the State governments. To set this matter in a clear light, permit me to instance some of the articles of the bills of rights of the individual States, and apply them to the case in question.

For the security of life, in criminal prosecutions, the bills of rights of most of the States have declared, that no man shall be held to answer for a crime until he is made fully acquainted with the charge brought against him; he shall not be compelled to accuse, or furnish evidence against himself-the witnesses against him shall be brought face to face, and he shall be fully heard by himself or counsel. That it is essential to the security of life and liberty, that trial of facts be in the vicinity where they happen. Are not provisions of this kind as necessary in the general government, as in that of a particular State? The powers vested in the new Congress extend in many cases to life; they are authorized to provide for the punishment of a variety of capital crimes, and no restraint is laid upon them in its exercise, save only, that "the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be in the State where the said crimes shall have been committed." No man is secure of a trial in the county where he is charged to have committed a crime; he may be brought from Niagara to New York, or carried from Kentucky to Richmond for trial for an offense supposed to be committed. What security is

there, that a man shall be furnished with a full and plain description of the charges against him? That he shall be allowed to produce all proof he can in his favor? That he shall see the witnesses against him face to face, or that he shall be fully heard in his own defense by himself or counsel?

For the security of liberty it has been declared, "that excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. That all warrants, without oath or affirmation, to search suspected places, or seize any person, his papers or property, are grievous and oppressive."

These provisions are as necessary under the general government as under that of the individual States; for the power of the former is as complete to the purpose of requiring bail, imposing fines, inflicting punishments, granting search warrants, and seizing persons, papers, or property, in certain cases, as the other.

For the purpose of securing the property of the citizens, it is declared by all the States, "that in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable."

Does not the same necessity exist of reserving this right under their national compact, as in that of the States? Yet nothing is said respecting it. In the bills of rights of the States it is declared, that a well regulated militia is the proper and natural defense of a free government; that as standing armies in time of peace are dangerous, they are not to be kept up, and that the military should be kept under strict subordination to, and controlled by, the civil power.

The same security is as necessary in this Constitution, and much more so; for the general government will have the sole power to raise and to pay armies, and are under no control in the exercise of it; yet nothing of this is to be found in this new system.

I might proceed to instance a number of other rights, which were as necessary to be reserved, such as, that elections should be free, that the liberty of the press should be held sacred; but the instances adduced are sufficient to prove that this argument is without foundation. Besides, it is evident that the reason here assigned was not the true one, why the framers of this Constitution omitted a bill of rights; if it had been, they would not have made certain reservations, while they totally omitted others of more importance. We find they have, in the ninth section of the first article declared, that the writ of habeas corpus shall not be suspended, unless in cases of rebellion,-that no bill of attainder, or ex post facto law, shall be passed,-that no title of nobility shall be granted by the United States, etc. If every thing which is not given is reserved, what propriety is there in these exceptions? Does this Constitution any where grant the power of suspending the habeas corpus, to make ex post facto laws, pass bills of attainder, or grant titles of nobility? It certainly does not in express terms. The only answer that can be given is, that these are implied in the general powers granted. With equal truth it may be said, that all the powers which the bills of rights guard against the abuse of, are contained or implied in the general ones granted by this Constitution.

So far is it from being true, that a bill of rights is less necessary in the general Constitution than in those of the States, the contrary is evidently the fact. This system, if it is possible for the

people of America to accede to it, will be an original compact; and being the last wilt, in the nature of things, vacate every former agreement inconsistent with it. For it being a plan of government received and ratified by the whole people, all other forms which are in existence at the time of its adoption, must yield to it. This is expressed in positive and unequivocal terms in the sixth article: "That this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution, or laws of any State, to the contrary notwithstanding."

"The senators and representatives before-mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States, and of the several States, shall be bound, by oath or affirmation, to support this Constitution."

It is therefore not only necessarily implied thereby, but positively expressed, that the different State Constitutions are repealed and entirely done away, so far as they are inconsistent with this, with the laws which shall be made in pursuance thereof, or with treaties made, or which shall be made, under the authority of the United States. Of what avail will the Constitutions of the respective States be to preserve the rights of its citizens? Should they be pled, the answer would be, the Constitution of the United States, and the laws made in pursuance thereof, is the supreme law, and all legislatures and judicial officers, whether of the General or State governments, are bound by oath to support it. No privilege, reserved by the bills of rights, or secured by the State governments, can limit the power granted by this, or restrain any laws made in pursuance of it. It stands, therefore, on its own bottom, and must receive a construction by itself, without any reference to any other. And hence it was of the highest importance, that the most precise and express declarations and reservations of rights should have been made.

This will appear the more necessary, when it is considered, that not only the Constitution and laws made in pursuance thereof, but alt treaties made, under the authority of the United States, are the supreme law of the land, and supersede the Constitutions of all the States. The power to make treaties, is vested in the president, by and with the advice and consent of two-thirds of the senate. I do not find any limitation or restriction to the exercise of this power. The most important article in any Constitution may therefore be repealed, even without a legislative act. Ought not a government, vested with such extensive and indefinite authority, to have been restricted by a declaration of rights? It certainly ought.

So clear a point is this, that I cannot help suspecting that persons who attempt to persuade people that such reservations were less necessary under this Constitution than under those of the States, are wilfully endeavoring to deceive, and to lead you into an absolute state of vassalage.

BRUTUS

Antifederalist No. 85 CONCLUDING REMARKS: EVILS UNDER CONFEDERATION EXAGGERATED; CONSTITUTION MUST BE DRASTICALLY REVISED BEFORE ADOPTION

By Melancthon Smith (a "PLEBIAN")

. . . . It is agreed, the plan is defective-that some of the powers granted are dangerous-others not well defined-and amendments are necessary why then not amend it? Why not remove the cause of danger, and, possible, even the apprehension of it? The instrument is yet in the hands of the people; it is not signed, sealed, and delivered, and they have power to give it any form they please.

But it is contended, adopt it first, and then amend it. I ask, why not amend, and then adopt it? Most certainly the latter mode of proceeding is more consistent with our ideas of prudence in the ordinary concerns of life If men were about entering into a contract respecting their private concerns it would be highly absurd in them to sign and seal an instrument containing stipulations which are contrary to their interests and wishes, under the expectation, that the parties, after its execution, would agree to make alteration agreeable to their desire. They would insist upon the exceptionable clause being altered before they would ratify the contract. And is a compact for the government of ourselves and our posterity of less moment than contract between individuals? Certainly not. But to this reasoning, which at first vie would appear to admit of no reply, a variety of objections are made, and number of reasons urged for adopting the system, and afterwards proposing amendments. Such as have come under my observation, I shall state, an remark upon.

It is insisted, that the present situation of our country is such, as not t admit of a delay in forming a new government, or of time sufficient to deliberate and agree upon the amendments which are proper, without involving ourselves in a state of anarchy and confusion.

On this head, all the powers of rhetoric, and arts of description, ar employed to paint the condition of this country, in the most hideous an frightful colors. We are told, that agriculture is without encouragement trade is languishing; private faith and credit are disregarded, and public credit is prostrate; that the laws and magistrates are condemned and set at naught; that a spirit of licentiousness is rampant, and ready to break over every bound set to it by the government; that private embarrassments and distresses invade the house of every man of middling property, and insecurity threatens every man in affluent circumstances: in short, that we are in a state of the most grievous calamity at home, and that we are contemptible abroad, the scorn of foreign nations, and the ridicule of the world. From this high wrought picture, one would suppose that we were in a condition the most deplorable of any people upon earth. But suffer me, my countrymen, to call your attention to a serious and sober estimate of the situation in which you are placed, while I trace the embarrassments under which you labor, to their true sources, What is your condition? Does not every man sit under his own vine and under his own fig-tree, having none to make him afraid? Does not every one follow his calling without impediments and receive the reward of his well-earned industry? The farmer cultivates his land, and reaps the fruit

which the bounty of heaven bestows on his honest toil. The mechanic is exercised in his art, and receives the reward of his labor. The merchant drives his commerce, and none can deprive him of the gain he honestly acquires; all classes and callings of men amongst us are protected in their various pursuits, and secured by the laws in the possession and enjoyment of the property obtained in those pursuits. The laws are as well executed as they ever were, in this or any other country. Neither the hand of private violence, nor the more to be dreaded hand of legal oppression, are reached out to distress us.

It is true, many individuals labor under embarrassments, but these are to be imputed to the unavoidable circumstances of things, rather than to any defect in our governments. We have just emerged from a long and expensive war. During its existence few people were in a situation to increase their fortunes, but many to diminish them. Debts contracted before the war were left unpaid while it existed, and these were left a burden too heavy to be home at the commencement of peace. Add to these, that when the war was over, too many of us, instead of reassuming our old habits of frugality, and industry, by which alone every country must be placed in a prosperous condition, took up the profuse use of foreign commodities. The country was deluged with articles imported from abroad, and the cash of the country has been sent to pay for them, and still left us laboring under the weight of a huge debt to persons abroad. These are the true sources to which we are to trace all the private difficulties of individuals. But will a new government relieve you from these? ... Your present condition is such as is common to take place after the conclusion of a war. Those who can remember our situation after the termination of the war preceding the last, will recollect that our condition was similar to the present, but time and industry soon recovered us from it. Money was scarce, the produce of the country much lower than it has been since the peace, and many individuals were extremely embarrassed with debts; and this happened although we did not experience the ravages, desolations, and loss of property, that were suffered during the late war.

With regard to our public and national concerns, what is there in our condition that threatens us with any immediate danger? We are at peace with all the world; no nation menaces us with war; nor are we called upon by any cause of sufficient importance to attack any nation. The state governments answer the purposes of preserving the peace, and providing for present exigencies. Our condition as a nation is in no respect worse than it has been for several years past. Our public debt has been lessened in various ways, and the western territory, which has been relied upon as a productive fund to discharge the national debt has at length been brought to market, and a considerable part actually applied to its reduction. I mention these things to show, that there is nothing special, in our present situation, as it respects our national affairs, that should induce us to accept the proffered system, without taking sufficient time to consider and amend it. I do not mean by this, to insinuate, that our government does not stand in need of reform. It is admitted by all parties, that alterations are necessary in our federal constitution, but the circumstances of our case do by no means oblige us to precipitate this business, or require that we should adopt a system materially defective. We may safely take time to deliberate and amend, without in the meantime hazarding a condition, in any considerable degree, worse than the present.

But it is said that if we postpone the ratification of this system until the necessary amendments are first incorporated, the consequence will be a civil war among the states. . . . The idea of [New

York] being attacked by the other states, will appear visionary and chimerical, if we consider that tho' several of them have adopted the new constitution, yet the opposition to it has been numerous and formidable. The eastern states from whom we are told we have most to fear, should a civil war be blown up, would have full employ to keep in awe those who are opposed to it in their own governments. Massachusetts, after a long and dubious contest in their convention, has adopted it by an inconsiderable majority, and in the very act has marked it with a stigma in its present form. No man of candor, judging from their public proceedings, will undertake to say on which side the majority of the people are. Connecticut, it is true, have acceded to it, by a large majority of their convention; but it is a fact well known, that a large proportion of the yeomanry of the country are against it. And it is equally true, that a considerable part of those who voted for it in the convention, wish to see it altered. In both these states the body of the common people, who always do the fighting of a country, would be more likely to fight against than for it. Can it then be presumed, that a country divided among themselves, upon a question where even the advocates for it, admit the system they contend for needs amendments, would make war upon a sister state? . . . The idea is preposterous. . .

The reasonings made use of to persuade us, that no alterations can be agreed upon previous to the adoption of the system, are as curious as they are futile. It is alleged, that there was great diversity of sentiments in forming the proposed constitution; that it was the effect of mutual concessions and a spirit of accommodation, and from hence it is inferred, that further changes cannot be hoped for. I should suppose that the contrary inference was the fair one. If the convention, who framed this plan, were possessed of such a spirit of moderation and condescension, as to be induced to yield to each other certain points, and to accommodate themselves to each other's opinions, and even prejudices, there is reason to expect, that this same spirit will continue and prevail in a future convention, and produce an union of sentiments on the points objected to. There is more reason to hope for this, because the subject has received a full discussion, and the minds of the people much better known than they were when the convention sat. Previous to the meeting of the convention, the subject of a new form of government had been little thought of, and scarcely written upon at all. It is true, it was the general opinion, that some alterations were requisite in the federal system. This subject had been contemplated by almost every thinking man in the union. It had been the subject of many well- written essays, and it was the anxious wish of every true friend to America. But it was Dever in the contemplation of one in a thousand of those who had reflected on the matter, to have an entire change in the nature of our federal government-to alter it from a confederation of states, to that of one entire government, which will swallow up that of the individual states. I will venture to say, that the idea of a government similar to the one proposed, never entered the minds of the legislatures who appointed the convention, and of but very few of the members who composed it, until they had assembled and heard it proposed in that body: much less had the people any conception of such a plan until after it was promulgated, While it was agitated, the debates of the convention were kept an impenetrable secret, and no opportunity was given for well informed men to offer their sentiments upon the subject. The system was therefore never publicly discussed, nor indeed could be, because it was not known to the people until after it was proposed. Since then, it has been the object of universal attention-it has been thought of by every reflecting man-been discussed in a public and private manner, in conversation and in print; its defects have been pointed out, and every objection to it stated; able advocates have written in its favor, and able opponents have written against it. And what is the result? It cannot be denied but that the general

opinion is, that it contains material errors, and requires important amendments. This then being the general sentiment, both of the friends and foes of the system, can it be doubted, that another convention would concur in such amendments as would quiet the fears of the opposers, and effect a great degree of union on the subject? -- An event most devoutly to be wished. But it is further said, that there can be no prospect of procuring alterations before it is acceded to, because those who oppose it do not agree among themselves with respect to the amendments that are necessary. To this I reply, that this may be urged against attempting alterations after it is received, with as much force as before; and therefore, if it concludes anything, it is that we must receive any system of government proposed to us, because those who object to it do not entirely concur in their objections. But the assertion is not true to any considerable extent. There is a remarkable uniformity in the objections made to the constitution, on the most important points. It is also worthy of notice, that very few of the matters found fault with in it, are of a local nature, or such as affect any particular state; on the contrary, they are such as concern the principles of general liberty, in which the people of New Hampshire, New York and Georgia are equally interested. . . .

It has been objected too that the new system . . . is calculated to and will effect such a consolidation of the States, as to supplant and overturn the state governments....

It has been said that the representation in the general legislature is too small to secure liberty, or to answer the intention of representation. In this there is an union of sentiments in the opposers.

The constitution has been opposed, because it gives to the legislature an unlimited power of taxation both with respect to direct and indirect taxes, a right to lay and collect taxes, duties, imposts and excises of every kind and description, and to any amount. In this there has been as general a concurrence of opinion as in the former.

The opposers to the constitution have said that it is dangerous, because the judicial power may extend to many cases which ought to be reserved to the decision of the State courts, and because the right of trial by jury is not secured in the judicial courts of the general government, in civil cases. All the opposers are agreed in this objection.

The power of the general legislature to alter and regulate the time, place and manner of holding elections, has been stated as an argument against the adoption of the system. The opposers to the constitution universally agree in this objection. . .

The mixture of legislative, judicial, and executive powers in the Senate; the little degree of responsibility under which the great officers of government will be held; and the liberty granted by the system to establish and maintain a standing army without any limitation or restriction, are also objected to the constitution; and in these there is a great degree of unanimity of sentiment in the opposers. . . .

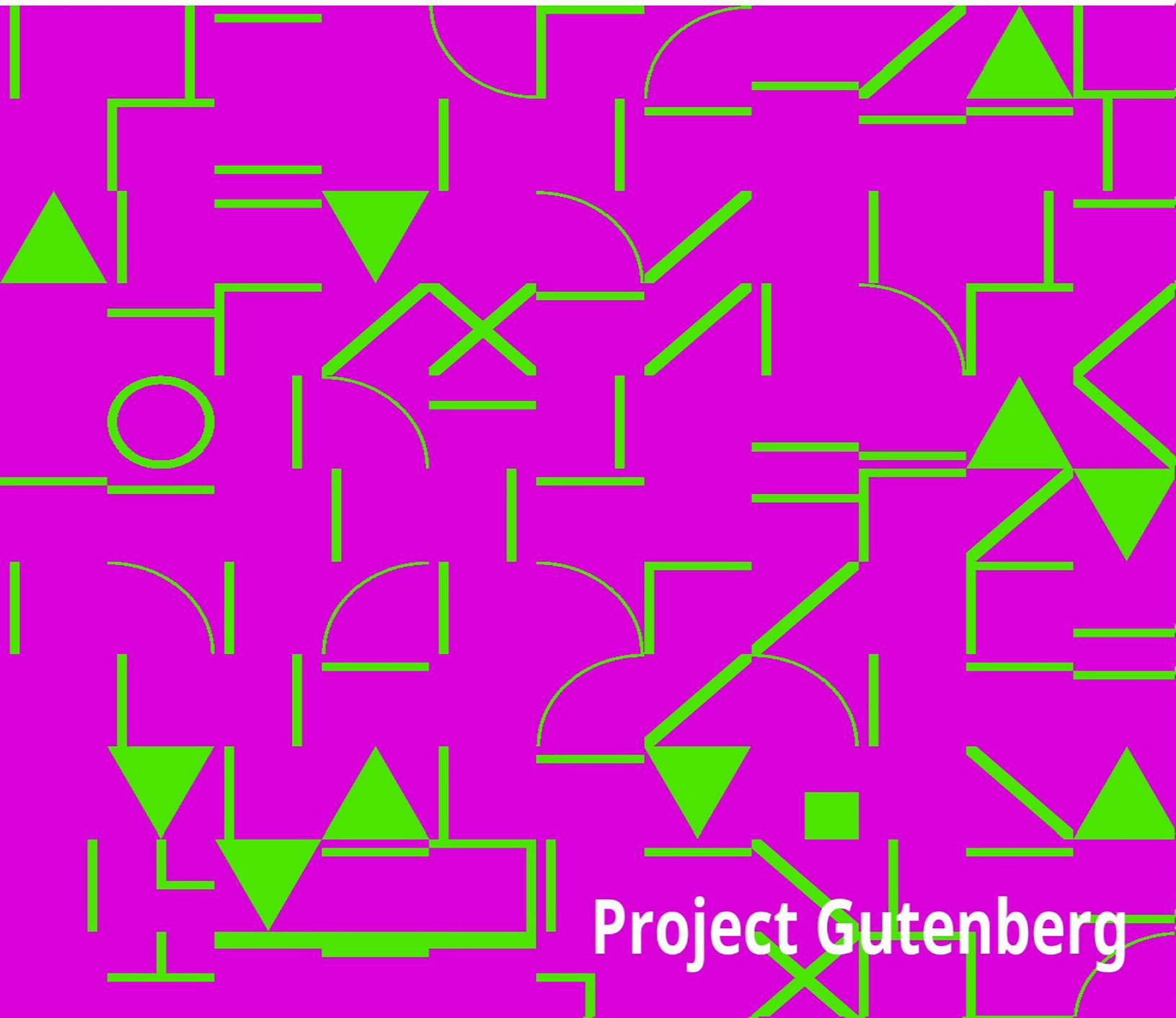
You have heard that both sides on this great question, agree, that there are in it great defects; yet the one side tell you, choose such men as will adopt it, and then amend it-while the other say, amend previous to its adoption. I have stated to you my reasons for the latter, and I think they are unanswerable. Consider, you the common people, the yeomanry of the country, for to such I

principally address myself, you are to be the principal losers, if the constitution should prove oppressive. When a tyranny is established, there are always masters as well as slaves; the great and well-born are generally the former, and the middling class the latter. Attempts have been made, and will be repeated, to alarm you with the fear of consequences; but reflect there are consequences on both sides, and none can be apprehended more dreadful, than entailing on ourselves and posterity a government which will raise a few to the height of human greatness and wealth, while it will depress the many to the extreme of poverty and wretchedness. Consequences are under the control of that all-wise and all-powerful being, whose providence conducts the affairs of all men. Our part is to act right, and we may then have confidence that the consequences will be favorable. The path in which you should walk is plain and open before you; be united as one man, and direct your choice to such men as have been uniform in their opposition to the proposed system in its present form, or without proper alterations. In men of this description you have reason to place confidence, while on the other hand, you have just cause to distrust those who urge the adoption of a bad constitution, under the delusive expectation of making amendments after it is acceded to. Your jealousy of such characters should be the more excited, when you consider that the advocates for the constitution have shifted their ground. When men are uniform in their opinions, it affords evidence that they are sincere. When they are shifting, it gives reason to believe, they do not change from conviction. It must be recollected, that when this plan was first announced to the public, its supporters cried it up as the most perfect production of human wisdom, It was represented either as having no defects, or if it had, they were so trifling and inconsiderable, that they served only, as the shades in a fine picture, to set off the piece to the greater advantage. One gentleman in Philadelphia went so far in the ardor of his enthusiasm in its favor, as to pronounce, that the men who formed it were as really under the guidance of Divine Revelation, as was Moses, the Jewish lawgiver. Their language is now changed; the question has been discussed; the objections to the plan ably stated, and they are admitted to be unanswerable. The same men who held it almost perfect, now admit it is very imperfect; that it is necessary it should be amended. The only question between us, is simply this@hall we accede to a bad constitution, under the uncertain prospect of getting it amended, after we have received it, or shall we amend it before we adopt it? Common sense will point out which is the most rational, which is the most secure line of conduct. May heaven inspire you with wisdom, union, moderation and firmness, and give you hearts to make a proper estimate of your invaluable privileges, and preserve them to you, to be transmitted to your posterity unimpaired, and may they be maintained in this our country, while Sun and Moon endure.

A PLEBEIAN

The Journal of the Debates in the Convention which Framed the Constitution of the United States, May-September 1787.

James Madison et al.



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As Recorded by
James Madison

Edited by
Gaillard Hunt

In Two Volumes

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THE RECORDS OF THE CONSTITUTIONAL CONVENTION.

James Madison's contemporaries generally conceded that he was the leading statesman in the convention which framed the Constitution of the United States; but in addition to this he kept a record of the proceedings of the convention which outranks in importance all the other writings of the founders of the American Republic. He is thus identified, as no other man is, with the making of the Constitution and the correct interpretation of the intentions of the makers. His is the only continuous record of the proceedings of the convention. He took a seat immediately in front of the presiding officer, among the members, and took down every speech or motion as it was made, using abbreviations of his own and immediately afterwards transcribing his notes when he returned to his lodgings. A few motions only escaped him and of important speeches he omitted none. The proceedings were ordered to be kept secret, but his self-imposed task of reporter had the unofficial sanction of the convention. Alexander Hamilton corrected slightly Madison's report of his great speech and handed him his plan of government to copy. The same thing was done with Benjamin Franklin's speeches, which were written out by Franklin and read by his colleague Wilson, the fatigue of delivery being too great for the aged Franklin, and Madison also copied the Patterson plan. Edmund Randolph wrote out for him his opening speech from his notes two years after the convention adjourned.[1]

[1] Madison to Randolph, April 21, 1789.

In the years after the convention Madison made a few alterations and additions in his journal, with the result that in parts there is much interlineation and erasure, but after patient study the meaning is always perfectly clear. Three different styles of Madison's own penmanship at different periods of his life appear in the journal, one being that of his old age within five years of his death. In this hand appears the following note at the end of the journal: "The few alterations and corrections made in the

debates which are not in my handwriting were dictated by me and made in my presence by John C. Payne."[2] The rare occasions where Payne's penmanship is distinguishable are indicated in the notes to this edition.

[2] Mrs. Madison's brother.

The importance attached by Madison to his record is shown by the terms of his will, dated April 15, 1835, fourteen months before his death:

> "I give all my personal estate ornamental as well as useful, except as herein after otherwise given, to my dear Wife; and I also give to her all my manuscript papers, having entire confidence in her discreet and proper use of them, but subject to the qualification in the succeeding clause. Considering the peculiarity and magnitude of the occasion which produced the Convention at Philadelphia in 1787, the Characters who composed it, the Constitution which resulted from their deliberations, its effects during a trial of so many years on the prosperity of the people living under it, and the interest it has inspired among the friends of free Government, it is not an unreasonable inference that a careful and extended report of the proceedings and discussions of that body, which were with closed doors, by a member who was constant in his attendance, will be particularly gratifying to the people of the United States, and to all who take an interest in the progress of political science and the course of true liberty. It is my desire that the Report as made by me should be published under her authority and direction."[3]

[3] Orange County, Va., MSS. records.

This desire was never consummated, for Mrs. Madison's friends advised her that she could not herself profitably undertake the publication of the work, and she accordingly offered it to the Government, by which it was bought for $30,000, by act of Congress, approved March 3, 1837. On July 9, 1838, an act was approved authorizing the Joint Committee on the Library to cause the papers thus purchased to be published, and the Committee intrusted the superintendence of the work to Henry D. Gilpin, Solicitor of the

Treasury. The duplicate copy of the journal which Mrs. Madison had delivered was, under authority of Congress, withdrawn from the State Department and placed in Mr. Gilpin's hands. In 1840 (Washington: Lantree & O'Sulivan), accordingly, appeared the three volumes, *The Papers of James Madison Purchased by Order of Congress*, edited by Henry D. Gilpin. Other issues of this edition, with changes of date, came out later in New York, Boston, and Mobile. This issue contained not only the journal of the Constitutional Convention, but Madison's notes of the debates in the Continental Congress and in the Congress of the Confederation from February 19 to April 25, 1787, and a report Jefferson had written of the debates in 1776 on the Declaration of Independence, besides a number of letters of Madison's. From the text of Gilpin a fifth volume was added to Elliot's *Debates* in 1845, and it was printed in one volume in Chicago, 1893.

Mr. Gilpin's reading of the duplicate copy of the Madison journal is thus the only one that has hitherto been published.[4] His work was both painstaking and thorough, but many inaccuracies and omissions have been revealed by a second reading from the original manuscript journal written in Madison's own hand, just as he himself left it; and this original manuscript has been followed with rigid accuracy in the text of the present edition.

[4] Volume iii of *The Documentary History of the United States* (Department of State, 1894) is a presentation of a literal print of the original journal, indicating by the use of larger and smaller type and by explanatory words the portions which are interlined or stricken out.

The editor has compared carefully with Madison's report, as the notes will show, the incomplete and less important records of the convention, kept by others. Of these, the best known is that of Robert Yates, a delegate in the convention from New York, who took notes from the time he entered the convention, May 25, to July 5, when he went home to oppose what he foresaw would be the result of the convention's labors. These notes were published in 1821 (Albany), edited by Yates's colleague in the convention, John Lansing, under the title, *Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787, for the Purpose of Forming the Constitution of the United States of America*. This was afterwards reprinted in several editions and in the three editions of *The Debates on the Federal Constitution*, by Jonathan Elliot (Washington, 1827-

1836). Madison pronounced Yates's notes "Crude and broken." "When I looked over them some years ago," he wrote to J. C. Cabell, February 2, 1829, "I was struck with the number of instances in which he had totally mistaken what was said by me, or given it in scraps and terms which, taken without the developments or qualifications accompanying them, had an import essentially different from what was intended." Yates's notes were colored by his prejudices, which were strong against the leaders of the convention, but, making allowance for this and for their incompleteness, they are of high value and rank next to Madison's in importance.

Rufus King, a delegate from Massachusetts, kept a number of notes, scattered and imperfect, which were not published till 1894, when they appeared in King's *Life and Correspondence of Rufus King* (New York: Putnam's).

William Pierce, a delegate from Georgia, made some memoranda of the proceedings of the convention, and brief and interesting sketches of all the delegates, which were first printed in *The Savannah Georgian*, April, 18-28, 1828, and reprinted in *The American Historical Review* for January, 1898.

The notes of Yates, King, and Pierce are the only unofficial record of the convention extant, besides Madison's, and their chief value is in connection with the Madison record, which in the main they support, and which occasionally they elucidate.

December 30, 1818, Charles Pinckney wrote to John Quincy Adams that he had made more notes of the convention than any other member except Madison, but they were never published and have been lost or destroyed.[5]

[5] See p. 22, n.

In 1819 (Boston) was published the *Journal, Acts and Proceedings of the Convention*, etc., under the supervision of John Quincy Adams, Secretary of State, by authority of a joint resolution of Congress of March 27, 1818. This was the official journal of the convention, which the Secretary, William Jackson, had turned over to the President, George Washington, when the convention adjourned, Jackson having previously burned all other papers of the convention in his possession. March 16, 1796, Washington deposited the

papers Jackson had given him with the Secretary of State, Timothy Pickering. They consisted of three volumes,—the journal of the convention, the journal of the proceedings of the Committee of the Whole of the convention, and a list of yeas and nays, beside a printed draft of the Constitution as reported August 6th, showing erasures and amendments afterwards adopted, and the Virginia plan in different stages of development.

In preparing the matter for publication Secretary Adams found that for Friday, September 14, and Saturday, September 15, the journal was a mere fragment, and Madison was applied to and completed it from his minutes. From General B. Bloomfield, executor of the estate of David Brearley, a delegate in the convention from New Jersey, Adams obtained a few additional papers, and from Charles Pinckney a copy of what purported to be the plan of a constitution submitted by him to the convention. All of these papers, with some others, appeared in the edition of 1819, which was a singularly accurate publication, as comparison by the present editor of the printed page with the original papers has shown.

The Pinckney plan, as it appeared in this edition of the journal, was incorporated by Madison into his record, as he had not secured a copy of it when the convention was sitting. But the draft furnished to Secretary Adams in 1818, and the plan presented by Pinckney to the convention in 1787 were not identical, as Madison conclusively proved in his note to his journal, in his letter to Jared Sparks of November 25, 1831, and in several other letters, in all of which he showed that the draft did not agree in several important respects with Pinckney's own votes and motions in the convention, and that there were important discrepancies between it and Pinckney's *Observations on the Plan of Government*, a pamphlet printed shortly after the convention adjourned.[6]

[6] See P. L. Ford's *Pamphlets on the Constitution*, 419.

It is, indeed, inconceivable that the convention should have incorporated into the constitution so many of the provisions of the Pinckney draft, and that at the same time so little reference should have been made to it in the course of the debates; and it is equally extraordinary that the contemporaries of Pinckney did not accord to him the chief paternity of the Constitution, which

honor would have belonged to him if the draft he sent to Mr. Adams in 1818 had been the one he actually offered the convention in the first week of its session. The editor has made a careful examination of the original manuscripts in the case. They consist (1) of Mr. Pinckney's letter to Mr. Adams of December 12, 1818, written from Winyaw, S. C., while Pinckney was temporarily absent from Charleston, acknowledging Mr. Adams's request for the draft, (2) his letter of December 30, written from Charleston, transmitting the draft, and (3) the draft. The penmanship of all three papers is contemporaneous, and the letter of December 30 and the draft were written with the same pen and ink. This may possibly admit of a difference of opinion, because the draft is in a somewhat larger chirography than the letter, having been, as befitted its importance, written more carefully. But the letter and the draft are written upon the same paper, and this paper was not made when the convention sat in 1787. There are several sheets of the draft and one of the letter, and all bear the same water-mark—"Russell & Co. 1797." The draft cannot, therefore, claim to be the original Pinckney plan, and was palpably made for the occasion, from Mr. Pinckney's original notes doubtless, aided and modified by a copy of the Constitution itself. Thirty years had elapsed since the close of the Constitutional Convention when the draft was compiled, and its incorrectness is not a circumstance to occasion great wonder.[7]

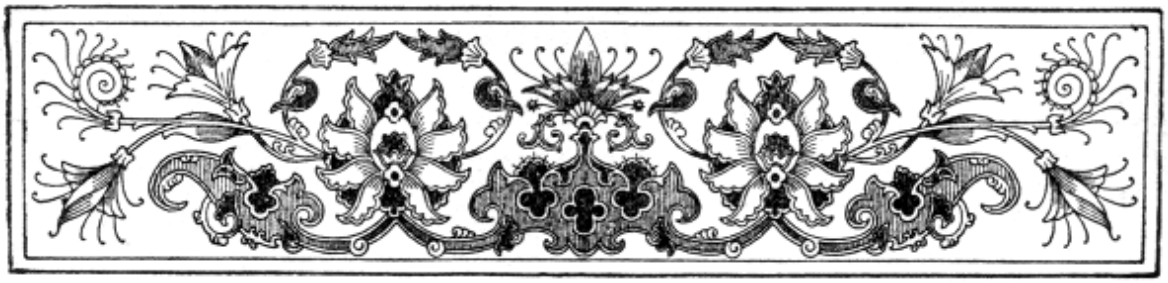
[7] See p. 19, n.

Correspondence on the subject of the convention, written while it was in session, was not extensive, but some unpublished letters throwing light upon contemporaneous opinion have been found and are quoted in the notes.

The editor desires to record his obligation for assistance in preparing these volumes to his friend, Montgomery Blair, Esq., of Silver Spring, Md.

Gaillard Hunt.

Cherry Hill Farm, Va.,
September, 1902.



CHRONOLOGY OF JAMES MADISON.

1787.

1787.

May 6-25 Prepares the "Virginia plan" in conjunction with the Virginia delegates.

May 14. Attends the first gathering of the delegates.

May 30. Moves postponement of question of representation by free population.

Moves that congressional representation be proportioned to the importance and size of the States.

Makes his first speech on this subject.

May 31. Advocates representation in one house by popular election.

Opposes uniting several States into one district for representation in Senate.

Doubts practicability of enumerating powers of national legislature.

Suggests the impossibility of using force to coerce individual States.

June 1. Moves that the powers of the Executive be enumerated.

June 2. Objects to giving Congress power to remove the President upon demand of a majority of the State legislatures.

June 4. Favors giving power to more than a majority of the national legislature to overrule an Executive negative of a law.

June 5. Opposes election of judges by both branches of Congress.

Advocates submission of constitution to conventions of the people.

Favors inferior judicial tribunals.

June 6. Speaks for popular representation in the House.

Seconds motion to include a portion of the Judiciary with the Executive in revisionary power over laws.

June 7. Speaks for proportional representation in both houses of Congress.

June 8. Seconds motion to give Congress power to negative State laws.

Suggests temporary operation of urgent laws.

June 12. Seconds motion to make term of Representatives three years.

Thinks the people will follow the convention.

Favors a term of seven years for Senators.

June 13. Moves defining powers of Judiciary.

Objects to appointment of judges by whole legislature.

Thinks both houses should have right to originate money bills.

Advocates a national government and opposes the "Jersey plan."

June 21. Speaks in favor of national supremacy.

Opposes annual or biennial elections of Representatives.

June 22. Favors fixing payment of salaries by a standard.

June 23. Proposes to debar Senators from offices created or enhanced during their term.

Speaks for the proposition.

June 25. Wishes to take up question of right of suffrage.

June 26. Speaks for a long term for Senators.

Opposes their payment by the States.

June 28. Speaks for proportional representation.

June 29. Insists that too much stress is laid on State sovereignty.

June 30. Contends against equal State representation in the Senate.

Speaks again on subject, but would preserve State rights.

July 2. Opposes submission of the question to a special committee.

July 5. Opposes compromise report of committee.

July 6. Thinks part of report need not be postponed.

July 7. Thinks question of representation ought to be settled before other questions.

July 9. Suggests free inhabitants as basis of representation one house, and all inhabitants as basis in the other house.

July 10. Moves increase of Representatives.

July 11. Favors representation based on population.

July 14. Urges proportional representation as necessary to protect the smaller States.

July 17. Advocates national power of negative over State laws.

Thinks the branches of government should be kept separate.

Thinks monarchy likely to follow instability.

Thinks there should be provision for interregnum between adoption and operation of constitution.

Moves national guarantee of States against domestic violence.

July 18. Seconds motion forbidding a State to form any but a republican government.

JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1787.

Monday May 14th 1787 was the day fixed for the meeting of the deputies in Convention for revising the federal System of Government. On that day a small number only had assembled. Seven States were not convened till,

Friday 25 of May, when the following members appeared to wit:

From *Massachusetts*, Rufus King. *N. York*, Robert Yates,[8] Alexr Hamilton. *N. Jersey*, David Brearly, William Churchill Houston, William Patterson. *Pennsylvania*, Robert Morris, Thomas Fitzsimons, James Wilson, Governeur Morris. *Delaware*, George Read, Richard Basset,[9] Jacob Broome. *Virginia*, George Washington, Edmund Randolph, John Blair,[10] James Madison, George Mason, George Wythe, James McClurg. *N. Carolina*, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight, Hugh Williamson. *S. Carolina*, John Rutlidge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler. *Georgia*, William Few.[11]

[8] William Pierce, delegate from Georgia, made an estimate of each member of the convention, the only contemporary estimate thus far brought to light. Yates did not speak in the Convention.

"Mr. Yates is said to be an able Judge. He is a Man of great legal abilities, but not distinguished as an Orator. Some of his Enemies say he is an anti-federal Man, but I discovered no such disposition in him. He is about 45 years old, and enjoys a great share of health."—Pierce's Notes, *Am. Hist. Rev.*, iii., 327. For more about Pierce's Notes, see p. 45, n.

[9] "Mr. Bassett is a religious enthusiast, lately turned Methodist, and serves his Country because it is the will of the people that he should do so. He is a Man of plain sense, and has modesty enough to hold his Tongue. He is Gentlemanly Man and is in high estimation among the Methodists. Mr. Bassett is about 36 years old."—Pierce's Notes, *Id.*, iii., 330. He did not speak in the Convention.

[10] "Mr. Blair is one of the most respectable Men in Virginia, both on account of his Family as well as fortune. He is one of the Judges of the Supreme Court in Virginia, and acknowledged to have a very extensive knowledge of the Laws. Mr. Blair is however, no Orator, but his good sense, and most excellent principles,

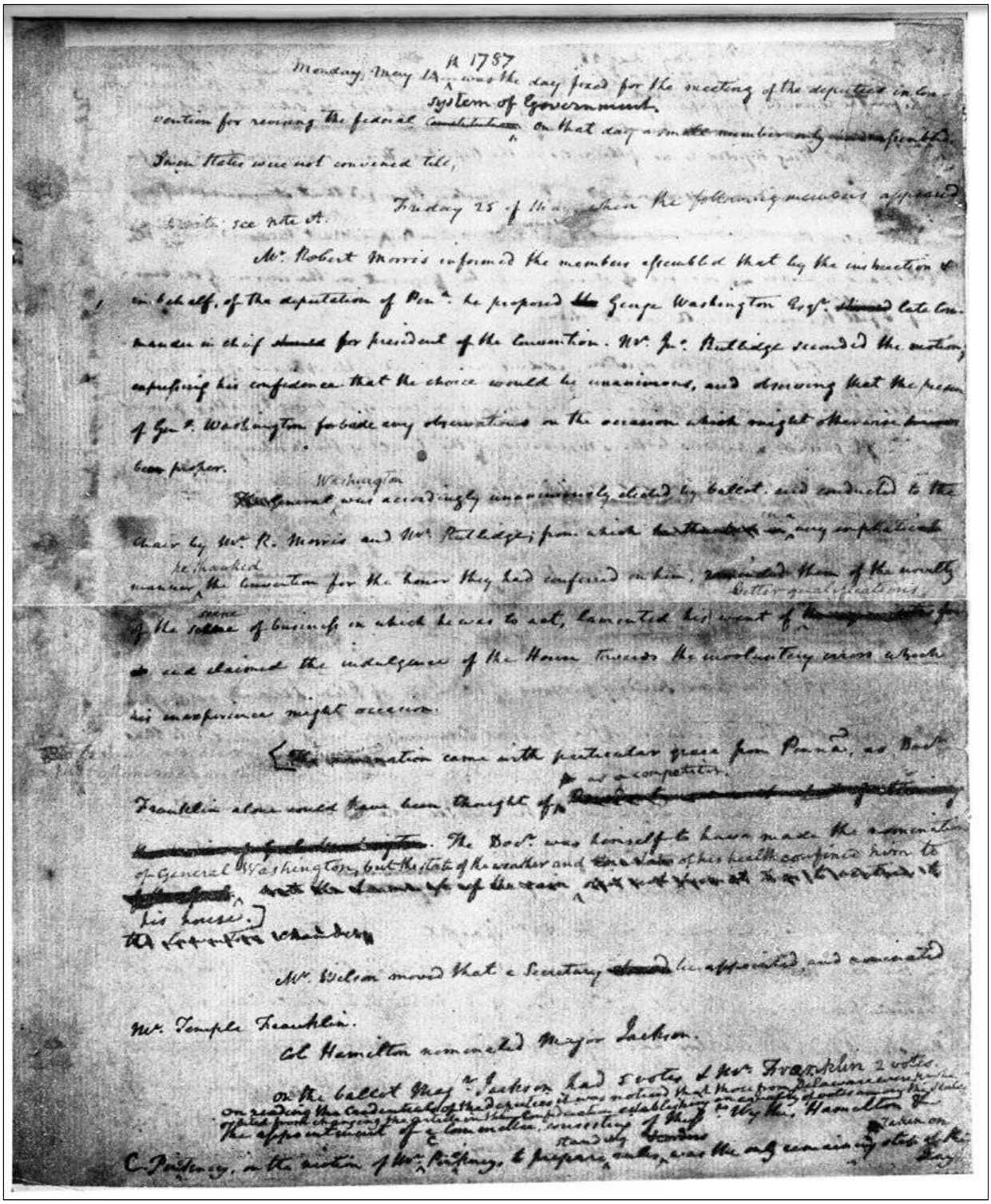
compensate for other deficiencies. He is about 50 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 331. He did not speak in the Convention.

[11] "M^r^ Few possesses a strong natural Genius, and from application has acquired some knowledge of legal matters;—he practises at the bar of Georgia, and speaks tolerably well in the Legislature. He has been twice a Member of Congress, and served in that capacity with fidelity to his State, and honor to himself. Mr. Few is about 35 years of age."—Pierce's Notes, *Id.*, iii., 333. He did not speak in the Convention.

The credentials of Connecticut and Maryland required but one deputy to represent the state; of New York, South Carolina, Georgia, and New Hampshire, two deputies; of Massachusetts, New Jersey, Delaware, Virginia, and North Carolina, three; of Pennsylvania, four.—*Journal of the Federal Convention*, 16 *et seq.*; *Documentary History of the Constitution*, i., 10 *et seq.*

M^r^ Robert Morris[12] informed the members assembled that by the instruction & in behalf, of the deputation of Pen^a^ he proposed George Washington, Esq^r^ late Commander in chief for president of the Convention. M^r^ Jn^o^ Rutlidge seconded the motion; expressing his confidence that the choice would be unanimous, and observing that the presence of Gen^l^ Washington forbade any observations on the occasion which might otherwise be proper.

[12] "Robert Morris is a merchant of great eminence and wealth; an able Financier, and a worthy Patriot. He has an understanding equal to any public object, and possesses an energy of mind that few Men can boast of. Although he is not learned, yet he is as great as those who are. I am told that when he speaks in the Assembly of Pennsylvania, that he bears down all before him. What could have been his reason for not Speaking in the Convention I know not,—but he never once spoke on any point. This Gentleman is about 50 years old."—Pierce's Notes, *Am. Hist: Rev.*, iii., 328.



General Washington[13] was accordingly unanimously elected by ballot, and conducted to the Chair by M[r]. R. Morris and M[r]. Rutlidge; from which in

a very emphatic manner he thanked the Convention for the honor they had conferred on him, reminded them of the novelty of the scene of business in which he was to act, lamented his want of better qualifications, and claimed the indulgence of the House towards the involuntary errors which his inexperience might occasion.

[13] "Gen^{l} Washington is well known as the Commander in chief of the late American Army. Having conducted these States to independence and peace, he now appears to assist in framing a Government to make the People happy. Like Gustavus Vasa, he may be said to be the deliverer of his Country;—like Peter the great he appears as the politician and the States-man; and like Cincinnatus he returned to his farm perfectly contented with being only a plain Citizen, after enjoying the highest honor of the confederacy,—and now only seeks for the approbation of his Country-men by being virtuous and useful. The General was conducted to the Chair as President of the Convention by the unanimous voice of its Members. He is in the 52^{d} year of his age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 331.

(The nomination came with particular grace from Pe~~n~~na, as Doc^{r} Franklin alone could have been thought of as a competitor. The Doc^{r} was himself to have made the nomination of General Washington, but the state of the weather and of his health confined him to his house.)

M^{r} Wilson[14] moved that a Secretary be appointed, and nominated M^{r} Temple Franklin.

[14] "Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with Man, and understands all the passions that influence him. Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Greecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great Orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning. He is about 45 years old."—Pierce's Notes, *Am. Hist. Rev.*, iii., 329.

Col Hamilton[15] nominated Major Jackson.

[15] "Col^{o} Hamilton is deservedly celebrated for his talents. He is a practitioner of the Law, and reputed to be a finished Scholar. To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the Heart and Head sympathize in approving him. Yet there is something too feeble in his voice to be equal to the strains of oratory;—it is my opinion he is rather a convincing Speaker, that [than] a blazing Orator. Col^{o} Hamilton requires time to think,—he enquires into every part of his subject with the searchings of phylosophy, and when he comes forward he comes highly charged with interesting matter, there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on.—His language is not always equal, sometimes didactic like Bolingbroke's, at others light and tripping like Stern's. His eloquence is not so defusive as to trifle with the senses, but he rambles just enough to strike and keep up the attention. He is about 33 years old, of small stature, and lean. His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreable."—Pierce's Notes, *Id.*, iii., 327.

On the ballot Maj^{r} Jackson had 5 votes & M^{r} Franklin 2 votes.

On reading the credentials of the deputies it was noticed that those from Delaware were prohibited from changing the Article in the Confederation establishing an equality of votes among the States.[16]

[16] " ... So also and Provided, that such Alterations or further Provisions, or any of them, do not extend to that part of the Fifth Article of the Confederation of the said States, finally ratified on the first day March, in the Year One thousand seven hundred and eighty one, which declares that 'In determining Questions in the United States in Congress Assembled each State shall have one Vote.'"—*Documentary History of the Constitution* (Dept. of State), i., 24.

The appointment of a Committee, consisting of Mess^{rs} Wythe, Hamilton & C. Pinckney, on the motion of Mr. Pinckney, to prepare standing rules & orders was the only remaining step taken on this day.

Monday May 28.——

From Mass[ts] Nat: Gorham & Caleb Strong. From Connecticut Oliver Elseworth. From Delaware, Gunning Bedford. From Maryland James M[c]Henry. From Penn[a] B. Franklin, George Clymer, Th[s] Mifflin & Jared Ingersol, took their seats.[17]

[17] "Entre nous. I believe the Eastern people have taken ground they will not depart from respecting the Convention.—One legislature composed of a lower-house triennially elected and an *Executive & Senate* for a good number of years. —I shall see Gerry & Johnson, as they pass & may perhaps give you a hint."—William Grayson to Madison, New York, May 24, 1787, *Mad. MSS.*

M[r] Wythe[18] from the Committee for preparing rules made a report which employed the deliberations of this day.

[18] "M[r] Wythe is the famous Professor of Law at the University of William and Mary. He is confessedly one of the most learned legal Characters of the present age. From his close attention to the study of general learning he has acquired a compleat knowledge of the dead languages and all the sciences. He is remarked for his exemplary life, and universally esteemed for his good principles. No Man it is said understands the history of Government better than M[r] Wythe,—nor any one who understands the fluctuating condition to which all societies are liable better than he does, yet from his too favorable opinion of Men, he is no great politician. He is a neat and pleasing Speaker, and a most correct and able Writer. Mr. Wythe is about 55 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 331.

M[r] King[19] objected to one of the rules in the Report authorizing any member to call for the yeas & nays and have them entered on the minutes. He urged that as the acts of the Convention were not to bind the Constituents, it was unnecessary to exhibit this evidence of the votes; and improper as changes of opinion would be frequent in the course of the business & would fill the minutes with contradictions.

[19] "M[r] King is a Man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts, and is said to have good

classical as well as legal knowledge. He has served for three years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his Country-men. This Gentleman is about thirty three years of age, about five feet ten inches high, well formed, an handsome face, with a strong expressive Eye, and a sweet high toned voice. In his public speaking there is something peculiarly strong and rich in his expression, clear, and convincing in his arguments, rapid and irresistible at times in his eloquence but he is not always equal. His action is natural, swimming, and graceful, but there is a rudeness of manner sometimes accompanying it. But take him *tout en semble*, he may with propriety be ranked among the luminaries of the present Age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 325.

Col. Mason[20] seconded the objection; adding that such a record of the opinions of members would be an obstacle to a change of them on conviction; and in case of its being hereafter promulged must furnish handles to the adversaries of the Result of the Meeting.

[20] "Mr. Mason is a Gentleman of remarkable strong powers, and possesses a clear and copious understanding. He is able and convincing in debate, steady and firm in his principles, and undoubtedly one of the best politicians in America. Mr. Mason is about 60 years old, with a fine strong constitution."—Pierce's Notes, *Id.*, iii., 331.

The proposed rule was rejected nem. contrad certe. The standing rules[21] agreed to were as follows:[22]

[21] Previous to the arrival of a majority of the States, the rule by which they ought to vote in the Convention had been made a subject of conversation among the members present. It was pressed by Governeur Morris and favored by Robert Morris and others from Pennsylvania, that the large States should unite in firmly refusing to the small states an equal vote, as unreasonable, and as enabling the small States to negative every good system of Government, which must, in the nature of things, be founded on a violation of that equality. The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large & small States, and that it would be easier to prevail on the latter, in the course of the deliberations, to give up their equality for the sake of an effective Government, than on taking the field of discussion to disarm themselves of the right & thereby throw themselves on the mercy of the larger States, discountenanced and stifled the project.—Madison's Note.

[22] In the MS. Madison adds: "[See the Journal & copy here the printed rules]," and they were copied by him from the *Journal of the Federal Convention* (*1819*). They have been compared with the MS. journal and found to be correct.

Viz.

A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented; but a less number than seven may adjourn from day to day.

Immediately after the President shall have taken the chair, and the members their seats, the minutes of the preceding day shall be read by the Secretary.

Every member, rising to speak, shall address the President; and whilst he shall be speaking, none shall pass between them, or hold discourse with another, or read a book, pamphlet or paper, printed or manuscript—and of two members rising at the same time, the President shall name him who shall be first heard.

A member shall not speak oftener than twice, without special leave, upon the same question; and not the second time, before every other, who had been silent, shall have been heard, if he choose to speak upon the subject.

A motion made and seconded, shall be repeated, and if written, as it shall be when any member shall so require, read aloud by the Secretary, before it

shall be debated; and may be withdrawn at any time, before the vote upon it shall have been declared.

Orders of the day shall be read next after the minutes, and either discussed or postponed, before any other business shall be introduced.

When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate shall be received.

[23]A question which is complicated, shall, at the request of any member, be divided, and put separately on the propositions of which it is compounded.

[23] An undecided line is drawn through the page in the MS. from here to the end of the rules; but not, as it would appear, to strike them out, as they were actually adopted by the Convention.

The determination of a question, altho' fully debated, shall be postponed, if the deputies of any State desire it until the next day.

A writing which contains any matter brought on to be considered, shall be read once throughout for information, then by paragraphs to be debated, and again, with the amendments, if any, made on the second reading; and afterwards the question shall be put on the whole, amended, or approved in its original form, as the case shall be.

Committees shall be appointed by ballot; and the members who have the greatest number of ballots, altho' not a majority of the votes present, shall be the Committee. When two or more members have an equal number of votes, the member standing first on the list in the order of taking down the ballots, shall be preferred.

A member may be called to order by any other member, as well as by the President; and may be allowed to explain his conduct or expressions supposed to be reprehensible. And all questions of order shall be decided by the President without appeal or debate.

Upon a question to adjourn for the day, which may be made at any time, if it be seconded, the question shall be put without a debate.

When the House shall adjourn, every member shall stand in his place, until the President pass him.

A letter from sundry persons of the State of Rho. Island addressed to the Honorable The Chairman of the General Convention was presented to the Chair by Mr. Govr. Morris,[24] and being read, was ordered to lie on the table for further consideration.[25]

[24] "Mr. Governeur Morris is one of those Genius's in whom every species of talents combine to render him conspicuous and flourishing in public debate:—He winds through all the mazes of rhetoric, and throws around him such a glare that he charms, captivates, and leads away the senses of all who hear him. With an infinite streach of fancy he brings to view things when he is engaged in deep argumentation, that render all the labor of reasoning easy and pleasing. But with all these powers he is fickle and inconstant,—never pursuing one train of thinking,—nor ever regular. He has gone through a very extensive course of reading, and is acquainted with all the sciences. No Man has more wit,—nor can any one engage the attention more than Mr. Morris. He was bred to the Law, but I am told he disliked the profession, and turned Merchant. He is engaged in some great mercantile matters with his namesake, Mr. Robt. Morris. This Gentleman is about 38 years old, he has been unfortunate in losing one of his Legs, and getting all the flesh taken off his right arm by a scald, when a youth."—Pierce's Notes, *Am. Hist. Rev.*, iii., 329.

[25] "Newport June 18th 1787

"Sir—

"The inclosed address, of which I presume your Excellency has received a duplicate, was returned to me from New York after my arrival in this State. I flattered myself that our Legislature, which convened on monday last, would have receded from the resolution therein refer'd to, and have complied with the recommendation of Congress in sending deligates to the federal convention. The upper house, or Governor, & Council, embraced the measure, but it was negatived in the house of Assembly by a large majority, notwithstanding the greatest exertions were made to support it.

"Being disappointed in their expectations, the minority in the administration and all the worthy citizens of this State, whose minds are well informd regreting the peculiarities of their Situation place their fullest confidence in the wisdom & moderation of the national council, and indulge the warmest hopes of being favorably consider'd in their deliberations. From these deliberations they anticipate a political System which must finally be adopted & from which will result the Safety, the honour, & the happiness of the United States.

"Permit me, Sir, to observe, that the measures of our present Legislature do not exhibit the real character of the State. They are equally reprobated, & abhored by Gentlemen of the learned professions, by the whole mercantile body, & by most of the respectable farmers and mechanicks. The majority of the administration is composed of a licentious number of men, destitute of education, and many of them, Void of principle. From anarchy and confusion they derive their temporary consequence, and this they endeavor to prolong by debauching the minds of the common people, whose attention is wholly directed to the Abolition of debts both public & private. With these are associated the disaffected of every description, particularly those who were unfriendly during the war. Their paper money System, founded in oppression & fraud, they are determined to Support at every hazard. And rather than relinquish their favorite pursuit they trample upon the most sacred obligations. As a proof of this they refused to comply with a requisition of Congress for repealing all laws repugnant to the treaty of peace with Great Britain, and urged as their principal reason, that it would be calling in question the propriety of their former measures.

"These evils may be attributed, partly to the extreme freedom of our own constitution, and partly to the want of energy in the federal Union: And it is greatly to be apprehended that they cannot Speedily be removed but by uncommon and very serious exertions. It is fortunate however that the wealth and resources of this State are chiefly in possion of the well Affected, & that they are intirely devoted to the public good.

"I have the honor of being Sir,
"with the greatest Veneration & esteem,
"Your excellencys very obedient &
"most humble servant—

["J. M. Varnum.]

"His excellency

"Gen.l Washington."

The letter was inadvertently unsigned, but it was well known to come from General Varnum. The enclosure was as follows:

"Providence, May 11. 1787.

"Gentlemen:

"Since the Legislature of this State have finally declined sending Delegates to Meet you in Convention for the purposes mentioned in the Resolve of Congress of the 21st February 1787, the Merchants Tradesmen and others of this place, deeply affected with the evils of the present unhappy times, have thought proper to Communicate in writing their approbation of your Meeting, And their regret that it will fall short of a Compleat Representation of the Federal Union.—

"The failure of this State was owing to the Nonconcurrence of the Upper House of Assembly with a Vote passed in the Lower House, for appointing Delegates to attend the said Convention, at their Session holden at Newport on the first Wednesday of the present Month.—

"It is the general Opinion here and we believe of the well informed throughout this State, that full power for the Regulation of the Commerce of the United States, both Foreign & Domestick ought to be vested in the National Council.

"And that Effectual Arrangements should also be made for giving Operation to the present powers of Congress in their Requisitions upon the States for National purposes.—

"As the Object of this Letter is chiefly to prevent any impressions unfavorable to the Commercial Interest of this State, from taking place in our Sister States from the Circumstance of our being unrepresented in the present National Convention, we shall not presume to enter into any detail of the objects we hope your deliberations will embrace and provide for being convinced they will be such as have a tendency to strengthen the Union, promote Commerce, increase the power & Establish the Credit of the United States.

"The result of your deliberations tending to these desireable purposes we still hope may finally be Approved and Adopted by this State, for which we pledge our Influence and best exertions.—

"In behalf of the Merchants, Tradesmen &c

"We have the Honour to be with perfect Consideration &
Respect
"Your most Obedient &
"Most Humble Servant's

"John Brown	Jabez Bowen	}
Thos Lloyd Halsey	Nichos Brown	}
Jos. Nightingale	John Jenckes	}
Levi Hall	Welcome Arnold	} Comtee.
Philip Allen	William Russell	}
Paul Allen	Jeremiah Olmy	}
	William Barton	}

"The Honble the Chairman of the General Convention

"Philadelphia"
—*Const. MSS.*

Both letters are printed in the *Documentary History of the Constitution*, i., 277 and 275.

Mr. Butler moved that the House provide agst interruption of business by absence of members,[26] and against licentious publications of their proceedings—to which was added by—Mr. Spaight[27]—a motion to provide that on the one hand the House might not be precluded by a vote upon any question, from revising the subject matter of it, When they see cause, nor, on the other hand, be led too hastily to rescind a decision, which was the result of mature discussion.—Whereupon it was ordered that these motions be referred for the consideration of the Committee appointed to draw up the standing rules and that the Committee make report thereon.

[26] "Mr. Butler is a character much respected for the many excellent virtues which he possesses. But as a politician or an Orator, he has no pretensions to either. He is a Gentleman of fortune, and takes rank among the first in South Carolina. He has been appointed to Congress, and is now a Member of the Legislature of South Carolina. Mr. Butler is about 40 years of age; an Irishman by birth."—Pierce's Notes, *Am. Hist. Rev.*, iii., 333.

[27] "Mr. Spaight is a worthy Man, of some abilities, and fortune. Without possessing a Genius to render him brilliant, he is able to discharge any public trust that his Country may repose in him. He is about 31 years of age."—Pierce's Notes, *Id.*, iii., 332.

Adjd. till tomorrow 10. OClock.

Tuesday May 29.

John Dickenson and Elbridge Gerry, the former from Delaware, the latter from Mass[ts] took their seats. The following rules were added, on the report of M[r] Wythe from the Committee—

> That no member be absent from the House, so as to interrupt the representation of the State, without leave.
>
> That Committees do not sit whilst the House shall be or ought to be, sitting.
>
> That no copy be taken of any entry on the journal during the sitting of the House without leave of the House.
>
> That members only be permitted to inspect the journal.
>
> That nothing spoken in the House be printed, or otherwise published or communicated without leave.
>
> That a motion to reconsider a matter which has been determined by a majority, may be made, with leave unanimously given, on the same day on which the vote passed; but otherwise not without one day's previous notice: in which last case, if the House agree to the reconsideration, some future day shall be assigned for that purpose.

M[r] C. Pinkney[28] moved that a Committee be appointed to superintend the Minutes.

[28] "Mr. Charles Pinckney is a young Gentleman of the most promising talents. He is, altho' only 24 y[s] of age, in possession of a very great variety of knowledge. Government, Law, History, and Phylosophy are his favorite studies, but he is intimately acquainted with every species of polite learning, and has a spirit of application and industry beyond most Men. He speaks with great neatness and perspicuity, and treats every subject as fully, without running into prolixity, as it requires. He has been a Member of Congress, and served in that Body with ability and eclat."—Pierce's Notes, *Am. Hist. Rev.*, iii., 333.

Mr. Govr. Morris objected to it. The entry of the proceedings of the Convention belonged to the Secretary as their impartial officer. A committee might have an interest & bias in moulding the entry according to their opinions and wishes.

The motion was negatived, 5 noes, 4 ays.

Mr. Randolph[29] then opened the main business.[30]

[29] "Mr. Randolph is Governor of Virginia,—a young Gentleman in whom unite all the accomplishments of the Scholar, and the Statesman. He came forward with the postulata, or first principles, on which the Convention acted, and he supported them with a force of eloquence and reasoning that did him great honor. He has a most harmonious voice, a fine person and striking manners. Mr. Randolph is about 32 years of age."—Pierce's Notes, *Id.*, iii., 332.

[30] In the MS. in Randolph's hand: "[here insert his speech including his resolutions]." The speech also is in Randolph's hand, having been furnished by him.

He expressed his regret, that it should fall to him, rather than those, who were of longer standing in life and political experience, to open the great subject of their mission. But, as the convention had originated from Virginia, and his colleagues supposed that some proposition was expected from them, they had imposed this task on him.

He then commented on the difficulty of the crisis, and the necessity of preventing the fulfilment of the prophecies of the American downfal.

He observed that in revising the fœderal system we ought to inquire 1. into the properties, which such a government ought to possess, 2. the defects of the confederation, 3. the danger of our situation & 4. the remedy.

1. The Character of such a government ought to secure 1. against foreign invasion: 2. against dissensions between members of the Union, or seditions in particular States: 3. to procure to the several States various blessings, of which an isolated situation was incapable: 4. to be able to defend itself against encroachment: & 5. to be paramount to the state constitutions.

2. In speaking of the defects of the confederation he professed a high respect for its authors, and considered them as having done all that patriots could do, in the then infancy of the science, of constitutions, & of confederacies,—when the inefficiency of requisitions was unknown—no commercial discord had arisen among any States—no rebellion had appeared as in Mass[ts]—foreign debts had not become urgent—the havoc of paper money had not been foreseen—treaties had not been violated—and perhaps nothing better could be obtained from the jealousy of the states with regard to their sovereignty.

He then proceeded to enumerate the defects. 1. that the confederation produced no security against foreign invasion; congress not being permitted to prevent a war nor to support it by their own authority—Of this he cited many examples; most of which tended to shew, that they could not cause infractions of treaties or of the law of nations to be punished: that particular states might by their conduct provoke war without controul; and that neither militia nor draughts being fit for defence on such occasions, enlistments only could be successful, and these could not be executed without money.

2, that the fœderal government could not check the quarrels between states, nor a rebellion in any, not having constitutional power nor means to interpose according to the exigency.

3, that there were many advantages, which the U. S. might acquire, which were not attainable under the confederation—such as a productive impost—counteraction of the commercial regulations of other nations—pushing of commerce ad libitum,—&c &c.

4, that the fœderal government could not defend itself against encroachments from the states.

5, that it was not even paramount to the state constitutions, ratified as it was in many of the states.

3. He next reviewed the danger of our situation, appealed to the sense of the best friends of the U. S. the prospect of anarchy from the laxity of government every where; and to other considerations.

4. He then proceeded to the remedy; the basis of which he said must be the republican principle.

He proposed as conformable to his ideas the following resolutions, which he explained one by one.

1. Resolved that the articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely, "common defence, security of liberty, and general welfare."

2. Res^{d} therefore that the rights of suffrage in the National Legislature ought to be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. Res^{d} that the National Legislature ought to consist of two branches.

4. Res^{d} that the members of the first branch of the National Legislature ought to be elected by the people of the several States every —— for the term of ——; to be of the age of —— years at least, to receive liberal stipends by which they may be compensated for the devotion of their time to the public service; to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belong to the functions of the first branch, during the term of service, and for the space of —— after its expiration; to be incapable of re-election for the space of —— after the expiration of their term of service, and to be subject to recall.

5. Resol^{d} that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual Legislatures, to be of the age of —— years at least; to hold their offices for a term sufficient to ensure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service; and for the space of —— after the expiration thereof.

6. Resolved that each branch ought to possess the right of originating Acts; that the National Legislature ought to be empowered to enjoy the Legislative Rights vested in Congress by the Confederation & moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; to negative all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union agst any member of the Union failing to fulfil its duty under the articles thereof.

7. Resd that a National Executive be instituted; to be chosen by the National Legislature for the term of —— years, to receive punctually at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made so as to affect the Magistracy, existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the national laws, it ought to enjoy the Executive rights vested in Congress by the Confederation.

8. Resd that the Executive and a convenient number of the National Judiciary, ought to compose a Council of revision with authority to examine every act of the National Legislature before it shall operate, & every act of a particular Legislature before a Negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that of a particular Legislature be again negatived by —— of the members of each branch.

9. Resd that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behaviour; and to receive punctually at stated times fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all Piracies & felonies on the high seas, captures from an enemy: cases in which foreigners or Citizens of other States applying to such jurisdictions may be interested, or which respect the collection of the National revenues; impeachments of

any national officers, and questions which may involve the national peace and harmony.

10. Resolv^{d} that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of Government & Territory or otherwise, with the consent of a number of voices in the National Legislature less than the whole.

11. Res^{d} that a Republican Government & the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guarantied by the United States to each State.

12. Res^{d} that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the articles of Union shall be adopted, and for the completion of all their engagements.

13. Res^{d} that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.

14. Res^{d} that the Legislative Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union.

15. Res^{d} that the amendments which shall be offered to the Confederation, by the Convention ought at a proper time, or times, after the approbation of Congress to be submitted to an assembly or assemblies of Representatives, recommended by the several Legislatures to be expressly chosen by the people to consider & decide thereon.

He concluded with an exhortation, not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the U. S. to pass away unimproved.[31]

[31] This abstract of the speech was furnished to J. M. by M^{r} Randolph and is in his handwriting. As a report of it from him had been relied on, it was omitted by J. M.—*Madison's Note.* The fifteen resolutions, constituting the "Virginia Plan," are in Madison's handwriting.

It was then Resolved—That the House will tomorrow resolve itself into a Committee of the Whole House to consider of the state of the American Union—and that the propositions moved by Mr. Randolph be referred to the said Committee.

Mr. Charles Pinkney laid before the House the draft of a federal Government which he had prepared, to be agreed upon between the free and independent States of America.[32]—Mr. P. plan ordered that the same be referred to the Committee of the Whole appointed to consider the state of the American Union.[33]

[32] Robert Yates, delegate from New York, kept notes of the proceedings of the Convention, until he left July 5th, with his colleague, John Lansing. They wrote a joint letter to Governor Clinton afterwards, giving their reasons: "We were not present at the completion of the new constitution; but before we left the convention, its principles were so well established as to convince us, that no alteration was to be expected to conform it to our ideas of expediency and safety."—*Secret Proceedings of the Federal Convention*, 10. Yates's notes are quoted here, whenever they are at variance with Madison's. He gives Pinckney's motion as follows: "Mr. C. Pinckney, a member from South Carolina, then added, that he had reduced his ideas of a new government to a system, which he read, and confessed that it was grounded on the same principle as of the above [the Randolph] resolutions."—*Id.*, 97.

[33] Charles Pinckney wrote to John Quincy Adams:

"Wingaw near Georgetown December 12 1818

"Sir

"I have just had the honour to receive your favour—Being at present absent from Charleston on a visit to my planting interest in this neighbourhood I shall in consequence of your letter shorten my stay here considerably & return to Town for the purpose of complying with your request as soon as possible—From an inspection of my old papers not long ago I know it was then easily in my power to have complied with your request—I still hope it is & as soon as I return to my residence in Charleston will again, or as quickly as I can write you on it to prevent delay.

"The Draught of the Constitution proposed by me was divided into a number of articles & was in complete detail—the resolutions offered by Mr. Randolph were merely general ones & as far as I recollect they were both referred to the same Committee.

"With great respect & esteem" &c.

—*Dept. of State MSS.*, Miscellaneous Letters.

Three weeks later he wrote again:

"SIR

"On my return to this City as I promised I examined carefully all the numerous notes & papers which I had retained relating to the federal Convention—among them I found several rough draughts of the Constitution I proposed to the Convention—although they differed in some measure from each other in the wording & arrangement of the articles—yet they were all substantially the same—they all proceeded upon the idea of throwing out of view the attempt to amend the existing Confederation (then a very favorite idea of a number) & proceeding de novo—of a Division of the Powers of Government into legislative executive & judicial & of making the Government to operate directly upon the People & not upon the States. My Plan was substantially adopted in the sequel except as to the Senate & giving more power to the Executive than I intended—the force of vote which the small & middling states had in the Convention prevented our obtaining a proportional representation in more than one branch & the great powers given to the President were never intended to have been given to him while the Convention continued in that patient & coolly deliberative situation in which they had been for nearly the whole of the preceding five months of their session nor was it until within the last week or ten days that almost the whole of the Executive Department was altered—I can assure you as a fact that for more than Four months & a half out of five the power of exclusively making treaties, appointing for the Ministers & judges of the Supreme Court was given to the Senate after numerous debates & consideration of the subject both in Committee of the whole & in the house—this I not only aver but can prove by printed Documents in my possession to have been the case —& should I ever have the pleasure to see you & converse on the subject will state to you some things relative to this business that may be new & perhaps surprising to you—the veil of secrecy from the Proceedings of the Convention being removed by Congress & but very few of the members alive would make disclosures now of the secrets there acted less improper than before—With the aid of the journal & the numerous notes & memorandums I have preserved should now be in my power to give a View of the almost insuperable difficulties the Convention had to encounter & of the conflicting opinions of the members I believe should have attempted it had I not always understood M.r Madison intended it—he alone I believe possessed & retained more numerous & particular notes of their proceedings than myself. I will thank you sir to do me the honour to send me or to get the President to direct a copy of the Journal of the Convention to be sent me as also of the Secret Journals of Congress should it be considered not improper in me to make the request.

"I have already informed you I have several rough draughts of the Constitution I proposed & that they are all substantially the same differing only in words & the arrangement of the Articles—at the distance of nearly thirty two years it is impossible for me now to say which of the 4 or 5 draughts I have was the one but enclosed I send you the one I believe was it —I repeat however that they are substantially the same differing only in form & unessentials—It may be necessary to remark that very soon after the

Convention met I changed & avowed candidly the change of my opinion on giving the power to Congress to revise the State Laws in certain cases & in giving the exclusive Power to the Senate to declare War thinking it safer to refuse the first altogether & to vest the latter in Congress—I will thank you to acknowledge by a line the receipt of the Draught & this.

"With very great respect & esteem
"I have the honour to be your most
"Obedient servant
"CHARLES PINCKNEY

.

"December 30 1818
"In Charleston."—*Const. MSS.*

The plan is written upon paper of the same size as the letter, and with the same ink. It is undoubtedly contemporaneous with the letter.

Madison wrote the following note to accompany his journal:

"The length of the Document laid before the Convention, and other circumstances having prevented the taking of a copy at the time, that which is here inserted was taken from the paper furnished to the Secretary of State, and contained in the Journal of the Convention published in 1819. On comparing the paper with the Constitution in its final form, or in some of its Stages; and with the propositions, and speeches of M.r Pinckney in the Convention, it would seem that considerable errour must have crept into the paper; occasioned possibly by the loss of the Document laid before the convention (neither that nor the Resolutions offered by M.r Patterson being among the preserved papers) and by a consequent resort for a copy to the rough draught, in which erasures and interlineations following what passed in the convention, might be confounded with the original text, and after a lapse of more than thirty years, confounded also in the memory of the author.

"There is in the paper a similarity in some cases, and an identity in others, with details, expressions, and definitions, the results of critical discussions and modifications that can not be ascribed to accident or anticipation.

"Examples may be noticed in Article VIII of the paper; which is remarkable also for the circumstance, that whilst it specifies the functions of the President, no provision is contained in the paper for the election of such an officer, nor indeed for the appointment of any executive magistracy; notwithstanding the evident purpose of the author to provide an *entire* plan of a Federal Government.

"Again, in several instances where the paper corresponds with the Constitution, it is at variance with the ideas of M.r Pinckney, as decidedly expressed in his propositions, and in his arguments, the former in the Journal of the Convention, the latter in the report of its debates: Thus in Art: VIII of the paper, provision is made for removing the President by impeachment; when it appears that in the convention, July 20. he was opposed to any

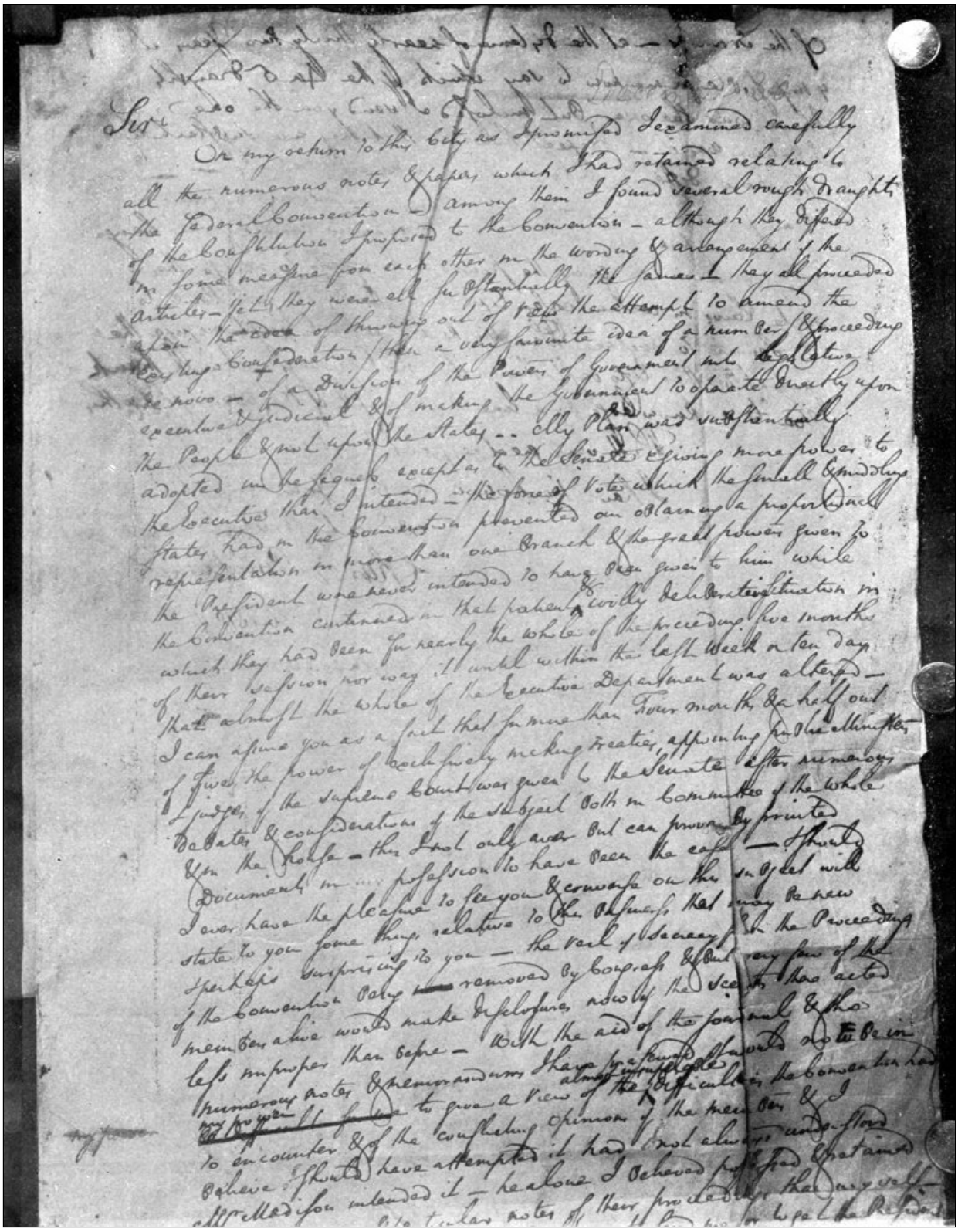
impeachability of the Executive magistrate: In Art: III, it is required that all money-bills shall originate in the first Branch of the Legislature; which he strenuously opposed Aug: 8 and again Aug: 11: In Art: V members of each House are made ineligible to, as well as incapable of holding, any office under the union &c. as was the case at one Stage of the Constitution; a disqualification highly disapproved and opposed by him Aug: 14.

"A still more conclusive evidence of errour in the paper is seen in Art: III, which provides, as the Constitution does, that the first Branch of the Legislature shall be chosen by the people of the several States; whilst it appears that on the 6th of June, a few days only after the Draft was laid before the convention, its author opposed that mode of choice, urging & proposing in place of it, an election by the Legislatures of the several States.

"The remarks here made tho' not material in themselves, were due to the authenticity and accuracy aimed at, in this Record of the proceedings of a Publick Body, so much an object, sometimes, of curious research, as at all times, of profound interest."—*Mad. MSS.*

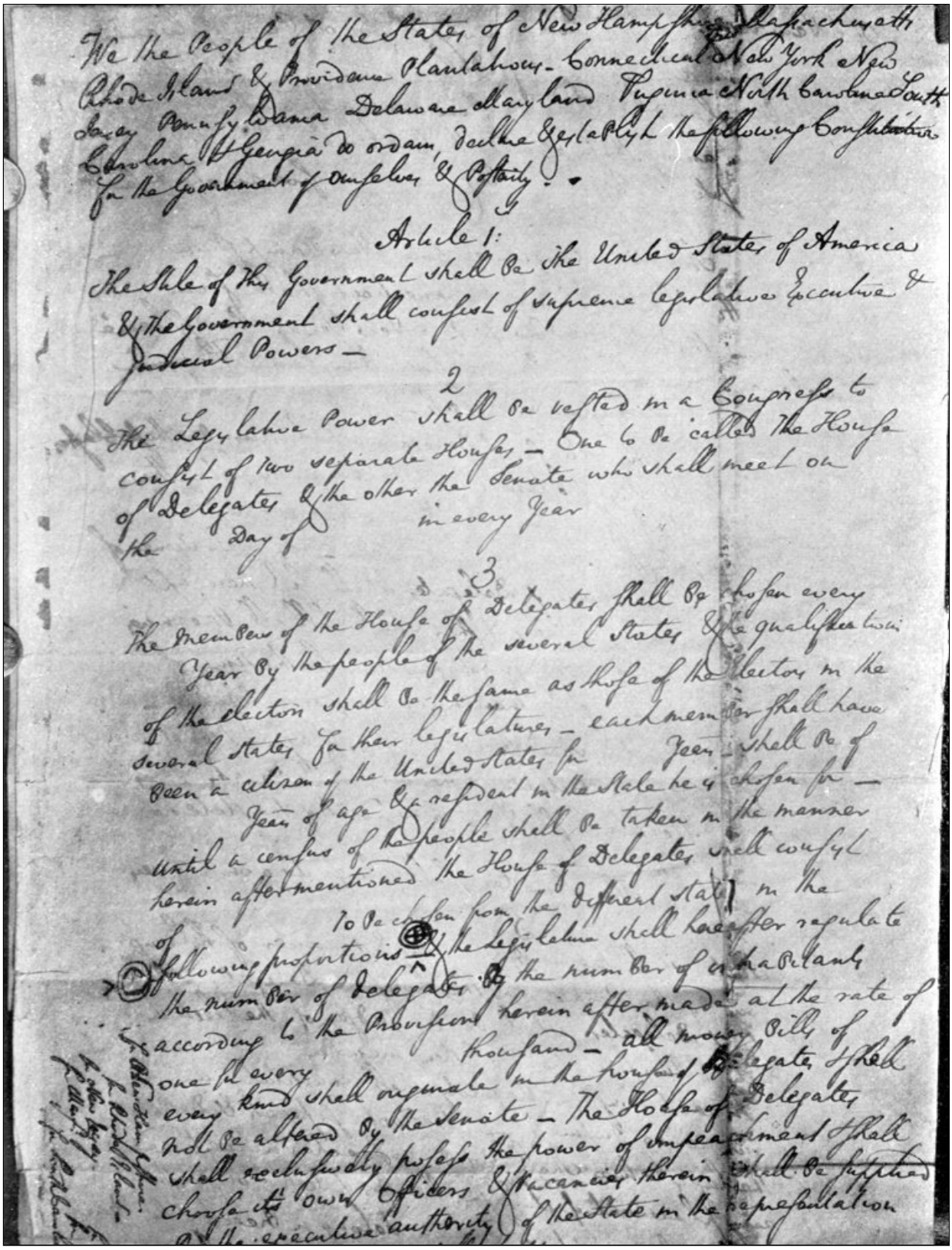
This note, as given in Gilpin's *Madison Papers* (*1840*), is freely edited. The Pinckney plan is given here as Pinckney sent it to Adams. Chief-Justice Charles C. Nott, of the U. S. Court of Claims, informs the editor that correspondence with Pinckney's descendants reveals the fact that none of the notes to which he alludes in his letters are extant.

The letter of December 30, 1818, and plan, are printed in *The Documentary History of the Constitution*, i., 309 *et seq.*



CHARLES PINCKNEY'S LETTER.

(Reduced.)



We the People of the States of New Hampshire Massachusetts Rhode Island & Providence Plantations Connecticut New York New Jersey Pensylvania Delaware Maryland Virginia North Carolina South Carolina & Georgia do ordain, declare & establish the following Constitution for the Government of ourselves & Posterity.

Article 1:

The Stile of this Government shall be the United States of America

& the Government shall consist of supreme legislative Executive & Judicial Powers —

2

The Legislative Power shall be vested in a Congress to consist of two separate Houses — One to be called the House of Delegates & the other the Senate who shall meet on the Day of in every Year

3

The Members of the House of Delegates shall be chosen every Year by the people of the several States & the qualification of the electors shall be the same as those of the Electors in the several States for their legislatures — each member shall have been a citizen of the United States for Years — shall be of Years of age & resident in the State he is chosen for — until a census of the people shall be taken in the manner herein after mentioned the House of Delegates shall consist of to be chosen from the different States in the following proportions — the legislature shall hereafter regulate the number of Delegates by the number of inhabitants according to the Proportion herein after made — at the rate of one for every thousand — all money Bills of every kind shall originate in the House of Delegates & not be altered by the Senate — The House of Delegates shall exclusively possess the power of impeachment shall chuse its own Officers & Vacancies therein shall be supplied by the executive authority of the State in the representation

THE PINCKNEY DRAFT.

(Reduced.)

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3

The members of the House of Delegates shall be chosen every —— year by the people of the several States & the qualification of the electors shall be the same as those of the electors in the several States for their legislatures—each member shall have been a citizen of the United States for —— years; and shall be of —— years of age & a resident in the State he is chosen for. ——Until a census of the people shall be taken in the manner herein after mentioned the House of Delegates shall consist of —— to be chosen from the different States in the following proportions: for New Hampshire, ——; for Massachusetts, —— for Rhode Island, —— for Connecticut, —— for New York, —— for New Jersey, —— for Pennsylvania, —— for Delaware, —— for Maryld, —— for Virginia, —— for North Carolina, —— for South Carolina, —— for Georgia, —— & the Legislature shall hereafter regulate the number of delegates by the number of inhabitants according to the

Provisions herein after made, at the rate of one for every —— thousand.— All money bills of every kind shall originate in the house of Delegates & shall not be altered by the Senate. The House of Delegates shall exclusively possess the power of impeachment & shall choose it's own officers & vacancies therein shall be supplied by the executive authority of the State in the representation from which they shall happen.

4

The Senate shall be elected & chosen by the House of Delegates which House immediately after their meeting shall choose by ballot —— Senators from among the Citizens & residents of New Hampshire —— from among those of Massachusetts —— from among those of Rhode Island —— from among those of Connecticut —— from among those of New York —— from among those of New Jersey —— from among those of Pennsylvania —— from among those of Delaware —— from among those of Maryland —— from among those of Virginia —— from among those of North Carolina —— from among those of South Carolina & —— from among those of Georgia ——

The Senators chosen from New Hampshire Massachusetts Rhode Island & Connecticut shall form one class—those from New York New Jersey Pennsylvania & Delaware one class—& those from Maryland Virginia North Carolina South Carolina & Georgia one class.

The House of Delegates shall number these Classes one two & three & fix the times of their service by Lot—the first class shall serve for —— years—the second for —— years & the third for —— years—as their times of service expire the House of Delegates shall fill them up by elections for —— years & they shall fill all vacancies that arise from death or resignation for the time of service remaining of the members so dying or resigning.

Each Senator shall be —— years of age at least—shall have been a Citizen of the United States 4 years before his election & shall be a resident of the State he is chosen from. The Senate shall choose its own Officers.

5

Each State shall prescribe the time & manner of holding elections by the People for the house of Delegates & the House of Delegates shall be the judges of the elections returns & Qualifications of their members.

In each house a Majority shall constitute a Quorum to do business—Freedom of Speech & Debate in the legislature shall not be impeached or Questioned in any place out of it & the Members of both Houses shall in all cases except for Treason Felony or Breach of the Peace be free from arrest during their attendance at Congress & in going to & returning from it—Both Houses shall keep journals of their Proceedings & publish them except on secret occasions & the yeas & nays may be entered thereon at the desire of one —— of the members present. Neither house without the consent of the other shall adjourn for more than —— days nor to any Place but where they are sitting.

The members of each house shall not be eligible to or capable of holding any office under the Union during the time for which they have been respectively elected nor the members of the Senate for one year after.

The members of each house shall be paid for their services by the States which they represent.

Every bill which shall have passed the Legislature shall be presented to the President of the United States for his revision—if he approves it he shall sign it—but if he does not approve it he shall return it with his objections to the house it originated in which house if two thirds of the members present, notwithstanding the President's objections agree to pass it, shall send it to the other house with the President's objections, where if two thirds of the members present also agree to pass it, the same shall become a law—& all bills sent to the President & not returned by him within —— days shall be laws unless the Legislature by their adjournment prevent their return in which case they shall not be laws.

6th

The Legislature of the United States shall have the power to lay & collect Taxes Duties Imposts & excises

To regulate Commerce with all nations & among the several States.

To borrow money & emit bills of Credit

To establish Post offices.

To raise armies

To build & equip Fleets

To pass laws for arming organizing & disciplining the Militia of the United States

To subdue a rebellion in any State on application of its legislature

To coin money & regulate the Value of all coins & fix the Standard of Weights & measures

To provide such Dock Yards & arsenals & erect such fortifications as may be necessary for the United States & to exercise exclusive Jurisdiction therein

To appoint a Treasurer by ballot

To constitute Tribunals inferior to the Supreme Court

To establish Post & military Roads

To establish & provide for a national University at the Seat of the Government of the United States

To establish uniform rules of Naturalization

To provide for the establishment of a Seat of Government for the United States not exceeding —— miles square in which they shall have exclusive jurisdiction

To make rules concerning Captures from an Enemy

To declare the law & Punishment of piracies & felonies at sea & of counterfeiting Coin & of all offences against the Laws of Nations

To call forth the aid of the Militia to execute the laws of the Union enforce treaties suppress insurrections and repel invasions

And to make all laws for carrying the foregoing powers into execution.

The Legislature of the United States shall have the Power to declare the Punishment of Treason which shall consist only in levying War against the United States or any of them or in adhering to their Enemies. No person shall be convicted of Treason but by the testimony of two witnesses.

The proportion of direct taxation shall be regulated by the whole number of inhabitants of every description which number shall within —— years after the first meeting of the Legislature & within the term of every —— year after be taken in the manner to be prescribed by the Legislature

No Tax shall be laid on articles exported from the States—nor capitation tax but in proportion to the Census before directed

All Laws regulating Commerce shall require the assent of two thirds of the members present in each house—The United States shall not grant any title of Nobility—The Legislature of the United States shall pass no Law on the subject of Religion, nor touching or abridging the Liberty of the Press nor shall the privilege of the writ of Habeas Corpus ever be suspended except in case of Rebellion or Invasion.

All acts made by the Legislature of the United States pursuant to this Constitution & all Treaties made under the authority of the United States shall be the supreme Law of the land & all Judges shall be bound to consider them as such in their decisions.

7

The Senate shall have the sole & exclusive power to declare War & to make treaties & to appoint Ambassadors & other Ministers to foreign nations & Judges of the Supreme Court.

They shall have the exclusive power to regulate the manner of deciding all disputes & controversies now subsisting or which may arise between the States respecting Jurisdiction or Territory.

8

The Executive Power of the United States shall be vested in a President of the United States of America which shall be his style & his title shall be His Excellency. He shall be elected for —— years & shall be reeligible.

He shall from time to time give information to the Legislature of the state of the Union & recommend to their consideration the measures he may think necessary—he shall take care that the laws of the United States be duly executed: he shall commission all the officers of the United States & except as to Ambassadors other ministers and Judges of the Supreme Court he shall nominate & with the consent of the Senate appoint all other officers of the United States. He shall receive public Ministers from foreign nations & may correspond with the Executives of the different States. He shall have power to grant pardons & reprieves except in impeachments—He shall be Commander in chief of the army & navy of the United States & of the Militia of the several States & shall receive a compensation which shall not be increased or diminished during his continuance in office. At entering on the Duties of his office he shall take an oath faithfully to execute the duties of a President of the United States.—He shall be removed from his office on impeachment by the house of Delegates & Conviction in the Supreme Court of Treason bribery or Corruption—In case of his removal death resignation or disability the President of the Senate shall exercise the duties of his office until another President be chosen—& in case of the death of the President of the Senate the Speaker of the House of Delegates shall do so.

9

The Legislature of the United States shall have the Power and it shall be their duty to establish such Courts of Law Equity & Admiralty as shall be necessary—The Judges of the Courts shall hold their offices during good behaviour & receive a compensation, which shall not be increased or diminished during their continuance in office—One of these Courts shall be termed the Supreme Court whose jurisdiction shall extend to all cases arising under the laws of the United States or affecting ambassadors other public Ministers & Consuls—to the trial of impeachment of officers of the United States—to all cases of Admiralty & maritime jurisdiction—In cases of

impeachment affecting ambassadors and other public Ministers this Jurisdiction shall be original & in all other cases appellate——

All criminal offences (except in cases of impeachment) shall be tried in the State where they shall be committed—the trials shall be open & public & shall be by Jury.

10

Immediately after the first census of the people of the United States the House of Delegates shall apportion the Senate by electing for each State out of the citizens resident therein one Senator for every —— members each State shall have in the House of Delegates—Each State shall be entitled to have at least one member in the Senate.

11

No State shall grant letters of marque & reprisal or enter into treaty or alliance or confederation nor grant any title of nobility nor without the Consent of the Legislature of the United States lay any impost on imports—nor keep troops or Ships of War in time of peace—nor enter into compacts with other States or foreign powers or emit bills of Credit or make any thing but Gold Silver or Copper a tender in payment of debts nor engage in War except for self defence when actually invaded or the danger of invasion be so great as not to admit of a delay until the Government of the United States can be informed thereof—& to render these prohibitions effectual the Legislature of the United States shall have the power to revise the laws of the several States that may be supposed to infringe the Powers exclusively delegated by this Constitution to Congress & to negative & annul such as do.

12

The Citizens of each State shall be entitled to all privileges & immunities of Citizens in the several States—Any person charged with Crimes in any State fleeing from justice to another shall on demand of the Executive of the State from which he fled be delivered up & removed to the State having jurisdiction of the offence.

13

Full faith shall be given in each State to the acts of the Legislature & to the records & judicial Proceedings of the Courts & magistrates of every State.

14

The Legislature shall have power to admit new States into the Union on the same terms with the original States provided two thirds of the members present in both Houses agree.

15

On the application of the legislature of a State the United States shall protect it against domestic insurrection.

16

If two thirds of the Legislatures of the States apply for the same the Legislature of the United States shall call a Convention for the purpose of amending the Constitution—or should Congress, with the Consent of two thirds of each house, propose to the States amendments to the same—the agreement of two thirds of the Legislatures of the States shall be sufficient to make the said amendments parts of the Constitution.

The Ratification of the conventions of —— States shall be sufficient for organizing this Constitution.[34]

[34] "... What will be the result of their meeting I cannot with any certainty determine, but I hardly think much good can come of it; the people of America don't appear to me to be ripe for any great innovations & it seems they are ultimately to ratify or reject: the weight of Gen.l Washington as you justly observe is very great in America, but I hardly think it is sufficient to induce the people to pay money or part with power.

"The delegates from the Eastw.d are for a very strong government, & wish to prostrate all y.e State legislatures, & form a general system out of y.e whole; but I don't learn that the people are with them, on y.e contrary in Massachusetts they think that government too strong, & are about rebelling again, for the purpose of making it more democratical: In Connecticut they have rejected the requisition for y.e present year decidedly, & no Man there would be elected to the office of a constable if he was to declare that he meant to pay a copper towards the domestic debt:—R. Island has refused to send members—the cry there is for a good government after they have paid their debts in depreciated paper:—first demolish the Philistines (i. e. their creditors) then for *propiety*.

"N. Hampshire has not paid a shilling, since peace, & does not ever mean to pay on to all eternity:—if it was attempted to tax the people for y.e domestic debt 500 Shays would arise in a fortnight.—In N. York they pay well because they can do it by plundering N. Jersey & Connecticut.—Jersey will go great lengths from motives of revenge and Interest: Pensylvany will join provided you let the sessions of the Executive of America be fixed in Philad.a & give her other advantages in trade to compensate for the loss of State power. I shall make no observations on the Southern States, but I think they will be (perhaps from different motives) as little disposed to part with efficient power as any in the Union...."—William Grayson to James Monroe, New York, May 29, 1787. *Monroe MSS.*

Adjourned.

Wednesday May 30.

Roger Sherman (from Connecticut) took his seat.

The House went into Committee of the Whole on the State of the Union. Mr. Gorham was elected to the Chair by Ballot.

The propositions of Mr. Randolph which had been referred to the Coñittee being taken up. He moved on the suggestion of Mr. G. Morris, that the first of his propositions to wit "Resolved that the articles of Confederation ought to be so corrected & enlarged, as to accomplish the objects proposed by their institution; namely, common defence, security of liberty, and general welfare,—should be postponed, in order to consider the 3 following:

1. that a union of the States merely federal will not accomplish the objects proposed by the articles of Confederation, namely common defence, security of liberty, & genl. welfare.

2. that no treaty or treaties among the whole or part of the States, as individual Sovereignties, would be sufficient.

3. that a *national* Government ought to be established consisting of a *supreme* Legislative, Executive & Judiciary.

The motion for postponing was seconded by Mr. Govr. Morris and unanimously agreed to.

Some verbal criticisms were raised agst. the first proposition, and it was agreed on motion of Mr. Butler seconded by Mr. Randolph, to pass on to the third, which underwent a discussion, less however on its general merits than on the force and extent of the particular terms *national & supreme*.

Mr. Charles Pinkney wished to know of Mr. Randolph, whether he meant to abolish the State Governts. altogether. Mr. R. replied that he meant by

these general propositions merely to introduce the particular ones which explained the outlines of the system he had in view.

Mr. Butler said he had not made up his mind on the subject, and was open to the light which discussion might throw on it. After some general observations he concluded with saying that he had opposed the grant of powers to Congs. heretofore, because the whole power was vested in one body. The proposed distribution of the powers into different bodies changed the case, and would induce him to go great lengths.

Genl. Pinkney[35] expressed a doubt whether the act of Congs. recomending the Convention, or the Commissions of the Deputies to it, could authorize a discussion of a system founded on different principles from the federal Constitution.

[35] "Mr. Chs. Cotesworth Pinckney is a Gentleman of Family and fortune in his own State. He has received the advantage of a liberal education, and possesses a very extensive degree of legal knowledge. When warm in a debate he sometimes speaks well,—but he is generally considered an indifferent Orator. Mr. Pinckney was an Officer of high rank in the American Army, and served with great reputation through the War. He is now about 40 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 333.

Mr. Gerry[36] seemed to entertain the same doubt.

[36] "M. Gerry's character is marked for integrity and perseverance. He is a hesitating and laborious speaker;—possesses a great degree of confidence and goes extensively into all subjects that he speaks on, without respect to elegance or flower of diction. He is connected and sometimes clear in his arguments, conceives well, and cherishes as his first virtue, a love for his Country. Mr. Gerry is very much of a Gentleman in his principles and manners;—he has been engaged in the mercantile line and is a Man of property. He is about 37 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 325.

Mr. Govr. Morris explained the distinction between a *federal* and *national*, *supreme*, Govt.; the former being a mere compact resting on the good faith of the parties; the latter having a compleat and *compulsive* operation. He contended that in all Communities there must be one supreme power, and one only.

M^r^ Mason observed that the present confederation was not only deficient in not providing for coercion & punishment ag^st^ delinquent States; but argued very cogently that punishment could not in the nature of things be executed on the States collectively, and therefore that such a Gov^t^ was necessary as could directly operate on individuals, and would punish those only whose guilt required it.

M^r^ Sherman[37] who took his seat today, admitted that the Confederation had not given sufficient power to Cong^s^ and that additional powers were necessary; particularly that of raising money which he said would involve many other powers. He admitted also that the General & particular jurisdictions ought in no case to be concurrent. He seemed however not to be disposed to make too great inroads on the existing system; intimating as one reason, that it would be wrong to lose every amendment, by inserting such as would not be agreed to by the States.

[37] "M^r^ Sherman exhibits the oddest shaped character I ever remember to have met with. He is awkward, un-meaning, and unaccountably strange in his manner. But in his train of thinking there is something regular, deep, and comprehensive; yet the oddity of his address, the vulgarisms that accompany his public speaking, and that strange new England cant which runs through his public as well as his private speaking make everything that is connected with him grotesque and laughable;—and yet he deserves infinite praise,—no Man has a better Heart or a clearer Head. If he cannot embellish he can furnish thoughts that are wise and useful. He is an able politician and extremely artful in accomplishing any particular object;—it is remarked that he seldom fails. I am told he sits on the Bench in Connecticut, and is very correct in the discharge of his Judicial functions. In the early part of his life he was a Shoe-maker;—but despising the lowness of his condition, he turned Almanack maker, and so progressed upwards to a Judge. He has been several years a Member of Congress, and discharged the duties of his Office with honor and credit to himself, and advantage to the State he represented. He is about 60."—Pierce's Notes, *Am. Hist. Rev.*, iii., 326.

It was moved by M^r^ Read,[38] 2^ded^ by M^r^ Ch^s^ Cotesworth Pinkney, to postpone the 3^d^ proposition last offered by M^r^ Randolph viz that a national Government ought to be established consisting of a supreme Legislative Executive and Judiciary, in order to take up the following,—viz. "Resolved that in order to carry into execution the Design of the States in forming this Convention, and to accomplish the objects proposed by the Confederation a more effective Government consisting of a Legislative, Executive and

Judiciary, ought to be established." The motion to postpone for this purpose was lost:

Yeas Massachusetts, Connecticut, Delaware, S. Carolina—4. Nays. N. Y. Pennsylvania, Virginia, North Carolina—4.

[38] "M^r^ Read is a Lawyer and a Judge;—his legal abilities are said to be very great, but his powers of Oratory are fatiguing and tiresome to the last degree;—his voice is feeble and his articulation so bad that few can have patience to attend to him. He is a very good Man, and bears an amiable character with those who know him. Mr. Read is about 50, of a low stature, and a weak constitution."—Pierce's Notes, *Id.*, iii., 330.

On the question as moved by M^r^ Butler, on the third proposition it was resolved in Committee of whole that a national govern^t^ ought to be established consisting of a supreme Legislative Executive & Judiciary,—Mass^ts^ being ay.—Connect.—no. N. York divided (Col. Hamilton ay. M^r^ Yates no.) Pen^a^ ay. Delaware ay. Virg^a^ ay. N. C. ay. S. C. ay.

The following Resolution, being the 2^d^ of those proposed by M^r^ Randolph was taken up, viz.—"that the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases."

M^r^ Madison[39] observing that the words, "*or to the number of free inhabitants*," might occasion debates which would divert the Committee from the general question whether the principle of representation should be changed, moved that they might be struck out.

[39] "Mr. Madison is a character who has long been in public life; and what is very remarkable every Person seems to acknowledge his greatness. He blends together the profound politician, with the Scholar. In the management of every great question he evidently took the lead in the Convention, and tho' he cannot be called an Orator, he is a most agreeable, eloquent, and convincing Speaker. From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed Man of any point in debate. The affairs of the United States, he perhaps, has the most correct knowledge of, of any Man in the Union. He has been twice a Member of Congress, and was

always thought one of the ablest Members that ever sat in that Council. Mr. Maddison is about 37 years of age, a Gentleman of great modesty,—with a remarkable sweet temper. He is easy and unreserved among his acquaintance, and has a most agreeable style of conversation."—Pierce's Notes, *Am. Hist. Rev.*, iii., 331.

M[r] King observed that the quotas of contribution which would alone remain as the measure of representation, would not answer, because waving every other view of the matter, the revenue might hereafter be so collected by the General Gov[t] that the sums respectively drawn from the States would not appear, and would besides be continually varying.

M[r] Madison admitted the propriety of the observation, and that some better rule ought to be found.

Col. Hamilton moved to alter the resolution so as to read "that the rights of suffrage in the national Legislature ought to be proportioned to the number of free inhabitiants." M[r] Spaight 2[ded] the motion.

It was then moved that the Resolution be postponed, which was agreed to.

M[r] Randolph and M[r] Madison then moved the following resolution —"that the rights of suffrage in the national Legislature ought to be proportioned."

It was moved and 2[ded] to amend it by adding "and not according to the present system"—which was agreed to.

It was then moved & 2[ded] to alter the resolution so as to read "that the rights of suffrage in the national Legislature ought not to be according to the present system."

It was then moved & 2[ded] to postpone the Resolution moved by M[r] Randolph & M[r] Madison, which being agreed to:

M[r] Madison, moved, in order to get over the difficulties, the following resolution—"that the equality of suffrage established by the articles of Confederation ought not to prevail in the national Legislature, and "that an

equitable ratio of representation ought to be substituted." This was 2ded by Mr. Govr. Morris, and being generally relished, would have been agreed to; when,

Mr. Reed moved that the whole clause relating to the point of Representation be postponed; reminding the Come that the deputies from Delaware were restrained by their comission from assenting to any change of the rule of suffrage, and in case such a change should be fixed on, it might become their duty to retire from the Convention.

Mr. Govr. Morris observed that the valuable assistance of those members could not be lost without real concern, and that so early a proof of discord in the Convention as the secession of a State, would add much to the regret; that the change proposed was however so fundamental an article in a national Govt, that it could not be dispensed with.

Mr. Madison observed that whatever reason might have existed for the equality of suffrage when the Union was a federal one among sovereign States, it must cease when a National Governmt, should be put into the place. In the former case, the acts of Congs depended so much for their efficacy on the cooperation of the States, that these had a weight both within & without Congress, nearly in proportion to their extent and importance. In the latter case, as the acts of the Genl, Govt, would take effect without the intervention of the State legislatures, a vote from a small State wd, have the same efficacy & importance as a vote from a large one, and there was the same reason for different numbers of representatives from different States, as from Counties of different extents within particular States. He suggested as an expedient for at once taking the sense of the members on this point and saving the Delaware deputies from embarrassment, that the question should be taken in Committee, and the clause on report to the House, be postponed without a question there. This however did not appear to satisfy Mr. Read.

By several it was observed that no just construction of the Act of Delaware, could require or justify a secession of her deputies, even if the resolution were to be carried thro' the House as well as the Committee. It was finally agreed however that the clause should be postponed: it being

understood that in the event the proposed change of representation would certainly be agreed to, no objection or difficulty being started from any other quarter than from Delaware.

The motion of Mr. Read to postpone being agreed to,

The Committee then rose. The Chairman reported progress, and the House having resolved to resume the subject in Committee to-morrow,

Adjourned to 10 O Clock.

Thursday May 31[40]

[40] "This day the state of New Jersey was represented, so that there were now ten states in Convention."—Yates, *Secret Proceedings*, etc., 99. But in the *Journal of the Federal Convention (1819)*, as in Madison's account, New Jersey is entered as present May 25th. On May 30 two votes are recorded by Madison and in the *Journal* without New Jersey. It is probable that an error was made in the *Journal* and that Madison followed it.

William Pierce, from Georgia took his seat.[41]

[41] Rufus King kept a few notes of the proceedings of the convention from May 31st to August 8th. They are meagre, but corroborate Madison's report. See King's *Life and Correspondence of Rufus King*, i., 587.

Pierce also kept a few rough notes of the proceedings which were printed in the *Savannah Georgian*, April 19, 21, 22, 23, 24, 25, 26, and 28, 1828, and reprinted in *The American Historical Review*, iii., 317 *et seq.* They throw little additional light on the debates, but wherever they do are quoted here, as are King's.

In Committee of the whole on Mr. Randolph's propositions.

The 3d Resolution "that the national Legislature ought to consist of two branches" was agreed to without debate or dissent, except that of Pennsylvania, given probably from complaisance to Docr Franklin who was understood to be partial to a single House of Legislation.

Resol: 4. first clause, "that the members of the first branch of the National Legislature ought to be elected by the people of the several States," being taken up,

Mr Sherman opposed the election by the people, insisting that it ought to be by the State Legislatures. The people he said, immediately should have as little to do as may be about the Government. They want information and are constantly liable to be misled.

Mr. Gerry. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Masts. it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of Governmt. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamour in Masts. for the reduction of salaries and the attack made on that of the Govr. though secured by the spirit of the Constitution itself. He had he said been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levelling spirit.

Mr. Mason argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the Govt. It was, so to speak, to be our House of Commons—It ought to know & sympathize with every part of the community; and ought therefore to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it, which had in several instances particularly in Virga., different interests and views arising from difference of produce, of habits &c &c. He admitted that we had been too democratic but was afraid we sd. incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity & policy, considering that however affluent their circumstances, or elevated their situations, might be, the course of a few years, not only might but certainly would, distribute their posterity throughout the lowest classes of Society. Every selfish motive therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest orders of Citizens.

Mr. Wilson contended strenuously for drawing the most numerous branch of the Legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican Government this confidence was peculiarly essential. He also thought it wrong to increase

the weight of the State Legislatures by making them the electors of the national Legislature. All interference between the general and local Governm[ts] should be obviated as much as possible. On examination it would be found that the opposition of States to federal measures had proceeded much more from the officers of the States, than from the people at large.

M[r] Madison considered the popular election of one branch of the national Legislature as essential to every plan of free Government. He observed that in some of the States one branch of the Legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State Legislatures, the second branch elected by the first—the Executive by the second together with the first; and other appointments again made for subordinate purposes by the Executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers, too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature, and in the Executive & judiciary branches of the Government. He thought too that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the Legislatures.

M[r] Gerry did not like the election by the people. The maxims taken from the British Constitution were often fallacious when applied to our situation which was extremely different. Experience he said had shewn that the State legislatures drawn immediately from the people did not always possess their confidence. He had no objection however to an election by the people if it were so qualified that men of honor & character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number out of which the State legislatures should be bound to choose.[42]

[42] "Mr. Strong would agree to the principle, provided it would undergo a certain modification, but pointed out nothing."—Pierce's Notes, *Am. Hist. Rev.*,

iii., 318.

Mr. Butler thought an election by the people an impracticable mode.

On the question for an election of the first branch of the national Legislature, by the people,

Masts. ay. Connect. divd. N. York ay. N. Jersey no. Penna. ay. Delawr. divd. Va. ay. N. C. ay. S. C. no. Georga. ay.

The remaiñg Clauses of Resolution 4th relating to the qualifications of members of the National Legislature, being pospd nem. con., as entering too much into detail for general propositions.

The Committee proceeded to Resolution 5. "that the second, (or senatorial) branch of the National Legislature ought to be chosen by the first branch out of persons nominated by the State Legislatures."

Mr. Spaight contended that the 2d branch ought to be chosen by the State Legislatures and moved an amendment to that effect.[43]

[43] "Mr. King observed that the Question called for was premature, and out of order,—that unless we go on regularly from one principle to the other we shall draw out our proceedings to an endless length."—Pierce's Notes, *Am. Hist. Rev.*, iii., 318.

Mr. Butler apprehended that the taking so many powers out of the hands of the States as was proposed, tended to destroy all that balance and security of interests among the States which it was necessary to preserve; and called on Mr. Randolph the mover of the propositions, to explain the extent of his ideas, and particularly the number of members he meant to assign to this second branch.

Mr. Randf observed that he had at the time of offering his propositions stated his ideas as far as the nature of general propositions required; that details made no part of the plan, and could not perhaps with propriety have been introduced. If he was to give an opinion as to the number of the

second branch, he should say that it ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable. He observed that the general object was to provide a cure for the evils under which the U. S. laboured; that in tracing these evils to their origin every man had found it in the turbulance and follies of democracy: that some check therefore was to be sought for agst this tendency of our Governments: and that a good Senate seemed most likely to answer the purpose.[44]

[44] "Butler said that until the number of the Senate could be known it would be impossible for him to give a vote on it."—Pierce's Notes, *Am. Hist. Rev.*, iii., 318.

Mr. King reminded the Committee that the choice of the second branch as proposed (by Mr. Spaight) viz. by the State Legislatures would be impracticable, unless it was to be very numerous, or *the idea of proportion* among the States was to be disregarded. According to this *idea*, there must be 80 or 100 members to entitle Delaware to the choice of one of them.—Mr. Spaight withdrew his motion.

Mr. Wilson opposed both a nomination by the State Legislatures, and an election by the first branch of the national Legislature, because the second branch of the latter, ought to be independent of both. He thought both branches of the National Legislature ought to be chosen by the people, but was not prepared with a specific proposition. He suggested the mode of chusing the Senate of N. York to wit of uniting several election districts for one branch, in chusing members for the other branch, as a good model.

Mr. Madison observed that such a mode would destroy the influence of the smaller States associated with larger ones in the same district; as the latter would chuse from within themselves, altho' better men might be found in the former. The election of Senators in Virga where large & small counties were often formed into one district for the purpose, had illustrated this consequence. Local partiality, would often prefer a resident within the County or State, to a candidate of superior merit residing out of it. Less merit also in a resident would be more known throughout his own State.[45]

[45] "M^r^ Butler moved to have the proposition relating to the first branch postponed, in order to take up another,—which was that the second branch of the Legislature consist of blank.

"M^r^ King objected to the postponement for the reasons which he had offered before."—Pierce's Notes, *Id.*, iii., 319.

M^r^ Sherman favored an election of one member by each of the State Legislatures.[46]

[46] According to Pierce, Mason spoke after Sherman, and Pinckney's motion is given more fully by Pierce than by Madison.

"M^r^ Mason was of opinion that it would be highly improper to draw the Senate out of the first branch; that it would occasion vacancies which would cost much time, trouble, and expense to have filled up,—besides which it would make the members too dependent on the first branch.

"M^r^ Ch^s^ Pinckney said he meant to propose to divide the Continent into four Divisions, out of which a certain number of persons sh^d^ be nominated, and out of that nomination to appoint a senate."—Pierce's Notes, *Amer. Hist. Rev.*, iii., 319.

M^r^ Pinkney moved to strike out the "nomination by the State Legislatures;" on this question.

[47]Mass^ts^ no. Con^t^ no. N. Y. no. N. J. no. Pen^a^ no. Del. div^d^ V^a^ no. N. C. no. S. C. no. Georg no.

[47] This question is omitted in the printed Journal, & the votes applied to the succeeding one, instead of the votes as here stated.—Madison's Note.

On the whole question for electing by the first branch out of nominations by the State Legislatures, Mass. ay. Con^t^ no. N. Y. no. N. Jersey, no. Pen^a^ no. Del. no. Virg^a^ ay. N. C. no. S. C. ay. G^a^ no.

So the clause was disagreed to & a chasm left in this part of the plan.

The sixth Resolution stating the cases in which the national Legislature ought to legislate was next taken into discussion: On the question whether each branch sh[d] originate laws, there was an unanimous affirmative without debate. On the question for transferring all the Legislative power of the existing Cong[s] to this Assembly, there was also a silent affirmative nem. con.

On the proposition for giving "Legislative power in all cases to which the State Legislatures were individually incompetent,"

M[r] Pinkney & M[r] Rutledge[48] objected to the vagueness of the term *incompetent*, and said they could not well decide how to vote until they should see an exact enumeration of the powers comprehended by this definition.[49]

[48] "Mr. Rutledge is one of those characters who was highly mounted at the commencement of the late revolution;—his reputation in the first Congress gave him a distinguished rank among the American Worthies. He was bred to the Law, and now acts as one of the Chancellors of South Carolina. This Gentleman is much famed in his own State as an Orator, but in my opinion he is too rapid in his public speaking to be denominated an agreeable Orator. He is undobotedly a man of abilities, and a Gentleman of distinction and fortune. Mr. Rutledge was once Governor of South Carolina. He is about 48 years of age."—Pierce's Notes, *Amer. Hist. Rev.*, iii., 333.

[49] According to Pierce:

"M[r] Sherman was of opinion that it would be too indefinitely expressed,—and yet it would be hard to define all the powers by detail. It appeared to him that it would be improper for the national Legislature to negative all the Laws that were connected with the States themselves.

"M[r] Madison said it was necessary to adopt some general principles on which we should act,—that we were wandering from one thing to another without seeming to be settled in any one principle.

"M[r] Wythe observed that it would be right to establish general principles before we go into detail, or very shortly Gentlemen would find themselves in confusion, and would be obliged to have recurrence to the point from whence they sat out.

"M[r] King was of opinion that the principles ought first to be established before we proceed to the framing of the Act. He apprehends that the principles

only go so far as to embrace all the power that is given up by the people to the Legislature, and to the federal Government, but no farther.

"M^r^ Randolph was of opinion that it would be impossible to define the powers and the length to which the federal Legislature ought to extend just at this time.

"M^r^ Wilson observed that it would be impossible to enumerate the powers which the federal Legislature ought to have."—Pierce's Notes, *Id.*, iii., 319, 320.

M^r^ Butler repeated his fears that we were running into an extreme in taking away the powers of the States, and called on Mr. Randolph for the extent of his meaning.

M^r^ Randolph disclaimed any intention to give indefinite powers to the national Legislature, declaring that he was entirely opposed to such an inroad on the State jurisdictions, and that he did not think any considerations whatever could ever change his determination. His opinion was fixed on this point.

M^r^ Madison said that he had brought with him into the Convention a strong bias in favor of an enumeration and definition of the powers necessary to be exercised by the national Legislature; but had also brought doubts concerning its practicability. His wishes remained unaltered; but his doubts had become stronger. What his opinion might ultimately be he could not yet tell. But he should shrink from nothing which should be found essential to such a form of Gov^[t.] as would provide for the safety, liberty and happiness of the community. This being the end of all our deliberations, all the necessary means for attaining it must, however reluctantly, be submitted to.

On the question for giving powers, in cases to which the States are not competent—Mass^ts^ ay. Con^t^ div^d^. (Sherman no. Elseworth ay.) N. Y. ay. N. J. ay. P^a^ ay. Del. ay. V^a^ ay. N. C. ay. S. Carolina ay. Georg^a^ ay.

The other clauses giving powers necessary to preserve harmony among the States to negative all State laws contravening in the opinion of the Nat. Leg. the articles of union, down to the last clause, (the words "or any treaties subsisting under the authority of the Union," being added after the

words "contravening &c. the articles of the Union," on motion of Dr. Franklin) were agreed to with[t] debate or dissent.

The last clause of Resolution 6, authorizing an exertion of the force of the whole ag[st] a delinquent State came next into consideration.

Mr. Madison, observed that the more he reflected on the use of force, the more he doubted, the practicability, the justice and the efficacy of it when applied to people collectively and not individually.—A union of the States containing such an ingredient seemed to provide for its own destruction. The use of force ag[st] a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this resource unnecessary, and moved that the clause be postponed. This motion was agreed to, nem. con.

The Committee then rose & the House

Adjourned.[50]

[50] "When the Convention first opened at Philadelphia, there were a number of propositions brought forward as great leading principles for the new Government to be established for the United States. A copy of these propositions was given to each Member with an injunction to keep everything a profound secret. One morning, by accident, one of the Members dropt his copy of the propositions, which being luckily picked up by General Mifflin was presented to General Washington, our President, who put it in his pocket. After the debates of the Day were over, and the question for adjournment was called for, the General arose from his seat, and previous to his putting the question addressed the Convention in the following manner,—

"'Gentlemen

"'I am sorry to find that some one Member of this Body, has been so neglectful of the secrets of the Convention as to drop in the State House, a copy of their proceedings, which by accident was picked up and delivered to me this Morning. I must entreat Gentlemen to be more careful, lest our transactions get into the News Papers, and disturb the public repose by premature speculations. I know not whose Paper it is, but there it is [throwing it down on the table,] let him who owns it take it.' At the same time he bowed, picked up his Hat, and quitted the room with a dignity so severe that every Person seemed alarmed; for my part I was extremely so, for putting my hand in my pocket I missed my copy

of the same Paper, but advancing up to the Table my fears soon dissipated; I found it to be in the hand writing of another Person. When I went to my lodgings at the Indian Queen, I found my copy in a coat pocket which I had pulled off that Morning. It is something remarkable that no Person ever owned the Paper."—Pierce's Notes, *Am. Hist. Rev.*, iii., 324.

Friday June 1st 1787

William Houston from Georgia took his seat.

The Committee of the whole proceeded to Resolution 7. "that a national Executive be instituted, to be chosen by the national Legislature for the term of —— years &c to be ineligible thereafter, to possess the Executive powers of Congress &c."

Mr. Pinkney was for a vigorous Executive but was afraid the Executive powers of the existing Congress might extend to peace & war &c which would render the Executive a monarchy, of the worst kind, to wit an elective one.

Mr. Wilson moved that the Executive consist of a single person. Mr. C. Pinkney seconded the motion, so as to read "that a National Ex. to consist of a single person, be instituted."

A considerable pause ensuing and the Chairman asking if he should put the question, Docr. Franklin[51] observed that it was a point of great importance and wished that the gentlemen would deliver their sentiments on it before the question was put.

[51] "Dr. Franklin is well known to be the greatest phylosopher of the present age;—all the operations of nature he seems to understand,—the very heavens obey him, and the Clouds yield up their Lightning to be imprisoned in his rod. But what claim he has to the politician, posterity must determine. It is certain that he does not shine much in public Council,—he is no Speaker, nor does he seem to let politics engage his attention. He is, however, a most extraordinary Man, and he tells a story in a style more engaging than anything I ever heard. Let his Biographer finish his character. He is 82 years old, and possesses an activity of mind equal to a youth of 25 years of age."—Pierce's Notes, *Amer. Hist. Rev.*, iii., 328.

Mr. Rutlidge animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded by having frankly disclosed their opinions from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the Executive power in a single person, tho' he was not for giving him the power of war and peace. A single man would feel the greatest responsibility and administer the public affairs best.

Mr. Sherman said he considered the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect, that the person or persons ought to be appointed by and accountable to the Legislature only, which was the depository of the supreme will of the Society. As they were the best judges of the business which ought to be done by the Executive department, and consequently of the number necessary from time to time for doing it, he wished the number might not be fixed, but that the legislature should be at liberty to appoint one or more as experience might dictate.

Mr. Wilson preferred a single magistrate, as giving most energy dispatch and responsibility to the office. He did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of a Legislative nature. Among others that of war & peace &c. The only powers he considered strictly Executive were those of executing the laws, and appointing officers, not appertaining to and appointed by the Legislature.[52]

[52] According to King, Madison followed Wilson: "Madison agreed with Wilson in the Definition of Executive power. *Ex vi termini.* Executive power does not include the Power of War and Peace. Executive Power shd. be limited and defined. If large, we shall have the Evils of Elective Monarchies. Perhaps the best plan will be a single Executive of long duration, with a Council and with Liberty to dissent on his personal Responsibility."—King's *Life and Correspondence of Rufus King*, i., 588.

According to Pierce:

"M^r. Madison was of opinion that an Executive formed of one Man would answer the purpose when aided by a Council, who should have the right to advise and record their proceedings, but not to control his authority."—Pierce's Notes, *Am. Hist. Rev.*, iii., 320.

M^r. Gerry favored the policy of annexing a Council to the Executive in order to give weight & inspire confidence.[53]

[53] King gives Gerry's remarks: "*Gerry.* I am in favor of a Council to advise the Executive: they will be organs of information respecting Persons qualified for various offices. Their opinions may be recorded, so as to be liable to be called to account & impeached—in this way, their Responsibility will be certain, and for misconduct their Punishment sure."

Dickinson followed Gerry: "*Dickinson.* A limited yet vigorous Executive is not republican, but peculiar to monarchy—the royal Executive has vigour, not only by power, but by popular Attachment & Report—an Equivalent to popular Attachment may be derived from the Veto on the Legislative acts. We cannot have a limited monarchy—our condition does not permit it. Republics are in the beginning and for a time industrious, but they finally destroy themselves because they are badly constituted. I dread the consolidation of the States, & hope for a good national Govt. from the present Division of the States with a feeble Executive.

"We are to have a Legislature of two branches, or two Legislatures, as the sovereign of the nation—this will work a change unless you provide that the judiciary shall aid and correct the Executive. The first Branch of the Legislature, the H. of Representatives, must be on another plan. The second Branch or Senate may be on the present scheme of representing *the States*—the Representatives to be apportioned according to the Quotas of the States paid into the general Treasury. The Executive to be removed from office by the national Legislature, on the Petition of seven States."—King's *Life and Correspondence of Rufus King*, i., 588 *et seq.*

Mr. Randolph strenuously opposed a unity in the Executive magistracy. He regarded it as the fœtus of monarchy. We had he said no motive to be governed by the British Govenmt as our prototype. He did not mean however to throw censure on that Excellent fabric. If we were in a situation to copy it he did not know that he should be opposed to it; but the fixt genius of the people of America required a different form of Government. He could not see why the great requisites for the Executive department, vigor, dispatch & responsibility could not be found in three men, as well as in one man. The Executive ought to be independent. It ought therefore in order to support its independence to consist of more than one.

Mr. Wilson said that unity in the Executive instead of being the fetus of monarchy would be the best safeguard against tyranny. He repeated that he was not governed by the British Model which was inapplicable to the situation of this Country; the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it.

Mr. Wilson's motion for a single magistrate was postponed by common consent, the Committee seeming unprepared for any decision on it; and the first part of the clause agreed to, viz—"that a National Executive be instituted."[54]

[54] Williamson followed Wilson, according to King: "*Williamson*—There is no true difference between an Executive composed of a single person, with a Council, and an Executive composed of three or more persons."—King's *Life and Correspondence of Rufus King*, i., 590.

Mr. Madison thought it would be proper, before a choice shd be made between a unity and a plurality in the Executive, to fix the extent of the Executive authority; that as certain powers were in their nature Executive, and must be given to that departmt whether administered by one or more persons, a definition of their extent would assist the judgment in determining how far they might be safely entrusted to a single officer. He accordingly moved that so much of the clause before the Committee as related to the powers of the Executive shd be struck out & that after the words "that a national Executive ought to be instituted" there be inserted the

words following viz. "with power to carry into effect the national laws, to appoint to offices in cases not otherwise provided for, and to execute such other powers "not Legislative nor Judiciary in their nature," as may from time to time be delegated by the national Legislature." The words "not legislative nor judiciary in their nature" were added to the proposed amendment, in consequence of a suggestion by Gen[l] Pinkney that improper powers might otherwise be delegated.

M[r] Wilson seconded this motion.

M[r] Pinkney moved to amend the amendment by striking out the last member of it; viz: "and to execute such other powers not Legislative nor Judiciary in their nature as may from time to time be delegated." He said they were unnecessary, the object of them being included in the "power to carry into effect the national laws."

M[r] Randolph seconded the motion.

M[r] Madison did not know that the words were absolutely necessary, or even the preceding words, "to appoint to offices &c. the whole being perhaps included in the first member of the proposition. He did not however see any inconveniency in retaining them, and cases might happen in which they might serve to prevent doubts and misconstructions.

In consequence of the motion of M[r] Pinkney, the question on M[r] Madison's motion was divided; and the words objected to by M[r] Pinkney struck out; by the votes of Connecticut, N. Y., N. J., Pen[a], Del., N. C., & Geo. ag[st] Mass., Virg[a] & S. Carolina the preceding part of the motion being first agreed to; Connecticut divided all the other States in the affirmative.

The next clause in Resolution 7, relating to the mode of appointing, & the duration of, the Executive being under consideration,

M[r] Wilson said he was almost unwilling to declare the mode which he wished to take place, being apprehensive that it might appear chimerical. He would say however at least that in theory he was for an election by the people. Experience, particularly in N. York & Mass[ts], shewed that an election of the first magistrate by the people at large, was both a convenient

& successful mode. The objects of choice in such cases must be persons whose merits have general notoriety.

M[r] Sherman was for the appointment by the Legislature, and for making him absolutely dependent on that body, as it was the will of that which was to be executed. An independence of the Executive on the supreme Legislature, was in his opinion the very essence of tyranny if there was any such thing.

M[r] Wilson moves that the blank for the term of duration should be filled with three years, observing at the same time that he preferred this short period, on the supposition that a re-eligibility would be provided for.

M[r] Pinkney moves for seven years.

M[r] Sherman was for three years, and ag[st] the doctrine of rotation as throwing out of office the men best qualified to execute its duties.

M[r] Mason was for seven years at least, and for prohibiting a re-eligibility as the best expedient both for preventing the effect of a false complaisance on the side of the Legislature towards unfit characters; and a temptation on the side of the Executive to intrigue with the Legislature for a re-appointment.

M[r] Bedford[55] was strongly opposed to so long a term as seven years. He begged the Committee to consider what the situation of the Country would be, in case the first magistrate should be saddled on it for such a period and it should be found on trial that he did not possess the qualifications ascribed to him, or should lose them after his appointment. An impeachment he said would be no cure for this evil, as an impeachment would reach misfeasance only, not incapacity. He was for a triennial election, and for an ineligibility after a period of nine years.

[55] "Mr. Bedford was educated for the Bar, and in his profession I am told, has merit. He is a bold and nervous Speaker, and has a very commanding and striking manner;—but he is warm and impetuous in his temper, and precipitate in his judgment. Mr. Bedford is about 32 years old, and very corpulent."—Pierce's Notes, *Am. Hist. Rev.*, iii., 330.

On the question for seven years,

Mass^{ts} divid^{d}. Con^{t} no. N. Y. ay. N. J. ay. Pen^{a} ay. Del. ay. Virg^{a} ay. N. C. no. S. C. no. Geor. no.

There being 5 ays, 4 noes, & 1 div^{d}, a question was asked whether a majority had voted in the Affirmative? The President decided that it was an affirmative vote.

The *mode of appointing* the Executive was the next question.

M^{r} Wilson renewed his declarations in favor of an appointment by the people. He wished to derive not only both branches of the Legislature from the people, without the intervention of the State Legislatures but the Executive also; in order to make them as independent as possible of each other, as well as of the States;

Col. Mason favors the idea, but thinks it impracticable. He wishes however that M^{r} Wilson might have time to digest it into his own form.— the clause, "to be chosen by the National Legislature"—was accordingly postponed.—

M^{r} Rutlidge suggests an election of the Executive by the second branch only of the national Legislature.

The Committee then rose and the House

Adjourned.

Saturday June 2D In Committee of whole

William Saml. Johnson from Connecticut, Daniel of St. Thomas Jenifer, from Maryd, & John Lansing Jr. from N. York, took their seats.

It was movd & 2ded to postpone ye Resol: of Mr. Randolph respecting the Executive, in order to take up the 2d branch of the Legislature; which being negatived by Mas: Con: Del: Virg: N. C. S. C. Geo: agst N. Y. Penna Maryd. The mode of appointing the Executive was resumed.

Mr. Wilson made the following motion, to be substituted for the mode proposed by Mr. Randolph's resolution, "that the Executive Magistracy shall be elected in the following manner: That the States be divided into —— districts: & that the persons qualified to vote in each district for members of the first branch of the national Legislature elect —— members for their respective districts to be electors of the Executive Magistracy, that the said Electors of the Executive magistracy meet at —— and they or any —— of them so met shall proceed to elect by ballot, but not out of their own body —— person— in whom the Executive authority of the national Government shall be vested."

Mr. Wilson repeated his arguments in favor of an election without the intervention of the States. He supposed too that this mode would produce more confidence among the people in the first magistrate, than an election by the national Legislature.

Mr. Gerry, opposed the election by the National legislature. There would be a constant intrigue kept up for the appointment. The Legislature & the candidates wd bargain & play into one another's hands, votes would be given by the former under promises or expectations from the latter, of recompensing them by services to members of the Legislature or to their friends. He liked the principle of Mr. Wilson's motion, but fears it would alarm & give a handle to the State partizans, as tending to supersede altogether the State authorities. He thought the Community not yet ripe for

stripping the States of their powers, even such as might not be requisite for local purposes. He was for waiting till the people should feel more the necessity of it. He seemed to prefer the taking the suffrages of the States, instead of Electors, or letting the Legislatures nominate, and the electors appoint. He was not clear that the people ought to act directly even in the choice of electors, being too little informed of personal characters in large districts, and liable to deceptions.

M[r] Williamson[56] could see no advantage in the introduction of Electors chosen by the people who would stand in the same relation to them as the State Legislatures, whilst the expedient would be attended with great trouble and expence.

[56] "Mr. Williamson is a Gentleman of education and talents. He enters freely into public debate from his close attention to most subjects, but he is no Orator. There is a great degree of good humour and pleasantry in his character; and in his manners there is a strong trait of the Gentleman. He is about 48 years of age."—Pierce's Notes, *Amer. Hist. Rev.*, iii., 332.

On the question for agreeing to M[r] Wilson's substitute, it was negatived: Mass[ts] no. Con[t] no. N. Y.[57] no. P[a] ay. Del. no. Mar[d] ay. Virg[a] no. N. C. no. S. C. no. Geo[a] no.

[57] New York, in the printed Journal, divided.—Madison's Note.

On the question for electing the Executive by the national Legislature for the term of seven years, it was agreed to, Mass[ts] ay. Con[t] ay. N. Y. ay. Pen[a] no. Del. ay. Mary[d] no. V[a] ay. N. C. ay. S. C. ay. Geo. ay.

Doc[r] Franklin moved that what related to the compensation for the services of the Executive be postponed, in order to substitute—"whose necessary expences shall be defrayed, but who shall receive no salary, stipend fee or reward whatsoever for their services." He said that being very sensible of the effect of age on his memory, he had been unwilling to trust to that for the observations which seemed to support his motion and had reduced them to writing, that he might with the permission of the

Committee read instead of speaking them. Mr. Wilson made an offer to read the paper, which was accepted. The following is a literal copy of the paper:

Sir,

It is with reluctance that I rise to express a disapprobation of any one article of the plan for which we are so much obliged to the honorable gentleman who laid it before us. From its first reading I have borne a good will to it, and in general wished it success. In this particular of salaries to the Executive branch I happen to differ; and as my opinion may appear new and chimerical, it is only from a persuasion that it is right, and from a sense of duty that I hazard it. The Committee will judge of my reasons when they have heard them, and their judgment may possibly change mine.—I think I see inconveniences in the appointment of salaries; I see none in refusing them, but on the contrary, great advantages.

Sir, there are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power, and the love of money. Separately each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men, a post of *honour* that shall be at the same time a place of *profit*, and they will move heaven and earth to obtain it. The vast number of such places it is that renders the British Government so tempestuous. The struggles for them are the true sources of all those factions which are perpetually dividing the Nation, distracting its Councils, hurrying sometimes into fruitless & mischievous wars, and often compelling a submission to dishonorable terms of peace.

And of what kind are the men that will strive for this profitable pre-eminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your Government and be your rulers.—And these too will be mistaken in the expected

happiness of their situation: For their vanquished competitors of the same spirit, and from the same motives will perpetually be endeavouring to distress their administration, thwart their measures, and render them odious to the people.

Besides these evils, Sir, tho' we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance. Reasons will never be wanting for proposed augmentations. And there will always be a party for giving more to the rulers, that the rulers may be able in return to give more to them. Hence as all history informs us, there has been in every State & Kingdom a constant kind of warfare between the Governing & Governed; the one striving to obtain more for its support, and the other to pay less. And this has alone occasioned great convulsions, actual civil wars, ending either in dethroning of the Princes, or enslaving of the people. Generally indeed the ruling power carries its point, the revenues of princes constantly increasing, and we see that they are never satisfied, but always in want of more. The more the people are discontented with the oppression of taxes; the greater need the prince has of money to distribute among his partizans and pay the troops that are to suppress all resistance, and enable him to plunder at pleasure. There is scarce a king in an hundred who would not, if he could, follow the example of Pharoah, get first all the people's money, then all their lands, and then make them and their children servants for ever. It will be said, that we don't propose to establish Kings. I know it. But there is a natural inclination in mankind to Kingly Government. It sometimes relieves them from Aristocratic domination. They had rather have one tyrant than five hundred. It gives more of the appearance of equality among Citizens, and that they like. I am apprehensive therefore, perhaps too apprehensive, that the Government of these States, may in future times, end in a Monarchy. But this Catastrophe I think may be long delayed, if in our proposed System we do not sow the seeds of contention, faction & tumult, by making our posts of honor, places of profit. If we do, I fear that tho' we do employ at first a number, and not a single person, the number will in time be set aside, it will only nourish the fœtus of a King, as the honorable

gentleman from Virginia very aptly expressed it, and a King will the sooner be set over us.

It may be imagined by some that this is an Utopian Idea, and that we can never find men to serve us in the Executive department, without paying them well for their services. I conceive this to be a mistake. Some existing facts present themselves to me, which incline me to a contrary opinion. The high Sheriff of a County in England is an honorable office, but it is not a profitable one. It is rather expensive and therefore not sought for. But yet, it is executed and well executed, and usually by some of the principal Gentlemen of the County. In France, the office of Counsellor, or Member of their Judiciary Parliaments is more honorable. It is therefore purchased at a high price: There are indeed fees on the law proceedings, which are divided among them, but these fees do not amount to more than three Per Cent on the sum paid for the place. Therefore as legal interest is there at five PerC$^{t.}$ they in fact pay two PerC$^{t.}$ for being allowed to do the Judiciary business of the Nation, which is at the same time entirely exempt from the burden of paying them any salaries for their services. I do not however mean to recommend this as an eligible mode for our Judiciary department. I only bring the instance to shew that the pleasure of doing good & serving their Country and the respect such conduct entitles them to, are sufficient motives with some minds to give up a great portion of their time to the Public, without the mean inducement of pecuniary satisfaction.

Another instance is that of a respectable Society who have made the experiment, and practised it with success more than one hundred years. I mean the Quakers. It is an established rule with them, that they are not to go to law; but in their controversies they must apply to their monthly, quarterly and yearly meetings. Committees of these sit with patience to hear the parties, and spend much time in composing their differences. In doing this, they are supported by a sense of duty, and the respect paid to usefulness. It is honorable to be so employed, but it is never made profitable by salaries, fees or perquisites. And indeed in all cases of Public service the less the profit the greater the honor.

To bring the matter nearer home, have we not seen, the great and most important of our offices, that of General of our armies executed for eight years together without the smallest salary, by a Patriot whom I will not now offend by any other praise; and this through fatigues and distresses in common with the other brave men his military friends & companions, and the constant anxieties peculiar to his station? And shall we doubt finding three or four men in all the U. States, with public spirit enough to bear sitting in peaceful Council for perhaps an equal term, merely to preside over our civil concerns, and see that our laws are duly executed. Sir, I have a better opinion of our Country. I think we shall never be without a sufficient number of wise and good men to undertake and execute well and faithfully the office in question.

Sir. The saving of the salaries that may at first be proposed is not an object with me. The subsequent mischiefs of proposing them are what I apprehend. And therefore it is, that I move the amendment. If it is not seconded or accepted I must be contented with the satisfaction of having delivered my opinion frankly and done my duty.

The motion was seconded by Col. Hamilton, with the view he said merely of bringing so respectable a proposition before the Committee, and which was besides enforced by arguments that had a certain degree of weight. No debate ensued, and the proposition was postponed for the consideration of the members. It was treated with great respect, but rather for the author of it, than from any apparent conviction of its expediency or practicability.

Mr. Dickinson moved,[58] "that the Executive be made removable by the National Legislature on the request of a majority of the Legislatures of individual States." It was necessary he said to place the power of removing somewhere. He did not like the plan of impeaching the Great officers of State. He did not know how provision could be made for removal of them in a better mode than that which he had proposed. He had no idea of abolishing the State Governments as some gentlemen seemed inclined to do. The happiness of this Country in his opinion required considerable powers to be left in the hands of the States.

[58] "Mr. Dickinson has been famed through all America for his Farmers Letters; he is a Scholar, and said to be a Man of very extensive information. When I saw him in the Convention I was induced to pay the greatest attention to him whenever he spoke. I had often heard that he was a great Orator, but I found him an indifferent Speaker. With an affected air of wisdom he labors to produce a trifle,—his language is irregular and incorrect,—his flourishes, (for he sometimes attempts them,) are like expiring flames, they just shew themselves and go out;—no traces of them are left on the mind to chear or animate it. He is, however, a good writer and will be ever considered one of the most important characters in the United States. He is about 55 years old, and was bred a Quaker."—Pierce's Notes, *Am. Hist. Rev.*, iii., 329.

M^r^ Bedford seconded the motion.

M^r^ Sherman contended that the national Legislature should have power to remove the Executive at pleasure.

M^r^ Mason. Some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen. He opposed decidedly the making the Executive the mere creature of the Legislature as a violation of the fundamental principle of good Government.

M^r^ Madison & M^r^ Wilson observed that it would leave an equality of agency in the small with the great States; that it would enable a minority of the people to prevent y^e^ removal of an officer who had rendered himself justly criminal in the eyes of a majority; that it would open a door for intrigues ag^st^ him in States where his administration tho' just might be unpopular, and might tempt him to pay court to particular States whose leading partizans he might fear, or wish to engage as his partizans. They both thought it bad policy to introduce such a mixture of the State authorities, where their agency could be otherwise supplied.

M^r^ Dickinson considered the business as so important that no man ought to be silent or reserved. He went into a discourse of some length, the sum of which was, that the Legislative, Executive, & Judiciary departments ought to be made as independ^t^ as possible; but that such an Executive as some seemed to have in contemplation was not consistent with a republic: that a firm Executive could only exist in a limited monarchy. In the British Gov^t^

itself the weight of the Executive arises from the attachments which the Crown draws to itself, & not merely from the force of its prerogatives. In place of these attachments we must look out for something else. One source of stability is the double branch of the Legislature. The division of the Country into distinct States formed the other principal source of stability. This division ought therefore to be maintained, and considerable powers to be left with the States. This was the ground of his consolation for the future fate of his Country. Without this, and in case of a consolidation of the States into one great Republic, we might read its fate in the history of smaller ones. A limited Monarchy he considered as *one* of the best Governments in the world. It was not *certain* that the same blessings were derivable from any other form. It was certain that equal blessings had never yet been derived from any of the republican form. A limited Monarchy however was out of the question. The spirit of the times—the state of our affairs forbade the experiment, if it were desireable. Was it possible moreover in the nature of things to introduce it even if these obstacles were less insuperable. A House of Nobles was essential to such a Gov[t]. could these be created by a breath, or by a stroke of the pen? No. They were the growth of ages, and could only arise under a complication of circumstances none of which existed in this Country. But though a form the most perfect *perhaps* in itself be unattainable, we must not despair. If antient republics have been found to flourish for a moment only & then vanish for ever, it only proves that they were badly constituted; and that we ought to seek for every remedy for their diseases. One of these remedies he conceived to be the accidental lucky division of this Country into distinct States; a division which some seemed desirous to abolish altogether.

As to the point of representation in the national Legislature as it might affect States of different sizes, he said it must probably end in mutual concession. He hoped that each State would retain an equal voice at least in one branch of the National Legislature, and supposed the sums paid within each State would form a better ratio for the other branch than either the number of inhabitants or the quantum of property.[59]

[59] According to Pierce: "M[r]. Madison said it was far from being his wish that every executive Officer should remain in Office, without being amenable to some Body for his conduct."—Pierce's Notes, *Am. Hist. Rev.*, iii., 321.

A motion being made to strike out, "on request by a majority of the Legislatures of the individual States," and rejected, Connecticut, S. Carol: & Geo. being ay, the rest no: the question on M^r^ Dickinson's motion for making Executive removable by Nat^l^ Legislature at request of majority of State Legislatures was also rejected all the States being in the negative Except Delaware which gave an affirmative vote.

The Question for making y^e^ Executive ineligible after seven years, was next taken and agreed to: Mass^ts^ ay. Con^t^ no. N. Y. ay. P^a^ div^d^. Del. ay. Mary^d^ ay. V^a^ ay. N. C. ay. S. C. ay. Geo. no.[60]

[60] In printed Journal Geo. ay.—Madison's Note.

M^r^ Williamson 2^ded^ by M^r^ Davie[61] moved to add to the last clause, the words—"and to be removable on impeachment & conviction of mal-practice or neglect of duty"—which was agreed to.

[61] "Mr. Davey is a Lawyer of some eminence in his State. He is said to have a good classical education, and is a Gentleman of considerable literary talents. He was silent in the Convention, but his opinion was always respected. Mr. Davy is about 30 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 332.

M^r^ Rutlidge & M^r^ C. Pinkney moved that the blank for the n^o^ of persons in the Executive be filled with the words "one person." He supposed the reasons to be so obvious & conclusive in favor of one that no member would oppose the motion.

M^r^ Randolph opposed it with great earnestness, declaring that he should not do justice to the Country which sent him if he were silently to suffer the establishm^t^ of a Unity in the Executive department. He felt an opposition to it which he believed he should continue to feel as long as he lived. He urged 1. that the permanent temper of the people was adverse to the very semblance of Monarchy. 2. that a unity was unnecessary a plurality being equally competent to all the objects of the department. 3. that the necessary confidence would never be reposed in a single Magistrate. 4. that the

appointments would generally be in favor of some inhabitant near the center of the Community, and consequently the remote parts would not be on an equal footing. He was in favor of three members of the Executive to be drawn from different portions of the country.

M[r]. Butler contended strongly for a single magistrate as most likely to answer the purpose of the remote parts. If one man should be appointed he would be responsible to the whole, and would be impartial to its interests. If three or more should be taken from as many districts, there would be a constant struggle for local advantages. In Military matters this would be particularly mischievous. He said his opinion on this point had been formed under the opportunity he had had of seeing the manner in which a plurality of military heads distracted Holland when threatened with invasion by the imperial troops. One man was for directing the force to the defence of this part, another to that part of the Country, just as he happened to be swayed by prejudice or interest.

The motion was then postp[d], the Committee rose & the House Adj[d].

Monday June 4. In Committee of the Whole

The Question was resumed on motion of Mr. Pinkney, 2ded by Mr. Wilson, "shall the blank for the number of the Executive be filled with a single person?"

Mr. Wilson was in favor of the motion. It had been opposed by the gentleman from Virga. (Mr. Randolph) but the arguments used had not convinced him. He observed that the objections of Mr. R. were levelled not so much agst the measure itself, as agst its unpopularity. If he could suppose that it would occasion a rejection of the plan of which it should form a part, though the part were an important one, yet he would give it up rather than lose the whole. On examination he could see no evidence of the alledged antipathy of the people. On the contrary he was persuaded that it does not exist. All know that a single magistrate is not a King. One fact has great weight with him. All the 13 States tho agreeing in scarce any other instance, agree in placing a single magistrate at the head of the Governt. The idea of three heads has taken place in none. The degree of power is indeed different; but there are no co-ordinate heads. In addition to his former reasons for preferring a Unity, he would mention another. The *tranquillity* not less than the vigor of the Govt he thought would be favored by it. Among three equal members, he foresaw nothing but uncontrouled, continued, & violent animosities; which would not only interrupt the public administration; but diffuse their poison thro' the other branches of Govt, thro' the States, and at length thro' the people at large. If the members were to be unequal in power the principle of opposition to the Unity was given up. If equal, the making them an odd number would not be a remedy. In Courts of Justice there are two sides only to a question. In the Legislative & Executive departments questions have commonly many sides. Each member therefore might espouse a separate one & no two agree.[62]

[62] According to Pierce, King followed Wilson:

"Mr. King was of opinion that the Judicial ought not to join in the negative of a Law, because the Judges will have the expounding of those Laws when they come before them; and they will no doubt stop the operation of such as shall appear repugnant to the Constitution."—Pierce's Notes, *Am. Hist. Rev.*, iii., 322.

M^r^ Sherman. This matter is of great importance and ought to be well considered before it is determined. M^r^ Wilson he said had observed that in each State a single magistrate was placed at the head of the Gov^t^. It was so he admitted, and properly so, and he wished the same policy to prevail in the federal Gov^t^. But then it should be also remarked that in all the States there was a Council of advice, without which the first magistrate could not act. A council he thought necessary to make the establishment acceptable to the people. Even in G. B. the King has a Council; and though he appoints it himself, its advice has its weight with him, and attracts the Confidence of the people.

M^r^ Williamson asks M^r^ Wilson whether he means to annex a Council.

M^r^ Wilson means to have no Council, which oftener serves to cover, than prevent malpractices.

M^r^ Gerry was at a loss to discover the policy of three members for the Executive. It w^d^ be extremely inconvenient in many instances, particularly in military matters, whether relating to the militia, an army, or a navy. It would be a general with three heads.

On the question for a single Executive it was agreed to Mass^ts^ ay. Con^t^ ay. N. Y. no. Pen^a^ ay. Del. no. Mary^d^ no. Virg^a^ ay. (M^r^ R. & M^r^ Blair no—Doc^r^ McC^g^ M^r^ M. & Gen. W. ay. Col. Mason being no., but not in the house, M^r^ Wythe ay. but gone home). N. C. ay. S. C. ay. Georg^a^ ay.

First Clause of Proposition 8^th^ relating *to a Council of Revision* taken into consideration.

M^r^ Gerry doubts whether the Judiciary ought to form a part of it, as they will have a sufficient check ag^st^ encroachments on their own department by their exposition of the laws, which involved a power of deciding on their

Constitutionality. In some States the Judges had actually set aside laws as being agst the Constitution. This was done too with general approbation. It was quite foreign from the nature of ye office to make them judges of the policy of public measures. He moves to postpone the clause in order to propose "that the National Executive shall have a right to negative any Legislative act which shall not be afterwards passed by —— parts of each branch of the national Legislature."

Mr. King seconds the motion, observing that the Judges ought to be able to expound the law as it should come before them, free from the bias of having participated in its formation.

Mr. Wilson thinks neither the original proposition nor the amendment goes far enough. If the Legislative Exetv & Judiciary ought to be distinct & independent, The Executive ought to have an absolute negative. Without such a self-defence the Legislature can at any moment sink it into non-existence. He was for varying the proposition in such a manner as to give the Executive & Judiciary jointly an absolute negative.

On the question to postpone in order to take Mr. Gerry's proposition into consideration it was agreed to, Mass. ay. Cont. no. N. Y. ay. Pa. ay. Del. no. Maryd. no. Virga. no. N. C ay. S. C. ay. Ga. ay.

Mr. Gerry's proposition being now before Committee, Mr. Wilson & Mr. Hamilton move that the last part of it (viz. "wch sl. not be afterwds passed "unless by —— parts of each branch of the National legislature") be struck out, so as to give the Executive an absolute negative on the laws. There was no danger they thought of such a power being too much exercised. It was mentioned by Col: Hamilton that the King of G. B. had not exerted his negative since the Revolution.

Mr. Gerry sees no necessity for so great a controul over the legislature as the best men in the Community would be comprised in the two branches of it.

Docr. Franklin, said he was sorry to differ from his colleague for whom he had a very great respect, on any occasion, but he could not help it on

this. He had had some experience of this check in the Executive on the Legislature, under the proprietary Government of Penᵃ. The negative of the Governor was constantly made use of to extort money. No good law whatever could be passed without a private bargain with him. An increase of his salary, or some donation, was always made a condition; till at last it became the regular practice, to have orders in his favor on the Treasury, presented along with the bills to be signed, so that he might actually receive the former before he should sign the latter. When the Indians were scalping the western people, and notice of it arrived, the concurrence of the Governor in the means of self-defence could not be got, till it was agreed that his Estate should be exempted from taxation: so that the people were to fight for the security of his property, whilst he was to bear no share of the burden. This was a mischevous sort of check. If the Executive was to have a Council, such a power would be less objectionable. It was true, the King of G. B. had not, as was said, exerted his negative since the Revolution; but that matter was easily explained. The bribes and emoluments now given to the members of parliament rendered it unnecessary, every thing being done according to the will of the Ministers. He was afraid, if a negative should be given as proposed, that more power and money would be demanded, till at last eno' would be gotten to influence & bribe the Legislature into a compleat subjection to the will of the Executive.

Mᵣ. Sherman was agˢᵗ enabling any one man to stop the will of the whole. No one man could be found so far above all the rest in wisdom. He thought we ought to avail ourselves of his wisdom in revising the laws, but not permit him to overrule the decided and cool opinions of the Legislature.

Mᵣ. Madison supposed that if a proper proportion of each branch should be required to overrule the objections of the Executive, it would answer the same purpose as an absolute negative. It would rarely if ever happen that the Executive constituted as ours is proposed to be, would have firmness eno' to resist the legislature, unless backed by a certain part of the body itself. The King of G. B. with all his splendid attributes would not be able to withstand yᵉ unanimous and eager wishes of both houses of Parliament. To give such a prerogative would certainly be obnoxious to the temper of this Country; its present temper at least.

Mr. Wilson believed as others did that this power would seldom be used. The Legislature would know that such a power existed, and would refrain from such laws, as it would be sure to defeat. Its silent operation would therefore preserve harmony and prevent mischief. The case of Penna formerly was very different from its present case. The Executive was not then as now to be appointed by the people. It will not in this case as in the one cited be supported by the head of a Great Empire, actuated by a different & sometimes opposite interest. The salary too is now proposed to be fixed by the Constitution, or if Dr. F.'s idea should be adopted all salary whatever interdicted. The requiring a large proportion of each House to overrule the Executive check might do in peaceable times; but there might be tempestuous moments in which animosities may run high between the Executive and Legislative branches, and in which the former ought to be able to defend itself.

Mr. Butler had been in favor of a single Executive Magistrate; but could he have entertained an idea that a compleat negative on the laws was to be given him he certainly should have acted very differently. It had been observed that in all countries the Executive power is in a constant course of increase. This was certainly the case in G. B. Gentlemen seemed to think that we had nothing to apprehend from an abuse of the Executive power. But why might not a Cataline or a Cromwell arise in this Country as well as in others.

Mr. Bedford was opposed to every check on the Legislature, even the Council of Revision first proposed. He thought it would be sufficient to mark out in the Constitution the boundaries to the Legislative Authority, which would give all the requisite security to the rights of the other departments. The Representatives of the people were the best Judges of what was for their interest, and ought to be under no external controul whatever. The two branches would produce a sufficient controul within the Legislature itself.

Col. Mason observed that a vote had already passed he found [he was out at the time] for vesting the executive powers in a single person. Among these powers was that of appointing to offices in certain cases. The probable abuses of a negative had been well explained by Dr. F. as proved by

experience, the best of all tests. Will not the same door be opened here. The Executive may refuse its assent to necessary measures till new appointments shall be referred to him; and having by degrees engrossed these into all his own hands, the American Executive, like the British, will by bribery & influence, save himself the trouble & odium of exerting his negative afterwards. We are M^r^ Chairman going very far in this business. We are not indeed constituting a British Government, but a more dangerous monarchy, an elective one. We are introducing a new principle into our system, and not necessary as in the British Gov^t^ where the Executive has greater rights to defend. Do gentlemen mean to pave the way to hereditary Monarchy? Do they flatter themselves that the people will ever consent to such an innovation? If they do I venture to tell them, they are mistaken. The people never will consent. And do gentlemen consider the danger of delay, and the still greater danger of a rejection, not for a moment but forever, of the plan which shall be proposed to them. Notwithstanding the oppression & injustice experienced among us from democracy; the genius of the people is in favor of it, and the genius of the people must be consulted. He could not but consider the federal system as in effect dissolved by the appointment of this Convention to devise a better one. And do gentlemen look forward to the dangerous interval between extinction of an old, and the establishment of a new Governm^t^ and to the scenes of confusion which may ensue. He hoped that nothing like a Monarchy would ever be attempted in this Country. A hatred to its oppressions had carried the people through the late Revolution. Will it not be eno' to enable the Executive to suspend offensive laws, till they shall be coolly revised, and the objections to them overruled by a greater majority than was required in the first instance. He never could agree to give up all the rights of the people to a single magistrate: If more than one had been fixed on, greater powers might have been entrusted to the Executive. He hoped this attempt to give such powers would have its weight hereafter as an argument for increasing the number of the Executive.

Doc^r^ Franklin. A Gentleman from S. C., (M^r^ Butler) a day or two ago called our attention to the case of the U. Netherlands. He wished the gentleman had been a little fuller, and had gone back to the original of that Gov^t^. The people being under great obligations to the Prince of Orange whose wisdom and bravery had saved them, chose him for the Stadtholder.

He did very well. Inconveniences however were felt from his powers; which growing more & more oppressive, they were at length set aside. Still however there was a party for the P. of Orange, which descended to his son who excited insurrections, spilt a great deal of blood, murdered the de Witts, and got the powers revested in the Stadtholder. Afterwards another Prince had power to excite insurrections & make the Stadtholdership hereditary. And the present Stadth^{der} is ready to wade thro' a bloody civil war to the establishment of a monarchy. Col. Mason had mentioned the circumstance of appointing officers. He knew how that point would be managed. No new appointment would be suffered as heretofore in Pens^{a} unless it be referred to the Executive; so that all profitable offices will be at his disposal. The first man put at the helm will be a good one. No body knows what sort may come afterwards. The Executive will be always increasing here, as elsewhere, till it ends in a Monarchy.

On the question for striking out so as to give Executive an absolute negative,—Mass^{ts} no. Con^{t} no. N. Y. no. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. no. Georg^{a} no.

M^{r} Butler moved that the Resol^{n} be altered so as to read—"Resolved that the National Executive have a power to suspend any Legislative act for the term of ——."

Doct^{r} Franklin seconds the motion.

M^{r} Gerry observed that a power of suspending might do all the mischief dreaded from the negative of useful laws; without answering the salutary purpose of checking unjust or unwise ones.

On question "for giving this suspending power" all the States, to wit Mass^{ts} Con^{t} N. Y. P^{a} Del. Mary^{d} Virg^{a} N. C. S. C. Georgia, were *No*.

On a question for enabling *two thirds* of each branch of the Legislature to overrule the revisionary check, it passed in the affirmative sub silentio; and was inserted in the blank of M^{r} Gerry's motion.

On the question on M^{r} Gerry's motion which gave the Executive alone without the Judiciary the revisionary controul on the laws unless overruled

by 2/3 of each branch; Mass^{ts} ay. Con^{t} no. N. Y. ay. P^{a} ay. Del. ay. Mary^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

It was moved by M^{r} Wilson 2^{ded} by M^{r} Madison—that the following amendment be made to the last resolution—after the words "National Ex." to add "& a convenient number of the National Judiciary."[63]

[63] Before the motion, according to King's notes:

> "*Madison*—The judiciary ought to be introduced in the business of Legislation—they will protect their department, and united with the Executive make its negatives more strong. There is weight in the objections to this measure—but a check on the Legislature is necessary, Experience proves it to be so, and teaches us that what has been thought a calumny on a republican Govt. is nevertheless true—In all Countries are diversity of Interests, the Rich & the Poor, the Dr. & Cr., the followers of different Demagogues, the Diversity of religious Sects—the Effects of these Divisions in Ancient Govts. are well known, and the like causes will now produce like effects. We must therefore introduce in our system Provisions against the measures of an interested majority—a check is not only necessary to protect the Executive power, but the minority in the Legislature. The independence of the Executive, having the Eyes of all upon him will make him an impartial judge—add the Judiciary, and you greatly increase his respectability."
>
> After the motion: "Dickinson opposed—You shd. separate the Departments—you have given the Executive a share in Legislation; and it is asked why not give a share to the judicial power. Because the Judges are to interpret the Laws, and therefore shd. have no share in making them—not so with the Executive whose causing the Laws to be Executed is a ministerial office only. Besides we have experienced in the Br. Constitution which confers the Power of a negative on the Executive."—King's *Life and Correspondence of Rufus King*, i., 592.

An Objection of order being taken by M^r^ Hamilton to the introduction of the last amendment at this time, notice was given by M^r^ W. & M^r^ M., that the same w^d^ be moved to-morrow,—whereupon Wednesday (the day after) was assigned to reconsider the amendment of M^r^ Gerry.

It was then moved & 2^ded^ to proceed to the consideration of the 9^th^ resolution submitted by M^r^ Randolph—when on motion to agree to the first clause namely "Resolved, that a National Judiciary be established," It passed in the affirmative nem. con.

It was then moved & 2^ded^ to add these words to the first clause of the ninth resolution namely—"to consist of one supreme tribunal, and of one or more inferior tribunals," which passed in the affirmative.

The Comm^e^ then rose and the House Adjourned.

Tuesday June 5. In Committee of the whole

Governor Livingston from New Jersey, took his seat.

The words, "one or more" were struck out before "inferior tribunals" as an amendment to the last clause of Resol^{n} 9th. The Clause—"that the National Judiciary be chosen by the National Legislature," being under consideration.

M^{r} Wilson opposed the appointm^{t} of Judges by the National Legisl: Experience shewed the impropriety of such appointm^{ts} by numerous bodies. Intrigue, partiality, and concealment were the necessary consequences. A principal reason for unity in the Executive was that officers might be appointed by a single, responsible person.

M^{r} Rutlidge was by no means disposed to grant so great a power to any single person. The people will think we are leaning too much towards Monarchy. He was against establishing any national tribunal except a single supreme one. The State tribunals are most proper to decide in all cases in the first instance.

Doc^{r} Franklin observed that two modes of chusing the Judges had been mentioned, to wit, by the Legislature and by the Executive. He wished such other modes to be suggested as might occur to other gentlemen; it being a point of great moment. He would mention one which he had understood was practised in Scotland. He then in a brief and entertaining manner related a Scotch mode, in which the nomination proceeded from the Lawyers, who always selected the ablest of the profession in order to get rid of him, and share his practice among themselves. It was here he said the interest of the electors to make the best choice, which should always be made the case if possible.

Mr. Madison disliked the election of the Judges by the Legislature or any numerous body. Besides the danger of intrigue and partiality, many of the members were not judges of the requisite qualifications. The Legislative

talents which were very different from those of a Judge, commonly recommended men to the favor of Legislative Assemblies. It was known too that the accidental circumstances of presence and absence, of being a member or not a member, had a very undue influence on the appointment. On the other hand He was not satisfied with referring the appointment to the Executive, He rather inclined to give it to the Senatorial branch, as numerous eno' to be confided in—as not so numerous as to be governed by the motives of the other branch; and as being sufficiently stable and independent to follow their deliberate judgments. He hinted this only and moved that the *appointment by the Legislature* might be struck out, & a blank left to be hereafter filled on maturer reflection. Mr. Wilson second it. On the question for striking out, Masts. ay. Cont. no. N. Y. ay. N. J. ay. Penna. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. no. Geo. ay.

Mr. Wilson gave notice that he should at a future day move for a reconsideration of that clause which respects "inferior tribunals."

Mr. Pinkney gave notice that when the clause respecting the appointment of the Judiciary should again come before the Committee he should move to restore the "appointment by the national Legislature."

The following clauses of Resol: 9. were agreed to viz "to hold their offices during good behaviour, and to receive punctually at stated times, a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution."

The remaining clause of Resolution 9. was postponed.

Resolution 10 was agreed to,—viz—that provision ought to be made for the admission of States lawfully arising within the limits of the U. States, whether from a voluntary junction of Government & territory, or otherwise with the consent of a number of voices in the National Legislature less than the whole.

The 11. Propos: "*for guaranteeing to States Republican Govt & territory*" &c. being read Mr. Patterson[64] wished the point of representation could be decided before this clause should be considered, and moved to

postpone it, which was not opposed, and agreed to,—Connecticut & S. Carolina only voting agst it.

[64] "M^{r} Patterson is one of those kind of Men whose powers break in upon you, and create wonder and astonishment. He is a Man of great modesty, with looks that bespeak talents of no great extent,—but he is a Classic, a Lawyer, and an Orator;—and of a disposition so favorable to his advancement that every one seemed ready to exalt him with their praises. He is very happy in the choice of time and manner of engaging in a debate, and never speaks but when he understands his subject well. This Gentleman is about 43 Y. of age, of a very low stature."—Pierce's Notes, *Amer. Hist. Rev.*, iii., 328.

Propos. 12 "*for continuing Cong^{s} till a given day and for fulfilling their engagements*," produced no debate.

On the question, Mass. ay. Con^{t} no. N. Y. ay. N. J.[65] ay. Pa. ay. Del. no. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. G. ay.

[65] Note in Madison's writing: New Jersey omitted in printed Journal.

Propos: 13. "that *provision ought to be made for hereafter amending the system now to be established, without requiring the assent of the Nat^{l} Legislature*", being taken up,

M^{r} Pinkney doubted the propriety or necessity of it.

M^{r} Gerry favored it. The novelty & difficulty of the experiment requires periodical revision. The prospect of such a revision would also give intermediate stability to the Gov^{t}. Nothing had yet happened in the States where this provision existed to prove its impropriety.—The proposition was postponed for further consideration: the votes being, Mas: Con. N. Y. P^{a} Del. Ma. N. C. ay. Virg^{a} S. C. Geo. no.

Propos. 14. "*requiring oath from the State officers to support National Gov^{t}*" was postponed after a short uninteresting conversation: the votes. Con. N. Jersey M^{d} Virg. S. C. Geo. ay. N. Y. P^{a} Del. N. C. no. Massachusetts divided.

Propos. 15. for "*recommending Conventions under appointment of the people to ratify the new Constitution*" &c. being taken up,

M^r^ Sherman thought such a popular ratification unnecessary: the articles of Confederation providing for changes and alterations with the assent of Cong^s^ and ratification of State Legislatures.

M^r^ Madison thought this provision essential. The articles of Confed^n^ themselves were defective in this respect, resting in many of the States on the Legislative sanction only. Hence in conflicts between acts of the States, and of Cong^s^ especially where the former are of posterior date, and the decision is to be made by State tribunals, an uncertainty must necessarily prevail, or rather perhaps a certain decision in favor of the State authority. He suggested also that as far as the articles of Union were to be considered as a Treaty only of a particular sort, among the Governments of Independent States, the doctrine might be set up that a breach of any one article, by any of the parties, absolved the other parties from the whole obligation. For these reasons as well as others he thought it indispensable that the new Constitution should be ratified in the most unexceptionable form, and by the supreme authority of the people themselves.

M^r^ Gerry observed that in the Eastern States the Confed^n^ had been sanctioned by the people themselves. He seemed afraid of referring the new system to them. The people in that quarter have at this time the wildest ideas of Government in the world. They were for abolishing the Senate in Mass^ts^ and giving all the other powers of Gov^t^ to the other branch of the Legislature.

M^r^ King supposed that the last article of y^e^ Confed^n^ Rendered the legislature competent to the ratification. The people of the Southern States where the federal articles had been ratified by the Legislatures only, had since *impliedly* given their sanction to it. He thought notwithstanding that there might be policy in varying the mode. A Convention being a single house, the adoption may more easily be carried thro' it, than thro' the Legislatures where there are several branches. The Legislatures also being to lose power, will be most likely to raise objections. The people having

already parted with the necessary powers it is immaterial to them, by which Government they are possessed, provided they be well employed.

Mr. Wilson took this occasion to lead the Committee by a train of observations to the idea of not suffering a disposition in the plurality of States to confederate anew on better principles, to be defeated by the inconsiderate or selfish opposition of a few States. He hoped the provision for ratifying would be put on such a footing as to admit of such a partial union, with a door open for the accession of the rest.[66]

[66] (This hint was probably meant in terrorem to the smaller States of N. Jersey & Delaware. Nothing was said in reply to it.)—Madison's Note.

Mr. Pinkney hoped that in case the experiment should not unanimously take place, nine States might be authorized to unite under the same Governmt.

The propos. 15. was postponed nem. contt.

Mr. Pinkney & Mr. Rutlidge moved that to-morrow be assigned to reconsider that clause of Propos: 4: which respects the election of the first branch of the National Legislature—which passed in affirmative,—Con.: N. Y., Pa Del. Md, Va, ay.—6 Mas.: N. J.: N. C.: S. C.: Geo.: no. 5.

Mr. Rutlidge havg obtained a rule for reconsideration of the clause for establishing *inferior* tribunals under the national authority, now moved that that part of the clause in the propos. 9. should be expunged: arguing that the State tribunals might and ought to be left in all cases to decide in the first instance the right of appeal to the supreme national tribunal being sufficient to secure the national rights & uniformity of Judgmts: that it was making an unnecessary encroachment on the jurisdiction of the States and creating unnecessary obstacles to their adoption of the new system. Mr. Sherman 2ded the motion.

Mr. Madison observed that unless inferior tribunals were dispersed throughout the Republic with *final* jurisdiction in *many* cases, appeals would be multiplied to a most oppressive degree; that besides, an appeal

would not in many cases be a remedy. What was to be done after improper Verdicts in State tribunals obtained under the biassed directions of a dependent Judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the Supreme bar would oblige the parties to bring up their witnesses, tho' ever so distant from the seat of the Court. An effective Judiciary establishment commensurate to the legislative authority, was essential. A Government without a proper Executive & Judiciary would be the mere trunk of a body, without arms or legs to act or move.

Mr. Wilson opposed the motion on like grounds. He said the admiralty jurisdiction ought to be given wholly to the national Government, as it related to cases not within the jurisdiction of particular states, & to a scene in which controversies with foreigners would be most likely to happen.

Mr. Sherman was in favor of the motion. He dwelt chiefly on the supposed expensiveness of having a new set of Courts, when the existing State Courts would answer the same purpose.

Mr. Dickinson contended strongly that if there was to be a National Legislature, there ought to be a national Judiciary, and that the former ought to have authority to institute the latter.

On the question for Mr. Rutlidge's motion to strike out "inferior tribunals"

Masts. divided. Cont. ay. N. Y. divd. N. J. ay. Pa. no. Del. no. Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay.

Mr. Wilson & Mr. Madison then moved, in pursuance of the idea expressed above by Mr. Dickinson, to add to the Resol: 9. the words following "that the National Legislature be empowered to institute inferior tribunals." They observed that there was a distinction between establishing such tribunals absolutely, and giving a discretion to the Legislature to establish or not establish them. They repeated the necessity of some such provision.

M[r] Butler. The people will not bear such innovations. The States will revolt at such encroachments. Supposing such an establishment to be useful, we must not venture on it. We must follow the example of Solon who gave the Athenians not the best Gov[t] he could devise, but the best they w[d] receive.

M[r] King remarked as to the comparative expence, that the establishment of inferior tribunals w[d] cost infinitely less than the appeals that would be prevented by them.

On this question as moved by M[r] W. & M[r] M.

Mass. ay. C[t] no. N. Y. div[d]. N. J.[67] ay. P[a] ay. Del. ay. M[d] ay. V[a] ay. N. C. ay. S. C. no. Geo. ay.

[67] In printed Journals N. Jersey, no.—Madison's Note.

The Committee then rose & the House adjourned to 11 OC tom[w].

Wednesday June 6th In Committee of the Whole.

Mr. Pinkney according to previous notice & rule obtained, moved "that the first branch of the national Legislature be elected by the State Legislatures, and not by the people;" contending that the people were less fit Judges in such a case, and that the Legislatures would be less likely to promote the adoption of the new Government, if they were to be excluded from all share in it.

Mr. Rutlidge 2ded the motion.

Mr. Gerry.[68] Much depends on the mode of election. In England the people will probably lose their liberty from the smallness of the proportion having a right of suffrage. Our danger arises from the opposite extreme: hence in Massts the worst men get into the Legislature. Several members of that Body had lately been convicted of infamous crimes. Men of indigence, ignorance & baseness, spare no pains, however dirty to carry their point agst men who are superior to the artifices practised. He was not disposed to run into extremes. He was as much principled as ever agst aristocracy and monarchy. It was necessary on the one hand that the people should appoint one branch of the Govt in order to inspire them with the necessary confidence. But he wished the election on the other to be so modified as to secure more effectually a just preference of merit. His idea was that the people should nominate certain persons in certain districts, out of whom the State Legislatures shd make the appointment.

[68] "Mr. Gerry.—If the national legislature are appointed by the state legislatures, demagogues and corrupt members will creep in."—Yates's *Secret Debates in Forming the Constitution*, 105.

Mr. Wilson. He wished for vigor in the Govt, but he wished that vigorous authority to flow immediately from the legitimate source of all authority.

The Gov^{t} ought to possess not only 1st the *force*, but 2^{dly} the *mind or sense* of the people at large. The Legislature ought to be the most exact transcript of the whole Society. Representation is made necessary only because it is impossible for the people to act collectively. The opposition was to be expected he said from the *Governments*, not from the Citizens of the States. The latter had parted as was observed (by M^{r} King) with all the necessary powers; and it was immaterial to them, by whom they were exercised, if well exercised. The State officers were to be the losers of power. The people he supposed would be rather more attached to the national Gov^{t} than to the State Gov^{ts} as being more important in itself, and more flattering to their pride. There is no danger of improper elections if made by *large* districts. Bad elections proceed from the smallness of the districts which give an opportunity to bad men to intrigue themselves into office.

M^{r} Sherman. If it were in view to abolish the State Gov^{ts} the elections ought to be by the people. If the State Gov^{ts} are to be continued, it is necessary in order to preserve harmony between the National & State Gov^{ts} that the elections to the former sh^{d} be made by the latter. The right of participating in the National Gov^{t} would be sufficiently secured to the people by their election of the State Legislatures. The objects of the Union, he thought were few, 1. defence agst foreign danger, 2. agst internal disputes & a resort to force, 3. Treaties with foreign nations 4. regulating foreign commerce, & drawing revenue from it. These & perhaps a few lesser objects alone rendered a Confederation of the States necessary. All other matters civil & criminal would be much better in the hands of the States. The people are more happy in small than in large States. States may indeed be too small as Rhode Island, & thereby be too subject to faction. Some others were perhaps too large, the powers of Gov^{t} not being able to pervade them. He was for giving the General Gov^{t} power to legislate and execute within a defined province.

Col. Mason. Under the existing Confederacy, Cong^{s} represent the *States* and not the *people* of the States: their acts operate on the *States*, not on the individuals. The case will be changed in the new plan of Gov^{t}. The people will be represented; they ought therefore to choose the Representatives. The requisites in actual representation are that the Rep^{s} should sympathize with

their constituents; sh^{d} think as they think, & feel as they feel; and that for these purposes sh^{d} even be residents among them. Much he s^{d} had been alledged agst democratic elections. He admitted that much might be said; but it was to be considered that no Gov^{t} was free from imperfections & evils; and that improper elections in many instances were inseparable from Republican Gov^{ts}. But compare these with the advantage of this Form in favor of the rights of the people, in favor of human nature. He was persuaded there was a better chance for proper elections by the people, if divided into large districts, than by the State Legislatures. Paper money had been issued by the latter when the former were against it. Was it to be supposed that the State Legislatures then w^{d} not send to the Nat^{l} legislature patrons of such projects, if the choice depended on them.

M^{r} Madison considered an election of one branch at least of the Legislature by the people immediately, as a clear principle of free Gov^{t} and that this mode under proper regulations had the additional advantage of securing better representatives, as well as of avoiding too great an agency of the State Governments in the General one. He differed from the member from Connecticut (Mr. Sherman) in thinking the objects mentioned to be all the principal ones that required a National Gov^{t}. Those were certainly important and necessary objects; but he combined with them the necessity of providing more effectually for the security of private rights, and the steady dispensation of Justice. Interferences with these were evils which had more perhaps than anything else, produced this convention. Was it to be supposed that republican liberty could long exist under the abuses of it practised in some of the States. The gentleman (M^{r} Sherman) had admitted that in a very small State, faction & oppression w^{d} prevail. It was to be inferred then that wherever these prevailed the State was too small. Had they not prevailed in the largest as well as the smallest tho' less than in the smallest; and were we not thence admonished to enlarge the sphere as far as the nature of the Gov^{t} would Admit. This was the only defence agst the inconveniences of democracy consistent with the democratic form of Gov^{t}. All civilized Societies would be divided into different Sects, Factions, & interests, as they happened to consist of rich & poor, debtors & creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that

political leader—the disciples of this religious Sect or that religious Sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim that honesty is the best policy is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience, the only remaining tie is known to be inadequate in individuals: In large numbers, little is to be expected from it. Besides, Religion itself may become a motive to persecution & oppression. These observations are verified by the Histories of every country antient & modern. In Greece & Rome the rich & poor, the Creditors & debtors, as well as the patricians & plebeians alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens & Carthage, & their respective provinces; the former possessing the power, & the latter being sufficiently distinguished to be separate objects of it? Why was America so justly apprehensive of Parliamentary injustice? Because G. Britain had a separate interest real or supposed, & if her authority had been admitted, could have pursued that interest at our expence. We have seen the mere distinction of colour made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The Holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure. In a Republican Gov^{t} the majority if united have always an opportunity. The only remedy is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1st place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2^{d} place that in case they sh^{d} have such an interest, they may not be apt to unite in the pursuit of it. It was incumbent on us then to try this remedy, and with that view to frame a republican system on such a

scale & in such a form as will controul all the evils w^ch^ have been experienced.

M^r^ Dickinson considered it essential that one branch of the Legislature sh^d^ be drawn immediately from the people; and as expedient that the other sh^d^ be chosen by the Legislatures of the States. This combination of the State Gov^ts^ with the national Gov^t^ was as politic as it was unavoidable. In the formation of the Senate we ought to carry it through such a refining process as will assimilate it as nearly as may be to the House of Lords in England. He repeated his warm eulogiums on the British Constitution. He was for a strong National Gov^t^ but for leaving the States a considerable agency in the System. The objection ag^st^ making the former dependent on the latter might be obviated by giving to the Senate an authority permanent & irrevocable for three, five or seven years. Being thus independent they will check & decide with becoming freedom.

M^r^ Read. Too much attachment is betrayed to the State Govern^ts^. We must look beyond their continuance. A national Gov^t^ must soon of necessity swallow all of them up. They will soon be reduced to the mere office of electing the National Senate. He was ag^st^ patching up the old federal System: he hoped the idea w^d^ be dismissed. It would be like putting new cloth on an old garment. The confederation was founded on temporary principles. It cannot last: it can not be amended. If we do not establish a good Gov^t^ on new principles, we must either go to ruin, or have the work to do over again. The people at large are wrongly suspected of being averse to a Gen^l^ Gov^t^. The aversion lies among interested men who possess their confidence.

M^r^ Pierce[69] was for an election by the people as to the 1^st^ branch & by the States as to the 2^d^ branch; by which means the Citizens of the States w^d^ be represented both *individually* & *collectively*.

[69] "My own character I shall not attempt to draw, but leave those who may choose to speculate on it, to consider it in any light that their fancy or imagination may depict. I am conscious of having discharged my duty as a Soldier through the course of the late revolution with honor and propriety; and my services in Congress and the Convention were bestowed with the best

intention towards the interest of Georgia, and towards the general welfare of the Confederacy. I possess ambition, and it was that, and the flattering opinion which some of my Friends had of me, that gave me a seat in the wisest Council in the World, and furnished me with an opportunity of giving these short Sketches of the Characters who composed it."—Pierce's Notes, *Amer. Hist. Rev.*, iii., 334.

General Pinkney wished to have a good National Gov^{t} & at the same time to leave a considerable share of power in the States. An election of either branch by the people scattered as they are in many States, particularly in S. Carolina was totally impracticable. He differed from gentlemen who thought that a choice by the people w^{d} be a better guard agst bad measures, than by the Legislatures. A majority of the people in S. Carolina were notoriously for paper-money as a legal tender; the Legislature had refused to make it a legal tender. The reason was that the latter had some sense of character and were restrained by that consideration. The State Legislatures also he said would be more jealous, & more ready to thwart the National Gov^{t}, if excluded from a participation in it. The Idea of abolishing these Legislatures w^{d} never go down.

M^{r} Wilson would not have spoken again, but for what had fallen from Mr. Read; namely, that the idea of preserving the State Gov^{ts} ought to be abandoned. He saw no incompatibility between the national & State Gov^{ts} provided the latter were restrained to certain local purposes; nor any probability of their being devoured by the former. In all confederated Systems antient & modern the reverse had happened; the Generality being destroyed gradually by the usurpations of the parts composing it.

On the question for electing the 1st branch by the State Legislatures as moved by M^{r} Pinkney: it was negatived:

Mass. no. C^{t} ay. N. Y. no. N. J. ay. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. no.

M^{r} Wilson moved to reconsider the vote excluding the Judiciary from a share in the revision of the laws, and to add after "National Executive" the words "with a convenient number of the national Judiciary;" remarking the

expediency of reinforcing the Executive with the influence of that Department.

M^{r} Madison 2^{ded} the motion. He observed that the great difficulty in rendering the Executive competent to its own defence arose from the nature of Republican Gov^{t} which could not give to an individual citizen that settled pre-eminence in the eyes of the rest, that weight of property, that personal interest agst betraying the national interest, which appertain to an hereditary magistrate. In a Republic personal merit alone could be the ground of political exaltation, but it would rarely happen that this merit would be so pre-eminent as to produce universal acquiescence. The Executive Magistrate would be envied & assailed by disappointed competitors: His firmness therefore w^{d} need support. He would not possess those great emoluments from his station, nor that permanent stake in the public interest which w^{d} place him out of the reach of foreign corruption. He would stand in need therefore of being controuled as well as supported. An association of the Judges in his revisionary function w^{d} both double the advantage and diminish the danger. It w^{d} also enable the Judiciary Department the better to defend itself agst Legislative encroachments. Two objections had been made 1st that the Judges ought not to be subject to the bias which a participation in the making of laws might give in the exposition of them. 2^{dly} that the Judiciary Departm^{t} ought to be separate & distinct from the other great Departments. The 1st objection had some weight; but it was much diminished by reflecting that a small proportion of the laws coming in question before a Judge w^{d} be such wherein he had been consulted; that a small part of this proportion w^{d} be so ambiguous as to leave room for his prepossessions; and that but a few cases w^{d} probably arise in the life of a Judge under such ambiguous passages. How much good on the other hand w^{d} proceed from the perspicuity, the conciseness, and the systematic character w^{ch} the Code of laws w^{d} receive from the Judiciary talents. As to the 2^{d} objection, it either had no weight, or it applied with equal weight to the Executive & to the Judiciary revision of the laws. The maxim on which the objection was founded required a separation of the Executive as well as the Judiciary from the Legislature & from each other. There w^{d} in truth however be no improper mixture of these distinct powers in the present case. In England, whence the maxim itself had been drawn, the Executive

had an absolute negative on the laws; and the Supreme tribunal of Justice (the House of Lords) formed one of the other branches of the Legislature. In short whether the object of the revisionary power was to restrain the Legislature from encroaching on the other co-ordinate Departments, or on the rights of the people at large; or from passing laws unwise in their principle, or incorrect in their form, the utility of annexing the wisdom and weight of the Judiciary to the Executive seemed incontestable.

Mr. Gerry thought the Executive, whilst standing alone wd be more impartial than when he cd be covered by the sanction & seduced by the sophistry of the Judges.

Mr. King. If the Unity of the Executive was preferred for the sake of responsibility, the policy of it is as applicable to the revisionary as to the executive power.

Mr. Pinkney had been at first in favor of joining the heads of the principal departmts the Secretary at War, of foreign affairs &c—in the council of revision. He had however relinquished the idea from a consideration that these could be called on by the Executive Magistrate whenever he pleased to consult them. He was opposed to the introduction of the Judges into the business.

Col. Mason was for giving all possible weight to the revisionary institution. The Executive power ought to be well secured agst Legislative usurpations on it. The purse & the sword ought never to get into the same hands whether Legislative or Executive.

Mr. Dickinson. Secrecy, vigor & despatch are not the principal properties reqd in the Executive. Important as these are, that of responsibility is more so, which can only be preserved; by leaving it singly to discharge its functions. He thought too a junction of the Judiciary to it, involved an improper mixture of powers.

Mr. Wilson remarked, that the responsibility required belonged to his Executive duties. The revisionary duty was an extraneous one, calculated for collateral purposes.

Mr. Williamson, was for substituting a clause requiring 2/3 for every effective act of the Legislature, in place of the revisionary provision.

On the question for joining the Judges to the Executive in the revisionary business,

Mass. no. Cont. ay. N. Y. ay. N. J. no. Pa. no. Del. no. Md. no. Va. ay. N. C. no. S. C. no. Geo. no.

Mr. Pinkney gave notice that tomorrow he should move for the reconsideration of that clause in the sixth Resolution adopted by the Comme. which vests a negative in the National Legislature on the laws of the several States.

The Come. rose & the House adjd. to 11 OC.

Thursday June 7TH 1787—In Committee of the whole

Mr. Pinkney according to notice moved to reconsider the clause respecting the negative on State laws, which was agreed to, and tomorrow for fixed the purpose.

The Clause providing for ye appointment of the 2d branch of the national Legislature, having lain blank since the last vote on the mode of electing it, to wit, by the 1st branch, Mr. Dickinson now moved "that the members of the 2d branch ought to be chosen by the individual Legislatures."

Mr. Sherman seconded the motion; observing that the particular States would thus become interested in supporting the National Govenmt and that a due harmony between the two Governments would be maintained. He admitted that the two ought to have separate and distinct jurisdictions, but that they ought to have a mutual interest in supporting each other.

Mr. Pinkney. If the small States should be allowed one Senator only, the number will be too great, there will be 80 at least.

Mr. Dickinson had two reasons for his motion. 1, because the sense of the States would be better collected through their Governments; than immediately from the people at large; 2. because he wished the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property, and bearing as strong a likeness to the British House of Lords as possible; and he thought such characters more likely to be selected by the State Legislatures, than in any other mode. The greatness of the number was no objection with him. He hoped there would be 80 and twice 80. of them. If their number should be small, the popular branch could not be balanced by them. The legislature of a numerous people ought to be a numerous body.

Mr. Williamson, preferred a small number of Senators, but wished that each State should have at least one. He suggested 25 as a convenient number. The different modes of representation in the different branches, will serve as a mutual check.

Mr. Butler was anxious to know the ratio of representation before he gave any opinion.

Mr. Wilson. If we are to establish a national Government, that Government ought to flow from the people at large. If one branch of it should be chosen by the Legislatures, and the other by the people, the two branches will rest on different foundations, and dissensions will naturally arise between them. He wished the Senate to be elected by the people as well as the other branch, the people might be divided into proper districts for the purpose & moved to postpone the motion of Mr. Dickinson, in order to take up one of that import.

Mr. Morris 2ded him.

Mr. Read proposed "that the Senate should be appointed by the Executive Magistrate out of a proper number of persons to be nominated by the individual legislatures." He said he thought it his duty, to speak his mind frankly. Gentlemen he hoped would not be alarmed at the idea. Nothing short of this approach towards a proper model of Government would answer the purpose, and he thought it best to come directly to the point at once.—His proposition was not seconded nor supported.

Mr. Madison, if the motion (of Mr. Dickinson) should be agreed to, we must either depart from the doctrine of proportional representation; or admit into the Senate a very large number of members. The first is inadmissible, being evidently unjust. The second is inexpedient. The use of the Senate is to consist in its proceeding with more coolness, with more system, & with more wisdom, than the popular branch. Enlarge their number and you communicate to them the vices which they are meant to correct. He differed from Mr. D. who thought that the additional number would give additional weight to the body. On the contrary it appeared to him that their weight would be in an inverse ratio to their number. The example of the Roman

Tribunes, was applicable. They lost their influence and power, in proportion as their number was augmented. The reason seemed to be obvious: They were appointed to take care of the popular interests & pretensions at Rome, because the people by reason of their numbers could not act in concert; were liable to fall into factions among themselves, and to become a prey to their aristocratic adversaries. The more the representatives of the people therefore were multiplied, the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves either from their own indiscretions or the artifices of the opposite faction, and of course the less capable of fulfilling their trust. When the weight of a set of men depends merely on their personal characters; the greater the number the greater the weight. When it depends on the degree of political authority lodged in them the smaller the number the greater the weight. These considerations might perhaps be combined in the intended Senate; but the latter was the material one.

Mr. Gerry. 4 modes of appointing the Senate have been mentioned. 1. by the 1st branch of the National Legislature. This would create a dependance contrary to the end proposed. 2. by the National Executive. This is a stride towards monarchy that few will think of. 3. by the people. The people have two great interests, the landed interest, and the commercial including the stockholders. To draw both branches from the people will leave no security to the latter interest; the people being Chiefly composed of the landed interest, and erroneously supposing, that the other interests are adverse to it. 4. by the Individual Legislatures. The elections being carried thro' this refinement, will be most likely to provide some check in favor of the Commercial interest agst the landed; without which oppression will take place, and no free Govt can last long where that is the case. He was therefore in favor of this last.

Mr. Dickenson.[70] The preservation of the States in a certain degree of agency is indispensable. It will produce that collision between the different authorities which should be wished for in order to check each other. To attempt to abolish the States altogether, would degrade the Councils of our Country, would be impracticable, would be ruinous. He compared the proposed National System to the Solar System, in which the States were the

planets, and ought to be left to move freely in their proper orbits. The Gentleman from P^{a} (M^{r} Wilson)

[70] It will throw light on this discussion to remark that an election by the State Legislatures involved a surrender of the principle insisted on by the large States & dreaded by the small ones, namely that of a proportional representation in the Senate. Such a rule w^d^ make the body too numerous, as the smallest State must elect one member at least.—Madison's Note.

wished he said to extinguish these planets. If the State Governments were excluded from all agency in the national one, and all power drawn from the people at large, the consequence would be that the national Gov^t^ would move in the same direction as the State Gov^ts^ now do, and would run into all the same mischiefs. The reform would only unite the 13 small streams into one great current pursuing the same course without any opposition whatever. He adhered to the opinion that the Senate ought to be composed of a large number, and that their influence from family weight & other causes would be increased thereby. He did not admit that the Tribunes lost their weight in proportion as their n^o^ was augmented and gave a historical sketch of this institution. If the reasoning of (M^r^ Madison) was good it would prove that the number of the Senate ought to be reduced below ten, the highest n^o^ of the Tribunitial corps.

M^r^ Wilson. The subject it must be owned is surrounded with doubts and difficulties. But we must surmount them. The British Governm^t^ cannot be our model. We have no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people, are opposed to it. He did not see the danger of the States being devoured by the Nation^l^ Gov^t^. On the contrary, he wished to keep them from devouring the national Gov^t^. He was not however for extinguishing these planets as was supposed by Mr. D.—neither did he on the other hand, believe that they would warm or enlighten the Sun. Within their proper orbits they must still be suffered to act for subordinate purposes, for which their existence is made essential by the great extent of our Country. He could not comprehend in what manner the landed interest w^d^ be rendered less predominant in the Senate, by an election through the medium of the Legislatures than by the people themselves. If the Legislatures, as was now complained, sacrificed the commercial to the landed interest, what reason was there to expect such a choice from them as would defeat their own

views. He was for an election by the people in large districts which w^{d} be most likely to obtain men of intelligence & uprightness; subdividing the districts only for the accommodation of voters.

M^{r} Madison could as little comprehend in what manner family weight, as desired by M^{r} D. would be more certainly conveyed into the Senate through elections by the State Legislatures, than in some other modes. The true question was in what mode the best choice w^{d} be made? If an election by the people, or thro' any other channel than the State Legislatures promised as uncorrupt & impartial a preference of merit, there could surely be no necessity for an appointment by those Legislatures. Nor was it apparent that a more useful check would be derived thro' that channel than from the people thro' some other. The great evils complained of were that the State Legislatures run into schemes of paper money &c. whenever solicited by the people, & sometimes without even the sanction of the people. Their influence then, instead of checking a like propensity in the National Legislature, may be expected to promote it. Nothing can be more contradictory than to say that the Nat^{l} Legislature with^{t} a proper check, will follow the example of the State Legislatures, & in the same breath, that the State Legislatures are the only proper check.

M^{r} Sherman opposed elections by the people in districts, as not likely to produce such fit men as elections by the State Legislatures.

M^{r} Gerry insisted that the commercial & monied interest w^{d} be more secure in the hands of the State Legislatures, than of the people at large. The former have more sense of character, and will be restrained by that from injustice. The people are for paper money when the Legislatures are agst it. In Mass^{ts} the County Conventions had declared a wish for a *depreciating* paper that w^{d} sink itself. Besides, in some States there are two Branches in the Legislature, one of which is somewhat aristocratic. There w^{d} therefore be so far a better chance of refinement in the choice. There seemed, he thought to be three powerful objections agst elections by districts, 1. it is impracticable; the people cannot be brought to one place for the purpose; and whether brought to the same place or not, numberless frauds w^{d} be unavoidable. 2. small States forming part of the same district with a large

one, or large part of a large one, w^{d} have no chance of gaining an appointment for its citizens of merit. 3 a new source of discord w^{d} be opened between different parts of the same district.

M^{r} Pinkney thought the 2^{d} branch ought to be permanent & independent; & that the members of it w^{d} be rendered more so by receiving their appointment from the State Legislatures. This mode w^{d} avoid the rivalships & discontents incident to the election by districts. He was for dividing the States into three classes according to their respective sizes, & for allowing to the 1st class three members, to the 2^{d} two, & to the 3^{d} one.

On the question for postponing M^{r} Dickinson's motion referring the appointment of the Senate to the State Legislatures, in order to consider M^{r} Wilson's for referring it to the people.

Mass. no. Con^{t} no. N. Y. no. N. J. no. P^{a} ay. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

Col. Mason. Whatever power may be necessary for the Nat^{l} Gov^{t} a certain portion must necessarily be left in the States. It is impossible for one power to pervade the extreme parts of the U. S. so as to carry equal justice to them. The State Legislatures also ought to have some means of defending themselves agst encroachments of the Nat^{l} Gov^{t}. In every other department we have studiously endeavoured to provide for its self-defence. Shall we leave the States alone unprovided with the means for this purpose? And what better means can we provide than the giving them some share in, or rather to make them a constituent part of, the Nat^{l} Establishment. There is danger on both sides no doubt; but we have only seen the evils arising on the side of the State Gov^{ts}. Those on the other side remain to be displayed. The example of Cong^{s} does not apply. Cong^{s} had no power to carry their acts into execution, as the Nat^{l} Gov^{t} will have.

On M^{r} Dickinson's motion for an appointment of the Senate by the State Legislatures,

Mass. ay. C^{t} ay. N. Y. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M[r] Gerry gave notice that he w[d] tomorrow move for a reconsideration of the mode of appointing the Nat[l] Executive in order to substitute an appointm[t] by the State Executives.

The Committee rose & The House adj[d].

Friday June 8TH In Committee of the Whole.

On a reconsideration of the clause giving the Natl Legislature a negative on such laws of the States as might be contrary to the articles of Union, or Treaties with foreign nations,

Mr. Pinkney moved "that the National Legislature shd have authority to negative all laws which they shd judge to be improper." He urged that such a universality of the power was indispensably necessary to render it effectual; that the States must be kept in due subordination to the nation; that if the States were left to act of themselves in any case, it wd be impossible to defend the national prerogatives, however extensive they might be on paper; that the acts of Congress had been defeated by this means; nor had foreign treaties escaped repeated violations: that this universal negative was in fact the corner stone of an efficient national Govt; that under the British Govt the negative of the Crown had been found beneficial, and the *States* are more one nation now, than the *Colonies* were then.

Mr. Madison seconded the motion. He could not but regard an indefinite power to negative legislative acts of the States as absolutely necessary to a perfect System. Experience had evinced a constant tendency in the States to encroach on the federal authority; to violate national Treaties; to infringe the rights & interests of each other; to oppress the weaker party within their respective jurisdictions. A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no such precaution be engrafted, the only remedy wd lie in an appeal to coercion. Was such a remedy eligible? was it practicable? Could the national resources, if exerted to the utmost enforce a national decree agst Masstts abetted perhaps by several of her neighbours? It wd not be possible. A small proportion of the Community, in a compact situation acting on the defensive, and at one of its extremities, might at any time bid defiance to the National authority. Any

Gov^{t} for the U. States formed on the supposed practicability of using force agst the unconstitutional proceedings of the States, w^{d} prove as visionary & fallacious as the Gov^{t} of Cong^{s}. The negative w^{d} render the use of force unnecessary. The States c^{d} of themselves pass no operative act, any more than one branch of a Legislature where there are two branches, can proceed without the other. But in order to give the negative this efficacy, it must extend to all cases. A discrimination w^{d} only be a fresh source of contention between the two authorities. In a word, to recur to the illustrations borrowed from the planetary system. This prerogative of the General Gov^{t}, is the great pervading principle that must controul the centrifugal tendency of the States; which, without it, will continually fly out of their proper orbits and destroy the order & harmony of the political System.

M^{r} Williamson was agst giving a power that might restrain the States from regulating their internal police.

M^{r} Gerry c^{d} not see the extent of such a power, and was agst every power that was not necessary. He thought a remonstrance agst unreasonable acts of the States w^{d} reclaim them. If it sh^{d} not force might be resorted to. He had no objection to authorize a negative to paper money and similar measures. When the confederation was depending before Congress, Massachusetts was then for inserting the power of emitting paper money am^{g} the exclusive powers of Congress. He observed that the proposed negative w^{d} extend to the regulations of the Militia, a matter on which the existence of a State might depend. The Nat^{l} Legislature with such a power may enslave the States. Such an idea as this will never be acceded to. It has never been suggested or conceived among the people. No speculative projector, and there are eno' of that character among us, in politics as well as in other things, has in any pamphlet or newspaper thrown out the idea. The States too have different interests and are ignorant of each other's interests. The Negative therefore will be abused. New States too having separate views from the old States will never come into the Union. They may even be under some foreign influence; are they in such case to participate in the negative on the will of the other States?

Mr. Sherman thought the cases in which the negative ought to be exercised, might be defined. He wished the point might not be decided till a trial at least shd. be made for that purpose.

Mr. Wilson would not say what modifications of the proposed power might be practicable or expedient. But however novel it might appear the principle of it when viewed with a close & steady eye, is right. There is no instance in which the laws say that the individual shd. be bound in one case, & at liberty to judge whether he will obey or disobey in another. The cases are parallel. Abuses of the power over the individual person may happen as well as over the individual States. Federal liberty is to the States, what civil liberty, is to private individuals, and States are not more unwilling to purchase it, by the necessary concession of their political sovereignty, than the savage is to purchase Civil liberty by the surrender of the personal sovereignty, which he enjoys in a State of nature. A definition of the cases in which the Negative should be exercised, is impracticable. A discretion must be left on one side or the other? will it not be most safely lodged on the side of the Natl. Govt.? Among the first sentiments expressed in the first Congs. one was that Virga. is no more, that Masstts. is no [more], that Pa. is no more &c. We are now one nation of brethren. We must bury all local interests & distinctions. This language continued for some time. The tables at length began to turn. No sooner were the State Govts. formed than their jealousy & ambition began to display themselves. Each endeavoured to cut a slice from the common loaf, to add to its own morsel, till at length the confederation became frittered down to the impotent condition in which it now stands. Review the progress of the articles of Confederation thro' Congress & compare the first & last draught of it. To correct its vices is the business of this convention. One of its vices is the want of an effectual controul in the whole over its parts. What danger is there that the whole will unnecessarily sacrifice a part? But reverse the case, and leave the whole at the mercy of each part, and will not the general interest be continually sacrificed to local interests?

Mr. Dickenson deemed it impossible to draw a line between the cases proper & improper for the exercise of the negative. We must take our choice of two things. We must either subject the States to the danger of being injured by the power of the Natl. Govt. or the latter to the danger of being

injured by that of the States. He thought the danger greater from the States. To leave the power doubtful, would be opening another spring of discord, and he was for shutting as many of them as possible.

Mr. Bedford, in answer to his colleague's question, where wd be the danger to the States from this power, would refer him to the smallness of his own State which may be injured at pleasure without redress. It was meant he found to strip the small States of their equal right of suffrage. In this case Delaware would have about 1/90 for its share in the General Councils, whilst Pa & Va would possess 1/3 of the whole. Is there no difference of interests, no rivalship of commerce, of manufactures? Will not these large States crush the small ones whenever they stand in the way of their ambitious or interested views. This shews the impossibility of adopting such a system as that on the table, or any other founded on a change in the priñple of representation. And after all, if a State does not obey the law of the new System, must not force be resorted to as the only ultimate remedy, in this as in any other system. It seems as if Pa & Va by the conduct of their deputies wished to provide a system in which they would have an enormous & monstrous influence. Besides, How can it be thought that the proposed negative can be exercised? Are the laws of the States to be suspended in the most urgent cases until they can be sent seven or eight hundred miles, and undergo the deliberation of a body who may be incapable of Judging of them? Is the National Legislature too to sit continually in order to revise the laws of the States?

Mr. Madison observed that the difficulties which had been started were worthy of attention and ought to be answered before the question was put. The case of laws of urgent necessity must be provided for by some emanation of the power from the Natl. Govt. into each State so far as to give a temporary assent at least. This was the practice in the Royal Colonies before the Revolution and would not have been inconvenient if the supreme power of negativing had been faithful to the American interest, and had possessed the necessary information. He supposed that the negative might be very properly lodged in the senate alone, and that the more numerous & expensive branch therefore might not be obliged to sit constantly. He asked Mr. B. what would be the consequence to the small States of a dissolution of the Union wch seemed likely to happen if no effectual substitute was made

for the defective System existing, and he did not conceive any effectual system could be substituted on any other basis than that of a proportional suffrage? If the large States possessed the Avarice & ambition with which they were charged, would the small ones in their neighbourhood, be more secure when all controul of a Gen^{l} Gov^{t} was withdrawn.

M^{r} Butler was vehement agst the Negative in the proposed extent, as cutting off all hope of equal justice to the distant States. The people there would not he was sure give it a hearing.

On the question for extending the negative power to all cases as proposed by (M^{r} P. & M^{r} M.) Mass. ay. Con^{t} no. N. Y. no. N. J. no. P^{a} ay. Del. div^{d}. M^{r} Read & M^{r} Dickenson ay. M^{r} Bedford & M^{r} Basset no. Mary^{d} no. V^{a} ay. M^{r} R. M^{r} Mason no. M^{r} Blair, Doc^{r} M^{c} C^{g} M^{r} M. ay. Gen^{l} W. not consulted. N. C. no. S. C. no. Geo no.

On motion of M^{r} Gerry and M^{r} King tomorrow was assigned for reconsidering the mode of appointing the National Executive: the reconsideration being voted for by all the States except Connecticut & N. Carolina.

M^{r} Pinkney and M^{r} Rutlidge moved to add to the Resol^{n} 4. agreed to by the Com^{e} the following, viz. "that the States be divided into three classes, the 1st class to have 3 members, the 2^{d} two, & the 3^{d} one member each, that an estimate be taken of the comparative importance of each State at fixed periods, so as to ascertain the number of members they may from time to time be entitled to." The Committee then rose and the House adjourned.

Saturday June 9TH[71] Mr. Luther Martin from Maryland took his seat. In Committee of the Whole.

[71] Edward Carrington wrote to Jefferson from New York, June 9,1787:

> "The debates and proceedings of the Convention are kept in profound secrecy—opinions of the probable result of their deliberations can only be formed from the prevailing impressions of men of reflection and understanding—these are reducible to two schemes—the first, a consolidation of the whole Empire into one republic, leaving in the States nothing more than subordinate courts for facilitating the administration of the Laws—the second an investiture of the fœderal sovereignty with full and independent authority as to the Trade, Revenues, and forces of the union, and the rights of peace and war, together with a negative upon all the acts of the State legislatures.
>
> The first idea, I apprehend, would be impracticable, and therefore do not suppose it can be adopted—general Laws through a Country embracing so many climates, productions, and manners as the United States, would operate many oppressions & a general legislature would be found incompetent to the formation of local ones, as a majority would in every instance, be ignorant of, and unaffected by the objects of legislation.... Something like the second will probably be formed—indeed I am certain that nothing less than what will give the fœderal sovereignty a compleat controul over the state Governments, will be thought worthy of discussion —such a scheme constructed upon well adjusted principles would certainly give us stability and importance as a nation, and if the Executive powers can be sufficiently checked, must be eligible—unless the whole has a decided influence over the parts, the constant effort will be to resume the delegated powers, and there cannot be an inducement in the fœderal sovereignty to refuse its assent to an innocent act of a State.... The Eastern opinions are for a total surrender of the state Sovereignties, and indeed some amongst them go to a monarchy at once—they have verged to anarchy, while to the southward we have only felt an inconvenience, and their proportionate disposition to an opposite extreme is a natural consequence."—*Jeff. MSS.*

Mr. Gerry, according to previous notice given by him, moved "that the national Executive should be elected by the Executives of the States whose proportion of votes should be the same with that allowed to the States in the

election of the Senate." If the appointm^{t} should be made by the Nat^{l} Legislature, it would lessen that independence of the Executive which ought to prevail, would give birth to intrigue and corruption between the Executive & Legislature previous to the election, and to partiality in the Executive afterwards to the friends who promoted him. Some other mode therefore appeared to him necessary. He proposed that of appointing by the State Executives as most analogous to the principle observed in electing the other branches of the Nat^{l} Gov^{t}; the first branch being chosen by the *people* of the States, & the 2^{d} by the Legislatures of the States, he did not see any objection agst letting the Executive be appointed by the Executives of the States. He supposed the Executives would be most likely to select the fittest men, and that it would be their interest to support the man of their own choice.

M^{r} Randolph urged strongly the inexpediency of M^{r} Gerry's mode of appointing the Nat^{l} Executive. The confidence of the people would not be secured by it to the Nat^{l} magistrate. The small States would lose all chance of an appointm^{t} from within themselves. Bad appointments would be made; the Executives of the States being little conversant with characters not within their own small spheres. The State Executives too notwithstanding their constitutional independence, being in fact dependent on the State Legislatures will generally be guided by the views of the latter, and prefer either favorites within the States, or such as it may be expected will be most partial to the interests of the State. A Nat^{l} Executive thus chosen will not be likely to defend with becoming vigilance & firmness the National rights agst State encroachments. Vacancies also must happen. How can these be filled? He could not suppose either that the Executives would feel the interest in supporting the Nat^{l} Executive which had been imagined. They will not cherish the great Oak which is to reduce them to paltry shrubs.

On the question for referring the appointment of the Nat^{l} Executive to the State Executives as prop^{d} by M^{r} Gerry Mass^{ts} no. Con^{t} no. N. Y. no. N. J. no. P^{a} no. Del. div^{d}. M^{d} no. V^{a} no. S. C. no. Geo. no.[72]

[72] "Carried against the motion, 10 noes, and Delaware divided."—Yates, *Secret Proceedings*, etc., 111. The Journal also includes North Carolina among the noes.—*Journal of the Federal Convention*, 110.

M[r] Patterson moves that the Committee resume the clause relating to the rule of suffrage in the Nat[l] Legislature.

M[r] Brearly[73] seconds him. He was sorry he said that any question on this point was brought into view. It had been much agitated in Cong[s] at the time of forming the Confederation, and was then rightly settled by allowing to each sovereign State an equal vote. Otherwise the smaller States must have been destroyed instead of being saved. The substitution of a ratio, he admitted carried fairness on the face of it; but on a deeper examination was unfair and unjust. Judging of the disparity of the States by the quota of Cong[s], Virg[a] would have 16 votes, and Georgia but one. A like proportion to the others will make the whole number ninety. There will be 3 large states, and 10 small ones. The large States by which he meant Mass[ts] Pen[a] & Virg[a] will carry every thing before them. It had been admitted, and was known to him from facts within N. Jersey that where large & small counties were united into a district for electing representatives for the district, the large counties always carried their point, and Consequently that the large States would do so. Virg[a] with her sixteen votes will be a solid column indeed, a formidable phalanx. While Georgia with her Solitary vote, and the other little States will be obliged to throw themselves constantly into the scale of some large one, in order to have any weight at all. He had come to the convention with a view of being as useful as he could in giving energy and stability to the federal Government. When the proposition for destroying the equality of votes came forward, he was astonished, he was alarmed. Is it fair then it will be asked that Georgia should have an equal vote with Virg[a]. He would not say it was. What remedy then? One only, that a map of the U. S. be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into 13 equal parts.

[73] "Mr. Brearly is a man of good, rather than of brilliant parts. He is a Judge of the Supreme Court of New Jersey, and is very much in the esteem of the people. As an Orator he has little to boast of, but as a Man he has every virtue to recommend him. Mr. Brearly is about 40 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 327.

Mr Patterson considered the proposition for a proportional representation as striking at the existence of the lesser States. He wd premise however to an investigation of this question some remarks on the nature structure and powers of the Convention. The Convention he said was formed in pursuance of an Act of Congs that this act was recited in several of the Commissions, particularly that of Masts which he required to be read: that the amendment of the Confederacy was the object of all the laws and Commissions on the subject: that the articles of the Confederation were therefore the proper basis of all the proceedings of the Convention. We ought to keep within its limits, or we should be charged by our Constituents with usurpation, that the people of America were sharpsighted and not to be deceived. But the Commissions under which we acted were not only the measure of our power, they denoted also the sentiments of the States on the subject of our deliberation. The idea of a National Govt as contradistinguished from a federal one, never entered into the mind of any of them, and to the public mind we must accommodate ourselves. We have no power to go beyond the federal Scheme, and if we had the people are not ripe for any other. We must follow the people; the people will not follow us. —The *proposition* could not be maintained whether considered in reference to us as a nation, or as a confederacy. A confederacy supposes sovereignty in the members composing it & sovereignty supposes equality. If we are to be considered as a nation, all State distinctions must be abolished, the whole must be thrown into hotchpot, and when an equal division is made, then there may be fairly an equality of representation. He held up Virga Masts & Pa as the three large States, and the other ten as small ones; repeating the calculations of Mr Brearly, as to the disparity of votes which wd take place, and affirming that the small States would never agree to it. He said there was no more reason that a great individual State contributing much, should have more votes than a small one contributing little, than that a rich individual citizen should have more votes than an indigent one. If the rateable property of A was to that of B as 40 to 1, ought A for that reason to have 40 times as many votes as B. Such a principle would never be admitted, and if it were admitted would put B entirely at the mercy of A. As A has more to be protected than B so he ought to contribute more for the common protection. The same may be said of a large State wch has more to be protected than a small one. Give the large States an influence in

proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small States will have every thing to fear. It was once proposed by Galloway & some others that America should be represented in the British Parl^{t} and then be bound by its laws. America could not have been entitled to more than 1/3 of the n^{o} of Representatives which would fall to the share of G. B. Would American rights & interests have been safe under an authority thus constituted? It has been said that if a Nat^{l} Gov^{t} is to be formed so as to operate on the people, and not on the States, the representatives ought to be drawn from the people. But why so? May not a Legislature filled by the State Legislatures operate on the people who chuse the State Legislatures? or may not a practicable coercion be found. He admitted that there was none such in the existing System.—He was attached strongly to the plan of the existing Confederacy, in which the people chuse their Legislative representatives; and the Legislatures their federal representatives. No other amendments were wanting than to mark the orbits of the States with due precision, and provide for the use of coercion, which was the great point. He alluded to the hint thrown out heretofore by M^{r} Wilson of the necessity to which the large States might be reduced of confederating among themselves, by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to compel the others to unite. N. Jersey will never confederate on the plan before the Committee. She would be swallowed up. He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan here but on his return home do every thing in his power to defeat it there.

M^{r} Wilson, hoped if the Confederacy should be dissolved, that a *majority*, that a *minority* of the States would unite for their safety. He entered elaborately into the defence of a proportional representation, stating for his first position that as all authority was derived from the people, equal numbers of people ought to have an equal n^{o} of representatives, and different numbers of people different numbers of representatives. This principle had been improperly violated in the Confederation, owing to the urgent circumstances of the time. As to the case of A. & B. stated by M^{r} Patterson, he observed that in districts as large as the States, the number of people was the best measure of their comparative wealth. Whether therefore wealth or numbers were to form the ratio it would be the same. M^{r} P.

admitted persons, not property to be the measure of suffrage. Are not the Citizens of Pen[a]. equal to those of N. Jersey? does it require 150 of the former to balance 50 of the latter? Representatives of different districts ought clearly to hold the same proportion to each other, as their respective Constituents hold to each other. If the small States will not confederate on this plan, Pen[a]. & he presumed some other States, would not confederate on any other. We have been told that each State being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality when he becomes a member of Civil Government. He can not. As little can a Sovereign State, when it becomes a member of a federal govern[t]. If N. J. will not part with her sovereignty it is vain to talk of Gov[t]. A new partition of the States is desirable, but evidently & totally impracticable.

M[r]. Williamson illustrated the cases by a comparison of the different States, to Counties of different sizes within the same State; observing that proportional representation was admitted to be just in the latter case, and could not therefore be fairly contested in the former.

The Question being about to be put M[r]. Patterson hoped that as so much depended on it, it might be thought best to postpone the decision till tomorrow, which was done, nem. con.

The Com[e]. rose & the House adjourned.

Monday, June 11th Mr Abraham Baldwin from Georgia took his seat. In Committee of the Whole.

The clause concerning the rule of suffrage in the Natl Legislature postponed on Saturday was resumed.

Mr Sherman proposed that the proportion of suffrage in the 1st branch should be according to the respective numbers of free inhabitants; and that in the second branch or Senate, each State should have one vote and no more. He said as the States would remain possessed of certain individual rights, each State ought to be able to protect itself: otherwise a few large States will rule the rest. The House of Lords in England he observed had certain particular rights under the Constitution, and hence they have an equal vote with the House of Commons that they may be able to defend their rights.

Mr Rutlidge proposed that the proportion of suffrage in the 1st branch should be according to the quotas of contribution. The justice of this rule he said could not be contested. Mr Butler urged the same idea: adding that money was power; and that the States ought to have weight in the Govt in proportion to their wealth.

Mr King & Mr Wilson,[74] in order to bring the question to a point moved "that the right of suffrage in the first branch of the national Legislature ought not to be according [to] the rule established in the articles of Confederation, but according to some equitable ratio of representation." The clause so far as it related to suffrage in the first branch was postponed in order to consider this motion.

[74] In the printed Journal Mr. Rutlidge is named as the seconder of the motion. —Madison's Note.

Mr. Dickenson contended for the *actual* contributions of the States as the rule of their representation & suffrage in the first branch. By thus connecting the interests of the States with their duty, the latter would be sure to be performed.

Mr. King remarked that it was uncertain what mode might be used in levying a National revenue; but that it was probable, imposts would be one source of it. If the *actual* contributions were to be the rule the non-importing States, as Cont. & N. Jersey, wd. be in a bad situation indeed. It might so happen that they wd. have no representation. This situation of particular States had been always one powerful argument in favor of the 5 Per Ct. impost.

The question being abt. to be put Docr. Franklin sd. he had thrown his ideas of the matter on a paper wch. Mr. Wilson read to the Committee in the words following—Mr. Chairman

> It has given me great pleasure to observe that till this point, the proportion of representation, came before us, our debates were carried on with great coolness & temper. If any thing of a contrary kind, has on this occasion appeared. I hope it will not be repeated; for we are sent here to *consult*, not to *contend*, with each other; and declarations of a fixed opinion, and of determined resolution, never to change it, neither enlighten nor convince us. Positiveness and warmth on one side, naturally beget their like on the other; and tend to create and augment discord & division in a great concern, wherein harmony & Union are extremely necessary to give weight to our Councils, and render them effectual in promoting & securing the common good.
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> I must own that I was originally of opinion it would be better if every member of Congress, or our national Council, were to consider himself rather as a representative of the whole, than as an Agent for the interests of a particular State; in which case the proportion of members for each State would be of less consequence, & it would not be very material whether they voted by States or individually. But as I find this is not to be expected, I now think the number of Representatives should bear some proportion to the number of the

Represented; and that the decisions shd be by the majority of members, not by the majority of the States. This is objected to from an apprehension that the greater States would then swallow up the smaller. I do not at present clearly see what advantage the greater States could propose to themselves by swallowing up the smaller, and therefore do not apprehend they would attempt it. I recollect that in the beginning of this Century, When the Union was proposed of the two Kingdoms, England & Scotland, the Scotch Patriots were full of fears, that unless they had an equal number of Representatives in Parliament, they should be ruined by the superiority of the English. They finally agreed however that the different proportions of importance in the Union, of the two Nations should be attended to, whereby they were to have only forty members in the House of Commons, and only sixteen in the House of Lords; A very great inferiority of numbers! And yet to this day I do not recollect that any thing has been done in the Parliament of Great Britain to the prejudice of Scotland; and whoever looks over the lists of Public officers, Civil & Military of that nation will find I believe that the North Britons enjoy at least their full proportion of emolument.

But, sir, in the present mode of voting by States, it is equally in the power of the lesser States to swallow up the greater; and this is mathematically demonstrable. Suppose for example, that 7 smaller States had each 3 members in the House, and the 6 larger to have one with another 6 members; and that upon a question, two members of each smaller State should be in the affirmative and one in the Negative, they would make

Affirmatives 14	Negatives 7
And that all the larger States should be unanimously in the Negative, they would make	Negatives 36
In all	43

It is then apparent that the 14 carry the question against the 43, and the minority overpowers the majority, contrary to the common practice of Assemblies in all Countries and Ages.

The greater States Sir are naturally as unwilling to have their property left in the disposition of the smaller, as the smaller are to have theirs in the disposition of the greater. An honorable gentleman has, to avoid this difficulty, hinted a proposition of equalizing the States. It appears to me an equitable one, and I should, for my own part, not be against such a measure, if it might be found practicable. Formerly, indeed, when almost every province had a different Constitution, some with greater others with fewer privileges, it was of importance to the borderers when their boundaries were contested, whether by running the division lines, they were placed on one side or the other. At present when such differences are done away, it is less material. The Interest of a State is made up of the interests of its individual members. If they are not injured, the State is not injured. Small States are more easily well & happily governed than large ones. If therefore in such an equal division, it should be found necessary to diminish Pennsylvania, I should not be averse to the giving a part of it to N. Jersey, and another to Delaware. But as there would probably be considerable difficulties in adjusting such a division; and however equally made at first, it would be continually varying by the augmentation of inhabitants in some States, and their fixed proportion in others; and thence frequent occasion for new divisions, I beg leave to propose for the consideration of the Committee another mode, which appears to me to be as equitable, more easily carried into practice, and more permanent in its nature.

Let the weakest State say what proportion of money or force it is able and willing to furnish for the general purposes of the Union.

Let all the others oblige themselves to furnish each an equal proportion.

The whole of these joint supplies to be absolutely in the disposition of Congress.

The Congress in this case to be composed of an equal number of Delegates from each State.

And their decisions to be by the Majority of individual members voting.

If these joint and equal supplies should on particular occasions not be sufficient, Let Congress make requisitions on the richer and more powerful States for further aids, to be voluntarily afforded, leaving to each State the right of considering the necessity and utility of the aid desired, and of giving more or less as it should be found proper.

This mode is not new. It was formerly practised with success by the British Government with respect to Ireland and the Colonies. We sometimes gave even more than they expected, or thought just to accept; and in the last war carried on while we were united, they gave us back in 5 years a million Sterling. We should probably have continued such voluntary contributions, whenever the occasions appeared to require them for the common good of the Empire. It was not till they chose to force us, and to deprive us of the merit and pleasure of voluntary contributions that we refused & resisted. Those contributions however were to be disposed of at the pleasure of a Government in which we had no representative. I am therefore persuaded, that they will not be refused to one in which the Representation shall be equal.

My learned colleague (M^{r} Wilson) has already mentioned that the present method of voting by States, was submitted to originally by Congress, under a conviction of its impropriety, inequality, and injustice. This appears in the words of their Resolution. It is of Sep^{r} 6. 1774. The words are

"Resolved that in determining questions in this Cong^{s} each Colony or province shall have one vote: The Cong^{s} not being possessed of or at present able to procure materials for ascertaining the importance of each Colony."

On the question for agreeing to M^{r} King's and M^{r} Wilson's motion it passed in the affirmative.

Mass^{ts} ay. C^{t} ay. N. Y. no. N. J. no. P^{a} ay. Del. no. M^{d} div^{d}. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

It was then moved by M^{r} Rutlidge, 2^{ded} by M^{r} Butler to add to the words "equitable ratio of representation" at the end of the motion just agreed to, the words "according to the quotas of contribution." On motion of M^{r} Wilson seconded by M^{r} Pinkney, this was postponed; in order to add, after the words "equitable ratio of representation" the words following: "in proportion to the whole number of white & other free Citizens & inhabitants of every age sex & condition including those bound to servitude for a term of years and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State," this being the rule in the Act of Congress agreed to by eleven States, for apportioning quotas of revenue on the States, and requiring a Census only every 5, 7, or 10 years.

M^{r} Gerry thought property not the rule of representation. Why then sh^{d} the blacks, who were property in the South, be in the rule of representation more than the Cattle & horses of the North.[75]

[75] After Gerry spoke, according to Yates, "Mr. Madison was of opinion at present, to fix the standard of representation, and let the detail be the business of a sub-committee."—*Secret Proceedings*, p. 116.

On the question,—Mass: Con: N. Y. Pen: Mary^{d} Virg^{a} N. C. S. C. & Geo: were in the affirmative: N. J. & Del: in the negative.

M^{r} Sherman moved that a question be taken whether each State shall have one vote in the 2^{d} branch. Every thing he said depended on this. The smaller States would never agree to the plan on any other principle than an equality of suffrage in this branch. M^{r} Elsworth[76] seconded the motion.

[76] "M^{r} Elsworth is a Judge of the Supreme Court in Connecticut;—he is Gentleman of a clear, deep, and copius understanding; eloquent, and connected in public debate; and always attentive to his duty. He is very happy in a reply, and choice in selecting such parts of his adversary's arguments as he finds make the strongest impressions,—in order to take off the force of them, so as to admit the power of his own. M^{r} Elsworth is about 37 years of age, a Man much respected for his integrity, and venerated for his abilities."—Pierce's Notes, *Am. Hist. Rev.*, iii., 326.

On the question for allowing each State one vote in the 2^{d} branch,

Mass^{ts} no. Con^{t} ay. N. Y. ay. N. J. ay. P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. no. S. C. no. Geo. no.

M^{r} Wilson & M^{r} Hamilton moved that the right of suffrage in the 2^{d} branch ought to be according to the same rule as in the 1st branch. On this question for making the ratio of representation the same in the 2^{d} as in the 1st branch it passed in the affirmative;

Mass^{ts} ay. Con^{t} no. N. Y. no. N. J. no. P^{a} ay. Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Resol: 11, for guarantying Republican Gov^{t} & territory to each State, being considered—the words "or partition," were, on motion of M^{r} Madison added, after the words "voluntary junction;"

Mas. N. Y. P. V^{a} N. C. S. C. G. ay. Con: N. J. Del: M^{d} no.

M^{r} Read disliked the idea of guarantying territory. It abetted the idea of distinct States w^{ch} would be a perpetual source of discord. There can be no cure for this evil but in doing away States altogether and uniting them all into one great Society.

Alterations having been made in the Resolution, making it read, "that a Republican Constitution & its existing laws ought to be guaranteed to each State by the U. States," the whole was agreed to nem. con.[77]

[77] Yates attributes this amendment to Madison. "Mr. Madison moved an amendment, to add to or alter the resolution as follows: The republican constitutions and the existing laws of each state, to be guaranteed by the United States."—*Secret Proceedings*, etc., 116.

Resolution 13. for amending the national Constitution hereafter without consent of the Nat^{l} Legislature being considered, Several members did not see the necessity of the Resolution at all, nor the propriety of making the consent of the Nat^{l} Legisl. unnecessary.

Col. Mason urged the necessity of such a provision. The plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments therefore will be necessary, and it will be better to provide for them, in an easy, regular and Constitutional way than to trust to chance and violence. It would be improper to require the consent of the Nat^{l} Legislature, because they may abuse their power, and refuse their consent on that very account. The opportunity for such an abuse, may be the fault of the Constitution calling for amendm^{t}.

M^{r} Randolph enforced these arguments.

The words, "without requiring the consent of the Nat^{l} Legislature" were postponed. The other provision in the clause passed nem. con.

Resolution 14. requiring oaths from the members of the State Gov^{ts} to observe the Nat^{l} Constitution & laws, being considered,[78]

[78] "Mr. Williamson. This resolve will be unnecessary, as the union will become the law of the land."—Yates, *Secret Proceedings*, etc., 117.

Mr. Sherman opposed it as unnecessarily intruding into the State jurisdictions.

Mr. Randolph considered it necessary to prevent that competition between the National Constitution & laws & those of the particular States, which had already been felt. The officers of the States are already under oath to the States. To preserve a due impartiality they ought to be equally bound to the Natl. Govt. The Natl. authority needs every support we can give it. The Executive & Judiciary of the States, notwithstanding their nominal independence on the State Legislatures are in fact, so dependent on them, that unless they be brought under some tie to the Natl. System, they will always lean too much to the State systems, whenever a contest arises between the two.

Mr. Gerry did not like the clause. He thought there was as much reason for requiring an oath of fidelity to the States from Natl. officers, as vice versa.

Mr. Luther Martin moved to strike out the words requiring such an oath from the State officers, viz "within the several States," observing that if the new oath should be contrary to that already taken by them it would be improper; if coincident the oaths already taken will be sufficient.

On the question for striking out as proposed by Mr. L. Martin

Masts. no. Cont. ay. N. Y. no. N. J. ay. Pa. no. Del. ay. Md. ay. Va. no. N. C. no. S. C. no. Geo. no.

Question on whole Resolution as proposed by Mr. Randolph;

Masts. ay. Cont. no. N. Y. no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Come. rose & House Adjd.

Tuesday June 12th in Committee of Whole

The Question taken on the Resolution 15, to wit, referring the new system to the people of the States for ratification it passed in the affirmative Massts ay. Contt no. N. Y. no. N. J. no. Pa[79] ay. Del. divd. Md divd. Va ay. N. C. ay. S. C. ay. Geo. ay.

[79] Pennsylvania omitted in the printed Journal. The vote is there entered as of June 11th.—Madison's Note.

Mr. Sherman & Mr. Elseworth moved to fill the blank left in the 4th Resolution for the periods of electing the members of the first branch with the words, "every year;" Mr. Sherman observing that he did it in order to bring on some question.

Mr. Rutlidge proposed "every two years."

Mr. Jennifer[80] propd, "every three years," observing that the too great frequency of elections rendered the people indifferent to them, and made the best men unwilling to engage in so precarious a service.

[80] "Mr. Jenifer is a Gentleman of fortune in Maryland;—he is always in good humour, and never fails to make his company pleased with him. He sits silent in the Senate, and seems to be conscious that he is no politician. From his long continuance in single life, no doubt but he has made the vow of celibacy. He speaks warmly of the Ladies notwithstanding. Mr. Jenifer is about 55 years of Age, and once served as Aid de Camp to Major Genl. Lee."—Pierce's Notes, *Am. Hist. Rev.*, iii., 330.

Mr. Madison seconded the motion for three years. Instability is one of the great vices of our republics, to be remedied. Three years will be necessary, in a Government so extensive, for members to form any knowledge of the various interests of the States to which they do not belong, and of which they can know but little from the situation and affairs of their own. One

year will be almost consumed in preparing for and travelling to & from the seat of national business.

Mr. Gerry. The people of New England will never give up the point of annual elections, they know of the transition made in England from triennial to septennial elections, and will consider such an innovation here as the prelude to a like usurpation. He considered annual elections as the only defence of the people agst tyranny. He was as much agst a triennial House as agst a hereditary Executive.

Mr. Madison, observed that if the opinions of the people were to be our guide, it wd be difficult to say what course we ought to take. No member of the Convention could say what the opinions of his Constituents were at this time; much less could he say what they would think if possessed of the information & lights possessed by the members here; & still less what would be their way of thinking 6 or 12 months hence. We ought to consider what was right & necessary in itself for the attainment of a proper Governmt. A plan adjusted to this idea will recommend itself—The respectability of this convention will give weight to their recommendation of it. Experience will be constantly urging the adoption of it, and all the most enlightened & respectable citizens will be its advocates. Should we fall short of the necessary & proper point, this influential class of Citizens, will be turned against the plan, and little support in opposition to them can be gained to it from the unreflecting multitude.

Mr. Gerry repeated his opinion that it was necessary to consider what the people would approve. This had been the policy of all Legislators. If the reasoning of Mr. Madison were just, and we supposed a limited Monarchy the best form in itself, we ought to recommend it, tho' the genius of the people was decidedly adverse to it, and having no hereditary distinctions among us, we were destitute of the essential materials for such an innovation.

On the question for the triennial election of the 1st branch

Mass. no. (Mr. King ay.) Mr. Ghorum wavering. Cont. no. N. Y. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. no. S. C. no. Geo. ay.

The words requiring members of y^e^ 1^st^ branch to be of the age of —— years were struck out Maryland alone no. The words "*liberal compensation for members*," being consid^d^ M^r^ Madison moves to insert the words, "*& fixt*." He observed that it would be improper to leave the members of the Nat^l^ legislature to be provided for by the State Legisl^s^, because it would create an improper dependence; and to leave them to regulate their own wages, was an indecent thing, and might in time prove a dangerous one. He thought wheat or some other article of which the average price throughout a reasonable period preceding might be settled in some convenient mode, would form a proper standard.

Col. Mason seconded the motion; adding that it would be improper for other reasons to leave the wages to be regulated by the States. 1. the different States would make different provision for their representatives, and an inequality would be felt among them, whereas he thought they ought to be in all respects equal. 2. the parsimony of the States might reduce the provision so low that as had already happened in choosing delegates to Congress, the question would be not who were most fit to be chosen, but who were most willing to serve.

On the question for inserting the words, "and fixt"

Mass^ts^ no. Con^t^ no. N. Y. ay. N. J. ay. P^a^ ay. Del. ay. M^d^ ay. V^a^ ay. N. C. ay. S. C. no. Geo. ay.

Doc^r^ Franklyn said he approved of the amendment just made for rendering the salaries as fixed as possible; but disliked the word "*liberal*." He would prefer the word moderate if it was necessary to substitute any other. He remarked the tendency of abuses in every case, to grow of themselves when once begun, and related very pleasantly the progression in ecclesiastical benefices, from the first departure from the gratuitous provision for the Apostles, to the establishment of the papal system. The word "liberal" was struck out nem con.

On the motion of M^r^ Pierce, that the wages should be paid out of the National Treasury, Mass^ts^ ay. C^t^ no. N. Y. no. N. J. ay. P^a^ ay. Del. ay. M^d^ ay. V^a^ ay. N. C. ay. S. C. no. G. ay.

Question on the clause relating to term of service & compensation of 1st branch,

Masts ay. Ct no. N. Y. no. N. J. ay. Pa ay. Del. ay. Md ay. Va ay. N. C. ay. S. C. no. Geo. ay.

On a question for striking out the "*ineligibility* of members of the Natl Legis: to *State offices*,"

Masts divd. Cont ay. N. Y. ay. N. J. no. Pa no. Del. no. Md divd. Va no. N. C. ay. S. C. ay. Geo. no.

On the question for agreeing to the clause as amended,

Masts ay. Cont no. N. Y. ay. N. J. ay. Pa ay. Del. ay. Md ay. Va ay. N. C. ay. S. C. ay. Geo. ay.

On a question for making members of the Natl Legislature *ineligible* to any office under the Natl Govt for the term of 3 years after ceasing to be members,

Masts no. Cont no. N. Y. no. N. J. no. Pa no. Del. no. Md ay. Va no. N. C. no. S. C. no. Geo. no.

On the question for such ineligibility for one year,

Masts ay. Ct ay. N. Y. no. N. J. ay. Pa ay. Del. ay. Md divd. Va ay. N. C. ay. S. C. ay. Geo. no.

On question moved by Mr. Pinckney, for striking out "incapable of re-election into 1st branch of the Natl Legisl. for —— years, and subject to recall" agd to nem. con.

On question for striking out from the Resol: 5 the words requiring members of the Senatorial branch to be of the age of —— years at least

Masts no. Cont ay. N. Y. no. N. J. ay. Pa ay. Del. no. Md no. Va no. N. C. divd. S. C. no. Geo. divd.

On the question for filling the blank with 30 years as the qualification; it was agreed to,

Mass^{ts} ay. C^{t} no. N. Y. ay. N. J. no. P^{a} ay. Del. no. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. no.

M^{r} Spaight moved to fill the blank for the duration of the appointm^{ts} to the 2^{d} branch of the National Legislature with the words "7 years."

M^{r} Sherman, thought 7 years too long. He grounded his opposition he said on the principle that if they did their duty well, they would be reelected. And if they acted amiss, an earlier opportunity should be allowed for getting rid of them. He preferred 5 years which w^{d} be between the terms of the 1st branch & of the executive.

M^{r} Pierce proposed 3 years. 7 years would raise an alarm. Great mischiefs had arisen in England from their septennial Act which was reprobated by most of their patriotic Statesmen.

M^{r} Randolph was for the term of 7 years. The democratic licentiousness of the State Legislatures proved the necessity of a firm Senate. The object of this 2^{d} branch is to controul the democratic branch of the Nat^{l} Legislature. If it be not a firm body, the other branch being more numerous, and coming immediately from the people, will overwhelm it. The Senate of Maryland constituted on like principles had been scarcely able to stem the popular torrent. No mischief can be apprehended, as the concurrence of the other branch, and in some measure, of the Executive, will in all cases be necessary. A firmness & independence may be the more necessary also in this branch, as it ought to guard the Constitution agst encroachments of the Executive who will be apt to form combinations with the demagogues of the popular branch.

M^{r} Madison, considered 7 years as a term by no means too long. What we wished was to give to the Gov^{t} that stability which was every where called for, and which the Enemies of the Republican form alledged to be inconsistent with its nature. He was not afraid of giving too much stability by the term of Seven years. His fear was that the popular branch would still

be too great an overmatch for it. It was to be much lamented that we had so little direct experience to guide us. The Constitution of Maryland was the only one that bore any analogy to this part of the plan. In no instance had the Senate of Mary^{d} created just suspicions of danger from it. In some instances perhaps it may have erred by yielding to the H. of Delegates. In every instance of their opposition to the measures of the H. of D. they had had with them the suffrages of the most enlightened and impartial people of the other States as well as of their own. In the States where the Senates, were chosen in the same manner as the other branches, of the Legislature, and held their seats for 4 years, the institution was found to be no check whatever agst the instabilities of the other branches. He conceived it to be of great importance that a stable & firm Gov^{t}, organized in the republican form should be held out to the people. If this be not done, and the people be left to judge of this species of Gov^{t} by y^{e} operations of the defective systems under which they now live, it is much to be feared the time is not distant when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them.

On the question for "seven years" as the term for the 2^{d} branch Mass^{ts} divided. (M^{r} King, M^{r} Ghorum ay, M^{r} Gerry, M^{r} Strong, no) Con^{t} no. N. Y. div^{d} N. J. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Butler and M^{r} Rutlidge proposed that the members of the 2^{d} branch should be entitled to no salary or compensation for their services. On the question,[81]—

Mass^{ts} div^{d}. Con^{t} ay. N. Y. no. N. J. no. P. no. Del. ay. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. no.

[81] (It is probable y^{e} votes here turned chiefly on the idea that if the salaries were not here provided for, the members would be paid by their respective States) This note for the bottom margin.—Madison's Note.

It was then moved & agreed that the clauses respecting the stipends & ineligibility of the 2^{d} branch be the same as, of the 1st branch:—Con:

disagreeing to the ineligibility.

It was moved & 2ded to alter the Resol: 9. so as to read "that the jurisdiction of the supreme tribunal shall be to hear & determine in the dernier resort, all piracies, felonies, &c."

It was moved & 2ded to strike out "all piracies & felonies on the high seas," which was agreed to.

It was moved & agreed to strike out "all captures from an enemy."

It was moved & agreed to strike out "other States" and insert "two distinct States of the Union."

It was moved & agreed to postpone the consideration of the Resolution 9, relating to the Judiciary:

The Come then rose & the House Adjourned.

Wednesday June 13.[82] in Committee of the whole

[82] Edward Carrington wrote to Madison from New York, June 13, 1787:

"The public mind is now on the point of a favourable turn to the objects of your meeting, and, being fairly met with the result, will, I am persuaded, eventually embrace it—being calculated for the permanent fitness, and not the momentary habits of the country, it may at first be viewed with hesitation, but derived and patronized as it will be, its influence must extend into an adoption as the present fabric gives way—the work once well done will be done forever, but patched up in accommodation to the whim of the day, it will soon require the hand of the cobbler again, and in every unfortunate experiment the materials are rendered the less fit for that monument of civil liberty which we wish to erect.—Constitute a federal Government, invigorate & check it well—give it then independent powers over the Trade the Revenues, and force of the Union, and all things that involve any relationship to foreign powers—give it also the revisal of all State acts—unless it possesses a compleat controul over the State Governments, the constant effort will be to resume the delegated powers,—nor do I see what inducement the federal sovereignty can have to negative an innocent act of a State—Constitute it in such shape that, its first principles being preserved, it will be a good republic—I wish to see that system have a fair experiment—but let the liability to encroachment be rather from the federal, than the State, governments—in the first case we shall insensibly glide into a monarchy: in the latter nothing but anarchy can be the consequence.

"Some Gentlemen think of a total surrender of the State Sovereignty—I see not the necessity of that measure for giving us national stability in consequence—the negative of the federal sovereignty will effectually prevent the existence of any licentious or inconsiderate act—and I believe that even under a new monarchy it would be found necessary thus to continue the local administration—general Laws would operate many particular [undecipherable] and a general legislature would be found incompetent to the formation of local ones—the interest of the United States may be well combined for the common good—but the affairs of so extensive a country are not to be thrown into one mass—an attempt to confederate upon terms materially opposed to the particular Interests would in all probability occasion a dismemberment, and in that event, within a long time yet to come, the prospects of commerce will be at an end as to any degree of national importance, let her fate be what it may as to freedom or vassalage."—*Mad. MSS.*

Resol: 9 being resumed

The latter parts of the clause relating to the jurisdiction of the Natl tribunals, was struck out nem. con in order to leave full room for their organization.

Mr. Randolph & Mr. Madison, then moved the following resolution respecting a National Judiciary, viz "that the jurisdiction of the National Judiciary shall extend to cases, which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony" which was agreed to.

Mr. Pinkney & Mr. Sherman moved to insert after the words "one supreme tribunal" the words "the Judges of which to be appointed by the National Legislature."

Mr. Madison, objected to an appt by the whole Legislature. Many of them were incompetent Judges of the requisite qualifications. They were too much influenced by their partialities. The candidate who was present, who had displayed a talent for business in the legislative field, who had perhaps assisted ignorant members in business of their own, or of their Constituents, or used other winning means, would without any of the essential qualifications for an expositor of the laws prevail over a competitor not having these recommendations, but possessed of every necessary accomplishment. He proposed that the appointment should be made by the Senate, which as a less numerous & more select body, would be more competent judges, and which was sufficiently numerous to justify such a confidence in them.

Mr. Sherman & Mr. Pinkney withdrew their motion, and the appt by the Senate was agd to nem. con.

Mr. Gerry moved to restrain the Senatorial branch from originating money bills. The other branch was more immediately the representatives of the people, and it was a maxim that the people ought to hold the Purse-strings. If the Senate should be allowed to originate such bills, they wd repeat the experiment, till chance should furnish a sett of representatives in the other branch who will fall into their snares.

Mr. Butler saw no reason for such a discrimination. We were always following the British Constitution when the reason of it did not apply. There was no analogy between the H. of Lords and the body proposed to be established. If the Senate should be degraded by any such discriminations, the best men would be apt to decline serving in it in favor of the other branch. And it will lead the latter into the practice of tacking other clauses to money bills.

Mr. Madison observed that the Comentators on the Brit: Const: had not yet agreed on the reason of the restriction on the H. of L. in money bills. Certain it was there could be no similar reason in the case before us. The Senate would be the representatives of the people as well as the 1st branch. If they sd. have any dangerous influence over it, they would easily prevail on some member of the latter to originate the bill they wished to be passed. As the Senate would be generally a more capable sett of men, it wd. be wrong to disable them from any preparation of the business, especially of that which was most important, and in our republics, worse prepared than any other. The Gentleman in pursuance of his principle ought to carry the restraint to the *amendment*, as well as the originating of money bills, since, an addition of a given sum wd. be equivalent to a distinct proposition of it.

Mr. King differed from Mr. Gerry, and concurred in the objections to the proposition.

Mr. Read favored the proposition, but would not extend the restraint to the case of amendments.

Mr. Pinkney thinks the question premature. If the Senate shd. be formed on the *same* proportional representation as it stands at present, they sd. have equal power, otherwise if a different principle sd. be introduced.

Mr. Sherman. As both branches must concur, there can be no danger whichever way the Senate be formed. We establish two branches in order to get more wisdom, which is particularly needed in the finance business— The Senate bear their share of the taxes, and are also the representatives of the people. What a man does by another, he does by himself is a maxim. In Cont. both branches can originate in all cases, and it has been found safe &

convenient. Whatever might have been the reason of the rule as to The H. of Lords, it is clear that no good arises from it now even there.

Gen[l] Pinkney. This distinction prevails in S. C. and has been a source of pernicious disputes between y[e] 2 branches. The Constitution is now evaded, by informal schedules of amendments handed from y[e] Senate to the other House.

M[r] Williamson wishes for a question chiefly to prevent re-discussion. The restriction will have one advantage, it will oblige some member in the lower branch to move, & people can then mark him.

On the question for excepting money bills, as prop[d] by M[r] Gerry, Mass. no. Con[t] no. N. Y. ay. N. J. no. Del. ay. M[d] no. V[a] ay. N. C. no. S. C. no. Geo. no.[83]

[83] According to the Journal (121) Pennsylvania was among the noes.

Committee rose & M[r] Ghorum made report, which was postponed till tomorrow, to give an opportunity for other plans to be proposed. The report was in the words following:

Report of the Committee of Whole on M[r] Randolph's propositions.

1. Res[d] that it is the opinion of this Committee that a National Governm[t] ought to be established, consisting of a supreme Legislative, Executive & Judiciary.

2. Resol[d] that the National Legislature ought to consist of two branches.

3. Res[d] that the members of the first branch of the National Legislature ought to be elected by the people of the several States for the term of three years, to receive fixed Stipends by which they may be compensated for the devotion of their time to public service, to be paid out of the National Treasury: to be ineligible to any office established by a particular State, or under the authority of the U. States, (except those peculiarly belonging to

the functions of the first branch), during the term of service, and under the national Government for the Space of one year after its expiration.

4. Res^{d} that the members of the second branch of the Nat^{l} Legislature ought to be chosen by the individual Legislatures, to be of the age of 30 years at least, to hold their offices for a term sufficient to ensure their independency, namely, seven years, to receive fixed stipends by which they may be compensated for the devotion of their time to public service to be paid out of the National Treasury; to be ineligible to any office established by a particular State, or under the authority of the U. States, (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the Nat^{l} Gov^{t} for the space of one year after its expiration.

5. Res^{d} that each branch ought to possess the right of originating Acts.

6. Res^{d} that the Nat^{l} Legislature ought to be empowered to enjoy the Legislative rights vested in Cong^{s} by the Confederation, and moreover to legislate in all cases to which the separate States are incompetent; or in which the harmony of the U. S. may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union, or any treaties subsisting under the authority of the Union.

7. Res^{d} that the rights of suffrage in the 1st branch of the National Legislature, ought not to be according to the rule established in the articles of confederation but according to some equitable ratio of representation, namely, in proportion to the whole number of white & other free citizens & inhabitants, of every age sex and condition, including those bound to servitude for a term of years, & three fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each State.

8. Resolved that the right of suffrage in the 2^{d} branch of the National Legislature ought to be according to the rule established for the first.

9. Resolved that a National Executive be instituted to consist of a single person, to be chosen by the Nat^{l} Legislature for the term of seven years,

with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for—to be ineligible a second time, & to be removeable on impeachment and conviction of malpractices or neglect of duty—to receive a fixed stipend by which he may be compensated for the devotion of his time to public service to be paid out of the national Treasury.

10. Resol^{d} that the Nat^{l} Executive shall have a right to negative any Legislative Act, which shall not be afterwards passed unless by two thirds of each branch of the National Legislature.

11. Resol^{d} that a Nat^{l} Judiciary be established, to consist of one supreme tribunal, the Judges of which to be appointed by the 2^{d} branch of the Nat^{l} Legislature, to hold their offices during good behaviour, & to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. Resol^{d} that the Nat^{l} Legislature be empowered to appoint inferior Tribunals.

13. Res^{d} that the jurisdiction of the Nat^{l} Judiciary shall extend to all cases which respect the collection of the Nat^{l} revenue, impeachments of any Nat^{l} Officers, and questions which involve the national peace & harmony.

14. Res^{d} that provision ought to be made for the admission of States lawfully arising within the limits of the U. States, whether from a voluntary junction of Government & territory or otherwise, with the consent of a number of voices in the Nat^{l} Legislature less than the whole.

15. Res^{d} that provision ought to be made for the continuance of Congress and their authorities and privileges untill a given day after the reform of the articles of Union shall be adopted and for the completion of all their engagements.

16. Res^{d} that a Republican Constitution & its existing laws ought to be guaranteed to each State by the U. States.

17. Res^{d} that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary.

18. Res^{d} that the Legislative, Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union.

19. Res^{d} that the amendments which shall be offered to the confederation by the Convention ought at a proper time or times after the approbation of Cong^{s} to be submitted to an Assembly or Assemblies recommended by the several Legislatures to be expressly chosen by the people to consider and decide thereon.

Thursday June 14. In Convention.

Mr. Patterson, observed to the Convention that it was the wish of several deputations, particularly that of N. Jersey, that further time might be allowed them to contemplate the plan reported from the Committee of the Whole, and to digest one purely federal, and contradistinguished from the reported plan. He said they hoped to have such an one ready by tomorrow to be laid before the Convention: And the Convention adjourned that leisure might be given for the purpose.

Friday June 15th 1787

Mr. Patterson, laid before the Convention the plan which he said several of the deputations wished to be substituted in place of that proposed by Mr. Randolph. After some little discussion of the most proper mode of giving it a fair deliberation it was agreed that it should be referred to a Committee of the Whole, and that in order to place the two plans in due comparison, the other should be recommitted. At the earnest request of Mr. Lansing[84] & some other gentlemen, it was also agreed that the Convention should not go into Coñittee of the whole on the subject till tomorrow, by which delay the friends of the plan proposed by Mr. Patterson wd. be better prepared to explain & support it, and all would have an opportuy. of taking copies.[85]

[84] "Mr. Lansing is a practising Attorney at Albany, and Mayor of that Corporation. He has a hisitation in his speech, that will prevent his being an Orator of any eminence;—his legal knowledge I am told is not extensive, nor his education a good one. He is however a Man of good sense, plain in his manners, and sincere in his friendships. He is about 32 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 327.

[85] (This plan had been concerted among the deputations or members thereof, from Cont. N. Y. N. J. Del. and perhaps Mr. Martin from Maryd. who made with them a common cause though on different principles. Cont. & N. Y. were agst. a departure from the principle of the Confederation, wishing rather to add a few new powers to Congs. than to substitute, a National Govt. The States of N. J. & Del. were opposed to a National Govt. because its patrons considered a proportional representation of the States as the basis of it. The eagerness displayed by the members opposed to a Natl. Govt. from these different motives began now to produce serious anxiety for the result of the Convention. Mr. Dickenson said to Mr. Madison You see the consequence of pushing things too far. Some of the members from the small States wish for two branches in the General Legislature, and are friends to a good National Government; but we would sooner submit to foreign power, than submit to be deprived of an equality of suffrage in both branches of the legislature, and thereby be thrown under the domination of the large States.)—Madison Note.

"Mr. Madison moved for the report of the committee, and the question may then come on whether the convention will postpone it in order to take into

consideration the system now offered.

"Mr. Lansing is of opinion that the two systems are fairly contrasted. The one now offered is on the basis of amending the federal government, and the other to be reported as a national government, on propositions which exclude the propriety of amendment. Considering therefore its importance, and that justice may be done to its weighty consideration, he is for postponing it a day.

"Col. Hamilton cannot say he is in sentiment with either plan—supposes both might again be considered as federal plans, and by this means they will be fairly in committee, and be contrasted so as to make a comparative estimate of the two."—Yates, *Secret Proceedings*, etc., 121, 122.

The propositions from N. Jersey moved by M[r] Patterson were in the words following.

1. Res[d] that the articles of Confederation ought to be so revised, corrected, & enlarged, as to render the federal Constitution adequate to the exigencies of Government, & the preservation of the Union.

2. Res[d] that in addition to the powers vested in the U. States in Congress, by the present existing articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the U. States, by Stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post-office, to be applied to such federal purposes as they shall deem proper & expedient; to make rules & regulations for the collection thereof; and the same from time to time, to alter & amend in such manner as they shall think proper, to pass Acts for the regulation of trade & commerce as well with foreign Nations as with each other: provided that all punishments, fines, forfeitures & penalties to be incurred for contravening such acts rules and regulations shall be adjudged by the Common law Judiciaries of the State in which any Offence contrary to the true intent & meaning of such Acts rules & regulations shall have been committed or perpetrated, with liberty of commencing in the first instance all suits & prosecutions for that purpose in the Superior Common law Judiciary in such State, subject nevertheless, for the correction of all errors, both in law & fact in rendering Judgment, to an appeal to the Judiciary of the U. States.

3. Resd that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the articles of Confederation, the United States in Congs be authorized to make such requisitions in proportion to the whole number of white & other free citizens & inhabitants of every age Sex and condition including those bound to servitude for a term of years & three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non complying States & for that purpose to devise and pass acts directing & authorizing the same; provided that none of the powers hereby vested in the U. States in Congs shall be exercised without the consent of at least —— States, and in that proportion if the number of Confederated States should hereafter be increased or diminished.

4. Resd that the U. States in Congs be authorized to elect a federal Executive to consist of —— persons, to continue in office for the term of —— years, to receive punctually at stated times a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons composing the Executive at the time of such increase or diminution, to be paid out of the federal treasury; to be incapable of holding any other office or appointment during their time of service and for —— years thereafter: to be ineligible a second time, & removeable by Congs on application by a majority of the Executives of the several States; that the Executives besides their general authority to execute the federal acts ought to appoint all federal officers not otherwise provided for, & to direct all military operations; provided that none of the persons composing the federal Executive shall on any occasion take command of any troops, so as personally to conduct any enterprise as General or in any other capacity.

5. Resd that a federal Judiciary be established to consist of a supreme Tribunal the Judges of which to be appointed by the Executive, & to hold their offices during good behaviour, to receive punctually at stated times a fixed compensation for their services in which no increase nor diminution shall be made, so as to affect the

persons actually in office at the time of such increase or diminution: that the Judiciary so established shall have authority to hear & determine in the first instance on all impeachments of federal Officers, & by way of appeal in the dernier resort in all cases touching the rights of Ambassadors, in all cases of captures from an enemy, in all cases of piracies & felonies on the high Seas, in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise on any of the Acts for the regulation of trade, or the collection of the federal Revenue: that none of the Judiciary shall during the time they remain in office be capable of receiving or holding any other office or appointment during their term of service, or for —— thereafter.

6. Res^{d} that all Acts of the U. States in Cong^{s} made by virtue & in pursuance of the powers hereby & by the Articles of Confederation vested in them, and all Treaties made & ratified under the authority of the U. States shall be the supreme law of the respective States so far forth as those Acts or Treaties shall relate to the said States or their Citizens, and that the Judiciary of the several States shall be bound thereby in their decisions any thing in the respective laws of the Individual States to the Contrary notwithstanding: and that if any State, or any body of men in any State shall oppose or prevent y^{e} carrying into execution such acts or treaties, the federal Executive shall be authorized to call forth y^{e} power of the Confederated States, or so much thereof as may be necessary to enforce and compel an Obedience to such Acts, or an observance of such Treaties.

7. Res^{d} that provision be made for the admission of new States into the Union.

8. Res^{d} that the rule for naturalization ought to be same in every State.

9. Res^{d} that a Citizen of one State committing an offence in another State of the Union, shall be deemed guilty of the same offence as if it had been committed by a Citizen of the State in which the offence was committed. [86]

[86] This copy of Mr. Patterson's propositions varies in a few clauses from that in the printed Journal furnished from the papers of Mr. Brearley a colleague of Mr. Patterson. A confidence is felt, notwithstanding, in its accuracy. That the copy in the Journal is not entirely correct is shewn by the ensuing speech of Mr. Wilson (June 16) in which he refers to the mode of removing the Executive by impeachment & conviction as a feature in the Virga. plan forming one of its contrasts to that of Mr. Patterson, which proposed a removal on the application of a majority of the Executives of the States. In the copy printed in the Journal, the two modes are combined in the same clause; whether through inadvertence, or as a contemplated amendment, does not appear.—Madison's Note.

The Journal contains: "6. Resolved, that the legislative, executive, and judiciary powers within the several states, ought to be bound, by oath, to support the articles of union," and "9. Resolved, that provision ought to be made for hearing and deciding upon all disputes arising between the United States and an individual state, respecting territory."—*Journal of the Federal Convention*, 126.

Adjourned.

Saturday June 16. in Committee of the Whole on Resolutions propos^{d} by M^{r} P. & M^{r} R.

M^{r} Lansing called for the reading of the 1st resolution of each plan, which he considered as involving principles directly in contrast; that of M^{r} Patterson says he sustains the sovereignty of the respective States, that of M^{r} Randolph destroys it: the latter requires a negative on all the laws of the particular States; the former, only certain general powers for the general good. The plan of M^{r} R. in short absorbs all power except what may be exercised in the little local matters of the States which are not objects worthy of the supreme cognizance. He grounded his preference of M^{r} P's plan, chiefly on two objections agst that of M^{r} R. 1. want of power in the Convention to discuss & propose it. 2. the improbability of its being adopted, 1. He was decidedly of opinion that the power of the Convention was restrained to amendments of a federal nature, and having for their basis the Confederacy in being. The Act of Congress The tenor of the Acts of the States, the Coñissions produced by the several deputations all proved this. And this limitation of the power to an amendment of the Confederacy, marked the opinion of the States, that it was unnecessary & improper to go farther. He was sure that this was the case with his State. N. York would never have concurred in sending deputies to the Convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government.

2. was it probable that the States would adopt & ratify a scheme, which they had never authorized us to propose? and which so far exceeded what they regarded as sufficient? We see by their several Acts particularly in relation to the plan of revenue proposed by Cong. in 1783, not authorized by the Articles of Confederation, what were the ideas they then entertained. Can so great a change be supposed to have already taken place. To rely on any change which is hereafter to take place in the sentiments of the people would be trusting to too great an uncertainty. We know only what their present sentiments are. And it is in vain to propose what will not accord with these. The States will never feel a sufficient confidence in a general Government to

give it a negative on their laws. The Scheme is itself totally novel. There is no parallel to it to be found. The Authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

M[r] Patterson, said as he had on a former occasion given his sentiments on the plan proposed by M[r] R. he would now avoiding repetition as much as possible give his reasons in favor of that proposed by himself. He preferred it because it accorded 1. with the powers of the Convention, 2 with the sentiments of the people. If the confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them ourselves. I came here not to speak my own sentiments, but the sentiments of those who sent me. Our object is not such a Governm[t] as may be best in itself, but such a one as our Constituents have authorized us to prepare, and as they will approve. If we argue the matter on the supposition that no Confederacy at present exists, it can not be denied that all the States stand on the footing of equal sovereignty. All therefore must concur before any can be bound. If a proportional representation be right, why do we not vote so here? If we argue on the fact that a federal compact actually exists, and consult the articles of it we still find an equal Sovereignty to be the basis of it. He reads the 5[th] art: of Confederation giving each State a vote—& the 13[th] declaring that no alteration shall be made without unanimous consent. This is the nature of all treaties. What is unanimously done, must be unanimously undone. It was observed (by M[r] Wilson) that the larger State gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are they for that reason at liberty to take it back. Can the donor resume his gift without the consent of the donee. This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser States. The larger States acceded readily to the confederacy. It was the small ones that came in reluctantly and slowly. N. Jersey & Maryland were the two last, the former objecting to the want of power in Congress over trade: both of them to the want of power to appropriate the vacant territory to the benefit of the whole.—If the sovereignty of the States is to be maintained, the Representatives must be drawn immediately from the States, not from the people: and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty, is that of throwing the States into Hotchpot. To say that this is impracticable, will not make it so. Let it be

tried, and we shall see whether the Citizens of Mass^{ts} Pen^{a} & V^{a} accede to it. It will be objected that Coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the States, or from the individuals; and according to his plan it may be exerted on individuals as well as according that of M^{r} R. A distinct executive & Judiciary also were equally provided by his plan. It is urged that two branches in the Legislature are necessary. Why? for the purpose of a check. But the reason of the precaution is not applicable to this case. Within a particular State, where party heats prevail, such a check may be necessary. In such a body as Congress it is less necessary, and besides, the delegations of the different States are checks on each other. Do the people at large complain of Cong^{s}? No, what they wish is that Cong^{s} may have more power. If the power now proposed be not eno', the people hereafter will make additions to it. With proper powers Cong^{s} will act with more energy & wisdom than the proposed Nat^{l} Legislature; being fewer in number, and more secreted & refined by the mode of election. The plan of M^{r} R. will also be enormously expensive. Allowing Georgia & Del. two representatives each in the popular branch the aggregate number of that branch will be 180. Add to it half as many for the other branch and you have 270, coming once at least a year from the most distant as well as the most central parts of the republic. In the present deranged State of our finances can so expensive a System be seriously thought of? By enlarging the powers of Cong^{s} the greatest part of this expence will be saved, and all purposes will be answered. At least a trial ought to be made.

M^{r} Wilson entered into a contrast of the principal points of the two plans so far he said as there had been time to examine the one last proposed. These points were 1. in the Virg^{a} plan there are 2 & in some degree 3 branches in the Legislature: in the plan from N. J. there is to be a *single* legislature only —2. Representation of the people at large is the basis of one: the State Legislatures, the pillars of the other—3. proportional representation prevails in one;—equality of suffrage in the other—4. A single Executive Magistrate is at the head of the one:—a plurality is held out in the other.—5. in the one the majority of the people of the U. S. must prevail:—in the other a minority may prevail. 6. the Nat^{l} Legislature is to make laws in all cases to which the separate States are incompetent &:—in place of this Cong^{s} are to have additional power in a few cases only—7. A negative on the laws of the

States:—in place of this coertion to be substituted—8. The Executive to be removable on impeachment & conviction;—in one plan: in the other to be removable at the instance of a majority of the Executives of the States—9. Revision of the laws provided for in one:—no such check in the other—10. inferior national tribunals in one:—none such in the other. 11. In one y^{e} jurisdiction of Nat^{l} tribunals to extend &c—; an appellate jurisdiction only allowed in the other. 12. Here the jurisdiction is to extend to all cases affecting the Nation^{l} peace & harmony; *there* a few cases only are marked out. 13. finally y^{e} ratification is in this to be by the people themselves:—in that by the legislative authorities according to the 13 art: of the Confederation.

With regard to the *power of the Convention*, he conceived himself authorized to *conclude nothing*, but to be at liberty to *propose any thing*. In this particular he felt himself perfectly indifferent to the two plans.

With *regard to the sentiments of the people*, he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved, were commonly mistaken for the general voice. He could not persuade himself that the State Gov^{ts} & Sovereignties were so much the idols of the people, nor a Nat^{l} Gov^{t} so obnoxious to them, as some supposed. Why s^{d} a Nat^{l} Gov^{t} be unpopular? Has it less dignity? will each Citizen enjoy under it less liberty or protection? Will a Citizen of *Deleware* be degraded by becoming a Citizen of the *United States*? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their Gov^{ts}? no, Sir. It is from the Nat^{l} Councils that relief is expected. For these reasons he did not fear, that the people would not follow us into a National Gov^{t} and it will be a further recommendation of M^{r} R's plan that it is to be submitted to *them*, and not to the *Legislatures*, for ratification.

Proceeding now to the 1st point on which he had contrasted the two plans, he observed that anxious as he was for some augmentation of the federal powers, it would be with extreme reluctance indeed that he could ever consent to give powers to Cong^{s} he had two reasons either of w^{ch} was sufficient, 1. Cong^{s} as a Legislative body does not stand on the people. 2. it is a *single* body. 1. He would not repeat the remarks he had formerly made

on the principles of Representation, he would only say that an inequality in it, has ever been a poison contaminating every branch of Govt. In G. Britain where this poison has had a full operation, the security of private rights is owing entirely to the purity of her tribunals of Justice, the Judges of which are neither appointed nor paid, by a venal Parliament. The political liberty of that Nation, owing to the inequality of representation is at the mercy of its rulers. He means not to insinuate that there is any parallel between the situation of that Country & ours at present. But it is a lesson we ought not to disregard, that the smallest bodies in G. B. are notoriously the most corrupt. Every other source of influence must also be stronger in small than large bodies of men. When Lord Chesterfield had told us that one of the Dutch provinces had been seduced into the views of France, he need not have added, that it was not Holland, but one of the *smallest* of them. There are facts among ourselves which are known to all. Passing over others, he will only remark that the *Impost*, so anxiously wished for by the public was defeated not by any of the *larger* States in the Union. 2. *Congress is a single Legislature.* Despotism comes on Mankind in different Shapes, sometimes in an Executive, sometimes in a Military, one. Is there no danger of a Legislative despotism? Theory & practice both proclaim it. If the Legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it within itself, into distinct and independent branches. In a single House there is no check, but the inadequate one, of the virtue & good sense of those who compose it.

On another great point, the contrast was equally favorable to the plan reported by the Committee of the whole. It vested the Executive powers in a single Magistrate. The plan of N. Jersey, vested them in a plurality. In order to controul the Legislative authority, you must divide it. In order to controul the Executive you must unite it. One man will be more responsible than three. Three will contend among themselves till one becomes the master of his colleagues. In the triumvirates of Rome first Cæsar, then Augustus, are witnesses of this truth. The Kings of Sparta, & the Consuls of Rome prove also the factious consequences of dividing the Executive Magistracy. Having already taken up so much time he wd not he sd, proceed to any of the other points. Those on which he had dwelt, are sufficient of themselves; and on the decision of them, the fate of the others will depend.

Mr Pinkney,[87] the whole comes to this, as he conceived. Give N. Jersey an equal vote, and she will dismiss her scruples, and concur in the Natl system. He thought the Convention authorized to go any length in recommending; which they found necessary to remedy the evils which produced this Convention.

[87] Yates states it was C. C. Pinckney who said this.—*Secret Proceedings*, etc., 123.

Mr Elseworth proposed as a more distinctive form of collecting the mind of the Committee on the subject, "that the Legislative power of the U. S. should remain in Congs" This was not seconded, though it seemed better calculated for the purpose than the 1st proposition of Mr Patterson in place of which Mr. E. wished to substitute it.

Mr Randolph, was not scrupulous on the point of power. When the Salvation of the Republic was at stake, it would be treason to our trust, not to propose what we found necessary. He painted in strong colours, the imbecility of the existing Confederacy, & the danger of delaying a substantial reform. In answer to the objection drawn from the sense of our Constituents as denoted by their acts relating to the Convention and the objects of their deliberation, he observed that as each State acted separately in the case, it would have been indecent for it to have charged the existing Constitution with all the vices which it might have perceived in it. The first State that set on foot this experiment would not have been justified in going so far, ignorant as it was of the opinion of others, and sensible as it must have been of the uncertainty of a successful issue to the experiment. There are certainly reasons of a peculiar nature where the ordinary cautions must be dispensed with; and this is certainly one of them. He wd not as far as depended on him leave any thing that seemed necessary, undone. The present moment is favorable, and is probably the last that will offer.

The true question is whether we shall adhere to the federal plan, or introduce the national plan. The insufficiency of the former has been fully displayed by the trial already made. There are but two modes, by which the end of a Genl Govt can be attained: the 1st is by coercion as proposed by Mr P's plan 2. by real legislation as propd by the other plan. Coercion he

pronounced to be *impracticable*, *expensive*, *cruel to individuals*. It tended also to habituate the instruments of it to shed the blood & riot in the Spoils of their fellow Citizens, and consequently trained them up for the service of Ambition. We must resort therefore to a National *Legislation over individuals*, for which Cong^{s} are unfit. To vest such power in them, would be blending the Legislative with the Executive, contrary to the rec^{d} maxim on this subject: If the Union of these powers heretofore in Cong^{s} has been safe, it has been owing to the general impotency of that body. Cong^{s} are moreover not elected by the people, but by the Legislatures who retain even a power of recall. They have therefore no will of their own, they are a mere diplomatic body, and are always obsequious to the views of the States, who are always encroaching on the authority of the U. States. A provision for harmony among the States, as in trade, naturalization &.—for crushing rebellion whenever it may rear its crest—and for certain other general benefits, must be made. The powers for these purposes can never be given to a body, inadequate as Congress are in point of representation, elected in the mode in which they are, and possessing no more confidence than they do: for notwithstanding what has been said to the contrary, his own experience satisfied him that a rooted distrust of Congress pretty generally prevailed. A Nat^{l} Gov^{t} alone, properly constituted, will answer the purpose; and he begged it to be considered that the present is the last moment for estabing one. After this select experiment, the people will yield to despair.

The Committee rose & the House adjourned.

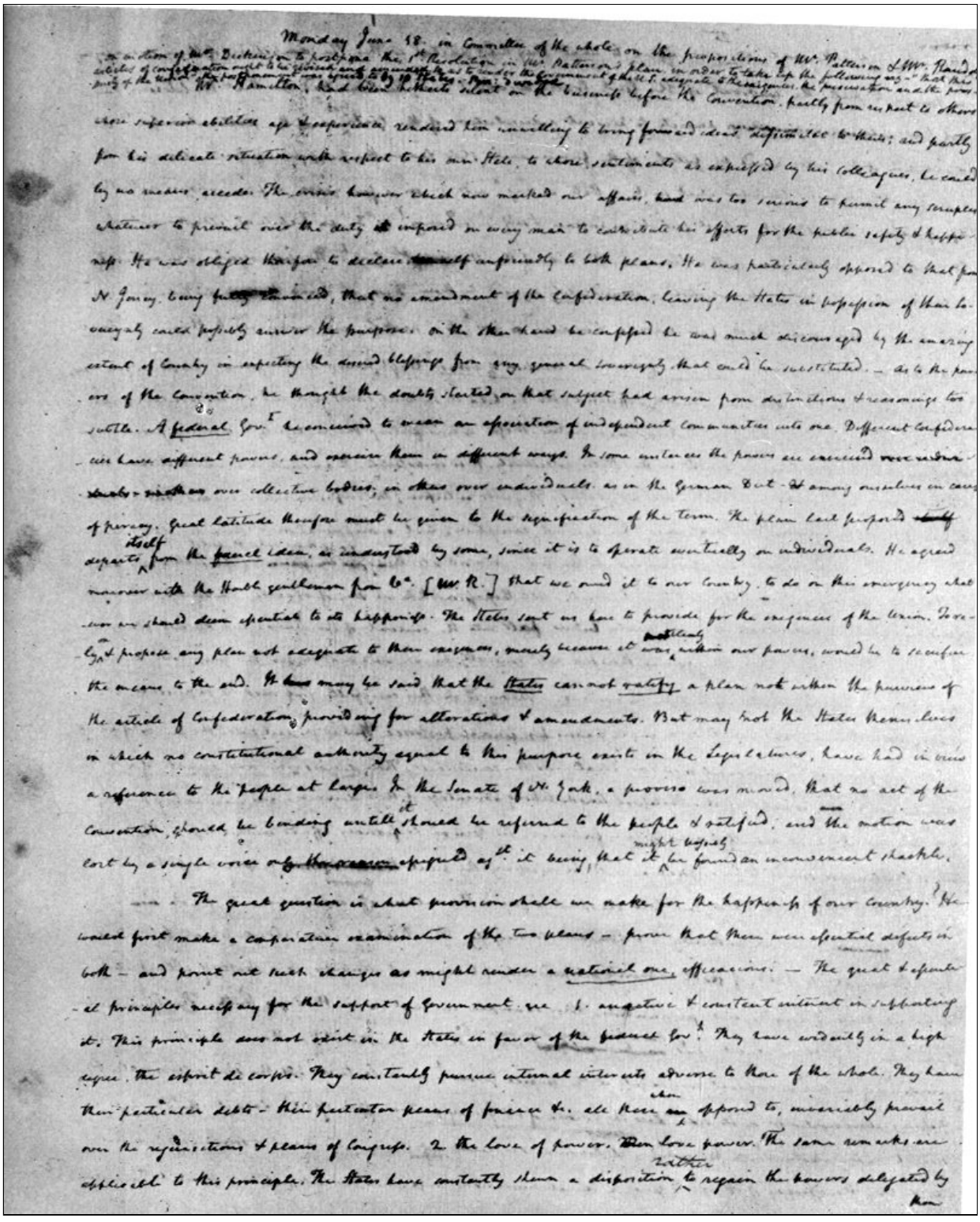
Monday June 18. in Committee of the whole on the propositions of M^r^ Patterson & M^r^ Randolph.

On motion of M^r^ Dickinson to postpone the 1^st^ Resolution in M^r^ Patterson's plan, in order to take up the following viz—"that the Articles of Confederation ought to be revised and amended, so as to render the Government of the U. S. adequate to the exigencies, the preservation and the prosperity of the Union" the postponement was agreed to by 10 States, Pen: divided.

Mr. Hamilton,[88] had been hitherto silent on the business before the Convention, partly from respect to others whose superior abilities age & experience rendered him unwilling to bring forward ideas dissimilar to theirs, and partly from his delicate situation with respect to his own State, to whose sentiments as expressed by his Colleages, he could by no means accede. This crisis however which now marked our affairs, was too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety & happiness. He was obliged therefore to declare himself unfriendly to both plans. He was particularly opposed to that from N. Jersey, being fully convinced, that no amendment of the Confederation, leaving the States in possession of their Sovereignty could possibly answer the purpose. On the other hand he confessed he was much discouraged by the amazing extent of Country in expecting the desired blessings from any general sovereignty that could be substituted.—As to the powers of the Convention, he thought the doubts started on that subject had arisen from distinctions & reasonings too subtle. A *federal* Gov^t^ he conceived to mean an association of independent Communities into one. Different Confederacies have different powers, and exercise them in different ways. In some instances the powers are exercised over collective bodies; in others over individuals, as in the German Diet—& among ourselves in cases of piracy. Great latitude therefore must be given to the signification of the term. The plan last proposed departs itself from the *federal* idea, as understood by some, since it is to operate eventually on individuals. He agreed moreover with the Honble gentleman from V^a^ (M^r^ R.)

that we owed it to our Country, to do on this emergency whatever we should deem essential to its happiness. The States sent us here to provide for the exigencies of the Union. To rely on & propose any plan not adequate to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end. It may be said that the *States* cannot *ratify* a plan not within the purview of the article of the Confederation providing for alterations & amendments. But may not the States themselves in which no constitutional authority equal to this purpose exists in the Legislatures, have had in view a reference to the people at large. In the Senate of N. York, a proviso was moved, that no act of the Convention should be binding untill it should be referred to the people & ratified; and the motion was lost by a single voice only, the reason assigned agst it being, that it might possibly be found an inconvenient shackle.

[88] Hamilton happened to call upon Madison while the latter was putting the last touches to this speech and "acknowledged its fidelity, without suggesting more than a few verbal alterations which were made."—(Cf. *Madison's Writings*, vol. ii.). A brief of the speech from the Hamilton Papers is given in Lodge's *Works of Hamilton*, i., 353, where (i., 375) Yates's report also is quoted.



Monday June 18. in Committee of the whole on the propositions of Mr. Patterson & Mr. Hamilton

HAMILTON'S PRINCIPAL SPEECH.

(Reduced.)

The great question is what provision shall we make for the happiness of our Country? He would first make a comparative examination of the two plans—prove that there were essential defects in both—and point out such changes as might render a *national one*, efficacious.—The great & essential principles necessary for the support of Government are 1. an active & constant interest in supporting it. This principle does not exist in the States in favor of the federal Gov^{t}. They have evidently in a high degree, the esprit de corps. They constantly pursue internal interests adverse to those of the whole. They have their particular debts—their particular plans of finance &c. All these when opposed to, invariably prevail over the requisitions & plans of Congress. 2. The love of power. Men love power. The same remarks are applicable to this principle. The States have constantly shewn a disposition rather to regain the powers delegated by them than to part with more, or to give effect to what they had parted with. The ambition of their demagogues is known to hate the controul of the Gen^{l} Government. It may be remarked too that the Citizens have not that anxiety to prevent a dissolution of the Gen^{l} Gov^{t} as of the particular Gov^{ts}. A dissolution of the latter would be fatal; of the former would still leave the purposes of Gov^{t} attainable to a considerable degree. Consider what such a State as Virg^{a} will be in a few years, a few compared with the life of nations. How strongly will it feel its importance and self-sufficiency? 3. An habitual attachment of the people. The whole force of this tie is on the side of the State Gov^{t}. Its sovereignty is immediately before the eyes of the people: its protection is immediately enjoyed by them. From its hand distributive justice, and all those acts which familiarize & endear a Gov^{t} to a people, are dispensed to them. 4. *Force* by which may be understood a *coercion of laws* or *coercion of arms*. Cong^{s} have not the former except in few cases. In particular States, this Coercion is nearly sufficient; tho' he held it in most cases, not entirely so. A certain portion of military force is absolutely necessary in large communities. Mass^{ts} is now feeling this necessity & making provision for it. But how can this force be exerted on the States collectively. It is impossible. It amounts to a war between the parties. Foreign powers also will not be idle spectators. They will interpose, the confusion will increase, and a dissolution of the Union will ensue. 5. *Influence.* he did not mean corruption, but a dispensation of those regular honors & emoluments, which produce an

attachment to the Govt. Almost all the weight of these is on the side of the States; and must continue so as long as the States continue to exist. All the passions then we see, of avarice, ambition, interest, which govern most individuals, and all public bodies, fall into the current of the States, and do not flow into the stream of the Genl Govt. The former therefore will generally be an overmatch for the Genl Govt and render any confederacy, in its very nature precarious. Theory is in this case fully confirmed by experience. The Amphyctionic Council had it would seem ample powers for general purposes. It had in particular the power of fining and using force agst delinquent members. What was the consequence. Their decrees were mere signals of war. The Phocian war is a striking example of it. Philip at length taking advantage of their disunion, and insinuating himself into their councils, made himself master of their fortunes. The German Confederacy affords another lesson. The Authority of Charlemagne seemed to be as great as could be necessary. The great feudal chiefs however, exercising their local sovereignties, soon felt the spirit & found the means of, encroachments, which reduced the imperial authority to a nominal sovereignty. The Diet has succeeded, which tho' aided by a Prince at its head, of great authority independently of his imperial attributes, is a striking illustration of the weakness of Confederated Governments. Other examples instruct us in the same truth. The Swiss cantons have scarce any union at all, and have been more than once at war with one another.—How then are all these evils to be avoided? only by such a compleat sovereignty in the General Goverm^t as will turn all the strong principles & passions abovementioned on its side. Does the scheme of N. Jersey produce this effect? does it afford any substantial remedy whatever? On the contrary it labors under great defects, and the defect of some of its provisions will destroy the efficacy of others. It gives a direct revenue to Congs but this will not be sufficient. The balance can only be supplied by requisitions: which experience proves cannot be relied on. If States are to deliberate on the mode, they will also deliberate on the object of the supplies, and will grant or not grant as they approve or disapprove of it. The delinquency of one will invite and countenance it in others. Quotas too must in the nature of things be so unequal as to produce the same evil. To what standard will you resort? Land is a fallacious one. Compare Holland with Russia; France or Engd with other countries of Europe, Pena with N. Carola will the relative pecuniary abilities in those instances, correspond with the relative value of land. Take numbers of

inhabitants for the rule and make like comparison of different countries, and you will find it to be equally unjust. The different degrees of industry and improvement in different Countries render the first object a precarious measure of wealth. Much depends too on *situation*. Con^{t} N. Jersey & N. Carolina, not being commercial States & contributing to the wealth of the Commercial ones, can never bear quotas assessed by the ordinary rules of proportion. They will & must fail in their duty, their example will be followed, and the union itself be dissolved. Whence then is the national revenue to be drawn? from Commerce; even from exports which notwithstanding the com̃on opinion are fit objects of moderate taxation, from excise, &c &c. These tho' not equal, are less unequal than quotas. Another destructive ingredient in the plan, is that equality of suffrage which is so much desired by the small States. It is not in human nature that V^{a} & the large States should consent to it, or if they did that they sh^{d} long abide by it. It shocks too much all ideas of Justice, and every human feeling. Bad principles in a Gov^{t} tho slow are sure in their operation, and will gradually destroy it. A doubt has been raised whether Cong^{s} at present have a right to keep Ships or troops in time of peace. He leans to the negative. Mr. P'^{s} plan provides no remedy.—If the powers proposed were adequate, the organization of Cong^{s} is such that they could never be properly & effectually exercised. The members of Cong^{s} being chosen by the States & subject to recall, represent all the local prejudices. Should the powers be found effectual, they will from time to time be heaped on them, till a tyrannic sway shall be established. The general power whatever be its form if it preserves itself, must swallow up the State powers. Otherwise it will be swallowed up by them. It is agst all the principles of a good Government to vest the requisite powers in such a body as Cong^{s}. Two Sovereignties can not co-exist within the same limits. Giving powers to Cong^{s} must eventuate in a bad Gov^{t} or in no Gov^{t}. The plan of N. Jersey therefore will not do. What then is to be done? Here he was embarrassed. The extent of the Country to be governed, discouraged him. The expence of a general Gov^{t} was also formidable; unless there were such a diminution of expence on the side of the State Gov^{ts} as the case would admit. If they were extinguished, he was persuaded that great œconomy might be obtained by substituting a general Gov^{t}. He did not mean however to shock the public opinion by proposing such a measure. On the other hand he saw no *other* necessity for declining it. They are not necessary

for any of the great purposes of commerce, revenue, or agriculture. Subordinate authorities he was aware would be necessary. There must be district tribunals; corporations for local purposes. But cui bono, the vast & expensive apparatus now appertaining to the States. The only difficulty of a serious nature which occurred to him, was that of drawing representatives from the extremes to the centre of the Community. What inducements can be offered that will suffice? The moderate wages for the 1st branch would only be a bait to little demagogues. Three dollars or thereabouts he supposed would be the utmost. The Senate he feared from a similar cause, would be filled by certain undertakers who wish for particular offices under the Govt. This view of the subject almost led him to despair that a Republican Govt could be established over so great an extent. He was sensible at the same time that it would be unwise to propose one of any other form. In his private opinion he had no scruple in declaring, supported as he was by the opinion of so many of the wise & good, that the British Govt was the best in the world: and that he doubted much whether any thing short of it would do in America. He hoped Gentlemen of different opinions would bear with him in this, and begged them to recollect the change of opinion on this subject which had taken place and was still going on. It was once thought that the power of Congs was amply sufficient to secure the end of their institution. The error was now seen by every one. The members most tenacious of republicanism, he observed, were as loud as any in declaiming agst the vices of democracy. This progress of the public mind led him to anticipate the time, when others as well as himself would join in the praise bestowed by Mr Neckar on the British Constitution, namely, that it is the only Govt in the world "which unites public strength with individual security."—In every Comunity where industry is encouraged, there will be a division of it into the few & the many. Hence separate interests will arise. There will be debtors & Creditors &c. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. Both therefore ought to have the power, that each may defend itself agst the other. To the want of this check we owe our paper money, instalment laws &c. To the proper adjustment of it the British owe the excellence of their Constitution. Their house of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest by means of their property, in being faithful to the national interest, they form a permanent barrier agst every pernicious innovation, whether attempted on the part of the Crown or of the Commons. No temporary

Senate will have firmness eno' to answer the purpose. The Senate (of Maryland) which seems to be so much appealed to, has not yet been sufficiently tried. Had the people been unanimous & eager in the late appeal to them on the subject of a paper emission they would have yielded to the torrent. Their acquiescing in such an appeal is a proof of it.—Gentlemen differ in their opinions concerning the necessary checks, from the different estimates they form of the human passions. They suppose seven years a sufficient period to give the senate an adequate firmness, from not duly considering the amazing violence & turbulence of the democratic spirit. When a great object of Gov^{t} is pursued, which seizes the popular passions, they spread like wild fire, and become irresistable. He appealed to the gentlemen from the N. England States whether experience had not there verified the remark.—As to the Executive, it seemed to be admitted that no good one could be established on Republican Principles. Was not this giving up the merits of the question; for can there be a good Gov^{t} without a good Executive. The English Model was the only good one on this subject. The Hereditary interest of the King was so interwoven with that of the Nation, and his personal emoluments so great, that he was placed above the danger of being corrupted from abroad—and at the same time was both sufficiently independent and sufficiently controuled, to answer the purpose of the institution at home, one of the weak sides of Republics was their being liable to foreign influence & corruption. Men of little character, acquiring great power become easily the tools of intermeddling Neibours. Sweden was a striking instance. The French & English had each their parties during the late Revolution which was effected by the predominant influence of the former. —What is the inference from all these observations? That we ought to go as far in order to attain stability and permanency, as republican principles will admit. Let one branch of the Legislature hold their places for life or at least during good behaviour. Let the Executive also be for life. He appealed to the feelings of the members present whether a term of seven years, would induce the sacrifices of private affairs which an acceptance of public trust would require, so as to ensure the services of the best Citizens. On this plan we should have in the Senate a permanent will, a weighty interest, which would answer essential purposes. But is this a Republican Gov^{t}, it will be asked? Yes if all the Magistrates are appointed, and vacancies are filled, by the people, or a process of election originating with the people. He was sensible that an Executive constituted as he proposed would have in fact but little of

the power and independence that might be necessary. On the other plan of appointing him for 7 years, he thought the Executive ought to have but little power. He would be ambitious, with the means of making creatures, and as the object of his ambition w^{d} be to *prolong* his power, it is probable that in case of a war, he would avail himself of the emergence, to evade or refuse a degradation from his place. An Executive for life has not this motive for forgetting his fidelity, and will therefore be a safer depository of power. It will be objected probably, that such an Executive will be an *elective Monarch*, and will give birth to the tumults which characterize that form of Gov^{t}. He w^{d} reply that *Monarch* is an indefinite term. It marks not either the degree or duration of power. If this Executive Magistrate w^{d} be a monarch for life—the other prop^{d} by the Report from the Coñittee of the whole, w^{d} be a monarch for seven years. The circumstance of being elective was also applicable to both. It had been observed by judicious writers that elective monarchies w^{d} be the best if they could be guarded agst the *tumults* excited by the ambition and intrigues of competitors. He was not sure that tumults were an inseparable evil. He rather thought this character of Elective Monarchies had been taken rather from particular cases than from general principles. The election of Roman Emperors was made by the *Army*. In *Poland* the election is made by great rival *princes* with independent power, and ample means, of raising commotions. In the German Empire, The appointment is made by the Electors & Princes, who have equal motives & means, for exciting cabals & parties. Might not such a mode of election be devised among ourselves as will defend the community agst these effects in any dangerous degree? Having made these observations he would read to the Committee a sketch of a plan which he sh^{d} prefer to either of those under consideration. He was aware that it went beyond the ideas of most members. But will such a plan be adopted out of doors? In return he would ask will the people adopt the other plan? At present they will adopt neither. But he sees the Union dissolving or already dissolved—he sees evils operating in the States which must soon cure the people of their fondness for democracies—he sees that a great progress has been already made & is still going on in the public mind. He thinks therefore that the people will in time be unshackled from their prejudices; and whenever that happens, they will themselves not be satisfied at stopping where the plan of M^{r} R. w^{d} place them, but be ready to go as far at least as he proposes. He did not mean to offer the paper he had sketched as a proposition to the Committee. It was meant only to give a more

correct view of his ideas, and to suggest the amendments which he should probably propose to the plan of M[r]. R. in the proper stages of its future discussion. He read his sketch in the words following; to wit

I. The supreme Legislative power of the United States of America to be vested in two different bodies of men; the one to be called the Assembly, the other the Senate who together shall form the Legislature of the United States with power to pass all laws whatsoever subject to the Negative hereafter mentioned.

II. The Assembly to consist of persons elected by the people to serve for three years.

III. The Senate to consist of persons elected to serve during good behaviour; their election to be made by electors chosen for that purpose by the people: in order to this the States to be divided into election districts. On the death, removal or resignation of any Senator his place to be filled out of the district from which he came.

IV. The supreme Executive authority of the United States to be vested in a Governour to be elected to serve during good behaviour—the election to be made by Electors chosen by the people in the Election Districts aforesaid—The authorities & functions of the Executive to be as follows: to have a negative on all laws about to be passed, and the execution of all laws passed; to have the direction of war when authorized or begun; to have with the advice and approbation of the Senate the power of making all treaties; to have the sole appointment of the heads or chief officers of the departments of Finance, War and Foreign Affairs; to have the nomination of all other officers (Ambassadors to foreign Nations included) subject to the approbation or rejection of the Senate; to have the power of pardoning all offences except Treason; which he shall not pardon without the approbation of the Senate.

V. On the death resignation or removal of the Governour his authorities to be exercised by the President of the Senate till a Successor be appointed.

VI. The Senate to have the sole power of declaring war, the power of advising and approving all Treaties, the power of approving or rejecting all appointments of officers except the heads or chiefs of the departments of Finance War and foreign affairs.

VII. The supreme Judicial authority to be vested in —— Judges to hold their offices during good behaviour with adequate and permanent salaries. This Court to have original jurisdiction in all causes of capture, and an appellative jurisdiction in all causes in which the revenues of the General Government or the Citizens of foreign Nations are concerned.

VIII. The Legislature of the United States to have power to institute Courts in each State for the determination of all matters of general concern.

IX. The Governour Senators and all officers of the United States to be liable to impeachment for mal- and corrupt conduct; and upon conviction to be removed from office, & disqualified for holding any place of trust or profit—All impeachments to be tried by a Court to consist of the Chief —— or Judge of the Superior Court of Law of each State, provided such Judge shall hold his place during good behavior, and have a permanent salary.

X. All laws of the particular States contrary to the Constitution or laws of the United States to be utterly void; and the better to prevent such laws being passed, the Governour or president of each State shall be appointed by the General Government and shall have a Negative upon the laws about to be passed in the State of which he is the Governour or President.

XI. No State to have any forces land or Naval; and the militia of all the States to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them.

On these several articles he entered into explanatory observations corresponding with the principles of his introductory reasoning.[89]

[89] Copy of a paper communicated to J. M. by Col. Hamilton, about the close of the convention in Philad[A], 1787, which he said delineated the constitution which he would have wished to be proposed by the convention. He had stated the principles of it in the course of the deliberations.

The people of the United States of America do ordain & establish this Constitution for the government of themselves and their posterity.

Article I

§ 1. The Legislative power shall be vested in two distinct bodies of men, one to be called the Assembly, the other the Senate, subject to the negative hereinafter mentioned.

§ 2. The Executive power, with the qualifications hereinafter specified, shall be vested in a President of the United States.

§ 3. The Supreme Judicial authority, except in the cases otherwise provided for in this Constitution, shall be vested in a Court to be called the Supreme Court, to consist of not less than six nor more than twelve Judges.

Article II

§ 1. The Assembly shall consist of persons to be called representatives, who shall be chosen, except in the first instance, by the free male citizens & inhabitants of the several States comprehended in the Union, all of whom of the age of twenty one years & upwards shall be entitled to an equal vote.

§ 2. But the first Assembly shall be chosen in the manner prescribed in the last article and shall consist of one hundred members of whom N. Hampshire shall have five, Massachusetts thirteen, Rhode Island two, Connecticut seven, N. York nine, N. Jersey six, Pennsylvania twelve, Delaware two, Maryland eight, Virginia sixteen, N. Carolina eight, S. Carolina eight, Georgia four.

§ 3. The Legislature shall provide for the future elections of Representatives, apportioning them in each State, from time to time, as nearly as may be to the number of persons described in the 4§ of the VII article, so as that the whole number of Representatives shall never be less than one hundred, nor more than —— hundred. There shall be a Census taken for this purpose within three years after the first meeting of the Legislature, and within every successive period of ten years. The term for which Representatives shall be elected shall be determined by the Legislature but shall not exceed three years. There shall be a general election at least once in three years; and the time of service of all the members in each Assembly shall begin, (except in filling vacancies) on the same day, and shall always end on the same day.

§ 4. Forty members shall make a House sufficient to proceed to business; but their number may be increased by the Legislature, yet so as never to exceed a

majority of the whole number of Representatives.

§ 5. The Assembly shall choose its President and other officers, shall judge of the qualifications & elections of its own members, punish them for improper conduct in their capacity of Representatives not extending to life or limb; and shall exclusively possess the power of impeachment except in the case of the President of the United States; but no impeachment of a member of the Senate shall be by less than two thirds of the Representatives present.

§ 6. Representatives may vote by proxy; but no Representative present shall be proxy for more than one who is absent.[A]

[A] Quere, ? (to provide for distant States).—Note in Madison's hand.

§ 7. Bills for raising revenue, and bills for appropriating monies for the support of fleets and armies, and for paying the salaries of the officers of Government, shall originate in the Assembly; but may be altered and amended by the Senate.

§ 8. The acceptance of an office under the United States by a Representative shall vacate his seat in the Assembly.

ARTICLE III

§ 1. The Senate shall consist of persons to be chosen, except in the first instance, by Electors elected for that purpose by the Citizens and inhabitants of the several States comprehended in the Union who shall have in their own right, or in the right of their wifes, an Estate in land for not less than life, or a term of years, whereof at the time of giving their votes there shall be at least fourteen years unexpired.

§ 2. But the first Senate shall be chosen in the manner prescribed in the last Article and shall consist of forty members to be called Senators, of whom N. Hampshire shall have —— Mass^{ts} —— R. Island —— Connecticut —— N. York —— N. Jersey —— Pen^{a} —— Delaware —— Mary^{d} —— Virg^{a} —— N. Carol. —— S. Carol. —— Geo. ——.

§ 3. The Legislature shall provide for the future elections of Senators, for which purpose the States respectively, which have more than one Senator, shall be divided into convenient districts to which the Senators shall be apportioned. A State having but one Senator shall be itself a district. On the death, resignation or removal from office of a Senator his place shall be supplied by a new election in the district from which he came. Upon each election there shall be not less than six nor more than twelve electors chosen in a district.

§ 4. The number of Senators shall never be less than forty, nor shall any State, if the same shall not hereafter be divided, ever have less than the number allotted to it in the second section of this article; but the Legislature may increase the whole number of Senators, in the same proportion to the whole number of

Representatives as forty is to one hundred; and such increase beyond the present number, shall be apportioned to the respective States in a ratio to the respective numbers of their representatives.

§ 5. If States shall be divided, or if a new arrangement of the boundaries of two or more States shall take place, the Legislature shall apportion the number of Senators (in elections succeeding such division or new arrangement) to which the constituent parts were entitled according to the change of situation, having regard to the number of persons described in the 4 §. of the VII article.

§ 6. The Senators shall hold their places during good behaviour, removable only by conviction on impeachment for some crime or misdemeanor. They shall continue to exercise their offices when impeached untill a conviction shall take place. Sixteen Senators attending in person shall be sufficient to make a House to transact business; but the Legislature may increase this number, yet so as never to exceed a majority of the whole number of Senators. The Senators may vote by proxy, but no Senator who is present shall be proxy for more than two who are absent.

§ 7. The Senate shall choose its President and other officers; shall judge of the qualifications and elections of its members, and shall punish them for improper conduct in their capacity of Senators; but such punishment shall not extend to life or limb, nor to expulsion. In the absence of their President they may choose a temporary President. The President shall only have a casting vote when the House is equally divided.

§ 8. The Senate shall exclusively possess the power of declaring war. No treaty shall be made without their advice and consent; which shall also be necessary to the appointment of all officers, except such for which a different provision is made in this Constitution.

ARTICLE IV

§ 1. The President of the United States of America, (except in the first instance) shall be elected in the manner following—The Judges of the Supreme Court shall within sixty days after a vacancy shall happen, cause public notice to be given in each State, of such vacancy, appointing therein three several days for the several purposes following, to wit, a day for commencing the election of electors for the purposes hereinafter specified, to be called the first electors, which day shall not be less than forty, nor more than sixty days, after the day of the publication of the notice in each State—another day for the meeting of the electors not less [than] forty nor more than ninety days from the day for commencing their election—another day for the meeting of electors to be chosen by the first electors, for the purpose hereinafter specified, and to be called the second Electors, which day shall be not less than forty nor more than sixty days after the day for the meeting of the first electors.

§ 2. After notice of a vacancy shall have been given there shall be chosen in each State a number of persons, as the first electors in the preceding section mentioned, equal to the whole number of the Representatives and Senators of such State in the Legislature of the United States; which electors shall be chosen

by the Citizens of such State having an estate of inheritance or for three lives in land, or a clear personal estate of the value of one thousand Spanish milled dollars of the present standard.

§ 3. These first electors shall meet in their respective States at the time appointed, at one place; and shall proceed to vote by ballot for a President, who shall not be one of their own number, unless the Legislature upon experiment should hereafter direct otherwise. They shall cause two lists to be made of the name or names of the person or persons voted for, which they or the major part of them shall sign & certify. They shall then proceed each to nominate openly in the presence of the others, two persons as for second electors, and out of the persons who shall have the four highest numbers of nominations, they shall afterwards by ballot by plurality of votes choose two who shall be the second electors, to each of whom shall be delivered one of the lists before mentioned. These second electors shall not be any of the persons voted for as President. A copy of the same list signed and certified in like manner shall be transmitted by the first electors to the Seat of the Government of the United States, under a sealed cover directed to the President of the Assembly, which after the meeting of the Second electors shall be opened for the inspection of the two Houses of the Legislature.

§ 4. The second electors shall meet precisely on the day appointed and not on another day, at one place. The Chief Justice of the Supreme Court, or if there be no Chief Justice, the Judge senior in office in such Court, or if there be no one Judge senior in office, some other Judge of that Court, by the choice of the rest of the Judges or of a majority of them, shall attend at the same place and shall preside at the meeting, but shall have no vote. Two thirds of the whole number of the Electors shall constitute a sufficient meeting for the execution of their trust. At this meeting the lists delivered to the respective electors shall be produced and inspected, and if there be any person who has a majority of the whole number of votes given by the first electors, he shall be the President of the United States; but if there be no such person, the second electors so met shall proceed to vote, by ballot for one of the persons named in the lists who shall have the three highest numbers of the votes of the first electors; and if upon the first or any succeeding ballot on the day of their meeting, either of those persons shall have a number of votes equal to a majority of the whole number of second electors chosen, he shall be the President. But if no such choice be made on the day appointed for the meeting either by reason of the non-attendance of the second electors, or their not agreeing, or any other matter, the person having the greatest number of votes of the first electors shall be the President.

§ 5. If it should happen that the Chief Justice or some other Judge of the Supreme Court should not attend in due time, the second electors shall proceed to the execution of their trust without him.

§ 6. If the Judges should neglect to cause the notice required by the first section of this article to be given within the time therein limited, they may nevertheless cause it to be afterwards given; but their neglect if wilful, is hereby declared to be an offence for which they may be impeached, and if convicted they shall be punished as in other cases of conviction on impeachment.

§ 7. The Legislature shall by permanent laws provide such further regulations as may be necessary for the more orderly election of the President; not

contravening the provisions herein contained.

§ 8. The President before he shall enter upon the execution of his office shall take an oath or affirmation, faithfully to execute the same, and to the utmost of his Judgment & power to protect the rights of the people, and preserve the Constitution inviolate. This oath or affirmation shall be administered by the President of the Senate for the time being in the presence of both Houses of the Legislature.

§ 9. The Senate and the Assembly shall always convene in Session on the day appointed for the meeting of the second electors and shall continue sitting till the President take the oath or affirmation of office. He shall hold his place during good behavior, removeable only by conviction upon impeachment for some crime or misdemeanor.

§ 10. The President at the beginning of every meeting of the Legislature as soon as they shall be ready to proceed to business, shall convene them together at the place where the Senate shall sit, and shall communicate to them all such matters as may be necessary for their information, or as may require their consideration. He may by message during the Session communicate all other matters which may appear to him proper. He may, whenever in his opinion the public business shall require it, convene the Senate and Assembly, or either of them, and may prorogue them for a time not exceeding forty days at one prorogation; and if they should disagree about their adjournment, he may adjourn them to such time as he shall think proper. He shall have a right to negative all bills, Resolutions or acts of the two Houses of the Legislature about to be passed into laws. He shall take care that the laws be faithfully executed. He shall be the commander in chief of the army and Navy of the United States and of the Militia within the several States, and shall have the direction of war when commenced, but he shall not take the actual command in the field of an army without the consent of the Senate and Assembly. All treaties, conventions and agreements with foreign nations shall be made by him, by and with the advice and consent of the Senate. He shall have the appointment of the Principal or Chief officer of each of the departments of war, naval Affairs, Finance and Foreign Affairs; and shall have the nomination; and by and with the consent of the Senate, the appointment of all other officers to be appointed under the authority of the United States, except such for whom different provision is made by this Constitution; and provided that this shall not be construed to prevent the Legislature, from appointing by name, in their laws, persons to special and particular trusts created in such laws; nor shall be construed to prevent principals in offices merely ministerial, from constituting deputies.—In the recess of the Senate he may fill vacancies in offices by appointments to continue in force until the end of the next Session of the Senate, and he shall commission all officers. He shall have power to pardon all offences except treason, for which he may grant reprieves, untill the opinion of the Senate & Assembly can be had, and with their concurrence may pardon the same.

§ 11. He shall receive a fixed compensation for his services to be paid to him at stated times, and not to be increased nor diminished during his continuance in office.

§ 12. If he depart out of the United States without the Consent of the Senate and Assembly, he shall thereby abdicate his office.

§ 13. He may be impeached for any crime or misdemeanor by the two Houses of the Legislature, two thirds of each House concurring, and if convicted shall be removed from office. He may be afterwards tried & punished in the ordinary course of law. His impeachment shall operate as a suspension from office until the determination thereof.

§ 14. The President of the Senate shall be vice President of the United States. On the death, resignation, impeachment, removal from office, or absence from the United States, of the President thereof, the Vice President shall exercise all the powers by this Constitution vested in the President, until another shall be appointed, or untill he shall return within the United States, if his absence was with the consent of the Senate and Assembly.

Article V

§ 1. There shall be a Chief Justice of the Supreme Court, who together with the other Judges thereof, shall hold the office during good behaviour, removable only by conviction on impeachment for some crime or misdemeanor. Each Judge shall have a competent salary to be paid to him at stated times, and not to be diminished during his continuance in office.

The Supreme Court shall have original jurisdiction in all causes in which the United States shall be a party, in all controversies between the United States, and a particular State, or between two or more States, except such as relate to a claim of territory between the United States, and one or more States, which shall be determined in the mode prescribed in the VI article; in all cases affecting foreign Ministers, Consuls and Agents; and an appellate jurisdiction both as to law and fact in all cases which shall concern the Citizens of foreign nations, in all questions between the Citizens of different States, and in all others in which the fundamental rights of this Constitution are involved, subject to such exceptions as are herein contained and to such regulations as the Legislature shall provide.

The Judges of all Courts which may be constituted by the Legislature shall also hold their places during good behaviour, removeable only by conviction on impeachment for some crime or misdemeanor, and shall have competent salaries to be paid at stated times and not to be diminished during their continuance in office; but nothing herein contained shall be construed to prevent the Legislature from abolishing such Courts themselves.

All crimes, except upon impeachment, shall be tried by a Jury of twelve men; and if they shall have been committed within any State, shall be tried within such State; and all civil causes arising under this constitution of the like kind with those which have been heretofore triable by Jury in the respective States, shall in like manner be tried by jury; unless in special cases the Legislature shall think proper to make different provision, to which provision the concurrence of two thirds of both Houses shall be necessary.

§ 2. Impeachments of the President and Vice President of the U. States, members of the Senate, the Governours and Presidents of the several States, the Principal or Chief Officers of the Departments enumerated in the 10 §. of the 4th Article, Ambassadors and other like Public Ministers, the Judges of the Supreme Court, Generals, and Admirals of the Navy shall be tried by a Court to consist of the Judges of the Supreme Court, and the Chief Justice or first or Senior Judge of the superior Court of law in each State, of whom twelve shall constitute a Court. A majority of the Judges present may convict. All other persons shall be tried on impeachment by a court to consist of the Judges of the Supreme Court and six Senators drawn by lot, a majority of whom may convict.

Impeachments shall clearly specify the particular offence for which the party accused is to be tried, and judgment on conviction upon the trial thereof shall be either removal from office singly, or removal from office and disqualification for holding any future office or place of trust; but no Judgment on impeachment shall prevent prosecution and punishment in the ordinary course of law; provided that no Judge concerned in such conviction shall sit as Judge on the second trial. The Legislature may remove the disabilities incurred by conviction on impeachment.

Article VI

Controversies about the right of territory between the United States and particular States shall be determined by a Court to be constituted in manner following. The State or States claiming in opposition to the United States as parties shall nominate a number of persons, equal to double the number of the Judges of the Supreme Court for the time being, of whom none shall be citizens by birth of the States which are parties, nor inhabitants thereof when nominated, and of whom not more than two shall have their actual residence in one State. Out of the persons so nominated the Senate shall elect one half, who together with the Judges of the Supreme Court, shall form the Court. Two thirds of the whole number may hear and determine the controversy, by plurality of voices. The States concerned may at their option claim a decision by the Supreme Court only. All of the members of the Court hereby instituted shall, prior to the hearing of the Cause take an oath impartially and according to the best of their judgments and consciences, to hear and determine the controversy.

Article VII

§ 1. The Legislature of the United States shall have power to pass all laws which they shall judge necessary to the common defence and general welfare of the Union: But no Bill, Resolution, or act of the Senate and assembly shall have the force of a law until it shall have received the assent of the President, or of the vice-President when exercising the powers of the President; and if such assent shall not have been given within ten days, after such bill, resolution or other act shall have been presented to him for that purpose, the same shall not be a law. No bill, resolution or other act not assented to shall be revived in the same Session of the Legislature. The mode of signifying such assent, shall be by signing the bill act of [r] resolution, and returning it so signed to either House of the Legislature.

§ 2. The enacting stile of all laws shall be "Be it enacted by the people of the United States of America."

§ 3. No bill of attainder shall be passed, nor any ex post facto law; nor shall any title of nobility be granted by the United States, or by either of them; nor shall any person holding an office or place of trust under the United States without the permission of the Legislature accept any present, emolument office or title from a foreign prince or State. Nor shall any Religious Sect, or denomination, or religious test for any office or place, be ever established by law.

§ 4. Taxes on lands, houses and other real estate, and capitation taxes shall be proportioned in each State by the whole number of free persons, except Indians not taxed, and by three fifths of all other persons.

§ 5. The two Houses of the Legislature may by joint ballot appoint a Treasurer of the United States. Neither House in the Session of both Houses, without the consent of the other shall adjourn for more than three days at a time. The Senators and Representatives, in attending, going to and coming from the Session of their respective houses shall be privileged from arrest, except for crimes and breaches of the peace. The place of meeting shall always be at the seat of Government which shall be fixed by law.

§ 6. The laws of the United States, and the treaties which have been made under the articles of the confederation, and which shall be made under this Constitution shall be the supreme law of the Land, and shall be so construed by the Courts of the several States.

§ 7. The Legislature shall convene at least once in each year, which unless otherwise provided for by law, shall be on the first Monday in December.

§ 8. The members of the two Houses of the Legislature shall receive a reasonable compensation for their services, to be paid out of the Treasury of the United States and ascertained by law. The law for making such provision shall be passed with the concurrence of the first Assembly and shall extend to succeeding Assemblies; and no succeeding assembly shall concur in an alteration of such provision, so as to increase its own compensation; but there shall be always a law in existence for making such provision.

ARTICLE VIII

§ 1. The Governour or President of each State shall be appointed under the authority of the United States, and shall have a right to negative all laws about to be passed in the State of which he shall be Governour or President, subject to such qualifications and regulations, as the Legislature of the United States shall prescribe. He shall in other respects have the same powers only which the Constitution of the State does or shall allow to its Governour or President, except as to the appointment of Officers of the Militia.

§ 2. Each Governour or President of a State shall hold his office until a successor be actually appointed, unless he die, or resign or be removed from

office by conviction on impeachment. There shall be no appointment of such Governor or President in the Recess of the Senate.

The Governours and Presidents of the several States at the time of the ratification of this Constitution shall continue in office in the same manner and with the same powers as if they had been appointed pursuant to the first section of this article.

The officers of the Militia in the several States may be appointed under the authority of the U. States; the Legislature whereof may authorize the Governors or Presidents of States to make such appointments with such restrictions as they shall think proper.

ARTICLE IX

§ 1. No person shall be eligible to the office of President of the United States unless he be now a Citizen of one of the States, or hereafter be born a Citizen of the United States.

§ 2. No person shall be eligible as a Senator or Representative unless at the time of his election he be a Citizen and inhabitant of the State in which he is chosen; provided that he shall not be deemed to be disqualified by a temporary absence from the State.

§ 3. No person entitled by this Constitution to elect or to be elected President of the United States, or a Senator or Representative in the Legislature thereof, shall be disqualified but by the conviction of some offence for which the law shall have previously ordained the punishment of disqualification. But the Legislature may by law provide that persons holding offices under the United States or either of them shall not be eligible to a place in the Assembly or Senate, and shall be during their continuance in office suspended from sitting in the Senate.

§ 4. No person having an office or place of trust under the United States shall without permission of the Legislature accept any present emolument office or title from any foreign Prince or State.

§ 5. The Citizens of each State shall be entitled to the rights privileges and immunities of Citizens in every other State; and full faith and credit shall be given in each State to the public acts, records and judicial proceedings of another.

§ 6. Fugitives from justice from one State who shall be found in another shall be delivered up on the application of the State from which they fled.

§ 7. No new State shall be erected within the limits of another, or by the junction of two or more States, without the concurrent consent of the Legislatures of the United States and of the States concerned. The Legislature of the United States may admit new States into the Union.

§ 8. The United States are hereby declared to be bound to guarantee to each State a Republican form of Government, and to protect each State as well against domestic violence as foreign invasion.

§ 9. All Treaties, Contracts and engagements of the United States of America under the articles of Confederation and perpetual Union, shall have equal validity under this Constitution.

§ 10. No State shall enter into a Treaty, Alliance, or contract with another, or with a foreign power without the consent of the United States.

§ 11. The members of the Legislature of the United States and of each State, and all officers Executive & Judicial of the one and of the other shall take an oath or affirmation to support the Constitution of the United States.

§ 12. This Constitution may receive such alterations and amendments as may be proposed by the Legislature of the United States, with the concurrence of two thirds of the members of both Houses, and ratified by the Legislatures of, or by Conventions of deputies chosen by the people in, two thirds of the States composing the Union.

ARTICLE X

This Constitution shall be submitted to the consideration of Conventions in the several States, the members whereof shall be chosen by the people of such States respectively under the direction of their respective Legislatures. Each Convention which shall ratify the same, shall appoint the first representatives and Senators from such State according to the rule prescribed in the —— § of the —— article. The representatives so appointed shall continue in office for one year only. Each Convention so ratifying shall give notice thereof to the Congress of the United States, transmitting at the same time a list of the Representatives and Senators chosen. When the Constitution shall have been duly ratified, Congress shall give notice of a day and place for the meeting of the Senators and Representatives from the several States; and when these or a majority of them shall have assembled according to such notice, they shall by joint ballot, by plurality of votes, elect a President of the United States; and the Constitution thus organized shall be carried into effect.—*Mad. MSS.*

"Col: Hamilton did not propose in the Convention any plan of a Constitution. He had sketched an outline which he read as part of a speech; observing that he did not mean it as a proposition, but only to give a more correct view of his ideas.

"Mr. Patterson regularly proposed a plan which was discussed & voted on."—Madison to John Quincy Adams, Montpellier, Nov. 2, 1818, *Dept. of State MSS.*, Miscellaneous Letters.

Committee rose & the House Adjourned.

Tuesday June 19TH in Committee of Whole on the Propositions of MR Patterson,—[90]

[90] This was the last session of the Convention in Committee of the Whole.

The substitute offered yesterday by Mr. Dickenson being rejected by a vote now taken on it; Con. N. Y. N. J. Del. ay. Mass. Pa. V. N. C. S. C. Geo. no. Maryd. divided Mr. Patterson's plan was again at large before the Committee.

Mr. Madison. Much stress has been laid by some gentlemen on the want of power in the Convention to propose any other than a *federal* plan. To what had been answered by others, he would only add, that neither of the characteristics attached to a *federal* plan would support this objection. One characteristic, was that in a *federal* Government, the power was exercised not on the people individually; but on the people *collectively*, on the *States*. Yet in some instances as in piracies, captures &c. the existing Confederacy, and in many instances the amendments to it proposed by Mr. Patterson, must operate immediately on individuals. The other characteristic was, that a *federal* Govt. derived its appointments not immediately from the people, but from the States which they respectively composed. Here too were facts on the other side. In two of the States, Connect. & Rh. Island, the delegates to Congs. were chosen, not by the Legislatures, but by the people at large; and the plan of Mr. P. intended no change in this particular.

It had been alledged (by Mr. Patterson), that the Confederation having been formed by unanimous consent, could be dissolved by unanimous Consent only. Does this doctrine result from the nature of compacts? does it arise from any particular stipulation in the articles of Confederation? If we consider the federal Union as analagous to the fundamental compact by which individuals compose one Society, and which must in its theoretic origin at least, have been the unanimous act of the component members, it

cannot be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact by a part of the Society would certainly absolve the other part from their obligations to it. If the breach of *any* article by *any* of the parties, does not set the others at liberty, it is because, the contrary is *implied* in the compact itself, and particularly by that law of it, which gives an indefinite authority to the majority to bind the whole in all cases. This latter circumstance shews that we are not to consider the federal Union as analagous to the social compact of individuals: for if it were so, a Majority would have a right to bind the rest, and even to form a new Constitution for the whole, which the Gentl[n] from N. Jersey would be among the last to admit. If we consider the federal Union as analagous not to the Social compacts among individual men: but to the conventions among individual States, What is the doctrine resulting from these conventions? Clearly, according to the Expositors of the law of Nations, that a breach of any one article by any one party, leaves all the other parties at liberty, to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties indeed it is expressly stipulated that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war, which in general is understood to dissolve all subsisting Treaties. But are there any exceptions of this sort to the Articles of Confederation? So far from it that there is not even an express stipulation that force shall be used to compell an offending member of the Union to discharge its duty. He observed that the violations of the federal articles had been numerous & notorious. Among the most notorious was an act of N. Jersey herself; by which she *expressly refused* to comply with a Constitutional requisition of Cong[s] and yielded no farther to the expostulations of their deputies, than barely to rescind her vote of refusal without passing any positive act of compliance. He did not wish to draw any rigid inferences from these observations. He thought it proper however that the true nature of the existing confederacy should be investigated, and he was not anxious to strengthen the foundations on which it now stands.

Proceeding to the consideration of M[r] Patterson's plan, he stated the object of a proper plan to be twofold. 1. to preserve the Union. 2. to provide a Governm[t] that will remedy the evils felt by the States both in their united

and individual capacities. Examine M^r^ P'^s^ plan, & say whether it promises satisfaction in these respects.

1. Will it prevent the violations of the law of nations & of Treaties which if not prevented must involve us in the calamities of foreign wars? The tendency of the States to these violations has been manifested in sundry instances. The files of Cong^s^ contain complaints already, from almost every Nation with which treaties have been formed. Hitherto indulgence has been shewn to us. This cannot be the permanent disposition of foreign nations. A rupture with other powers is among the greatest of national calamities. It ought therefore to be effectually provided that no part of a nation shall have it in its power to bring them on the whole. The existing Confederacy does not sufficiently provide against this evil. The proposed amendment to it does not supply the omission. It leaves the will of the States as uncontrouled as ever.

2. Will it prevent encroachments on the federal authority? A tendency to such encroachments has been sufficiently exemplified, among ourselves, as well as in every other confederated republic antient and modern. By the federal articles, transactions with the Indians appertain to Cong^s^. Yet in several instances, the States have entered into treaties & wars with them. In like manner no two or more States can form among themselves any treaties &c. without the consent of Cong^s^. Yet Virg^a^ & Mary^d^ in one instance—Pen^a^ & N. Jersey in another, have entered into compacts, without previous application or subsequent apology. No State again can of right raise troops in time of peace without the like consent. Of all cases of the league, this seems to require the most scrupulous observance. Has not Mass^ts^, notwithstanding, the most powerful member of the Union, already raised a body of troops? Is she not now augmenting them, without having even deigned to apprise Cong^s^ of Her intention? In fine—Have we not seen the public land dealt out to Con^t^ to bribe her acquiescence in the decree constitutionally awarded ag^st^ her claim on the territory of Pen^a^: for no other possible motive can account for the policy of Cong^s^ in that measure?—If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphyctionic & Achæan confederacies among the antients, and the Helvetic, Germanic & Belgic among the moderns, tracing

their analogy to the U. States in the constitution and extent of their federal authorities—in the tendency of the particular members to usurp on these authorities, and to bring confusion & ruin on the whole.—He observed that the plan of Mr. Pat[er]son, besides omitting a controul over the States as a general defence of the federal prerogatives was particularly defective in two of its provisions. 1. Its ratification was not to be by the people at large, but by the *legislatures*. It could not therefore render the acts of Cong^{s} in pursuance of their powers, even legally *paramount* to the acts of the States. 2. It gave to the federal Tribunal an appellate jurisdiction only—even in the criminal cases enumerated. The necessity of any such provision supposed a danger of undue acquittals in the State tribunals, of what avail c^{d} an appellate tribunal be, after an acquittal? Besides in most if not all of the States, the Executives have by their respective *Constitutions*, the right of pard^{g}. How could this be taken from them by a *legislative* ratification only?

3. Will it prevent trespasses of the States on each other? Of these enough has been already seen. He instanced Acts of Virg^{a} & Maryland which gave a preference to their own Citizens in cases where the Citizens of other States are entitled to equality of privileges by the Articles of Confederation. He considered the emissions of paper money & other kindred measures as also aggressions. The States relatively to one another being each of them either Debtor or Creditor; The creditor States must suffer unjustly from every emission by the debtor States. We have seen retaliating Acts on the subject which threatened danger not to the harmony only, but the tranquillity of the Union. The plan of M^{r} Paterson, not giving even a negative on the Acts of the States, left them as much at liberty as ever to execute their unrighteous projects agst each other.

4. Will it secure the internal tranquillity of the States themselves? The insurrections in Mass^{ts} admonished all the States of the danger to which they were exposed. Yet the plan of M^{r} P. contained no provisions for supplying the defect of the Confederation on this point. According to the Republican theory indeed, Right & power being both vested in the majority, are held to be synonymous. According to fact & experience, a minority may in an appeal to force be an overmatch for the majority. 1. If the minority happen to include all such as possess the skill & habits of military life, with such as possess the great pecuniary resources, one third may conquer the

remaining two thirds. 2. one third of those who participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, & who for obvious reasons may be more ready to join the standard of sedition than that of established Government. 3. where slavery exists, the Republican Theory becomes still more fallacious.

5. Will it secure a good internal legislation & administration to the particular States? In developing the evils which vitiate the political system of the U. S. it is proper to take into view those which prevail within the States individually as well as those which affect them collectively: Since the former indirectly affect the whole; and there is great reason to believe that the pressure of them had a full share in the motives which produced the present Convention. Under this head he enumerated and animadverted on 1. the multiplicity of the laws passed by the several States. 2. the mutability of their laws. 3. the injustice of them. 4. the impotence of them: observing that Mr. Patterson's plan contained no remedy for this dreadful class of evils, and could not therefore be received as an adequate provision for the exigencies of the Community.

6. Will it secure the Union agst. the influence of foreign powers over its members. He pretended not to say that any such influence had yet been tried: but it was naturally to be expected that occasions would produce it. As lessons which claimed particular attention, he cited the intrigues practised among the Amphyctionic Confederates first by the Kings of Persia, and afterwards fatally by Philip of Macedon: Among the Achæans, first by Macedon & afterwards no less fatally by Rome: among the Swiss by Austria, France & the lesser neighbouring powers: among the members of the Germanic Body by France, England, Spain & Russia—And in the Belgic Republic, by all the great neighbouring powers. The plan of Mr. Patterson, not giving to the general Councils any negative on the will of the particular States, left the door open for the like pernicious Machinations among ourselves.

7. He begged the smaller States which were most attached to Mr. Patterson's plan to consider the situation in which it would leave them. In the first place they would continue to bear the whole expence of

maintaining their Delegates in Congress. It ought not to be said that if they were willing to bear this burthen, no others had a right to complain. As far as it led the small States to forbear keeping up a representation, by which the public business was delayed, it was evidently a matter of common concern. An examination of the minutes of Congress would satisfy every one that the public business had been frequently delayed by this cause; and that the States most frequently unrepresented in Cong^{s} were not the larger States. He reminded the Convention of another consequence of leaving on a small State the burden of maintaining a Representation in Cong^{s}. During a considerable period of the War, one of the Representatives of Delaware, in whom alone before the signing of the Confederation the entire vote of that State and after that event one half of its vote, frequently resided, was a Citizen & Resident of Pen^{a} and held an office in his own State incompatible with an appointment from it to Cong^{s}. During another period, the same State was represented by three delegates two of whom were citizens of Penn^{a} and the third a Citizen of New Jersey. These expedients must have been intended to avoid the burden of supporting Delegates from their own State. But whatever might have been y^{e} cause, was not in effect the vote of one State doubled, and the influence of another increased by it? In the 2^{d} place the coercion, on which the efficacy of the plan depends, can never be exerted but on themselves. The larger States will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphyctionic confederates: and the ban of the German Empire. It was the cobweb w^{ch} could entangle the weak, but would be the sport of the strong.

8. He begged them to consider the situation in which they would remain in case their pertinacious adherence to an inadmissible plan, should prevent the adoption of any plan. The contemplation of such an event was painful; but it would be prudent to submit to the task of examining it at a distance, that the means of escaping it might be the more readily embraced. Let the Union of the States be dissolved, and one of two consequences must happen. Either the States must remain individually independent & sovereign; or two or more Confederacies must be formed among them. In the first event would the small States be more secure agst the ambition & power of their larger neighbours, than they would be under a General

Government pervading with equal energy every part of the Empire, and having an equal interest in protecting every part agst every other part? In the second, can the smaller expect that their larger neighbours would confederate with them on the principle of the present Confederacy, which gives to each member, an equal suffrage; or that they would exact less severe concessions from the smaller States, than are proposed in the scheme of Mr. Randolph?

The great difficulty lies in the affair of Representation; and if this could be adjusted, all others would be surmountable. It was admitted by both the gentlemen from N. Jersey, (Mr. Brearly and Mr. Patterson) that it would not be *just to allow Virga* which was 16 times as large as Delaware an equal vote only. Their language was that it would not be *safe for Delaware* to allow Virga 16 times as many votes. The expedient proposed by them was that all the States should be thrown into one mass and a new partition be made into 13 equal parts. Would such a scheme be practicable? The dissimilarities existing in the rules of property, as well as in the manners, habits and prejudices of the different States, amounted to a prohibition of the attempt. It had been found impossible for the power of one of the most absolute princes in Europe (K. of France) directed by the wisdom of one of the most enlightened and patriotic Ministers (Mr. Neckar) that any age has produced, to equalize in some points only the different usages & regulations of the different provinces. But admitting a general amalgamation and repartition of the States to be practicable, and the danger apprehended by the smaller States from a proportional representation to be real; would not a particular and voluntary coalition of these with their neighbours, be less inconvenient to the whole community, and equally effectual for their own safety. If N. Jersey or Delaware conceived that an advantage would accrue to them from an equalization of the States, in which case they would necessarily form a junction with their neighbours, why might not this end be attained by leaving them at liberty by the Constitution to form such a junction whenever they pleased? And why should they wish to obtrude a like arrangement on all the States, when it was, to say the least, extremely difficult, would be obnoxious to many of the States, and when neither the inconveniency, nor the benefit of the expedient to themselves, would be lessened by confining it to themselves.—The prospect of many new States to the Westward was another consideration of importance. If they should

come into the Union at all, they would come when they contained but few inhabitants. If they shd be entitled to vote according to their proportions of inhabitants, all would be right & safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.[91]

[91] "Mr. Dickinson supposed that there were good regulations in both. Let us therefore contrast the one with the other, and consolidate such parts of them as the committee approve."—Yates, *Secret Proceedings*, etc., 140.

On a question for postponing generally the 1st proposition of Mr Patterson's plan, it was agreed to: N. Y. & N. J. only being no.

On the question moved by Mr King whether the Comitee should rise & Mr Randolph's proposition be reported without alteration, which was in fact a question whether Mr R's should be adhered to as preferable to those of Mr Patterson;

Masts ay. Cont ay. N. Y. no. N. J. no. Pa ay. Del. no. Md divd. Va ay. N. C. ay. S. C. ay. Geo. ay.

Copy of the Resolns of Mr. R. as altered in Come and reported to the House.

(Of Mr Randolph's plan as reported from the Comittee)—the 1. propos: "that a Natl Govt ought to be established consisting &c." being taken up in the House.

Mr Wilson observed that by a Natl Govt he did not mean one that would swallow up the State Govts as seemed to be wished by some gentlemen. He was tenacious of the idea of preserving the latter. He thought, contrary to the opinion of (Col. Hamilton) that they might not only subsist but subsist on friendly terms with the former. They were absolutely necessary for certain purposes which the former could not reach. All large Governments must be subdivided into lesser jurisdictions. As Examples he mentioned Persia, Rome, and particularly the divisions & subdivisions of England by Alfred.

Col. Hamilton coincided with the proposition as it stood in the Report. He had not been understood yesterday. By an abolition of the States, he meant that no boundary could be drawn between the National & State Legislatures; that the former must therefore have indefinite authority. If it were limited at all, the rivalship of the States would gradually subvert it. Even as Corporations the extent of some of them as V^{a} Mass^{ts} &c would be formidable. *As States*, he thought they ought to be abolished. But he admitted the necessity of leaving in them, subordinate jurisdictions. The examples of Persia & the Roman Empire, cited by (M^{r} Wilson) were he thought in favor of his doctrine: the great powers delegated to the Satraps & proconsuls having frequently produced revolts, and schemes of independence.

M^{r} King wished as every thing depended on this proposition, that no objections might be improperly indulged agst the phraseology of it. He conceived that the import of the term "States" "Sovereignty" "*national*" "federal," had been often used & applied in the discussions inaccurately & delusively. The States were not "Sovereigns" in the sense contended for by some. They did not possess the peculiar features of sovereignty, they could not make war, nor peace, nor alliances nor treaties. Considering them as political Beings, they were dumb, for they could not speak to any for[~e]gn Sovereign whatever. They were deaf, for they could not hear any propositions from such Sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war. On the other side, if the Union of the States comprises the idea of a confederation, it comprises that also of consolidation. A Union of the States is a Union of the men composing them, from whence a *national* character results to the whole. Cong^{s} can act alone without the States—they can act & their acts will be binding agst the Instructions of the States. If they declare war: war is de jure declared—captures made in pursuance of it are lawful—no Acts of the States can vary the situation, or prevent the judicial consequences. If the States therefore retained some portion of their sovereignty, they had certainly divested themselves of essential portions of it. If they formed a confederacy in some respects—they formed a Nation in others. The Convention could clearly deliberate on & propose any alterations that Cong^{s} could have done under y^{e} federal articles, and Could not Cong^{s} propose by virtue of the last article,

a change in any article whatever; and as well that relating to the equality of suffrage, as any other. He made these remarks to obviate some scruples which had been expressed. He doubted much the practicability of annihilating the States; but thought that much of their power ought to be taken from them.[92]

[92] King, in his notes, gives a résumé of his speech. It illustrates the accuracy of Madison's reporting:

> "Answer (R. King) The States under the confed. are not sovereign States they can do no act but such as are of a subordinate nature or such as terminate in themselves—and even these are restrained—coinage, P. office &c they are wholly incompetent to the exercise of any of the gt. & distinguishing acts of sovereignty—They can neither make nor receive (embassies) to or from any other sovereign—they have not the powers of injuring another or of defending themselves from an Injury offered from one another—they are deaf, dumb and impotent—these Faculties are yielded up and the U. S. in C. Assd. hold and possess them, and they alone can exercise them—they are so far out of the controul of the separate States yt. if every State in the Union was to instruct yr. Deleg., and those Delegates within ye powers of the Arts. of Union shd. do an act in violation of their Instructions it wd. nevertheless be valid. If they declared a war, any giving aid or comfort to the enemy wd. be Treason; if peace, any capture on the high seas wd. be piracy. This remark proves yt. the States are now subordinate corporations or societies and not sovereigns—these imperfect States are the confederates and they are the electors of the magistrates who exercise the national sovereignty. The Articles of Confedr. and perpetual Union, are partly federal & partly of the nature of a constitution or form of Govt. arising from and applying to the Citizens of the U. S. & not from the individual States.
>
> "The only criterion of determining what is federal & what is national is this, those acts which are for the government of the States only are purely federal, those which are for the government of the Citizens of the individual States are national and not federal.
>
> "If then the articles of Confedr. & perpetual union have this twofold capacity, and if they provide for an alteration in a certain mode, why may not they be so altered as that the federal article may be changed to a national one, and the national to a federal? I see no argument that can be objected to the authority. The 5th article regulates the influence of the several States and makes them equal—does not the confed. authorize this alteration, that instead of this Equality, one state may have double the Influence of another—I conceive it does—and so of every Article except that wh. destroys the Idea of a confedy. I think it may be proved that every article may be totally altered provided you have one guarantying to each State the right of regulating its private & internal affairs in the manner of a subordinate corporation.

"But admitting that the Arts, of Confed. & perpet. Union, or the powers of the Legis. did not extend to the proposed Reform; yet the public Deputations & the public Danger require it—the system proposed to be adopted is no scheme of a day, calculated to postpone the hour of Danger, & thus leave it to fall with double ruin on our successors—It is no crude and undigested plan; the child of narrow and unextensive views, brought forward under the Auspices of Cowardice & Irresolution—It is a measure of Decision, it is the foundation of Freedom & of national Glory. It will draw on itself and be able to support the severest scrutiny & Examination. It is no idle experiment, no romantic speculation—the measure forces itself upon wise men, and if they have not firmness to look it in the face and protect it—Farewell to the Freedom of our Government—our military glory will be tarnished and our boasts of Freedom will be the scorn of the Enemies of Liberty."—*Life and Correspondence of Rufus King*, i., 602, n.

M[r]. Martin.[93] said he considered that the separation from G. B. placed the 13 States in a state of Nature towards each other; that they would have remained in that state till this time, but for the confederation; that they entered into the Confederation on the footing of equality; that they met now to amend it on the same footing; and that he could never accede to a plan that would introduce an inequality and lay 10 States at the mercy of V[a]. Mass[ts]. and Penn[a].

[93] "Mr. Martin was educated for the Bar, and is Attorney general for the State of Maryland. This Gentleman possesses a good deal of information, but he has a very bad delivery, and so extremely prolix, that he never speaks without tiring the patience of all who hear him. He is about 34 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 330.

M[r]. Wilson, could not admit the doctrine that when the Colonies became independent of G. Britain, they became independent also of each other. He read the declaration of Independence, observing thereon that the *United Colonies* were declared to be free & independent States; and inferring that they were independent, not *individually* but *Unitedly* and that they were confederated as they were independent, States.

Col. Hamilton assented to the doctrine of M[r]. Wilson. He denied the doctrine that the States were thrown into a State of Nature. He was not yet prepared to admit the doctrine that the Confederacy, could be dissolved by partial infractions of it. He admitted that the States met now on an equal

footing but could see no inference from that against concerting a change of the system in this particular. He took this occasion of observing for the purpose of appeasing the fears of the small States, that two circumstances would render them secure under a National Gov^{t} in which they might lose the equality of rank they now held: one was the local situation of the 3 largest States Virg^{a} Mass^{ts} & P^{a}. They were separated from each other by distance of place, and equally so, by all the peculiarities which distinguish the interests of one State from those of another. No combination therefore could be dreaded. In the second place, as there was a gradation in the States from V^{a} the largest down to Delaware the smallest, it would always happen that ambitious combinations among a few States might & w^{d} be counteracted by defensive combinations of greater extent among the rest. No combination has been seen among the large Counties merely as such, agst lesser Counties. The more close the Union of the States, and the more compleat the authority of the whole: the less opportunity will be allowed to the stronger States to injure the weaker.

Adj^{d}.

Wednesday June 20. 1897. In Convention.

M^{r} William Blount from N. Carolina took his seat.

1st propos: of the Report of Com^{e} of the whole, before the House.

M^{r} Elseworth 2^{ded} by M^{r} Gorham, moves to alter it so as to run "that the Government of the United States ought to consist of a supreme legislative, Executive and Judiciary." This alteration he said would drop the word *national*, and retain the proper title "the United States." He could not admit the doctrine that a breach of any of the federal articles could dissolve the whole. It would be highly dangerous not to consider the Confederation as still subsisting. He wished also the plan of the Convention to go forth as an amendment of the articles of the Confederation, since under this idea the authority of the Legislatures could ratify it. If they are unwilling, the people will be so too. If the plan goes forth to the people for ratification several succeeding Conventions within the States would be unavoidable. He did not like these conventions. They were better fitted to pull down than to build up Constitutions.

M^{r} Randolph. did not object to the change of expression, but apprised the gentleman who wished for it that he did not admit it for the reasons assigned; particularly that of getting rid of a reference to the people for ratification. The motion of M^{r} Elsewth was acquiesced in nem: con:

The 2^{d} Resol: "that the National Legislature ought to consist of two branches" taken up, the word "national" struck out as of course.

M^{r} Lansing. observed that the true question here was, whether the Convention would adhere to or depart from the foundation of the present Confederacy; and moved instead of the 2^{d} Resolution, "that the powers of Legislation be vested in the U. States in Congress." He had already assigned two reasons agst such an innovation as was proposed: 1. the want of competent powers in the Convention.—2. the state of the public mind. It

had been observed by (Mr. Madison) in discussing the first point, that in two States the Delegates to Congs were chosen by the people. Notwithstanding the first appearance of this remark, it had in fact no weight, as the Delegates however chosen, did not represent the people merely as so many individuals; but as forming a Sovereign State. (Mr. Randolph) put it, he said, on its true footing namely that the public safety superseded the scruple arising from the review of our powers. But in order to feel the force of this consideration, the same impression must be had of the public danger. He had not himself the same impression, and could not therefore dismiss his scruple. (Mr. Wilson) contended that as the Convention were only to recommend, they might recommend what they pleased. He differed much from him. Any act whatever of so respectable a body must have a great effect, and if it does not succeed, will be a source of great dissentions. He admitted that there was no certain criterion of the Public mind on the subject. He therefore recurred to the evidence of it given by the opposition in the States to the scheme of an Impost. It could not be expected that those possessing Sovereignty could ever voluntarily part with it. It was not to be expected from any one State, much less from thirteen. He proceeded to make some observations on the plan itself and the argumts urged in support of it. The point of Representation could receive no elucidation from the case of England. The corruption of the boroughs did not proceed from their comparative smallness; but from the actual fewness of the inhabitants, some of them not having more than one or two. A great inequality existed in the Counties of England. Yet the like complaint of peculiar corruption in the small ones had not been made. It had been said that Congress represent the State Prejudices: will not any other body whether chosen by the Legislatures or people of the States, also represent their prejudices? It had been asserted by his colleague (Col. Hamilton) that there was no coincidence of interests among the large States that ought to excite fears of oppression in the smaller. If it were true that such a uniformity of interests existed among the States, there was equal safety for all of them, whether the representation remained as heretofore, or were proportioned as now proposed. It is proposed that the Genl Legislature shall have a negative on the laws of the States. Is it conceivable that there will be leisure for such a task? There will on the most moderate calculation, be as many Acts sent up from the States as there are days in the year. Will the members of the General Legislature be competent Judges? Will a gentleman from Georgia

be a judge of the expediency of a law which is to operate in N. Hampshire. Such a Negative would be more injurious than that of Great Britain heretofore was. It is said that the National Gov^{t} must have the influence arising from the grant of offices and honors. In order to render such a Government effectual he believed such an influence to be necessary. But if the States will not agree to it, it is in vain, worse than in vain to make the proposition. If this influence is to be attained, the States must be entirely abolished. Will any one say this would ever be agreed to? He doubted whether any Gen^{l} Government equally beneficial to all can be attained. That now under consideration he is sure, must be utterly unattainable. He had another objection. The system was too novel & complex. No man could foresee what its operation will be either with respect to the Gen^{l} Gov^{t} or the State Gov^{ts}. One or other it has been surmised must absorb the whole.

Col. Mason. did not expect this point would have been reagitated. The essential differences between the two plans, had been clearly stated. The principal objections agst that of M^{r} R. were the *want of power* & the *want of practicability*. There can be no weight in the first as the fiat is not to be *here*, but in the people. He thought with his colleague M^{r} R. that there were besides certain crisises, in which all the ordinary cautions yielded to public necessity. He gave as an example, the eventual Treaty with G. B. in forming which the Com̃^{srs} of the U. S. had boldly disregarded the improvident shackles of Cong^{s} had given to their Country an honorable & happy peace, and instead of being censured for the transgression of their powers, had raised to themselves a monument more durable than brass. The *impracticability* of gaining the public concurrence he thought was still more groundless. (M^{r} Lansing) had cited the attempts of Congress to gain an enlargement of their powers, and had inferred from the miscarriage of these attempts, the hopelessness of the plan which he (M^{r} L) opposed. He thought a very different inference ought to have been drawn; viz that the plan which (M^{r} L) espoused, and which proposed to augment the powers of Congress, never could be expected to succeed. He meant not to throw any reflections on Cong^{s} as a body, much less on any particular members of it. He meant however to speak his sentiments without reserve on this subject; it was a privilege of age, and perhaps the only compensation which nature had given for, the privation of so many other enjoyments: and he should not scruple to

exercise it freely. Is it to be thought that the people of America, so watchful over their interests; so jealous of their liberties, will give up their all, will surrender both the sword and the purse, to the same body, and that too not chosen immediately by themselves? They never will. They never ought. Will they trust such a body, with the regulation of their trade, with the regulation of their taxes; with all the other great powers, which are in contemplation? Will they give unbounded confidence to a secret Journal—to the intrigues—to the factions which in the nature of things appertain to such an Assembly? If any man doubts the existence of these characters of Congress, let him consult their Journals for the years 78, 79, & 80.—It will be said, that if the people are averse to parting with power, why is it hoped that they will part with it to a National Legislature. The proper answer is that in this case they do not part with power: they only transfer it from one sett of immediate Representatives to another sett.—Much has been said of the unsettled state of the mind of the people, he believed the mind of the people of America, as elsewhere, was unsettled as to some points; but settled as to others. In two points he was sure it was well settled. 1. in an attachment to Republican Government. 2. in an attachment to more than one branch in the Legislature. Their constitutions accord so generally in both these circumstances, that they seem almost to have been preconcerted. This must either have been a miracle, or have resulted from the genius of the people. The only exceptions to the establishm^{t} of two branches in the Legislatures are the State of P^{a} & Cong^{s} and the latter the only single one not chosen by the people themselves. What has been the consequence? The people have been constantly averse to giving that Body further powers—It was acknowledged by (M^{r} Patterson) that his plan could not be enforced without military coercion. Does he consider the force of this concession. The most jarring elements of Nature; fire & water themselves are not more incompatible that[n] such a mixture of civil liberty and military execution. Will the militia march from one State to another, in order to collect the arrears of taxes from the delinquent members of the Republic? Will they maintain an army for this purpose? Will not the Citizens of the invaded State assist one another till they rise as one Man, and shake off the Union altogether. Rebellion is the only case, in which the military force of the State can be properly exerted agst its Citizens. In one point of view he was struck with horror at the prospect of recurring to this expedient. To punish the non-payment of taxes with death, was a severity not yet adopted by

despotism itself: yet this unexampled cruelty would be mercy compared to a military collection of revenue, in which the bayonet could make no discrimination between the innocent and the guilty. He took this occasion to repeat, that notwithstanding his solicitude to establish a national Government, he never would agree to abolish the State Govts or render them absolutely insignificant. They were as necessary as the Genl Govt and he would be equally careful to preserve them. He was aware of the difficulty of drawing the line between them, but hoped it was not insurmountable. The Convention, tho' comprising so many distinguished characters, could not be expected to make a faultless Govt. And he would prefer trusting to Posterity the amendment of its defects, rather than to push the experiment too far.

Mr. Luther Martin agreed with (Col Mason) as to the importance of the State Govts he would support them at the expence of the Genl Govt which was instituted for the purpose of that support. He saw no necessity for two branches, and if it existed Congress might be organized into two. He considered Congs as representing the people, being chosen by the Legislatures who were chosen by the people. At any rate, Congress represented the Legislatures; and it was the Legislatures not the people who refused to enlarge their powers. Nor could the rule of voting have been the ground of objection, otherwise ten of the States must always have been ready, to place further confidence in Congs. The causes of repugnance must therefore be looked for elsewhere.—At the separation from the British Empire, the people of America preferred the establishment of themselves into thirteen separate sovereignties instead of incorporating themselves into one: to these they look up for the security of their lives, liberties & properties: to these they must look up. The federal Govt they formed, to defend the whole agst foreign nations, in case of war, and to defend the lesser States agst the ambition of the larger: they are afraid of granting power unnecessarily, lest they should defeat the original end of the Union; lest the powers should prove dangerous to the sovereignties of the particular States which the Union was meant to support; and expose the lesser to being swallowed up by the larger. He conceived also that the people of the States having already vested their powers in their respective Legislatures, could not resume them without a dissolution of their Governments. He was

agst Conventions in the States: was not agst assisting States agst rebellious subjects; thought the *federal* plan of Mr. Patterson did not require coercion more than the *National one*, as the latter must depend for the deficiency of its revenues on requisitions & quotas, and that a national Judiciary extended into the States would be ineffectual, and would be viewed with a jealousy inconsistent with its usefulness.

Mr. Sherman 2ded & supported Mr. Lansings motion. He admitted two branches to be necessary in the State Legislatures, but saw no necessity for them in a Confederacy of States. The examples were all, of a single Council. Congs carried us thro' the war, and perhaps as well as any Govt could have done. The complaints at present are not that the views of Congs are unwise or unfaithful; but that their powers are insufficient for the execution of their views. The national debt & the want of power somewhere to draw forth the National resources, are the great matters that press. All the States were sensible of the defect of power in Congs. He thought much might be said in apology for the failure of the State Legislatures to comply with the Confederation. They were afraid of leaning too hard on the people, by accumulating taxes; no *constitutional* rule had been or could be observed in the quotas—the Accounts also were unsettled & every State supposed itself in advance, rather than in arrears. For want of a general system, taxes to a due amount had not been drawn from trade which was the most convenient resource. As almost all the States had agreed to the recommendation of Congs on the subject of an impost, it appeared clearly that they were willing to trust Congs with power to draw a revenue from Trade. There is no weight therefore in the argument drawn from a distrust of Congs for money matters being the most important of all, if the people will trust them with power as to them, they will trust them with any other necessary powers. Congs indeed by the confederation have in fact the right of saying how much the people shall pay, and to what purpose it shall be applied: and this right was granted to them in the expectation that it would in all cases have its effect. If another branch were to be added to Congs to be chosen by the people, it would serve to embarrass. The people would not much interest themselves in the elections, a few designing men in the large districts would carry their points, and the people would have no more confidence in their new representatives than in Congs. He saw no reason

why the State Legislatures should be unfriendly as had been suggested, to Cong^{s}. If they appoint Cong^{s} and approve of their measures, they would be rather favourable and partial to them. The disparity of the States in point of size he perceived was the main difficulty. But the large States had not yet suffered from the equality of votes enjoyed by the small ones. In all great and general points, the interests of all the States were the same. The State of Virg^{a} notwithstanding the equality of votes, ratified the Confederation without, or even proposing, any alteration. Mass^{ts} also ratified without any material difficulty &c. In none of the ratifications is the want of two branches noticed or complained of. To consolidate the States as some had proposed would dissolve our Treaties with foreign Nations, which had been formed with us, as *Confederated* States. He did not however suppose that the creation of two branches in the Legislature would have such an effect. If the difficulty on the subject of representation can not be otherwise got over, he would agree to have two branches, and a proportional representation in one of them, provided each State had an equal voice in the other. This was necessary to secure the rights of the lesser States; otherwise three or four of the large States would rule the others as they please. Each State like each individual had its peculiar habits usages and manners, which constituted its happiness. It would not therefore give to others a power over this happiness, any more than an individual would do, when he could avoid it.

M^{r} Wilson. urged the necessity of two branches; observed that if a proper model were not to be found in other Confederacies it was not to be wondered at. The number of them was small & the duration of some at least short. The Amphyctionic and Achæan were formed in the infancy of political Science; and appear by their History & fate, to have contained radical defects. The Swiss & Belgic Confederacies were held together not by any vital principle of energy but by the incumbent pressure of formidable neighbouring nations: The German owed its continuance to the influence of the H. of Austria. He appealed to our own experience for the defects of our Confederacy. He had been 6 years in the 12 since the commencement of the Revolution, a member of Congress, and had felt all its weaknesses. He appealed to the recollection of others whether on many important occasions, the public interest had not been obstructed by the small members of the Union. The success of the Revolution was owing to other causes, than the Constitution of Congress. In many instances it went

on even agst the difficulties arising from Cong^{s} themselves. He admitted that the large States did accede as had been stated, to the Confederation in its present form. But it was the effect of necessity not of choice. There are other instances of their yielding from the same motive to the unreasonable measures of the small States. The situation of things is now a little altered. He insisted that a jealousy would exist between the State Legislatures & the General Legislature: observing that the members of the former would have views & feelings very distinct in this respect from their constituents. A private Citizen of a State is indifferent whether power be exercised by the Gen^{l} or State Legislatures, provided it be exercised most for his happiness. His representative has an interest in its being exercised by the body to which he belongs. He will therefore view the National Legisl: with the eye of a jealous rival. He observed that the addresses of Cong^{s} to the people at large, had always been better received & produced greater effect, than those made to the Legislatures.

On the question for postponing in order to take up M^{r} Lansing's proposition "to vest the powers of legislation in Cong^{s}"

Mass^{ts} no. Con^{t} ay. N. Y. ay. N. J. ay. P^{a} no. Del. ay. M^{d} div^{d}. V^{a} no. N. C. no. S. C. no. Geo. no.

On motion of the Deputies from Delaware, the question on the 2^{d} Resolution in the Report from the Committee of the whole was postponed till tomorrow.

Adj^{d}.

Thursday June 21. in Convention.

Mr. Jonathan Dayton from N. Jersey took his seat.[94]

[94] From June 21 to July 18 inclusive not copied by Mr. Eppes.—Madison's Note. This applies evidently to notes he permitted Hon. George W. Eppes, Jefferson's son-in-law, to take.

Docr Johnson.[95] On a comparison of the two plans which had been proposed from Virginia & N. Jersey, it appeared that the peculiarity which characterized the latter was its being calculated to preserve the individuality of the States. The plan from Va did not profess to destroy this individuality altogether, but was charged with such a tendency. One Gentleman alone (Col. Hamilton) in his animadversions on the plan of N. Jersey, boldly and decisively contended for an abolition of the State Govts. Mr Wilson & the gentleman from Virga who also were adversaries of the plan of N. Jersey held a different language. They wished to leave the States in possession of a considerable, tho' a subordinate jurisdiction. They had not yet however shewn how this cd consist with, or be secured agst the general sovereignty & jurisdiction, which they proposed to give to the National Government. If this could be shewn in such a manner as to satisfy the patrons of the N. Jersey propositions, that the individuality of the States would not be endangered, many of their objections would no doubt be removed. If this could not be shewn their objections would have their full force. He wished it therefore to be well considered whether in case the States, as was proposed, shd retain some portion of sovereignty at least, this portion could be preserved, without allowing them to participate effectually in the Genl Govt, without giving them each a distinct and equal vote for the purpose of defending themselves in the general Councils.

[95] "Dr Johnson is a character much celebrated for his legal knowledge; he is said to be one of the first classics in America, and certainly possesses a very strong and enlightened understanding.

"As an Orator in my opinion, there is nothing in him that warrants the high reputation which he has for public speaking. There is something in the tone of his voice not pleasing to the Ear,—but he is eloquent and clear,—always abounding with information and instruction. He was once employed as an Agent for the State of Connecticut to state her claims to certain landed territory before the British House of Commons; this Office he discharged with so much dignity, and made such an ingenious display of his powers, that he laid the foundation of a reputation which will probably last much longer than his own life. Dr Johnson

is about sixty years of age, possesses the manners of a Gentleman, and engages the Hearts of Men by the sweetness of his temper, and that affectionate style of address with which he accosts his acquaintance."—Pierce's Notes, *Am. Hist. Rev.*, iii., 326.

M^r^ Wilson's respect for Doc^r^ Johnson, added to the importance of the subject led him to attempt, unprepared as he was, to solve the difficulty which had been started. It was asked how the Gen^l^ Gov^t^ and individuality of the particular States could be reconciled to each other; and how the latter could be secured ag^st^ the former? Might it not, on the other side be asked how the former was to be secured ag^st^ the latter? It was generally admitted that a jealousy & rivalship would be felt between the Gen^l^ & particular Gov^ts^. As the plan now stood, tho' indeed contrary to his opinion, one branch of the Gen^l^ Gov^t^ (the Senate or second branch) was to be appointed by the State Legislatures. The State Legislatures, therefore, by this participation in the Gen^l^ Gov^t^ would have an opportunity of defending their rights. Ought not a reciprocal opportunity to be given to the Gen^l^ Gov^t^ of defending itself by having an appointment of some one constituent branch of the State Gov^ts^. If a security be necessary on one side, it w^d^ seem reasonable to demand it on the other. But taking the matter in a more general view, he saw no danger to the States from the Gen^l^ Gov^t^. In case a combination should be made by the large ones it w^d^ produce a general alarm among the rest; and the project w^d^ be frustrated. But there was no temptation to such a project. The States having in general a similar interest, in case of any propositions in the National Legislature to encroach on the State Legislatures, he conceived a general alarm w^d^ take place in the National Legislature itself, that it would communicate itself to the State Legislatures, and w^d^ finally spread among the people at large. The Gen^l^ Gov^t^ will be as ready to preserve the rights of the States as the latter are to preserve the rights of individuals; all the members of the former, having a common interest, as representatives of all the people of the latter, to leave the State Gov^ts^ in possession of what the people wish them to retain. He could not discover, therefore any danger whatever on the side from which it was apprehended. On the contrary, he conceived that in spite of every precaution the General Gov^t^ would be in perpetual danger of encroachments from the State Gov^ts^.

Mr Madison was of opinion that there was 1. less danger of encroachment from the Genl Govt than from the State Govts 2. that the mischief from encroachments would be less fatal if made by the former, than if made by the latter. 1. All the examples of other confederacies prove the greater tendency in such systems to anarchy than to tyranny; to a disobedience of the members than usurpations of the federal head. Our own experience had fully illustrated this tendency.—But it will be said that the proposed change in the principles & form of the Union will vary the tendency; that the Genl Govt will have real & greater powers, and will be derived in one branch at least from the people, not from the Govts of the States. To give full force to this objection, let it be supposed for a moment that indefinite power should be given to the Genl Legislature, and the States reduced to Corporations dependent on the Genl Legislature; Why shd it follow that the Genl Govt wd take from the States any branch of their power as far as its operation was beneficial, and its continuance desireable to the people? In some of the States, particularly in Connecticut, all the Townships are incorporated, and have a certain limited jurisdiction. Have the Representatives of the people of the Townships in the Legislature of the State ever endeavoured to despoil the Townships of any part of their local authority? As far as this local authority is convenient to the people they are attached to it; and their representatives chosen by & amenable to them, naturally respect their attachment to this, as much as their attachment to any other right or interest. The relation of a General Govt to State Govts is parallel. 2. Guards were more necessary agst encroachments of the State Govts on the Genl Govt than of the latter on the former. The great objection made agst an abolition of the State Govts was that the Genl Govt could not extend its care to all the minute objects which fall under the cognizance of the local jurisdictions. The objection as stated lay not agst the probable abuse of the general power, but agst the imperfect use that could be made of it throughout so great an extent of country, and over so great a variety of objects. As far as its operation would be practicable it could not in this view be improper; as far as it would be impracticable, the conveniency of the Genl Govt itself would concur with that of the people in the maintenance of subordinate Governments. Were it practicable for the Genl Govt to extend its care to every requisite object without the cooperation of the State Govts the people would not be less free as members of one great Republic than as

members of thirteen small ones. A Citizen of Delaware was not more free than a Citizen of Virginia: nor would either be more free than a Citizen of America. Supposing therefore a tendency in the Gen[l] Government to absorb the State Gov[ts] no fatal consequence could result. Taking the reverse as the supposition, that a tendency should be left in the State Gov[ts] towards an independence on the General Gov[t] and the gloomy consequences need not be pointed out. The imagination of them, must have suggested to the States the experiment we are now making to prevent the calamity, and must have formed the chief motive with those present to undertake the arduous task.

On the question for resolving "that the Legislature ought to consist of two Branches"

Mass. ay. Con[t] ay. N. Y. no. N. Jersey, no. P[a] ay. Del. no. M[d] div[d]. V[a] ay. N. C. ay. S. C. ay. Geo. ay.

The *third* resolution of the Report taken into consideration.

Gen[l] Pinkney moved "that the 1[st] branch, instead of being elected by the people, sh[d] be elected in such manner as the Legislature of each State should direct." He urged 1. that this liberty would give more satisfaction, as the Legislatures could then accommodate the mode to the conveniency & opinions of the people. 2. that it would avoid the undue influence of large Counties which would prevail if the elections were to be made in districts as must be the mode intended by the Report of the Committee. 3. that otherwise disputed elections must be referred to the General Legislature which would be attended with intolerable expence and trouble to the distant parts of the Republic.

M[r] L. Martin seconded the Motion.[96]

[96] After Martin's second, according to Yates:

> "M[r] Madison. I oppose the motion—there are no difficulties, but they may be obviated in the details connected with the subject."—Yates, *Secret Proceedings*, etc., 149.

Col. Hamilton considered the Motion as intended manifestly to transfer the election from the people to the State Legislatures, which would essentially vitiate the plan. It would increase that State influence which could not be too watchfully guarded agst. All too must admit the possibility, in case the Gen^{l} Gov^{t} sh^{d} maintain itself, that the State Gov^{ts} might gradually dwindle into nothing. The system therefore sh^{d} not be engrafted on what might possibly fail.

M^{r} Mason urged the necessity of retaining the election by the people. Whatever inconveniency may attend the democratic principle, it must actuate one part of the Gov^{t}. It is the only security for the rights of the people.

M^{r} Sherman, would like an election by the Legislatures best, but is content with the plan as it stands.

M^{r} Rutlidge could not admit the solidity of the distinction between a mediate & immediate election by the people. It was the same thing to act by oneself, and to act by another. An election by the Legislature would be more refined than an election immediately by the people: and would be more likely to correspond with the sense of the whole community. If this Convention had been chosen by the people in districts it is not to be supposed that such proper characters would have been preferred. The Delegates to Cong^{s} he thought had also been fitter men than would have been appointed by the people at large.

M^{r} Wilson considered the election of the 1st branch by the people not only as the Corner Stone, but as the foundation of the fabric: and that the difference between a mediate & immediate election was immense. The difference was particularly worthy of notice in this respect: that the Legislatures are actuated not merely by the sentiment of the people; but have an official sentiment opposed to that of the Gen^{l} Gov^{t} and perhaps to that of the people themselves.

M^{r} King enlarged on the same distinction. He supposed the Legislatures w^{d} constantly choose men subservient to their own views as contrasted to the general interest; and that they might even devise modes of election that

w^d^ be subversive of the end in view. He remarked several instances in which the views of a State might be at variance with those of the Gen^l^ Gov^t^: and mentioned particularly a competition between the National & State debts, for the most certain & productive funds.

Gen^l^ Pinkney was for making the State Gov^ts^ a part of the General System. If they were to be abolished, or lose their agency, S. Carolina & other States would have but a small share of the benefits of Gov^t^.

On the question for Gen^l^ Pinkney motion to substitute election of the 1^st^ branch in such mode as the Legislatures should appoint, in stead of its being elected by the people"

Mass^ts^ no. Con^t^ ay. N. Y. no. N. J. ay. P^a^ no. Del. ay. M^d^ div^d^. V^a^ no. N. C. no. S. C. ay. Geo. no.

General Pinkney then moved that the 1^st^ branch be elected *by the people* in such mode as the Legislatures should direct; but waived it on its being hinted that such a provision might be more properly tried in the detail of the plan.

On the question for y^e^ election of the 1^st^ branch by the *people*"

Mass^ts^ ay. Con^t^ ay. N. Y. ay. N. J. no. P^a^ ay. Del. ay. M^d^ div^d^. V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

Election of the 1^st^ branch "for the term of three years," considered.

M^r^ Randolph moved to strike out, "three years" and insert "two years"— he was sensible that annual elections were a source of great mischiefs in the States, yet it was the want of such checks ag^st^ the popular intemperence as were now proposed, that rendered them so mischievous. He would have preferred annual to biennial, but for the extent of the U. S. and the inconveniency which would result from them to the representatives of the extreme parts of the Empire. The people were attached to frequency of elections. All the Constitutions of the States except that of S. Carolina, had established annual elections.

M[r] Dickinson. The idea of annual elections was borrowed from the antient Usage of England, a country much less extensive than ours. He supposed biennial would be inconvenient. He preferred triennial, and in order to prevent the inconveniency of an entire change of the whole number at the same moment, suggested a rotation, by an annual election of one third.

M[r] Elseworth was opposed to three years, supposing that even one year was preferable to two years. The people were fond of frequent elections and might be safely indulged in one branch of the Legislature. He moved for 1 year.

M[r] Strong[97] seconded & supported the motion.

[97] "M[r] Strong is a Lawyer of some eminence,—he has received a liberal education, and has good connections to recommend him. As a speaker he is feeble, and without confidence. This Gent[n] is about thirty five years of age, and greatly in the esteem of his Colleagues."—Pierce's Notes, *Amer. Hist. Rev.* iii., 326.

M[r] Wilson being for making the 1[st] branch an effectual representation of the people at large, preferred an annual election of it. This frequency was most familiar & pleasing to the people. It would not be more inconvenient to them, than triennial elections, as the people in all the States have annual meetings with which the election of the National representatives might be made to co-incide. He did not conceive that it would be necessary for the Nat[l] Leigsl: to sit constantly; perhaps not half—perhaps not one fourth of the year.

M[r] Madison was persuaded that annual elections would be extremely inconvenient and apprehensive that biennial would be too much so; he did not mean inconvenient to the electors; but to the representatives. They would have to travel seven or eight hundred miles from the distant parts of the Union; and would probably not be allowed even a reimbursement of their expences. Besides, none of those who wished to be re-elected would remain at the seat of Governm[t]; confiding that their absence would not affect them. The members of Cong[s] had done this with few instances of

disappointment. But as the choice was here to be made by the people themselves who would be much less complaisant to individuals, and much more susceptible of impressions from the presence of a Rival candidate, it must be supposed that the members from the most distant States would travel backwards & forwards at least as often as the elections should be repeated. Much was to be said also on the time requisite for new Members who would always form a large proportion, to acquire that knowledge of the affairs of the States in general without which their trust could not be usefully discharged.

M[r] Sherman preferred annual elections, but would be content with biennial. He thought the Representatives ought to return home and mix with the people. By remaining at the seat of Gov[t] they would acquire the habits of the place which might differ from those of their Constituents.

Col. Mason observed that the States being differently situated such a rule ought to be formed as would put them as nearly as possible on a level. If elections were annual the middle States would have a great advantage over the extreme ones. He wished them to be biennial; and the rather as in that case they would coincide with the periodical elections of S. Carolina as well of the other States.

Col. Hamilton urged the necessity of 3 years, there ought to be neither too much nor too little dependence, on the popular sentiments. The checks in the other branches of the Govern[t] would be but feeble, and would need every auxiliary principle that could be interwoven. The British House of Commons were elected septennially, yet the democratic spirit of y[e] Constitution had not ceased. Frequency of elections tended to make the people listless to them; and to facilitate the success of little cabals. This evil was complained of in all the States. In Virg[a] it had been lately found necessary to force the attendance & voting of the people by severe regulations.

On the question for striking out "three years"

Mass[ts] ay. Con[t] ay. N. Y. no. N. J. div[d]. P[a] ay. Del. no. M[d] no. V[a] ay. N. C. ay. S. C. ay. Geo. ay.

The motion for "two years" was then inserted nem. con.

Adj^{d}.

Friday June 22. in Convention

The clause in Resol. 3 "to receive fixed stipends to be paid out of the Nation[l] Treasury" considered.

M[r] Elseworth, moved to substitute payment by the States out of their own Treasurys: observing that the manners of different States were very different in the stile of living and in the profits accruing from the exercise of like talents. What would be deemed therefore a reasonable compensation in some States, in others would be very unpopular, and might impede the system of which it made a part.

M[r] Williamson favored the idea. He reminded the House of the prospect of new States to the Westward. They would be too poor—would pay little into the common Treasury—and would have a different interest from the old States. He did not think therefore that the latter ought to pay the expences of men who would be employed in thwarting their measures & interests.

M[r] Ghorum[98] wished not to refer the matter to the State Legislatures who were always paring down salaries in such a manner as to keep out of offices men most capable of executing the functions of them. He thought also it would be wrong to fix the compensations by the constitution, because we could not venture to make it as liberal as it ought to be without exciting an enmity ag[st] the whole plan. Let the Nat[l] Legisl: provide for their own wages from time to time; as the State Legislatures do. He had not seen this part of their power abused, nor did he apprehend an abuse of it.

[98] "M[r] Gorham is a merchant in Boston, high in reputation, and much in the esteem of his country-men. He is a man of very good sense, but not much improved in his education. He is eloquent and easy in public debate, but has nothing fashionable or elegant in his style;—all he aims at is to convince, and where he fails it never is from his auditory not understanding him, for no man is more perspicuous and full. He has been President of Congress, and three years a Member of that Body. M[r] Gorham is about 46 years of age, rather lusty, and has an agreeable and pleasing manner."—Pierce's Notes, *Am. Hist. Rev.*, iii., 325.

Mr. Randolph said he feared we were going too far, in consulting popular prejudices. Whatever respect might be due to them, in lesser matters, or in cases where they formed the permanent character of the people, he thought it neither incumbent on nor honorable for the Convention, to sacrifice right & justice to that consideration. If the States were to pay the members of the Natl. Legislature, a dependence would be created that would vitiate the whole System. The whole nation has an interest in the attendance & services of the members. The Nationl. Treasury therefore is the proper fund for supporting them.

Mr. King, urged the danger of creating a dependence on the States by leavg. to them the payment of the members of the Natl. Legislature. He supposed it wd. be best to be explicit as to the compensation to be allowed. A reserve on that point, or a reference to the Natl. Legislature of the quantum, would excite greater opposition than any sum that would be actually necessary or proper.

Mr. Sherman contended for referring both the quantum and the payment of it to the State Legislatures.

Mr. Wilson was agst. *fixing* the compensation as circumstances would change and call for a change of the amount. He thought it of great moment that the members of the Natl. Govt. should be left as independent as possible of the State Govts. in all respects.

Mr. Madison concurred in the necessity of preserving the compensations for the Natl. Govt. independent on the State Govts. but at the same time approved of *fixing* them by the Constitution, which might be done by taking a standard which wd. not vary with circumstances. He disliked particularly the policy suggested by Mr. Williamson of leaving the members from the poor States beyond the Mountains, to the precarious & parsimonious support of their constituents. If the Western States hereafter arising should be admitted into the Union, they ought to be considered as equals & as brethren. If their representatives were to be associated in the Common

Councils, it was of common concern that such provisions should be made as would invite the most capable and respectable characters into the service.

Mr. Hamilton apprehended inconveniency from *fixing* the wages. He was strenuous agst. making the National Council dependent on the Legislative rewards of the States. Those who pay are the masters of those who are paid. Payment by the States would be unequal as the distant States would have to pay for the same term of attendance and more days in travelling to & from the seat of the Govt. He expatiated emphatically on the difference between the feelings & views of the *people*—& the *Governments* of the States arising from the personal interest & official inducements which must render the latter unfriendly to the Genl. Govt.

Mr. Wilson moved that the Salaries of the 1st branch "*be ascertained by the National Legislature*," and be paid out of the Natl. Treasury.

Mr. Madison, thought the members of the Legisl. too much interested to ascertain their own compensation. It wd. be indecent to put their hands into the public purse for the sake of their own pockets.

On this question Mass. no. Contt. no. N. Y. divd. N. J. ay. Pa. ay. Del. no. Md. no. Va. no. N. C. no. S. C. no. Geo. divd.

On the question for striking out "Natl. Treasury" as moved by Mr. Elseworth.

Mr. Hamilton renewed his opposition to it. He pressed the distinction between the State Govts. & the people. The former wd. be the rivals of the Genl. Govt. The State legislatures ought not therefore to be the paymasters of the latter.

Mr. Elseworth. If we are jealous of the State Govts. they will be so of us. If on going home I tell them we gave the Gen: Govt. such powers because we cd. not trust you. Will they adopt it, and witht. yr. approbation it is a nullity.[99]

[99] According to Yates, Wilson followed Ellsworth:

"Mr. Wilson. I am not for submitting the national government to the approbation of the state legislatures. I know that they and the state officers will oppose it. I am for carrying it to the people of each state."—Yates, *Secret Proceedings*, etc., 153.

Mass^{ts} ay. Con^{t} ay. N. Y. div^{d}. N. J. no. Pen^{a} no. Del. no. M^{d} no. V^{a} no. N. C. ay. S. C. ay. Geo. div^{d}[100]

[100] (It appeared that Mass^{ts} concurred, not because they thought the State Treas^{y} ought to be substituted; but because they thought nothing should be said on the subject, in which case it w^{d} silently devolve on the Nat^{l} Treasury to support the National Legislature.)—Madison's Note.

On a question for substituting "adequate compensation" in place of "fixt stipends" it was agreed to nem. con. the friends of the latter being willing that the practicability of *fixing* the compensation should be considered hereafter in forming the details.

It was then moved by M^{r} Butler that a question be taken on both points jointly; to wit "adequate compensation to be paid out of the Nat^{l} Treasury." It was objected to as out of order, the parts having been separately decided on. The Presid^{t} refer^{d} the question of order to the House, and it was determined to be in order. Con. N. J. Del. M^{d} N. C. S. C.—ay.—N. Y. P^{a} V^{a} Geo. no.—Mass. divided. The question on the sentence was then postponed by S. Carolina in right of the State.

Col. Mason moved to insert "twenty-five years of age as a qualification for the members of the 1st branch." He thought it absurd that a man today should not be permitted by the law to make a bargain for himself, and tomorrow should be authorized to manage the affairs of a great nation. It was more extraordinary as every man carried with him in his own experience a scale for measuring the deficiency of young politicians; since he would if interrogated be obliged to declare that his political opinions at the age of 21. were too crude & erroneous to merit an influence on public measures. It had been said that Cong^{s} had proved a good school for our

young men. It might be so for any thing he knew but if it were, he chose that they should bear the expence of their own education.

Mr. Wilson was agst abridging the rights of election in any shape. It was the same thing whether this were done by disqualifying the objects of choice, or the persons chusing. The motion tended to damp the efforts of genius, and of laudable ambition. There was no more reason for incapacitating *youth* than *age*, where the requisite qualifications were found. Many instances might be mentioned of signal services rendered in high stations to the public before the age of 25: The present Mr. Pitt and Lord Bolingbroke were striking instances.

On the question for inserting "25 years of age"

Massts no. Cont ay. N. Y. divd. N. J. ay. Pa no. Del. ay. Md ay. Va ay. N. C. ay. S. C. ay. Geo. no.

Mr. Ghorum moved to strike out the last member of the 3 Resol: concerning ineligibility of members of the 1st branch to office during the term of their membership & for one year after. He considered it as unnecessary & injurious. It was true abuses had been displayed in G. B. but no one cd say how far they might have contributed to preserve the due influence of the Govt nor what might have ensued in case the contrary theory had been tried.

Mr. Butler opposed it. This precaution agst intrigue was necessary. He appealed to the example of G. B. where men got into Parlt that they might get offices for themselves or their friends. This was the source of the corruption that ruined their Govt.

Mr. King, thought we were refining too much. Such a restriction on the members would discourage merit. It would also give a pretext to the Executive for bad appointments, as he might always plead this as a bar to the choice he wished to have made.

Mr. Wilson was agst fettering elections, and discouraging merit. He suggested also the fatal consequence in time of war, of rendering perhaps

the best Commanders ineligible; appealing to our situation during the late war, and indirectly leading to a recollection of the appointment of the Coñander in Chief out of Congress.[101]

[101] According to Yates, Madison followed Wilson:

"Mr. Madison. Some gentlemen give too much weight and others too little to this subject. If you have no exclusive clause, there may be danger of creating offices or augmenting the stipends of those already created, in order to gratify some members if they were not excluded. Such an instance has fallen within my own observation. I am therefore of opinion, that no office ought to be open to a member, which may be created or augmented while he is in the legislature."—Yates, *Secret Proceedings*, etc., 155. Yates gives the rest of the debate as follows:

"Mr. Mason. It seems as if it was taken for granted, that all offices will be filled by the executive, while I think many will remain in the gift of the legislature. In either case, it is necessary to shut the door against corruption. If otherwise, they may make or multiply offices, in order to fill them. Are gentlemen in earnest when they suppose that this exclusion will prevent the first characters from coming forward? Are we not struck at seeing the luxury and venality which has already crept in among us? If not checked we shall have ambassadors to every petty state in Europe—the little republic of *St. Marino* not excepted. We must in the present system remove the temptation. I admire many parts of the British constitution and government, but I detest their corruption.—Why has the power of the crown so remarkably increased the last century? A stranger, by reading their laws, would suppose it considerably diminished; and yet, by the sole power of appointing the increased officers of government, corruption pervades every town and village in the kingdom. If such a restriction should abridge the right of election, it is still necessary, as it will prevent the people from ruining themselves; and will not the same causes here produce the same effects? I consider this clause as the corner-stone on which our liberties depend—and if we strike it out we are erecting a fabric for our destruction.

"Mr. Gorham. The corruption of the English government cannot be applied to America. This evil exists there in the venality of their boroughs; but even this corruption has its advantage, as it gives stability to their government. We do not know what the effect would be if members of parliament were excluded from offices. The great bulwark of our liberty is the frequency of elections, and the great danger is the septennial parliaments.

"Mr. Hamilton. In all general questions which become the subjects of discussion, there are always some truths mixed with falsehoods. I confess there is danger where men are capable of holding two offices. Take mankind in general, they are vicious—their passions may be

operated upon. We have been taught to reprobate the danger of influence in the British government, without duly reflecting how far it was necessary to support a good government. We have taken up many ideas on trust, and at last, pleased with their own opinions, establish them as undoubted truths. Hume's opinion of the British constitution confirms the remark, that there is always a body of firm patriots, who often shake a corrupt administration. Take mankind as they are, and what are they governed by? Their passions. There may be in every government a few choice spirits, who may act from more worthy motives. One great error is that we suppose mankind more honest than they are. Our prevailing passions are ambition and interest; and it will ever be the duty of a wise government to avail itself of those passions, in order to make them subservient to the public good—for these ever induce us to action. Perhaps a few men in a state, may, from patriotic motives, or to display their talents, or to reap the advantage of public applause, step forward; but if we adopt the clause, we destroy the motive. I am therefore against all exclusions and refinements, except only in this case; that when a member takes his seat, he should vacate every other office. It is difficult to put any exclusive regulation into effect. We must in some degree submit to the inconvenience."—Yates, *Secret Proceedings*, etc., 155, 156.

Col. Mason was for shutting the door at all events agst corruption. He enlarged on the venality and abuses in this particular in G. Britain: and alluded to the multiplicity of foreign Embassies by Cong^{s}. The disqualification he regarded as a corner stone in the fabric.

Col. Hamilton, there are inconveniences on both sides. We must take man as we find him, and if we expect him to serve the public must interest his passions in doing so. A reliance on pure patriotism had been the source of many of our errors. He thought the remark of M^{r} Ghorum a just one. It was impossible to say what w^{d} be the effect in G. B. of such a reform as had been urged. It was known that one of the ablest politicians (M^{r} Hume) had pronounced all that influence on the side of the crown, which went under the name of corruption, an essential part of the weight which maintained the equilibrium of the Constitution.

On M^{r} Ghorum's Motion for striking out "ineligibility,"

Mass^{ts} ay. Con^{t} no. N. Y. div^{d}. N. J. ay. P^{a} div^{d}. Del. div^{d}. Mar^{d} no. V^{a} no. N. C. ay. S. C. no. G^{a} ay.

Adj[d].

Saturday June 23. in Convention

The 3d Resol: resumed.

On Question yesterday postponed by S. Carol: for agreeing to the whole sentence "for allowing an adequate compensation to be paid out of the *Treasury of the U. States*"

Masts ay. Cont no. N. Y. no. N. J. ay. Pena ay. Del. no. Md ay. Va ay. N. C. no. S. C. no. Geo. divided. So the question was lost, & the sentence not inserted:

Genl Pinkney moves to strike out the ineligibility of members of the 1st branch to offices established "by a particular State." He argued from the inconveniency to which such a restriction would expose both the members of the 1st branch, and the States wishing for their services; & from the smallness of the object to be attained by the restriction.

It wd seem from the ideas of some that we are erecting a Kingdom to be divided agst itself,[102] he disapproved such a fetter on the Legislature.

[102] According to Yates Wilson followed Pinckney:

> "Mr. Wilson. I perceive that some gentlemen are of opinion to give a bias in favor of state governments. This question ought to stand on the same footing."—Yates, *Secret Proceedings*, etc., 157.

Mr Sherman seconds the motion. It wd seem that we are erecting a Kingdom at war with itself. The Legislature ought not to [be] fettered in such a case. On the question

Masts no. Cont ay. N. Y. ay. N. J. ay. Pa no. Md divd. Del. no. Md ay. Va ay. N. C. ay. S. C. ay. Geo. ay.

M^r^ Madison renewed his motion yesterday made & waved to render the members of the 1^st^ branch "ineligible during their term of service, & for one year after—to such offices only as should be established, or the emoluments thereof augmented, by the Legislature of the U. States during the time of their being members." He supposed that the unnecessary creation of offices, and increase of salaries, were the evils most experienced, & that if the door was shut ag^st^ them: it might properly be left open for the appoint^t^ of members to other offices as an encouragem^t^ to the Legislative service.

M^r^ Alex: Martin[103] seconded the Motion.

[103] "Mr. Martin was lately Governor of North Carolina, which office he filled with credit. He is a man of sense, and undoubtedly is a good politician, but he is not formed to shine in public debate, being no speaker. Mr. Martin was once a Colonel in the American Army, but proved unfit for the field. He is about 40 years of age."—Pierce's Notes, *Am. Hist. Rev.*, iii., 332.

M^r^ Butler. The amend^t^ does not go far eno. & w^d^ be easily evaded.

M^r^ Rutlidge, was for preserving the Legislature as pure as possible, by shutting the door against appointments of its own members to offices, which was one source of its corruption.

M^r^ Mason.[104] The motion of my colleague is but a partial remedy for the evil. He appealed to him as a witness of the shameful partiality of the Legislature of Virginia to its own members. He enlarged on the abuses & corruption in the British Parliament, connected with the appointment of its members. He c^d^ not suppose that a sufficient number of Citizens could not be found who would be ready, without the inducement of eligibility to offices, to undertake the Legislative service. Genius & virtue it may be said, ought to be encouraged. Genius, for aught he knew, might, but that virtue should be encouraged by such a species of venality, was an idea, that at least had the merit of being new.

[104] Yates gives Mason's speech more fully and a speech by Madisonomitted here:

> "Mr. Mason. I differ from my colleague in his proposed amendment. Let me state the practice in the state where we came from. There, all officers are appointed by the legislature. Need I add, that many of their appointments are most shameful. Nor will the check proposed by this amendment be sufficient. It will soon cease to be any check at all. It is asserted that it will be very difficult to find men sufficiently qualified as legislators without the inducement of emolument. I do believe that men of genius will be deterred unless possessed of great virtues. We may well dispense with the first characters when destitute of virtue—I should wish them never to come forward—But if we do not provide against corruption, our government will soon be at an end; nor would I wish to put a man of virtue in the way of temptation. Evasions and caballing would evade the amendment. Nor would the danger be less, if the executive has the appointment of officers. The first three or four years we might go on well enough; but what would be the case afterwards? I will add, that such a government ought to be refused by the people—and it will be refused.
>
> "Mr. Madison. My wish is that the national legislature be as uncorrupt as possible. I believe all public bodies are inclined, from various motives, to support its members; but it is not always done from the base motives of venality. Friendship, and a knowledge of the abilities of those with whom they associate, may produce it. If you bar the door against such attachments, you deprive the government of its greatest strength and support. Can you always rely on the patriotism of the members? If this be the only inducement, you will find a great indifferency in filling your legislative body. If we expect to call forth useful characters, we must hold out allurements; nor can any great inconveniency arise from such inducements. The legislative body must be the road to public honor; and the advantage will be greater to adopt my motion, than any possible inconvenience."—Yates, *Secret Proceedings*, etc., 158.

Mr. King remarked that we were refining too much in this business; and that the idea of preventing intrigue and solicitation of offices was chimerical. You say that no member shall himself be eligible to any office. Will this restrain him from availing himself of the same means which would gain appointments for himself, to gain them for his son, his brother, or any other object of his partiality. We were losing therefore the advantages on one side, without avoiding the evils on the other.

Mr. Wilson supported the motion. The proper cure he said for corruption in the Legislature was to take from it the power of appointing to offices. One branch of corruption would indeed remain, that of creating unnecessary

offices, or granting unnecessary salaries, and for that the amendment would be a proper remedy. He animadverted on the impropriety of stigmatizing with the name of venality the laudable ambition of rising into the honorable offices of the Government; an ambition most likely to be felt in the early & most incorrupt period of life, & which all wise & free Gov^ts^ had deemed it sound policy, to cherish, not to check. The members of the Legislature have perhaps the hardest & least profitable task of any who engage in the service of the state. Ought this merit to be made a disqualification?

M^r^ Sherman observed that the motion did not go far enough. It might be evaded by the creation of a new office, the translation to it of a person from another office, and the appointment of a member of the Legislature to the latter. A new Embassy might be established to a new Court, & an ambassador taken from another, in order to *create* a vacancy for a favorite member. He admitted that inconveniences lay on both sides. He hoped there w^d^ be sufficient inducements to the public service without resorting to the prospect of desirable offices, and on the whole was rather ag^st^ the motion of M^r^ Madison.

M^r^ Gerry thought there was great weight in the objection of M^r^ Sherman. He added as another objection ag^st^ admitting the eligibility of members in any case that it would produce intrigues of ambitious men for displacing proper officers, in order to create vacancies for themselves.[105] In answer to M^r^ King he observed that although members, if disqualified themselves might still intrigue & cabal for their sons, brothers &c, yet as their own interests would be dearer to them, than those of their nearest connections, it might be expected they would go greater lengths to promote it.

[105] Yates gives Gerry's remarks:

> "This amendment is of great weight, and its consequences ought to be well considered. At the beginning of the war, we possessed more than Roman virtue. It appears to me it is now the reverse. We have more land and stock-jobbers than any place on earth. It appears to me that we have constantly endeavored to keep distinct the three great branches of government; but if we agree to this motion, it must be destroyed by admitting the legislators to share in the executive, or to be too much influenced by the executive, in looking up to them for offices."—Yates, *Secret Proceedings*, etc., 160.

M[r] Madison had been led to this motion as a middle ground between an eligibility in all cases, and an absolute disqualification. He admitted the probable abuses of an eligibility of the members, to offices particularly within the gift of the Legislature. He had witnessed the partiality of such bodies to their own members, as had been remarked of the Virginia Assembly by his colleague (Col. Mason). He appealed however to him, in turn to vouch another fact not less notorious in Virginia, that the backwardness of the best citizens to engage in the Legislative service gave but too great success to unfit characters. The question was not to be viewed on one side only. The advantages & disadvantages on both ought to be fairly compared. The objects to be aimed at were to fill all offices with the fittest characters, & to draw the wisest & most worthy citizens into the Legislative service. If on one hand, public bodies were partial to their own members; on the other they were as apt to be misled by taking characters on report, or the authority of patrons and dependents.

All who had been concerned in the appointment of strangers on those recommendations must be sensible of this truth. Nor w[d] the partialities of such Bodies be obviated by disqualifying their own members. Candidates for office would hover round the seat of Gov[t] or be found among the residents there, and practise all the means of counting the favor of the members. A great proportion of the appointments made by the States were evidently brought about in this way. In the General Gov[t] the evil must be still greater, the characters of distant states, being much less known throughout the U. States than those of the distant parts of the same State. The elections by Congress had generally turned on men living at the seat of the fed[l] Gov[t] or in its neighbourhood.—As to the next object, the impulse to the Legislative service, was evinced by experience to be in general too feeble with those best qualified for it. This inconveniency w[d] also be more felt in the Nat[l] Gov[t] than in the State Gov[ts] as the Sacrifices req[d] from the distant members, w[d] be much greater, and the pecuniary provisions, probably, more disproportionate. It w[d] therefore be impolitic to add fresh objections to the Legislative service by an absolute disqualification of its members. The point in question was whether this would be an objection with the most capable citizens. Arguing from experience he concluded that it would. The Legislature of Virg[a] would probably have been without many

of its best members, if in that situation, they had been ineligible to Cong^{s} to the Gov^{t} & other honorable offices of the State.

M^{r} Butler thought Characters fit for office w^{d} never be unknown.

Col. Mason. If the members of the Legislature are disqualified, still the honors of the State will induce those who aspire to them to enter that service, as the field in which they can best display & improve their talents, & lay the train for their subsequent advancement.

M^{r} Jenifer remarked that in Maryland, the Senators chosen for five years, c^{d} hold no other office & that this circumstance gained them the greatest confidence of the people.

On the question for agreeing to the motion of M^{r} Madison,

Mass^{ts} div^{d}. C^{t} ay. N. Y. no. N. J. ay. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

M^{r} Sherman mov^{d} to insert the words "and incapable of holding" after the words "eligible to offices" w^{ch} was agreed to without opposition.

The word "established" & the words "Nat^{l} Gov^{t}" were struck out of the Resolution 3^{d}.

M^{r} Spaight called for a division of the question, in consequence of which it was so put, as that it turned in the first member of it, "on the ineligibility of members *during the term for which they were elected*"—whereon the States were,

Mass^{ts} div^{d}. C^{t} ay. N. Y. ay. N. J. ay. P^{a} no. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. no.

On the 2^{d} member of the sentence extending ineligibility of members to one year after the term for which they were elected Col. Mason thought this essential to guard agst evasions by resignations, and stipulations for office to be filled at the expiration of the legislative term. M^{r} Gerry, had known such

a case. M^r^ Hamilton. Evasions c^d^ not be prevented—as by proxies—by friends holding for a year, & then opening the way &c. M^r^ Rutlidge admitted the possibility of evasions, but was for contracting them as possible.

Mass. no. C^t^ no. N. Y. ay. N. J. no. P^a^ div^d^. Del. ay. Mar^d^ ay. V^a^ no. N. C. no. S. C. ay. Geo. no.

Adj^d^.

Monday, June 25. in Convention.

Resolution 4. being taken up.

M^r. Pinkney spoke as follows—[106] The efficacy of the System will depend on this article. In order to form a right judgm^t. in the case, it will be proper to examine the situation of this Country more accurately than it has yet been done. The people of the U. States are perhaps the most singular of any we are acquainted with. Among them there are fewer distinctions of fortune & less of rank, than among the inhabitants of any other nation. Every freeman has a right to the same protection & security; and a very moderate share of property entitles them to the possession of all the honors and privileges the Public can bestow: hence arises a greater equality, than is to be found among the people of any other Country, and an equality which is more likely to continue—I say this equality is likely to continue, because in a new Country, possessing immense tracts of uncultivated lands, where every temptation is offered to emigration & where industry must be rewarded with competency, there will be few poor, and few dependent—Every member of the Society almost, will enjoy an equal power of arriving at the supreme offices & consequently of directing the strength & sentiments of the whole Community. None will be excluded by birth, & few by fortune, from voting for proper persons to fill the offices of Government—the whole community will enjoy in the fullest sense that kind of political liberty which consists in the power the members of the State reserve to themselves, of arriving at the Public offices, or at least, of having votes in the nomination of those who fill them.

[106] Pinckney furnished Madison with a copy of this speech which he transcribed, but apparently not with the whole of it, as Madison's note at the end indicates. The original Pinckney draft is among the Madison papers, and shows Madison's copying to have been accurate.

If this State of things is true & the prospect of its continuing probable, it is perhaps not politic to endeavour too close an imitation of a Government

calculated for a people whose situation is, & whose views ought to be extremely different.

Much has been said of the Constitution of G. Britain. I will confess that I believe it to be the best Constitution in existence; but at the same time I am confident it is one that will not or cannot be introduced into this Country, for many centuries.—If it were proper to go here into a historical dissertation on the British Constitution, it might easily be shewn that the peculiar excellence, the distinguishing feature of that Governm^{t} cannot possibly be introduced into our System—that its balance between the Crown & the people cannot be made a part of our Constitution,—that we neither have nor can have the members to compose it, nor the rights, privileges & properties of so distinct a class of Citizens to guard,—that the materials for forming this balance or check do not exist, nor is there a necessity for having so permanent a part of our Legislative, until the Executive power is so constituted as to have something fixed & dangerous in its principle—By this I mean a sole, hereditary, though limited Executive.

That we cannot have a proper body for forming a Legislative balance between the inordinate power of the Executive and the people, is evident from a review of the accidents & circumstances which gave rise to the peerage of Great Britain—I believe it is well ascertained that the parts which compose the British Constitution arose immediately from the forests of Germany; but the antiquity of the establishment of Nobility is by no means clearly defined. Some authors are of opinion that the dignity denoted by the titles of dux et comes, was derived from the old Roman to the German Empire; while others are of the opinion that they existed among the Germans long before the Romans were acquainted with them. The institution however of Nobility is immemorial among the Nations who may properly be termed the ancestors of Britain.—At the time they were summoned in England to become a part of the National Council, the circumstances which contributed to make them a Constituent part of that constitution, must be well known to all gentlemen who have had industry & curiosity enough to investigate the subject—The Nobles with their possessions & dependents composed a body permanent in their nature and formidable in point of power. They had a distinct interest both from the

King and the people; an interest which could only be represented by themselves, and the guardianship could not be safely intrusted to others.—At the time they were originally called to form a part of the National Council, necessity perhaps as much as other cause, induced the Monarch to look up to them. It was necessary to demand the aid of his subjects in personal & pecuniary services. The power and possessions of the Nobility would not permit taxation from any Assembly of which they were not a part: & the blending the Deputies of the Commons with them, & thus forming what they called their parlerment was perhaps as much the effect of chance as of any thing else. The Commons were at that time compleatly subordinate to the nobles, whose consequence & influence seem to have been the only reasons for their superiority; a superiority so degrading to the Commons that in the first summons we find the peers are called upon to consult the commons to consent. From this time the peers have composed a part of the British Legislature, and notwithstanding their power and influence have diminished & those of the Commons have increased, yet still they have always formed an excellent balance agst either the encroachments of the Crown or the people.

I have said that such a body cannot exist in this Country for ages, and that untill the situation of our people is exceedingly changed no necessity will exist for so permanent a part of the Legislature. To illustrate this I have remarked that the people of the United States are more equal in their circumstances than the people of any other Country—that they have very few rich men among them,—by rich men I mean those whose riches may have a dangerous influence, or such as are esteemed rich in Europe—perhaps there are not one hundred such on the Continent; that it is not probable this number will be greatly increased; that the genius of the people their mediocrity of situation & the prospects which are afforded their industry in a Country which must be a new one for centuries are unfavorable to the rapid distinction of ranks. The destruction of the right of primogeniture & the equal division of the property of Intestates will also have an effect to preserve this mediocrity; for laws invariably affect the manners of a people. On the other hand that vast extent of unpeopled territory which opens to the frugal & industrious a sure road to competency & independence will effectually prevent for a considerable time the increase

of the poor or discontented, and be the means of preserving that equality of condition which so eminently distinguishes us.

If equality is as I contend the leading feature of the U. States, where then are the riches & wealth whose representation & protection is the peculiar province of this Permanent body. Are they in the hands of the few who may be called rich; in the possession of less than a hundred citizens? Certainly not. They are in the great body of the people, among whom there are no men of wealth, and very few of real poverty.—Is it probable that a change will be created, and that a new order of men will arise? If under the British Government, for a century no such change was probable, I think it may be fairly concluded it will not take place while even the semblance of Republicanism remains.—How is this change to be effected? Where are the sources from whence it is to flow? From the landed interest? No. That is too unproductive & too much divided in most of the States. From the Monied interest? If such exists at present, little is to be apprehended from that source. Is it to spring from commerce? I believe it would be the first instance in which a nobility sprang from merchants. Besides, Sir, I apprehend that on this point the policy of the U. States has been much mistaken. We have unwisely considered ourselves as the inhabitants of an old instead of a new country. We have adopted the maxims of a State full of people & manufactures & established in credit. We have deserted our true interest, and instead of applying closely to those improvements in domestic policy which would have ensured the future importance of our commerce, we have rashly & prematurely engaged in schemes as extensive as they are imprudent. This however is an error which daily corrects itself & I have no doubt that a few more severe trials will convince us, that very different commercial principles ought to govern the conduct of these States.

The people of this Country are not only very different from the inhabitants of any State we are acquainted with in the modern world; but I assert that their situation is distinct from either the people of Greece or Rome, or of any State we are acquainted with among the antients.—Can the orders introduced by the institution of Solon, can they be found in the United States? Can the military habits & manners of Sparta be resembled to our habits & manners? Are the distinction of Patrician & Plebeian known among us? Can the Helvetic or Belgic confederacies, or can the unwieldy,

unmeaning body called the Germanic Empire, can they be said to possess either the same or a situation like ours? I apprehend not.—They are perfectly different, in their distinctions of rank, their Constitutions, their manners & their policy.

Our true situation appears to me to be this,—a new extensive Country containing within itself the materials for forming a Government capable of extending to its Citizens all the blessings of Civil & religious liberty—capable of making them happy at home. This is the great end of Republican Establishments. We mistake the object of our Government, if we hope or wish that it is to make us respectable abroad. Conquest or superiority among other powers is not or ought not ever to be the object of republican Systems. If they are sufficiently active & energetic to rescue us from contempt & preserve our domestic happiness & security, it is all we can expect from them,—it is more than almost any other Government ensures to its citizens.

I believe this observation will be found generally true:—that no two people are so exactly alike in their situation or circumstances as to admit the exercise of the same Government with equal benefit; that a system must be suited to the habits & genius of the People it is to govern, and must grow out of them.

The people of the U. S. may be divided into three classes—*Professional men* who must from their particular pursuits always have a considerable weight in the Government while it remains popular—*Commercial men*, who may or may not have weight as a wise or injudicious commercial policy is pursued.—If that commercial policy is pursued which I conceive to be the true one, the merchants of this Country will not or ought not for a considerable time to have much weight in the political scale.—The third is the *landed interest*, the owners and cultivators of the soil, who are and ought ever to be the governing spring in the system.—These three classes, however distinct in their pursuits are individually equal in the political scale, and may be easily proved to have but one interest. The dependence of each on the other is mutual. The merchant depends on the planter. Both must in private as well as public affairs be connected with the professional men; who in their turn must in some measure depend on them. Hence it is clear from this manifest connection, & the equality which I before stated

exists, & must for the reasons then assign, continue, that after all there is one, but one great & equal body of Citizens composing the inhabitants of this Country among whom there are no distinctions of rank, and very few or none of fortune.

For a people thus circumstanced are we then to form a Government & the question is what sort of Government is best suited to them.

Will it be the British Gov^{t}? No. Why? Because G. Britain contains three orders of people distinct in their situation, their possessions & their principles.—These orders combined form the great body of the Nation. And as in national expences the wealth of the whole community must contribute, so ought each component part to be properly & duly represented.—No other combination of power could form this due representation, but the one that exists.—Neither the peers or the people could represent the royalty, nor could the Royalty & the people form a proper representation for the Peers. —Each therefore must of necessity be represented by itself, or the sign of itself; and this accidental mixture has certainly formed a Government admirably well balanced.

But the U. States contain but one order that can be assimilated to the British Nation,—this is the order of Commons. They will not surely then attempt to form a Government consisting of three branches, two of which shall have nothing to represent. They will not have an Executive & Senate (hereditary) because the King & Lords of England are so. The same reasons do not exist and therefore the same provisions are not necessary.

We must as has been observed suit our Governm^{t} to the people it is to direct. These are I believe as active, intelligent & susceptible of good Governm^{t} as any people in the world. The Confusion which has produced the present relaxed State is not owing to them. It is owing to the weakness & (defects) of a Gov^{t} incapable of combining the various interests it is intended to unite, and destitute of energy.—All that we have to do then is to distribute the powers of Gov^{t} in such a manner, and for such limited periods, as while it gives a proper degree of permanency to the Magistrate, will reserve to the people, the right of election they will not or ought not frequently to part with.—I am of opinion that this may easily be done; and

that with some amendments the propositions before the Committee will fully answer this end.

No position appears to me more true than this; that the General Govt cannot effectually exist without reserving to the States the possession of their local rights. They are the instruments upon which the Union must frequently depend for the support & execution of their powers, however immediately operating upon the people, and not upon the States.

Much has been said about the propriety of abolishing the distinction of State Governments, & having but one general System. Suffer me for a moment to examine this question.[107]

[107] The residue of this speech was not furnished, like the above, by Mr. Pinckney.—Madison's Note.

Yates' report of the speech is meagre. The closing paragraph, apparently the part lacking in Madison's report, is:

"While we were dependent on the crown of Great Britain, it was in contemplation to form the whole into one; but it was found impracticable. No legislature could make good laws for the whole, nor can it now be done. It would necessarily place the power in the hands of the few nearest the seat of government. State governments must therefore remain, if you mean to prevent confusion. The general negative powers will support the general government. Upon these considerations, I am led to form the second branch differently from the report. These powers are important, and the number not too large, upon the principle of proportion. I have considered the subject with great attention; and I propose this plan (reads it), and if no better plan is proposed, I will then move its adoption."—Yates, *Secret Proceedings*, etc., 163.

The mode of constituting the 2d branch being under consideration.

The word "national" was struck out, and "United States" inserted.

Mr. Ghorum, inclined to a compromise as to the rule of proportion. He thought there was some weight in the objections of the small States. If Va should have 16. votes & Delre with several other States together 16, those from Virga would be more likely to unite than the others, and would therefore have an undue influence. This remark was applicable not only to

States, but to Counties or other districts of the same State. Accordingly the Constitution of Mass^{ts} had provided that the representatives of the larger districts should not be in an exact ratio to their numbers, and experience he thought had shewn the provision to be expedient.

M^{r} Read. The States have heretofore been in a sort of partnership. They ought to adjust their old affairs before they open a new account. He brought into view the appropriation of the com̃on interest in the Western lands, to the use of particular States. Let justice be done on this head; let the fund be applied fairly & equally to the discharge of the general debt, and the smaller States who had been injured; would listen then perhaps to those ideas of just representation which had been held out.

M^{r} Ghorum, did not see how the Convention could interpose in the case. Errors he allowed had been committed on the subject. But Cong^{s} were now using their endeavours to rectify them. The best remedy would be such a Government as would have vigor enough to do justice throughout. This was certainly the best chance that could be afforded to the smaller States.

M^{r} Wilson, the question is shall the members of the 2^{d} branch be chosen by the Legislatures of the States? When he considered the amazing extent of Country—the immense population which is to fill it, the influence which the Gov^{t} we are to form will have, not only on the present generation of our people & their multiplied posterity, but on the whole Globe, he was lost in the magnitude of the object. The project of Henry the 4th & his Statesmen was but the picture in miniature of the great portrait to be exhibited. He was opposed to an election by the State Legislatures. In explaining his reasons it was necessary to observe the twofold relation in which the people would stand, 1. as Citizens of the Gen^{l} Gov^{t} 2. as Citizens of their particular State. The Gen^{l} Gov^{t} was meant for them in the first capacity: the State Gov^{ts} in the second. Both Gov^{ts} were derived from the people—both meant for the people—both therefore ought to be regulated on the same principles. The same train of ideas which belonged to the relation of the Citizens to their State Gov^{ts} were applicable to their relation to the Gen^{l} Gov^{t} and in forming the latter, we ought to proceed, by abstracting as much as possible from the idea of the State Gov^{ts}. With respect to the province & object of the Gen^{l} Gov^{t} they should be considered as having no existence. The election of the

2d branch by the Legislatures, will introduce & cherish local interests & local prejudices. The Genl Govt is not an assemblage of States, but of individuals for certain political purposes—it is not meant for the States, but for the individuals composing them; the *individuals* therefore not the *States*, ought to be represented in it: A proportion in this representation can be preserved in the 2d as well as in the 1st branch; and the election can be made by electors chosen by the people for that purpose. He moved an amendment to that effect which was not seconded.

Mr Elseworth saw no reason for departing from the mode contained in the Report. Whoever chooses the member, he will be a Citizen of the State he is to represent & will feel the same spirit & act the same part whether he be appointed by the people or the Legislature. Every State has its particular views & prejudices, which will find their way into the general Councils, through whatever channel they may flow. Wisdom was one of the characteristics which it was in contemplation to give the second branch. Would not more of it issue from the Legislatures; than from an immediate election by the people. He urged the necessity of maintaining the existence, & agency of the States. Without their co-operation it would be impossible to support a Republican Govt over so great an extent of Country. An army could scarcely render it practicable. The largest States are the worst Governed. Virga is obliged to acknowledge her incapacity to extend her Govt to Kentuckey. Masstts cannot keep the peace one hundred miles from her capitol and is now forming an army for its support. How long Pena may be free from a like situation cannot be foreseen. If the principles & materials of our Govt are not adequate to the extent of these single States; how can it be imagined that they can support a single Govt throughout the U. States. The only chance of supporting a Genl Govt lies in grafting it on that of the individual States.

Docr Johnson urged the necessity of preserving the State Govts which would be at the mercy of the Genl Govt on Mr Wilson's plan.

Mr Madison thought it wd obviate difficulty if the present resol: were postponed, & the 8th taken up, which is to fix the right of suffrage in the 2d branch.

Doc^{r} Williamson professed himself a friend to such a system as would secure the existence of the State Gov^{ts}. The happiness of the people depended on it. He was at a loss to give his vote as to the Senate untill he knew the number of its members. In order to ascertain this, he moved to insert these words after "2^{d} branch of the Nat^{l} Legislature"—"who shall bear such proportion to the n^{o} of the 1st branch as 1 to ——." He was not seconded.

M^{r} Mason. It has been agreed on all hands that an efficient Gov^{t} is necessary that to render it such it ought to have the faculty of self defence, that to render its different branches effectual each of them ought to have the same power of self defence. He did not wonder that such an agreement should have prevailed in these points. He only wondered that there should be any disagreement about the necessity of allowing the State Gov^{ts} the same self-defence. If they are to be preserved as he conceived to be essential, they certainly ought to have this power. And the only mode left of giving it to them, was by allowing them to appoint the 2^{d} branch of the Nat^{l} Legislature.

M^{r} Butler observing that we were put to difficulties at every step by the uncertainty whether an equality or a ratio of representation w^{d} prevail finally in the 2^{d} branch, moved to postpone the 4th Resol: & to proceed to the Resol: on that point. M^{r} Madison seconded him.

On the question

Mass^{ts} no. Con^{t} no. N. Y. ay. N. J. no. P^{a} no, Del. no. M^{d} no. V^{a} ay. N. C. no. S. C. ay. Geo. ay.

On a question to postpone the 4 and take up the 7 Resol: ays, Mary^{d} V^{a} N. C. S. C. Geo;—Noes, Mass. C^{t} N. Y. N. J. P^{a} Del:

On the question to agree "that the members of the 2^{d} branch be chosen by the indiv^{l} Legislatures" Mass^{ts} ay. Con^{t} ay. N. Y. ay. N. J. ay. P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. ay. S. C. ay. Geo. ay.[108]

[108] Madison's Note:

It must be kept in view that the largest States particularly Pennsylvania & Virginia always considered the choice of the 2d Branch by the State Legislatures as opposed to a proportional representation to which they were attached as a fundamental principle of just Government. The smaller States who had opposite views, were reinforced by the members from the large States most anxious to secure the importance of the State Governments.

On a question on the clause requiring the age of 30 years at least,—it was agreed to unanimously:

On a question to strike out the words, "sufficient to ensure their independency" after the word "term" it was agreed to.

That the 2d branch hold their offices for a term of seven years, considered.

Mr. Ghorum suggests a term of "4 years," 1/4 to be elected every year.

Mr. Randolph, supported the idea of rotation, as favorable to the wisdom & stability of the Corps, which might possibly be always sitting, and aiding the Executive.

And moves after "7 years," to add, "to go out in fixt proportion" which was agreed to.

Mr. Williamson suggests "6 years," as more convenient for Rotation than 7 years.

Mr. Sherman seconds him.

Mr. Reed proposed that they sd hold their offices "during good behaviour." Mr. R. Morris seconds him.

Genl. Pinkney, proposed "4 years." A longer term wd fix them at the seat of Govt. They wd acquire an interest there, perhaps transfer their property &

lose sight of the States they represent. Under these circumstances the distant States w^{d} labour under great disadvantages.[109]

[109] According to Yates, Madison followed Pinckney:

> "Mr. Madison. We are proceeding in the same manner that was done when the Confederation was first formed. Its original draft was excellent, but in its progress and completion it became so insufficient as to give rise to the present Convention. By the vote already taken, will not the temper of the state legislatures transfuse itself into the Senate? Do we create a free government?"—Yates, *Secret Proceedings*, etc., 168.

M^{r} Sherman moved to strike out "7 years" in order to take questions on the several propositions.

On the question to strike out "seven"

Mass^{ts} ay. Con^{t} ay. N. Y. ay. N. J. ay. P^{a} no. Del. no. M^{d} div^{d}. V^{a} no. N. C. ay. S. C. ay. Geo. ay.

On the question to insert "6 years", which failed 5 St^{s} being ay. 5 no, & 1 divided

Mass^{ts} no. Con^{t} ay. N. Y. no. N. J. no. P^{a} ay. Del. ay. M^{d} div^{d}. V^{a} ay. N. C. ay. S. C. no. Geo. no.

On a motion to adjourn, the votes were 5 for 5 agst it & 1 divided,—Con. N. J. P^{a} Del. V^{a} ay. Mass^{ts} N. Y. N. C. S. C. Geo: no. Mary^{d} divided.

On the question for "5 years" it was lost.

Mass^{ts} no. Con^{t} ay. N. Y. no. N. J. no. P^{a} ay. Del. ay. M^{d} div^{d}. V^{a} ay. N. C. ay. S. C. no. Geo. no.

Adj^{d}.

Tuesday, June 26. in Convention

The duration of the 2d branch under consideration.

Mr. Ghorum moved to fill the blank with "six years," one third of the members to go out every second year.

Mr. Wilson 2ded the motion.

Genl. Pinkney opposed six years in favor of four years. The States he said had different interests. Those of the Southern, and of S. Carolina in particular were different from the Northern. If the Senators should be appointed for a long term, they wd. settle in the State where they exercised their functions; and would in a little time be rather the representatives of that than of the State appointg. them.

Mr. Reed movd. that the term be nine years. This wd. admit of a very convenient rotation, one third going out triennially. He wd. still prefer "during good behaviour," but being little supported in that idea, he was willing to take the longest term that could be obtained.

Mr. Broome 2ded the motion.

Mr. Madison. In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were first to protect the people agst. their rulers; secondly to protect the people agst. the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of Govt. most likely to secure their happiness, would first be aware, that those chargd. with the public happiness might betray their trust. An obvious precaution agst. this danger wd. be to divide the trust between different bodies of men, who might watch & check each other. In this they wd. be governed by the same prudence which has prevailed in organizing the subordinate departments of Govt., where all

business liable to abuses is made to pass thro' separate hands, the one being a check on the other. It w^d^ next occur to such people, that they themselves were liable to temporary errors, thro' want of information as to their true interest, and that men chosen for a short term, & employed but a small portion of that in public affairs, might err from the same cause. This reflection w^d^ naturally suggest that the Gov^t^ be so constituted as that one of its branches might have an opp^y^ of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion, w^d^ be that they themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence ag^st^ this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose ag^st^ impetuous councils. It ought finally to occur to a people deliberating on a Gov^t^ for themselves, that as different interests necessarily result from the liberty meant to be secured, the major interest might under sudden impulses be tempted to commit injustice on the minority. In all civilized Countries the people fall into different classes hav^g^ a real or supposed difference of interests. There will be creditors & debtors; farmers, merch^ts^ & manufacturers. There will be particularly the distinction of rich & poor. It was true as had been observ^d^ (by M^r^ Pinkney) we had not among us those hereditary distinctions, of rank which were a great source of the contests in the ancient Gov^ts^ as well as the modern States of Europe, nor those extremes of wealth or poverty which characterize the latter. We cannot however be regarded even at this time, as one homogeneous mass, in which every thing that affects a part will affect in the same manner the whole. In framing a system which we wish to last for ages, we sh^d^ not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labour under all the hardships of life, & secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this Country, but symptoms, of a levelling spirit, as we have understood, have sufficiently appeared in certain quarters, to give notice of the future danger. How is this danger to be guarded ag^st^ on the republican principles? How is the danger in all cases of interested coalitions to oppress

the minority to be guarded agst? Among other means by the establishment of a body in the Govt sufficiently respectable for its wisdom & virtue, to aid on such emergencies, the preponderance of justice by throwing its weight into that scale. Such being the objects of the second branch in the proposed Govt he thought a considerable duration ought to be given to it. He did not conceive that the term of nine years could threaten any real danger; but in pursuing his particular ideas on the subject, he should require that the long term allowed to the 2d branch should not commence till such a period of life, as would render a perpetual disqualification to be re-elected little inconvenient either in a public or private view. He observed that as it was more than probable we were now digesting a plan which in its operation wd decide for ever the fate of Republican Govt we ought not only to provide every guard to liberty that its preservation cd require, but be equally careful to supply the defects which our own experience had particularly pointed out.

Mr Sherman. Govt is instituted for those who live under it. It ought therefore to be so constituted as not to be dangerous to their liberties. The more permanency it has the worse if it be a bad Govt. Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the Government, by preserving that good behavior, because it ensures their re-election. In Connecticut elections have been very frequent, yet great stability & uniformity both as to persons & measures have been experienced from its original establishmt to the present time; a period of more than a 130 years. He wished to have provision made for steadiness & wisdom in the system to be adopted; but he thought six or four years would be sufficient. He shd be content with either.

Mr Read wished it to be considered by the small States that it was their interest that we should become one people as much as possible; that State attachments shd be extinguished as much as possible; that the Senate, shd be so constituted as to have the feelings of Citizens of the whole.

Mr Hamilton. He did not mean to enter particularly into the subject. He concurred with Mr Madison in thinking we were now to decide forever the fate of Republican Government; and that if we did not give to that form due

stability and wisdom, it would be disgraced & lost among ourselves, disgraced & lost to mankind forever. He acknowledged himself not to think favorably of Republican Government; but addressed his remarks to those who did think favorably of it, in order to prevail on them to tone their Government as high as possible. He professed himself to be as zealous an advocate for liberty as any man whatever, and trusted he should be as willing a martyr to it though he differed as to the form in which it was most eligible.—He concurred also in the general observations of (M^r. Madison) on the subject, which might be supported by others if it were necessary. It was certainly true that nothing like an equality of property existed; that an inequality would exist as long as liberty existed, and that it would unavoidably result from that very liberty itself. This inequality of property constituted the great & fundamental distinction in Society. When the Tribunitial power had levelled the boundary between the *patricians* & *plebeians*, what followed? The distinction between rich & poor was substituted. He meant not however to enlarge on the subject. He rose principally to remark that (M^r. Sherman) seemed not to recollect that one branch of the proposed Gov^t. was so formed, as to render it particularly the guardians of the poorer orders of Citizens; nor to have adverted to the true causes of the stability which had been exemplified in Con^t. Under the British system as well as the federal, many of the great powers appertaining to Gov^t. particularly all those relating to foreign Nations were not in the hands of the Gov^t. there. Their internal affairs also were extremely simple, owing to sundry causes many of which were peculiar to that Country. Of late the Governm^t. had entirely given way to the people, and had in fact suspended many of its ordinary functions in order to prevent those turbulent scenes which had appeared elsewhere. He asks M^r. S. whether the State at this time dare impose & collect a tax on y^e. people? To these causes & not to the frequency of elections, the effect as far as it existed ought to be chiefly ascribed.

M^r. Gerry, wished we could be united in our ideas concerning a permanent Gov^t. All aim at the same end, but there are great differences as to the means. One circumstance He thought should be carefully attended to. There was not 1/1000 part of our fellow citizens who were not ag^st. every approach towards Monarchy. Will they ever agree to a plan which seems to

make such an approach. The Convention ought to be extremely cautious in what they hold out to the people. Whatever plan may be proposed will be espoused with warmth by many out of respect to the quarter it proceeds from as well as from an approbation of the plan itself. And if the plan should be of such a nature as to rouse a violent opposition, it is easy to foresee that discord & confusion will ensue, and it is even possible that we may become a prey to foreign powers. He did not deny the position of Mr. Madison, that the majority will generally violate justice when they have an interest in so doing: But did not think there was any such temptation in this Country. Our situation was different from that of G. Britain; and the great body of lands yet to be parcelled out & settled would very much prolong the difference. Notwithstanding the symptoms of injustice which had marked many of our public Councils, they had not proceeded so far as not to leave hopes, that there would be a sufficient sense of justice & virtue for the purpose of Govt.. He admitted the evils arising from a frequency of elections; and would agree to give the Senate a duration of four or five years. A longer term would defeat itself. It never would be adopted by the people.

Mr. Wilson did not mean to repeat what had fallen from others, but wd add an observation or two which he believed had not yet been suggested. Every nation may be regarded in two relations 1 to its own citizens. 2 to foreign nations. It is therefore not only liable to anarchy & tyranny within, but has wars to avoid & treaties to obtain from abroad. The Senate will probably be the depository of the powers concerning the latter objects. It ought therefore to be made respectable in the eyes of foreign Nations. The true reason why G. Britain has not yet listened to a commercial treaty with us has been, because she had no confidence in the stability or efficacy of our Government. 9 years with a rotation, will provide these desirable qualities; and give our Govt an advantage in this respect over Monarchy itself. In a Monarchy much must always depend on the temper of the man. In such a body, the personal character will be lost in the political. He wd add another observation. The popular objection agst appointing any public body for a long term was that it might by gradual encroachments prolong itself first into a body for life, and finally become a hereditary one. It would be a satisfactory answer to this objection that as 1/3 would go out triennially, there would be always three divisions holding their places for unequal

times, and consequently acting under the influence of different views, and different impulses.—On the question for 9 years, 1/3 to go out triennially,

Mass^{ts} no. Con^{t}, no. N. Y. no. N. J. no. P^{a} ay. Del. ay. M^{d} no. V^{a} ay. N. C. no. S. C. no. Geo. no.

On the question for 6 years,[110] 1/3 to go out biennially

Mass^{ts} ay. Con^{t} ay. N. Y. no. N. J. no. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. no. Geo. no.

[110] Yates has the question on *five* years, but this is obviously a mistake.—Yates, *Secret Proceedings*, etc., 172.

"To receive fixt stipends by which they may be compensated for their services" considered.

General Pinkney proposed "that no Salary should be allowed." As this (the Senatorial) branch was meant to represent the wealth of the Country, it ought to be composed of persons of wealth; and if no allowance was to be made the wealthy alone would undertake the service. He moved to strike out the clause.

Doct[r] Franklin seconded the motion. He wished the Convention to stand fair with the people. There were in it a number of young men who would probably be of the Senate. If lucrative appointments should be recommended we might be chargeable with having carved out places for ourselves. On the question,—Mas[ts] Connecticut[111] P[a] M[d] S. Carolina ay. N. Y. N. J. Del. Virg[a] N. C. Geo. no.

[111] Quer. whether Connecticut should not be, no, & Delaware, ay.—Madison's Note.

M[r] Williamson moved to change the expression into these words to wit "to receive a compensation for the devotion of their time to the public service." The motion was seconded by M[r] Elseworth, and agreed to by all the States except S. Carol[a]. It seemed to be meant only to get rid of the word "fixt" and leave greater room for modifying the provision on this point.

M[r] Elseworth moved to strike out "to be paid out of the Nat[l] Treasury" and insert "to be paid by their respective States." If the Senate was meant to strengthen the Gov[t] it ought to have the confidence of the States. The States will have an interest in keeping up a representation, and will make such provision for supporting the members as will ensure their attendance.

Mr. Madison considered this as a departure from a fundamental principle, and subverting the end intended by allowing the Senate a duration of 6 years. They would if this motion should be agreed to, hold their places during pleasure; during the pleasure of the State Legislatures. One great end of the institution was, that being a firm, wise and impartial body, it might not only give stability to the Genl. Govt. in its operations on individuals, but hold an even balance among different States. The motion would make the Senate like Congress, the mere Agents & Advocates of State interests & views, instead of being the impartial umpires & Guardians of justice and the general Good. Congs. had lately by the establishment of a board with full powers to decide on the mutual claims between the U. States & the individual States, fairly acknowledged themselves to be unfit for discharging this part of the business referred to them by the Confederation.

Mr. Dayton[112] considered the payment of the Senate by the States as fatal to their independence, he was decided for paying them out of the Natl. Treasury.

[112] "Cap. Dayton is a young Gentleman of talents, with ambition to exert them. He possesses a good education and some reading; he speaks well, and seems desirous of improving himself in Oratory. There is an impetuosity in his temper that is injurious to him; but there is an honest rectitude about him that makes him a valuable Member of Society, and secures to him the esteem of all good Men. He is about 30 years old, served with me a Brother Aid to General Sullivan in the Western Expedition of '79."—Pierce's Notes, *Am. Hist. Rev.*, iii., 328.

On the question for payment of the Senate to be left to the States as moved by Mr. Elseworth.

Masstts. no. Contt. ay. N. Y. ay. N. J. ay. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. ay. Geo. ay.

Col. Mason. He did not rise to make any motion, but to hint an idea which seemed to be proper for consideration. One important object in constituting the Senate was to secure the rights of property. To give them weight & firmness for this purpose, a considerable duration in office was thought necessãy. But a longer term than 6 years, would be of no avail in

this respect, if needy persons should be appointed. He suggested therefore the propriety of annexing to the office a qualification of property. He thought this would be very practicable; as the rules of taxation would supply a scale for measuring the degree of wealth possessed by every man.

A question was then taken whether the words "to be paid out of the public treasury," should stand.

Mass^{ts} ay. Con^{t} no. N. Y. no. N. J. no. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

M^{r} Butler moved to strike out the ineligibility of Senators to *State offices*.

Mr. Williamson seconded the motion.[113]

[113] According to Yates, before Wilson spoke:

> "Mr. Madison. Congress heretofore depended on state interests; we are now going to pursue the same plan."—Yates, *Secret Proceedings*, etc., 173.

M^{r} Wilson remarked the additional dependance this w^{d} create in the Senators on the States. The longer the time he observed allotted to the Officer, the more compleat will be the dependance if it exists at all.[114]

[114] After Wilson, according to Yates:

> "Mr. Butler. This second branch I consider as the aristocratic part of our government; and they must be controlled by the states, or they will be too independent."—Yates, *Secret Proceedings*, etc., 173.

Gen^{l} Pinkney was for making the States as much as could be conveniently done, a part of the Gen^{l} Gov^{t}. If the Senate was to be appointed by the States, it ought in pursuance of the same idea to be paid by the States: and the States ought not to be barred from the opportunity of calling members of it into offices at home. Such a restriction would also discourage the ablest men from going into the Senate.

M[r] Williamson moved a resolution so penned as to admit of the two following questions. 1. whether the members of the Senate should be ineligible to & incapable of holding offices *under the U. States*

2. Whether &c. under the *particular States*.

On the Question to postpone in order to consider Williamson's Resol[n]. Mas[ts] no. Con[t] ay. N. Y. no. N. J. no. P[a] ay. Del. ay. M[d] ay. V[a] ay. N. C. ay. S. C. ay. Geo. ay.

M[r] Gerry & M[r] Madison move to add to M[r] Williamson's 1. Quest: "and for 1 year thereafter." On this amend[t]

Mas[ts] no. Con[t] ay. N. Y. ay. N. J. no. P[a] no. Del. ay. M[d] ay. V[a] ay. N. C. ay. S. C. ay. Geo. no.

On M[r] Will[iam]son's 1 Question as amend[ed] vz, inelig: & incapable &c. &c. for 1 year &c. ag[d] to unãmously.

On the 2. question as to ineligibility &c. to State offices,

Mass. ay. C[t] no. N. Y. no. N. J. no. P[a] ay. Del. no. M[d] no. V[a] ay. N. C. no. S. C. no. Geo. no.

The 5. Resol: "that each branch have the right of originating acts," was agreed to nem. con.

Adj[d].

Wednesday June 27. in Convention.

Mr. Rutlidge moved to postpone the 6th Resolution, defining the powers of Congs in order to take up the 7 & 8 which involved the most fundamental points; the rules of suffrage in the 2 branches which was agreed to nem. con.

A question being proposed on the Resol: 7; declaring that the suffrage in the first branch shd be according to an equitable ratio.

Mr. L. Martin[115] contended at great length and with great eagerness that the General Govt was meant merely to preserve the State Governts not to govern individuals: that its powers ought to be kept within narrow limits: that if too little power was given to it, more might be added; but that if too much, it could never be resumed: that individuals as such have little to do but with their own States; that the Genl Govt has no more to apprehend from the States composing the Union, while it pursues proper measures, that Govt over individuals has to apprehend from its subjects: that to resort to the Citizens at large for their sanction to a new Governt will be throwing them back into a state of Nature; that the dissolution of the State Govts is involved in the nature of the process; that the people have no right to do this without the consent of those to whom they have delegated their power for State purposes: through their tongues only they can speak, through their ears, only can hear: that the States have shewn a good disposition to comply with the Acts of Congs, weak, contemptibly weak as that body has been; and have failed through inability alone to comply: that the heaviness of the private debts, and the waste of property during the war, were the chief causes of this inability; that he did not conceive the instances mentioned by Mr. Madison of compacts between Va & Md between Pa & N. J. or of troops raised by Masts for defence against the Rebels, to be violations of the articles of confederation—that an equal vote in each State was essential to the federal idea, and was founded in justice & freedom, not merely in policy: that tho' the States may give up this right of sovereignty, yet they had not, and ought not: that the States like individuals were in a State of

nature equally sovereign & free. In order to prove that individuals in a State of Nature are equally free & independent he read passages from Locke, Vattel, Lord Summers—Priestly. To prove that the case is the same with States till they surrender their equal sovereignty, he read other passages in Locke & Vattel, and also Rutherford: that the States being equal cannot treat or confederate so as to give up an equality of votes without giving up their liberty: that the propositions on the table were a system of slavery for 10 States: that as V^a^ Mass^ts^ & P^a^ have 42/90 of the votes they can do as they please without a miraculous Union of the other ten: that they will have nothing to do, but to gain over one of the ten to make them compleat masters of the rest; that they can then appoint an Execut^e^ & Judiciary & legislate for them as they please: that there was & would continue a natural predilection & partiality in men for their own States; that the States, particularly the smaller, would never allow a negative to be exercised over their laws: that no State in Ratifying the Confederation had objected to the equality of votes; that the complaints at present run not ag^st^ this equality but the want of power: that 16 members from V^a^ would be more likely to act in concert than a like number formed of members from different States: that instead of a junction of the small States as a remedy, he thought a division of the large States would be more eligible.—This was the substance of a speech which was continued more than three hours. He was too much exhausted he said to finish his remarks, and reminded the House that he should tomorrow, resume them.

[115] "Mr. Martin, the Attorney-General from Maryland, spoke on this subject upwards of three hours. As his arguments were too diffuse, and in many instances desultory, it was not possible to trace him through the whole, or to methodize his ideas into a systematic or argumentative arrangement."—Yates, *Secret Proceedings*, etc., 174.

Adj^d^.

Thursday June 28th. in Convention

Mr. L. Martin resumed his discourse,[116] contending that the Genl. Govt ought to be formed for the States, not for individuals: that if the States were to have votes in proportion to their numbers of people, it would be the same thing whether their representatives were chosen by the Legislatures or the people; the smaller States would be equally enslaved; that if the large States have the same interest with the smaller as was urged, there could be no danger in giving them an equal vote; they would not injure themselves, and they could not injure the large ones on that supposition without injuring themselves and if the interests, were not the same, the inequality of suffrage wd be dangerous to the smaller States: that it will be in vain to propose any plan offensive to the rulers of the States, whose influence over the people will certainly prevent their adopting it: that the large States were weak at present in proportion to their extent; & could only be made formidable to the small ones, by the weight of their votes: that in case a dissolution of the Union should take place, the small States would have nothing to fear from their power; that if in such a case the three great States should league themselves together, the other ten could do so too; & that he had rather see partial Confederacies take place, than the plan on the table. This was the substance of the residue of his discourse which was delivered with much diffuseness & considerable vehemence.

[116] Yates gives Martin's speech more fully:

> "On federal grounds, it is said, that a minority will govern a majority—but on the Virginia plan a minority would tax a majority. In a federal government, a majority of states must and ought to tax. In the local government of states, counties may be unequal—still numbers, not property, govern. What is the government now forming, over states or persons? As to the latter, their rights cannot be the object of a general government. These are already secured by their guardians, the state governments. The general government is therefore intended only to protect and guard the rights of the states as states.
>
> "This general government, I believe, is the first upon earth which gives checks against democracies or aristocracies. The only necessary check in a general government ought to be a restraint to prevent its absorbing the

powers of the state governments. Representation on federal principles can only flow from state societies. Representation and taxation are ever inseparable—not according to the quantum of property, but the quantum of freedom.

"Will the representatives of a state forget state interests? The mode of election cannot change it. These prejudices cannot be eradicated—Your general government cannot be just or equal upon the Virginia plan, unless you abolish state interests. If this cannot be done, you must go back to principles purely federal.

"On this latter ground, the state legislatures and their constituents will have no interests to pursue different from the general government, and both will be interested to support each other. Under these ideas can it be expected that the people can approve the Virginia plan? But it is said, the people, not the state legislatures, will be called upon for approbation—with an evident design to separate the interests of the governors from the governed. What must be the consequence? Anarchy and confusion. We lose the ideas of the powers with which we are intrusted. The legislatures must approve. By them it must, on your own plan, be laid before the people. How will such a government, over so many great states, operate. Wherever new settlements have been formed in large states, they immediately want to shake off their independency. Why? Because the government is too remote for their good. The people want it nearer home.

"The basis of all ancient and modern confederacies is the freedom and the independency of the states composing it. The states forming the amphictionic council were equal, though Lacedemon, one of the greatest states, attempted the exclusion of three of the lesser states from this right. The plan reported, it is true, only intends to diminish those rights, not to annihilate them—It was the ambition and power of the great Grecian states which at last ruined this respectable council. The states as societies are ever respectful. Has Holland or Switzerland ever complained of the equality of the states which compose their respective confederacies? Bern and Zurich are larger than the remaining eleven cantons—so of many of the states of Germany; and yet their governments are not complained of. Bern alone might usurp the whole power of the Helvetic confederacy, but she is contented still with being equal.

"The admission of the larger states into the confederation, on the principle of equality, is dangerous—But on the Virginia system it is ruinous and destructive. Still it is the true interest of all the states to confederate—It is their joint efforts which must protect and secure us from foreign danger, and give us peace and harmony at home.

"(Here Mr. Martin entered into a detail of the comparative powers of each state, and stated their probable weakness and strength.)

"At the beginning of our troubles with Great Britain, the smaller states were attempted to be cajoled to submit to the views of that nation, lest the larger states should usurp their rights. We then answered them—your

present plan is slavery, which on the remote prospect of a distant evil, we will not submit to.

"I would rather confederate with any single state, than submit to the Virginia plan. But we are already confederated, and no power on earth can dissolve it but by the consent of *all* the contracting powers—and four states, on this floor, have already declared their opposition to annihilate it. Is the old confederation dissolved, because some of the states wish a new confederation?"—Yates, *Secret Proceedings*, etc., 177.

Mr. Lansing & Mr. Dayton moved to strike out "not," so that the 7 art. might read that the rights of suffrage in the 1st branch ought to be according to the rule established by the Confederation."

Mr. Dayton expressed great anxiety that the question might not be put till tomorrow; Govern[r] Livingston being kept away by indisposition, and the representation of N. Jersey thereby suspended.

Mr. Williamson, thought that if any political truth could be grounded on mathematical demonstration, it was that if the States were equally sovereign now, and parted with equal proportions of sovereignty, that they would remain equally sovereign. He could not comprehend how the smaller States would be injured in the case, and wished some Gentleman would vouchsafe a solution of it. He observed that the small States, if they had a plurality of votes would have an interest in throwing the burdens off their own shoulders on those of the large ones. He begged that the expected addition of new States from the Westward might be kept in view. They would be small States, they would be poor States, they would be unable to pay in proportion to their numbers; their distance from market rendering the produce of their labour less valuable; they would consequently be tempted to combine for the purpose of laying burdens on comm̃erce & consumption which would fall with greatest weight on the old States.

Mr. Madison, s[d] he was much disposed to concur in any expedient not inconsistent with fundamental principles, that could remove the difficulty concerning the rule of representation. But he could neither be convinced that the rule contended for was just, nor necessary for the safety of the small States ag[st] the large States. That it was not just, had been conceded by Mr. Breerly & Mr. Paterson themselves. The expedient proposed by them was a

new partition of the territory of the U. States. The fallacy of the reasoning drawn from the equality of Sovereign States in the formation of compacts, lay in confounding together mere Treaties, in which were specified certain duties to which the parties were to be bound, and certain rules by which their subjects were to be reciprocally governed in their intercourse, with a compact by which an authority was created paramount to the parties, & making laws for the government of them. If France, England & Spain were to enter into a Treaty for the regulation of commerce &c with the Prince of Monacho & 4 or 5 other of the smallest sovereigns of Europe, they would not hesitate to treat as equals, and to make the regulations perfectly reciprocal. W^{d} the case be the same, if a Council were to be formed of deputies from each with authority and discretion, to raise money, levy troops, determine the value of coin &c? Would 30 or 40, million of people submit their fortunes into the hands of a few thousands? If they did it would only prove that they expected more from the terror of their superior force, than they feared from the selfishness of their feeble associates. Why are Counties of the Same States represented in proportion to their numbers? Is it because the representatives are chosen by the people themselves? So will be the representatives in the Nation^{l} Legislature. Is it because, the larger have more at stake than the smaller? The Case will be the same with the larger & smaller States. Is it because the laws are to operate immediately on their persons & properties? The same is the case in some degree as the articles of confederation stand; the same will be the case in a far greater degree, under the plan proposed to be substituted. In the cases of captures, of piracies, and of offences in a federal army, the property & persons of individuals depend on the laws of Cong^{s}. By the plan proposed a compleat power of taxation, the highest prerogative of supremacy is proposed to be vested in the National Gov^{t}. Many other powers are added which assimilate it to the Gov^{t} of individual States. The negative proposed on the State laws, will make it an essential branch of the State Legislatures & of course will require that it should be exercised by a body established on like principles with the other branches of those Legislatures.—That it is not necessãy to secure the small States agst the large ones he conceived to be equally obvious: Was a combination of the large ones dreaded? This must arise either from some interest common to V^{a} Mass^{ts} & P^{a} & distinguishing them from the other States, or from the mere circumstance of similarity of size.

Did any such common interest exist? In point of situation they could not have been more effectually separated from each other by the most jealous citizen of the most jealous State. In point of manners, Religion, and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other States—In point of the staple productions they were as dissimilar as any three other States in the Union. The Staple of Mass^{ts} was *fish*, of P^{a} *flower*, of V^{a} *Tob^{o}* Was a Combination to be apprehended from the mere circumstance of equality of size? Experience suggested no such danger. The journals of Cong^{s} did not present any peculiar association of these States in the votes recorded. It had never been seen that different Counties in the same State, conformable in extent, but disagreeing in other circumstances, betrayed a propensity to such combinations. Experience rather taught a contrary lesson. Among individuals of superior eminence & weight in Society, rivalships were much more frequent than coalitions. Among independent Nations, pre-eminent over their neighbours, the same remark was verified. Carthage & Rome tore one another to pieces instead of uniting their forces to devour the weaker nations of the Earth. The Houses of Austria & France were hostile as long as they remained the greatest powers of Europe. England & France have succeeded to the pre-eminence & to the enmity. To this principle we owe perhaps our liberty. A coalition between those powers would have been fatal to us. Among the principal members of antient & Modern confederacies, we find the same effect from the same cause. The contentions, not the Coalitions of Sparta, Athens & Thebes, proved fatal to the smaller members of the Amphyctionic Confederacy. The contentions, not the combinations of Prussia & Austria, have distracted & oppressed the German empire. Were the large States formidable *singly* to their smaller neighbours? On this supposition the latter ought to wish for such a General Gov^{t} as will operate with equal energy on the former as on themselves. The more lax the band, the more liberty the larger will have to avail themselves of their superior force. Here again Experience was an instructive monitor. What is y^{e} situation of the weak compared with the strong in those stages of civilization in which the violence of individuals is least controuled by an efficient Government? The Heroic period of Antient Greece, the feudal licentiousness of the middle ages of Europe, the existing condition of the American Savages, answer this question. What is the situation of the minor sovereigns in the great society of independent nations, in which the more

powerful are under no controul but the nominal authority of the law of Nations? Is not the danger to the former exactly in proportion to their weakness. But there are cases still more in point. What was the condition of the weaker members of the Amphyctionic Confederacy. Plutarch (life of Themistocles) will inform us that it happened but too often that the strongest cities corrupted & awed the weaker, and that Judgment went in favor of the more powerful party. What is the condition of the lesser states in the German Confederacy? We all know that they are exceedingly trampled upon: and that they owe their safety as far as they enjoy it, partly to their enlisting themselves, under the rival banners of the pre-eminent members, partly to alliances with neighbouring Princes which the Constitution of the Empire does not prohibit. What is the state of things in the lax system of the Dutch Confederacy? Holland contains about 1/2 the People, supplies about 1/2 of the money, and by her influence, silently & indirectly governs the whole republic. In a word; the two extremes before us are a perfect separation & a perfect incorporation, of the 13 States. In the first case they would be independent nations subject to no law, but the law of nations. In the last, they would be mere counties of one entire republic, subject to one common law. In the first case the smaller States would have every thing to fear from the larger. In the last they would have nothing to fear. The true policy of the small States therefore lies in promoting those principles & that form of Gov^{t} which will most approximate the States to the condition of counties. Another consideration may be added. If the Gen^{l} Gov^{t} be feeble, the large States distrusting its continuance, and foreseeing that their importance & security may depend on their own size & strength, will never submit to a partition. Give to the Gen^{l} Gov^{t} sufficient energy & permanency, & you remove the objection. Gradual partitions of the large, & junctions of the small States will be facilitated, and time may effect that equalization, which is wished for by the small States now, but can never be accomplished at once.

M^{r} Wilson. The leading argument of those who contend for equality of votes among the States is that the States as such being equal, and being represented not as districts of individuals, but in their political & corporate capacities, are entitled to an equality of suffrage. According to this mode of reasoning the representation of the boroughs in Engl[~d] which has been allowed on all hands to be the rotten part of the Constitution, is perfectly

right & proper. They are like the States represented in their corporate capacity like the States therefore they are entitled to equal voices, old Sarum to as many as London. And instead of the injury supposed hitherto to be done to London, the true ground of Complaint lies with old Sarum: for London instead of two which is her proper share, sends four representatives to Parliament.[117]

[117] According to King's Notes, Charles Pinckney spoke after Madison: "*Charles Pinckney.* The Honors & offices may become the objects of strong desire and of combination to acquire them. If Representatives be apportioned among the States in the Ratio of numbers, the Citizens will be free and equal but the States will be unequal, and their sovereignty will be degraded."—King's *Life and Correspondence of Rufus King*, i., 610.

Mr. Sherman. The question is not what rights naturally belong to man; but how they may be most equally & effectually guarded in Society. And if some give up more than others in order to obtain this end, there can be no room for complaint. To do otherwise, to require an equal concession from all, if it would create danger to the rights of some, would be sacrificing the end to the means. The rich man who enters into Society along with the poor man, gives up more than the poor man, yet with an equal vote he is equally safe. Were he to have more votes than the poor man in proportion to his superior stake the rights of the poor man would immediately cease to be secure. This consideration prevailed when the articles of Confederation were formed.[118]

[118] According to Yates, Madison followed Sherman: "Mr. Madison. There is danger in the idea of the gentleman from Connecticut. Unjust representation will ever produce it. In the United Netherlands, Holland governs the whole, although she has only one vote. The counties in Virginia are exceedingly disproportionate, and yet the smaller has an equal vote with the greater, and no inconvenience arises."—Yates, *Secret Proceedings*, etc., 182.

The determination of the question from striking out the word "not" was put off till tomorrow at the request of the Deputies of N. York.

Docr. Franklin. Mr. President.

The small progress we have made after 4 or five weeks close attendance & continual reasonings with each other—our different sentiments on almost every question, several of the last producing as many noes as ays, is methinks a melancholy proof of the imperfection of the Human Understanding. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of Government, and examined the different forms of those Republics which having been formed with the seeds of their own dissolution now no longer exist. And we have viewed Modern States all round Europe, but find none of their Constitutions suitable to our circumstances.

In this situation of this Assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings? In the beginning of the Contest with G. Britain, when we were sensible of danger we had daily prayer in this room for the divine protection.—Our prayers, Sir, were heard, & they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending providence in our favor. To that kind providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? or do we imagine that we no longer need his assistance? I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth—*that God Governs in the affairs of men*. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings that "except the Lord build the House they labour in vain that build it." I firmly believe this; and I also believe that without his concurring aid we shall succeed in this political building no better than the Builders of Babel: We shall be divided by our little partial local interests; our projects will be confounded, and we ourselves shall become a reproach and bye word down to future ages. And what is worse, mankind may hereafter from this unfortunate instance, despair of establishing Governments by Human wisdom and leave it to chance, war and conquest.

I therefore beg leave to move—that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of the Clergy of this City be requested to officiate in that Service—

Mr. Sherman seconded the motion.

Mr. Hamilton & several others expressed their apprehensions that however proper such a resolution might have been at the beginning of the convention, it might at this late day, 1. bring on it some disagreeable animadversions, & 2. lead the public to believe that the embarrassments and dissensions within the Convention, had suggested this measure. It was answered by Docr. F. Mr. Sherman & others, that the past omission of a duty could not justify a further omission—that the rejection of such a proposition would expose the Convention to more unpleasant animadversions than the adoption of it: and that the alarm out of doors that might be excited for the state of things within, would at least be as likely to do good as ill.

Mr. Williamson, observed that the true cause of the omission could not be mistaken. The Convention had no funds.

Mr. Randolph proposed in order to give a favorable aspect to ye. measure, that a sermon be preached at the request of the convention on 4th. of July, the anniversary of Independence; & thenceforward prayers be used in ye. Convention every morning. Dr. Frankn. 2ded. this motion. After several unsuccessful attempts for silently postponing this matter by adjourng. the adjournment was at length carried, without any vote on the motion.

Friday June 29TH in Convention.

Docr Johnson. The controversy must be endless whilst Gentlemen differ in the grounds of their arguments; Those on one side considering the States as districts of people composing one political Society; those on the other considering them as so many political societies. The fact is that the States do exist as political Societies, and a Govt is to be formed for them in their political capacity, as well as for the individuals composing them. Does it not seem to follow, that if the States as such are to exist they must be armed with some power of self-defence. This is the idea of (Col. Mason) who appears to have looked to the bottom of this matter. Besides the aristocratic and other interests, which ought to have the means of defending themselves, the States have their interests as such, and are equally entitled to like means. On the whole he thought that as in some respects the States are to be considered in their political capacity, and in others as districts of individual citizens the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined; that in *one* branch the *people*, ought to be represented, in the *other* the *States*.

Mr Ghoram. The States as now confederated have no doubt a right to refuse to be consolidated, or to be formed into any new system. But he wished the small States which seemed most ready to object, to consider which are to give up most, they or the larger ones. He conceived that a rupture of the Union wd be an event unhappy for all, but surely the large States would be least unable to take care of themselves, and to make connections with one another. The weak therefore were most interested in establishing some general system for maintaining order. If among individuals, composed partly of weak, and partly of strong, the former most need the protection of law & Government, the case is exactly the same with weak & powerful States. What would be the situation of Delaware (for these things he found must be spoken out, & it might as well be done at first as last) what wd be the situation of Delaware in case of a separation of the States? Would she not be at the mercy of Pennsylvania? would not her true interest lie in being consolidated with her, and ought she not now to wish

for such a union with P^{a} under one Gov^{t} as will put it out of the power of Pen^{a} to oppress her? Nothing can be more ideal than the danger apprehended by the States from their being formed into one nation. Mass^{ts} was originally three colonies, viz old Mass^{ts} Plymouth—& the province of Mayne. These apprehensions existed then. An incorporation took place; all parties were safe & satisfied; and every distinction is now forgotten. The case was similar with Connecticut & New haven. The dread of Union was reciprocal; the consequence of it equally salutary and satisfactory. In like manner N. Jersey has been made one society out of two parts. Should a separation of the States take place, the fate of N. Jersey w^{d} be worst of all. She has no foreign commerce & can have but little. P^{a} & N. York will continue to levy taxes on her consumption. If she consults her interest she w^{d} beg of all things to be annihilated. The apprehensions of the small States ought to be appeased by another reflection Mass^{ts} will be divided. The province of Maine is already considered as approaching the term of its annexation to it; and P^{a} will probably not increase, considering the present state of her population, & other events that may happen. On the whole he considered a Union of the States as necessary to their happiness, & a firm Gen^{l} Gov^{t} as necessary to their Union. He sh^{d} consider it as his duty if his colleagues viewed the matter in the same light he did to stay here as long as any other State would remain with them, in order to agree on some plan that could with propriety be recommended to the people.

M^{r} Elseworth, did not despair. He still trusted that some good plan of Gov^{t} w^{d} be devised & adopted.

M^{r} Read. He sh^{d} have no objection to the system if it were truly national, but it has too much of a federal mixture in it. The little States he thought had not much to fear. He suspected that the large States felt their want of energy, & wished for a Gen^{l} Gov^{t} to supply the defect. Mass^{ts} was evidently labouring under her weakness and he believed Delaware w^{d} not be in much danger if in her neighbourhood. Delaware had enjoyed tranquillity & he flattered himself w^{d} continue to do so. He was not however so selfish as not to wish for a good Gen^{l} Gov^{t}. In order to obtain one the whole States must be incorporated. If the States remain, the representatives of the large ones will stick together, and carry everything before them. The Executive also

will be chosen under the influence of this partiality, and will betray it in his administration. These jealousies are inseparable from the scheme of leaving the States in existence. They must be done away. The ungranted lands also which have been assumed by particular States must also be given up. He repeated his approbation of the plan of Mr. Hamilton, & wished it to be substituted in the place of that on the table.

Mr. Madison agreed with Docr. Johnson, that the mixed nature of the Govt. ought to be kept in view; but thought too much stress was laid on the rank of the States as political societies. There was a gradation, he observed from the smallest corporation, with the most limited powers, to the largest empire with the most perfect sovereignty. He pointed out the limitations on the sovereignty of the States, as now confederated their laws in relation to the paramount law of the Confederacy were analagous to that of bye laws to the supreme law within a State. Under the proposed Govt. the powers of the States will be much farther reduced. According to the views of every member, the Genl. Govt. will have powers far beyond those exercised by the British Parliament, when the States were part of the British Empire. It will in particular have the power, without the consent of the State Legislatures, to levy money directly on the people themselves; and therefore not to divest such *unequal* portions of the people as composed the several States, of an *equal* voice, would subject the system to the reproaches & evils which have resulted from the vicious representation in G. B.

He entreated the gentlemen representing the small States to renounce a principle wch was confessedly unjust, which cd never be admitted, & if admitted must infuse mortality into a Constitution which we wished to last forever. He prayed them to ponder well the consequences of suffering the Confederacy to go to pieces. It had been sd that the want of energy in the large states wd be a security to the small. It was forgotten that this want of energy proceeded from the supposed security of the States agst all external danger. Let each state depend on itself for its security, & let apprehensions arise of danger, from distant powers or from neighbouring States, & the languishing condition of all the States, large as well as small, wd soon be transformed into vigorous & high toned Govts. His great fear was that their Govts wd then have too much energy, that these might not only be formidable in the large to the small States, but fatal to the internal liberty of

all. The same causes which have rendered the old world the Theatre of incessant wars, & have banished liberty from the face of it, w^{d} soon produce the same effects here. The weakness & jealousy of the small States w^{d} quickly introduce some regular military force agst sudden danger from their powerful neighbours. The example w^{d} be followed by others, and w^{d} soon become universal. In time of actual war, great discretionary powers are constantly given to the Executive Magistrate. Constant apprehension of war, has the same tendency to render the head too large for the body. A standing military force, with an overgrown Executive will not long be safe companions to liberty. The means of defence agst foreign danger, have been always the instruments of tyranny at home. Among the Romans it was a standing maxim to excite a war, whenever a revolt was apprehended. Throughout all Europe, the armies kept up under the pretext of defending, have enslaved the people. It is perhaps questionable, whether the best concerted system of absolute power in Europe c^{d} maintain itself, in a situation, where no alarms of external danger c^{d} tame the people to the domestic yoke. The insular situation of G. Britain was the principal cause of her being an exception to the general fate of Europe. It has rendered less defence necessary, and admitted a kind of defence w^{ch} c^{d} not be used for the purpose of oppression.—These consequences he conceived ought to be apprehended whether the States should run into a total separation from each other, or sh^{d} enter into partial confederacies. Either event w^{d} be truly deplorable; & those who might be accessary to either, could never be forgiven by their Country, nor by themselves.

[119]M^{r} Hamilton observed that individuals forming political Societies modify their rights differently with regard to suffrage. Examples of it are found in all the States. In all of them some individuals are deprived of the right altogether, not having the requisite qualification of property. In some of the States the right of suffrage is allowed in some cases and refused in others. To vote for a member in one branch, a certain quantum of property, to vote for a member in another branch of the Legislature, a higher quantum of property is required. In like manner States may modify their right of suffrage differently, the larger exercising a larger, the smaller a smaller share of it. But as States are a collection of individual men which ought we to respect most, the rights of the people composing them, or of the artificial

beings resulting from the composition. Nothing could be more preposterous or absurd than to sacrifice the former to the latter. It has been s[d] that if the smaller States renounce their *equality*, they renounce at the same time their *liberty*. The truth is it is a contest for power, not for liberty. Will the men composing the small States be less free than those composing the larger. The State of Delaware having 40,000 souls will *lose power*, if she has 1/10 only of the votes allowed to P[a] having 400,000: but will the people of Del: *be less free*, if each citizen has an equal vote with each citizen of P[a] He admitted that common residence within the same State would produce a certain degree of attachment; and that this principle might have a certain influence in public affairs. He thought however that this might by some precautions be in a great measure excluded: and that no material inconvenience could result from it, as there could not be any ground for combination among the States whose influence was most dreaded. The only considerable distinction of interests, lay between the carrying & non-carrying States, which divides instead of uniting the largest States. No considerable inconvenience had been found from the division of the State of N. York into different districts of different sizes.

[119] From this date he was absent till the —— of ——.—Madison's Note.

Some of the consequences of a dissolution of the Union, and the establishment of partial confederacies, had been pointed out. He would add another of a most serious nature. Alliances will immediately be formed with different rival & hostile nations of Europes, who will foment disturbances among ourselves, and make us parties to all their own quarrels. Foreign Nations having American dominion are & must be jealous of us. Their representatives betray the utmost anxiety for our fate, & for the result of this meeting, which must have an essential influence on it.—It had been said that respectability in the eyes of foreign Nations was not the object at which we aimed; that the proper object of republican Government was domestic tranquillity & happiness. This was an ideal distinction. No Government could give us tranquillity & happiness at home, which did not possess sufficient stability and strength to make us respectable abroad. This was the critical moment for forming such a Government. We should run every risk in trusting to future amendments. As yet we retain the habits of union. We are weak & sensible of our weakness. Henceforward the motives will become feebler, and the difficulties greater. It is a miracle that we were now here exercising our tranquil & free deliberations on the subject. It would be madness to trust to future miracles. A thousand causes must obstruct a reproduction of them.

M^r^. Pierce considered the equality of votes under the Confederation as the great source of the public difficulties. The members of Cong^s^ were advocates for local advantages. State distinctions must be sacrificed as far as the general good required, but without destroying the States. Tho' from a small State he felt himself a Citizen of the U. S.

M^r^. Gerry, urged that we never were independent States, were not such now, & never could be even on the principles of the Confederation. The States & the advocates for them were intoxicated with the idea of their *sovereignty*. He was a member of Congress at the time the federal articles were formed. The injustice of allowing each State an equal vote was long insisted on. He voted for it, but it was ag^st^ his Judgment, and under the pressure of public danger, and the obstinacy of the lesser States. The present

Confederation he considered as dissolving. The fate of the Union will be decided by the Convention. If they do not agree on something, few delegates will probably be appointed to Cong^{s}. If they do Cong^{s} will probably be kept up till the new System should be adopted. He lamented that instead of coming here like a band of brothers, belonging to the same family, we seemed to have brought with us the spirit of political negotiators.

M^{r} L. Martin remarked that the language of the States being *sovereign & independent*, was once familiar & understood; though it seemed now so strange & obscure. He read those passages in the articles of Confederation, which describe them in that language.

On the question as moved by M^{r} Lansing. Shall the word "not" be struck out.

Mass^{ts} no. Con^{t} ay. N. Y. ay. N. J. ay. P^{a} no. Del. ay. M^{d} div^{d}. V^{a} no. N. C. no. S. C. no. Geo. no.

On the motion to agree to the clause as reported, "that the rule of suffrage in the 1st branch ought not to be according to that established by the Articles of the Confederation

Mass. ay. Con^{t} no. N. Y. no. N. J. no. P^{a} ay. Del. no. M^{d} div^{d}. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Doc^{r} Johnson & M^{r} Elseworth moved to postpone the residue of the clause, & take up y^{e} 8 Resol:

On question

Mas. no. Con^{t} ay. N. Y. ay. N. J. ay. P^{a} ay. Del. no. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Elseworth moved that the rule of suffrage in the 2^{d} branch be the same with that established by the articles of Confederation. "He was not sorry on the whole he said that the vote just passed, had determined against this rule in the first branch. He hoped it would become a ground of compromise with regard to the 2^{d} branch. We were partly national; partly

federal. The proportional representation in the first branch was conformable to the national principle & would secure the large States agst the small. An equality of voices was conformable to the federal principle and was necessary to secure the Small States agst the large. He trusted that on this middle ground a compromise would take place. He did not see that it could on any other. And if no compromise should take place, our meeting would not only be in vain but worse than in vain. To the Eastward he was sure Masstts was the only State that would listen to a proposition for excluding the States as equal political Societies, from an equal voice in both branches. The others would risk every consequence rather than part with so dear a right. An attempt to deprive them of it, was at once cutting the body of America in two, and as he supposed would be the case, somewhere about this part of it. The large States he conceived would notwithstanding the equality of votes, have an influence that would maintain their superiority. Holland, as had been admitted (by Mr. Madison) had, notwithstanding a like equality in the Dutch Confederacy, a prevailing influence in the public measures. The power of self defence was essential to the small States. Nature had given it to the smallest insect of the creation. He could never admit that there was no danger of combinations among the large States. They will like individuals find out and avail themselves of the advantage to be gained by it. It was true the danger would be greater if they were contiguous and had a more immediate common interest. A defensive combination of the small States was rendered more difficult by their great number. He would mention another consideration of great weight. The existing confederation was founded on the equality of the States in the article of suffrage: was it meant to pay no regard to this antecedent plighted faith. Let a strong Executive, a Judiciary & Legislative power be created, but Let not too much be attempted; by which all may be lost. He was not in general a half-way man, yet he preferred doing half the good we could, rather than do nothing at all. The other half may be added, when the necessity shall be more fully experienced.[120]

[120] In King's Notes another speech of Madison's is given after Ellsworth's:

"*Madison.* One Gentleman from Connecticut has proposed doing as much as is prudent now, leaving future amendments to Posterity,—this is a dangerous doctrine. The Defects of the Amphictionic League were acknowledged, but were reformed. The Netherlands have four times

attempted to make amendments in their Confederation, but have failed in each attempt. The Fear of innovation, the hue & Cry in favour of the Liberty of the People will as they have done prevent the necessary Reforms. If the States have equal Votes & influence in the Senate we shall be in the utmost danger, the minority of the People will govern the majority. Delaware during the late war opposed and defeated an Embargo, to which twelve States had agreed, and continued to supply the enemy with Provisions in time of war."—King's *Life and Times of Rufus King*, i., 612.

M^r^ Baldwin[121] could have wished that the powers of the General Legislature had been defined, before the mode of constituting it had been agitated. He should vote against the motion of M^r^ Elseworth, tho. he did not like the Resolution as it stood in the Report of the Committee of the whole. He thought the second branch ought to be the representation of property, and that in forming it therefore some reference ought to be had to the relative wealth of their Constituents, and to the principles on which the Senate of Mass^ts^ was constituted. He concurred with those who thought it w^d^ be impossible for the Gen^l^ Legislature to extend its cares to the local matters of the States.[122] Adj^d^.

[121] "Mr. Baldwin is a Gentleman of superior abilities, and joins in a public debate with great art and eloquence. Having laid the foundation of a compleat classical education at Harvard College, he pursues every other study with ease. He is well acquainted with Books and Characters, and has an accommodating turn of mind, which enables him to gain the confidence of Men, and to understand them. He is a practising Attorney in Georgia, and has been twice a Member of Congress. Mr. Baldwin is about 38 years of age."—Pierce's Notes *Am. Hist. Rev.*, iii., 333.

[122] According to Yates, after Baldwin spoke:

> "Mr. Madison. I would always exclude inconsistent principles in framing a system of government. The difficulty of getting its defects amended are great and sometimes insurmountable. The Virginia state government was the first which was made, and though its defects are evident to every person, we cannot get it amended. The Dutch have made four several attempts to amend their system without success. The few alterations made in it were by tumult and faction, and for the worse. If there was real danger, I would give the smaller states the defensive weapons—But there is none from that quarter. The great danger to our general government is the great southern and northern interests of the continent, being opposed to each other. Look to the votes in congress, and most of them stand divided by the geography of the country, not according to the size of the states.

"Suppose the first branch granted money, may not the second branch, from state views, counteract the first? In congress, the single state of Delaware prevented an embargo, at the time that all the other states thought it absolutely necessary for the support of the army. Other powers, and those very essential, besides the legislative, will be given to the second branch—such as the negativing all state laws. I would compromise on this question, if I could do it on correct principles, but otherwise not—if the old fabric of the confederation must be the groundwork of the new, we must fall."—Yates, *Secret Proceedings*, etc., 189.

Saturday June 30. 1787. in Convention

Mr. Brearly moved that the Presidt. write to the Executive of N. Hampshire, informing it that the business depending before the Convention was of such a nature as to require the immediate attendance of the deputies of that State. In support of his motion he observed that the difficulties of the subject and the diversity of opinions called for all the assistance we could possibly obtain, (it was well understood that the object was to add N. Hampshire to the no. of States opposed to the doctrine of proportional representation, which it was presumed from her relative size she must be adverse to).

Mr. Patterson seconded the motion.

Mr. Rutlidge could see neither the necessity nor propriety of such a measure. They are not unapprized of the meeting, and can attend if they choose. Rho. Island might as well be urged to appoint & send deputies. Are we to suspend the business until the deputies arrive? if we proceed he hoped all the great points would be adjusted before the letter could produce its effect.

Mr. King, said he had written more than once as a private correspondent, & the answers gave him every reason to expect that State would be represented very shortly, if it shd. be so at all. Circumstances of a personal nature had hitherto prevented it. A letter cd. have no effect.

Mr. Wilson wished to know whether it would be consistent with the rule or reason of secrecy, to communicate to N. Hampshire that the business was of such a nature as the motion described. It wd. spread a great alarm. Besides he doubted the propriety of soliciting any State on the subject; the meeting being merely voluntary—on motion of Mr. Brearly Masts. no. Cont. no. N. Y. ay. N. J. ay. Pa. not on ye. floor. Del. not on floor. Md. divd. Va. no. N. C. no. S. C. no. Geo. not on floor.

The motion of M^{r} Elseworth resumed for allowing each State an equal vote in y^{e} 2^{d} branch.

M^{r} Wilson did not expect such a motion after the establishment of y^{e} contrary principle in the 1st branch; and considering the reasons which would oppose it, even if an equal vote had been allowed in the 1st branch. The Gentleman from Connecticut (M^{r} Elseworth) had pronounced that if the motion should not be acceded to, of all the States North of Pen^{a} one only would agree to any Gen^{l} Government. He entertained more favorable hopes of Conn^{t} and of the other Northern States. He hoped the alarms exceeded their cause, and that they would not abandon a Country to which they were bound by so many strong and endearing ties. But should the deplored event happen, it would neither stagger his sentiments nor his duty. If the minority of the people of America refuse to coalesce with the majority on just and proper principles, if a separation must take place, it could never happen on better grounds. The votes of yesterday agst the just principle of representation, were as 22 to 90 of the people of America. Taking the opinions to be the same on this point, and he was sure if there was any room for change, it could not be on the side of the majority, the question will be shall less than 1/4 of the U. States withdraw themselves from the Union; or shall more than 3/4 renounce the inherent, indisputable and unalienable rights of men, in favor of the artificial systems of States. If issue must be joined, it was on this point he would chuse to join it. The Gentleman from Connecticut in supposing that the preponderancy secured to the majority in the 1st branch had removed the objections to an equality of votes in the 2^{d} branch for the security of the minority, narrowed the case extremely. Such an equality will enable the minority to controul in all cases whatsoever, the sentiments and interests of the majority. Seven States will controul six: Seven States, according to the estimates that had been used, composed 24/90 of the whole people. It would be in the power then of less than 1/3 to overrule 2/3 whenever a question should happen to divide the States in that manner. Can we forget for whom we are forming a Government? Is it for *men*, or for the imaginary beings called *States*? Will our honest Constituents be satisfied with metaphysical distinctions? Will they, ought they to be satisfied with being told, that the one-third compose the greater number of States? The rule of suffrage ought on every principle

to be the same in the 2d as in the 1st branch. If the Government be not laid on this foundation, it can be neither solid nor lasting. Any other principle will be local, confined & temporary. This will expand with the expansion, and grow with the growth of the U. States.—Much has been said of an imaginary combination of three States. Sometimes a danger of monarchy, sometimes of aristocracy has been charged on it. No explanation however of the danger has been vouchsafed. It would be easy to prove both from reason & history that rivalships would be more probable than coalitions; and that there are no coinciding interests that could produce the latter. No answer has yet been given to the observations of (Mr. Madison) on this subject. Should the Executive Magistrate be taken from one of the large States would not the other two be thereby thrown into the scale with the other States? Whence then the danger of monarchy? Are the people of the three large States more aristocratic than those of the small ones? Whence then the danger of aristocracy from their influence? It is all a mere illusion of names. We talk of States, till we forget what they are composed of. Is a real & fair majority, the natural hot-bed of aristocracy? It is a part of the definition of this species of Govt or rather of tyranny, that the smaller number governs the greater. It is true that a majority of States in the 2d branch cannot carry a law agst a majority of the people in the 1st. But this removes half only of the objection. Bad Governts are of two sorts. 1. that which does too little. 2. that which does too much: that which fails thro' weakness; and that which destroys thro' oppression. Under which of these evils do the U. States at present groan? Under the weakness and inefficiency of its Govern[t]. To remedy this weakness we have been sent to this Convention. If the motion should be agreed to, we shall leave the U. S. fettered precisely as heretofore; with the additional mortification of seeing the good purposes of ye fair representation of the people in the 1st branch, defeated in the 2d. Twenty four will still controul sixty six. He lamented that such a disagreement should prevail on the point of representation, as he did not foresee that it would happen on the other point most contested, the boundary between the Genl & the local authorities. He thought the States necessary & valuable parts of a good system.

Mr. Elseworth. The capital objection of Mr. Wilson, "that the minority will rule the majority" is not true. The power is given to the few to save

them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have had weight. Is it a novel thing that the few should have a check on the many? Is it not the case in the British Constitution the wisdom of which so many gentlemen have united in applauding? Have not the House of Lords, who form so small a proportion of the nation a negative on the laws, as a necessary defence of their peculiar rights agst the encroachm^{ts} of the Commons. No instance of a Confederacy has existed in which an equality of voices has not been exercised by the members of it. We are running from one extreme to another. We are razing the foundations of the building, when we need only repair the roof. No salutary measure has been lost for want of *a majority of the States*, to favor it. If security be all that the great States wish for the 1st branch secures them. The danger of combinations among them is not imaginary. Altho' no particular abuses could be foreseen by him, the possibility of them would be sufficient to alarm him. But he could easily conceive cases in which they might result from such combinations. Suppose that in pursuance of some commercial treaty or arrangement, three or four free ports & no more were to be established would not combinations be formed in favor of Boston—Philad^{a} & some port of the Chesapeak? A like concert might be formed in the appointment of the Great officers. He appealed again to the obligations of the federal pact which was still in force, and which had been entered into with so much solemnity; persuading himself that some regard would still be paid to the plighted faith under which each State small as well as great, held an equal right of suffrage in the general Councils. His remarks were not the result of partial or local views. The State he represented (Connecticut) held a middle rank.

M^{r} Madison did justice to the able and close reasoning of M^{r} E. but must observe that it did not always accord with itself. On another occasion, the large States were described by him as the Aristocratic States, ready to oppress the small. Now the Small are the House of Lords requiring a negative to defend them agst the more numerous Commons. M^{r} E. had also erred in saying that no instance had existed in which confederated States had not retained to themselves a perfect equality of suffrage. Passing over the German system in which the K. of Prussia has nine voices, he reminded M^{r} E. of the Lycian Confederacy, in which the component members had votes proportioned to their importance, and which Montesquieu

recommends as the fittest model for that form of Government. Had the fact been as stated by M^r^ E. it would have been of little avail to him, or rather would have strengthened the arguments ag^st^ him; the History & fate of the several confederacies modern as well as Antient, demonstrating some radical vice in their structure. In reply to the appeal of M^r^ E. to the faith plighted in the existing federal compact, he remarked that the party claiming from others an adherence to a common engagement ought at least to be guiltless itself of a violation. Of all the States however Connecticut was perhaps least able to urge this plea. Besides the various omissions to perform the stipulated acts from which no State was free, the Legislature of that State had by a pretty recent vote, *positively refused* to pass a law for complying with the Requisitions of Cong^s^, and had transmitted a copy of the vote to Cong^s^. It was urged, he said, continually that an equality of votes in the 2^d^ branch was not only necessary to secure the small, but would be perfectly safe to the large ones whose majority in the 1^st^ branch was an effectual bulwark. But notwithstanding this apparent defence, the majority of States might still injure the majority of people. 1. they could *obstruct* the wishes and interests of the majority. 2. they could *extort* measures repugnant to the wishes & interest of the Majority. 3. they could *impose* measures adverse thereto; as the 2^d^ branch will prob[~l]y exercise some great powers, in which the 1^st^ will not participate. He admitted that every peculiar interest whether in any class of Citizens, or any description of States, ought to be secured as far as possible. Wherever there is danger of attack there ought to be given a Constitutional power of defence. But he contended that the States were divided into different interests not by their difference of size, but by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves. These two causes concurred in forming the great division of interests in the U. States. It did not lie between the large & small States: It lay between the Northern & Southern. And if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred was that instead of proportioning the votes of the States in both branches, to their respective numbers of inhabitants computing the slaves in the ratio of 5 to 3, they should be represented in

one branch according to the number of free inhabitants only; and in the other according to the whole nº counting the slaves as free. By this arrangement the Southern Scale would have the advantage in one House, and the Northern in the other. He had been restrained from proposing this expedient by two considerations: one was his unwillingness to urge any diversity of interests on an occasion where it is but too apt to arise of itself —the other was, the inequality of powers that must be vested in the two branches, and which wd destroy the equilibrium of interests.

Mr. Elseworth assured the House that whatever might be thought of the Representatives of Connecticut the State was entirely federal in her disposition. He appealed to her great exertions during the war, in supplying both men & money. The muster rolls would show she had more troops in the field than Virga. If she had been Delinquent, it had been from inability, and not more so than other States.

Mr. Sherman. Mr. Madison had animadverted on the delinquency of the States, when his object required him to prove that the Constitution of Congs was faulty. Congs is not to blame for the faults of the States. Their measures have been right, and the only thing wanting has been, a further power in Congs to render them effectual.

Mr. Davy was much embarrassed and wished for explanations. The Report of the Committee allowing the Legislatures to choose the Senate, and establishing a proportional representation in it, seemed to be impracticable. There will according to this rule be ninety members in the outset, and the number will increase as new States are added. It was impossible that so numerous a body could possess the activity and other qualities required in it. Were he to vote on the comparative merits of the report as it stood, and the amendment, he should be constrained to prefer the latter. The appointment of the Senate by electors chosen by the people for that purpose was he conceived liable to an insuperable difficulty. The larger Counties or districts thrown into a general district, would certainly prevail over the smaller Counties or Districts, and merit in the latter would be excluded altogether. The report therefore seemed to be right in referring the appointment to the Legislatures, whose agency in the general System did not appear to him objectionable as it did to some others. The fact was

that the local prejudices & interests which could not be denied to exist, would find their way into the national Councils whether the Representatives should be chosen by the Legislatures or by the people themselves. On the other hand if a proportional representation was attended with insuperable difficulties, the making the Senate the Representative of the States, looked like bringing us back to Cong^{s} again, and shutting out all the advantages expected from it. Under this view of the subject he could not vote for any plan for the Senate yet proposed. He thought that in general there were extremes on both sides. We were partly federal, partly national in our Union, and he did not see why the Gov^{t} might not in some respects operate on the States, in others on the people.

M^{r} Wilson admitted the question concerning the number of Senators, to be embarrassing. If the smallest States be allowed one, and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest States will contain 100,000 souls at least. Let there be then one Senator in each for every 100,000 souls and let the States not having that n^{o} of inhabitants be allowed one. He was willing himself to submit to this temporary concession to the small States; and threw out the idea as a ground of compromise.

Doc^{r} Franklin. The diversity of opinions turns on two points. If a proportional representation takes place, the small States contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large States say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both, and makes a good joint. In like manner here both sides must part with some of their demands, in order that they may join in some accommodating proposition. He had prepared one which he would read, that it might lie on the table for consideration. The proposition was in the words following

> "That the Legislatures of the several States shall choose & send an equal number of Delegates, namely —— who are to compose the 2^{d} branch of the General Legislature—
>
> That in all cases or questions wherein the Sovereignty of individual States may be affected, or whereby their authority over their own

Citizens may be diminished, or the authority of the General Government within the several States augmented, each State shall have equal suffrage.

That in the appointment of all Civil officers of y^e^ Gen^l^ Gov^t^ in the election of whom the 2^d^ branch may by the Constitution have part, each State shall have equal suffrage.

That in fixing the Salaries of such Officers, and in all allowances for public services, and generally in all appropriations & dispositions of money to be drawn out of the general Treasury; and in all laws for supplying that Treasury, the Delegates of the several States shall have suffrage in proportion to the Sums which their respective States do actually contribute to the Treasury." Where a ship had many owners this was the rule of deciding on her expedition. He had been one of the Ministers from this Country to France during the joint war and w^d^ have been very glad if allowed a vote in distributing the money to carry it on.

M^r^ King observed that the simple question was whether each State should have an equal vote in the 2^d^ branch; that it must be apparent to those Gentlemen who liked neither the motion for this equality, nor the report as it stood, that the report was as susceptible of melioration as the motion; that a reform would be nugatory & nominal only if we should make another Congress of the proposed Senate: that if the adherence to an equality of votes was fixed & unalterable, there could not be less obstinacy on the other side, & that we were in fact cut asunder already, and it was in vain to shut our eyes against it: that he was however filled with astonishment that if we were convinced that every *man* in America was secured in all his rights, we should be ready to sacrifice this substantial good to the Phantom of *State* sovereignty: that his feelings were more harrowed & his fears more agitated for his Country than he could express, that he conceived this to be the last opportunity of providing for its liberty & happiness: that he could not therefore but repeat his amazement that when a just govern^t^ founded on a fair representation of the *people* of America was within our reach, we should renounce the blessing, from an attachment to the ideal freedom & importance of *States*: that should this wonderful illusion continue to prevail,

his mind was prepared for every event, rather than to sit down under a Govt founded in a vicious principle of representation, and which must be as short lived as it would be unjust. He might prevail on himself to accede to some such expedient as had been hinted by Mr Wilson; but he never could listen to an equality of votes as proposed in the motion.

Mr Dayton. When assertion is given for proof, and terror substituted for argument, he presumed they would have no effect however eloquently spoken. It should have been shewn that the evils we have experienced have proceeded from the equality now objected to; and that the seeds of dissolution for the State Governments are not sown in the Genl Government. He considered the system on the table as a novelty, an amphibious monster; and was persuaded that it never would be recd by the people. Mr Martin wd never confederate if it could not be done on just principles.

Mr Madison would acquiesce in the concession hinted by Mr Wilson, on condition that a due independence should be given to the Senate. The plan in its present shape makes the Senate absolutely dependent on the States. The Senate therefore is only another edition of Congs. He knew the faults of that Body & had used a bold language agst it. Still he would preserve the State rights, as carefully as the trials by jury.

Mr Bedford, contended that there was no middle way between a perfect consolidation and a mere confederacy of the States. The first is out of the question, and in the latter they must continue if not perfectly, yet equally sovereign. If political Societies possess ambition avarice, and all the other passions which render them formidable to each other, ought we not to view them in this light here? Will not the same motives operate in America as elsewhere? If any gentleman doubts it let him look at the votes. Have they not been dictated by interest, by ambition? Are not the large States evidently seeking to aggrandize themselves at the expense of the small? They think no doubt that they have right on their side, but interest had blinded their eyes. Look at Georgia. Though a small State at present, she is actuated by the prospect of soon being a great one. S. Carolina is actuated both by present interest & future prospects. She hopes too to see the other States cut down to her own dimensions. N. Carolina has the same motives

of present & future interest. Virg[a] follows. Mary[d] is not on that side of the Question. Pen[a] has a direct and future interest. Mass[ts] has a decided and palpable interest in the part she takes. Can it be expected that the small States will act from pure disinterestedness. Look at G. Britain. Is the Representation there less unequal? But we shall be told again that that is the rotten part of the Constitution. Have not the boroughs however held fast their constitutional rights? And are we to act with greater purity than the rest of mankind. An exact proportion in the Representation is not preserved in any one of the States. Will it be said that an inequality of power will not result from an inequality of votes. Give the opportunity, and ambition will not fail to abuse it. The whole History of mankind proves it. The three large States have a common interest to bind them together in commerce. But whether a combination as we suppose, or a competition as others suppose, shall take place among them, in either case, the small States must be ruined. We must like Solon make such a Govern[t] as the people will approve. Will the smaller States ever agree to the proposed degradation of them. It is not true that the people will not agree to enlarge the powers of the present Cong[s]. The language of the people has been that Cong[s] ought to have the power of collecting an impost, and of coercing the States where it may be necessary. On The first point they have been explicit &, in a manner, unanimous in their declarations. And must they not agree to this & similar measures if they ever mean to discharge their engagements. The little States are willing to observe their engagements, but will meet the large ones on no ground but that of the Confederation. We have been told with a dictatorial air that this is the last moment for a fair trial in favor of a Good Governm[t]. It will be the last indeed if the propositions reported from the Committee go forth to the people. He was under no apprehensions. The Large States dare not dissolve the Confederation. If they do the small ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice. He did not mean by this to intimidate or alarm. It was a natural consequence, which ought to be avoided by enlarging the federal powers not annihilating the federal system. This is what the people expect. All agree in the necessity of a more efficient Gov[t] and why not make such an one as they desire.

M[r] Elseworth. Under a National Gov[t] he should participate in the National Security, as remarked by (M[r] King) but that was all. What he

wanted was domestic happiness. The Natl. Govt could not descend to the local objects on which this depended. It could only embrace objects of a general nature. He turned his eyes therefore for the preservation of his rights to the State Govts. From these alone he could derive the greatest happiness he expects in this life. His happiness depends on their existence, as much as a new born infant on its mother for nourishment. If this reasoning was not satisfactory, he had nothing to add that could be so.

Mr. King was for preserving the States in a subordinate degree, and as far as they could be necessary for the purposes stated by Mr. Elseworth. He did not think a full answer had been given to those who apprehended a dangerous encroachment on their jurisdictions. Expedients might be devised as he conceived that would give them all the security the nature of things would admit of. In the establisht of Societies the Constitution was to the Legislature what the laws were to individuals. As the fundamental rights of individuals are secured by express provisions in the State Constitutions; why may not a like security be provided for the Rights of States in the National Constitution. The articles of Union between Engld & Scotland furnish an example of such a provision in favor of sundry rights of Scotland. When that Union was in agitation, the same language of apprehension which has been heard from the smaller States, was in the mouths of the Scotch patriots. The articles however have not been violated and the Scotch have found an increase of prosperity & happiness. He was aware that this will be called a mere *paper security*. He thought it a sufficient answer to say that if fundamental articles of compact, are no sufficient defence against physical power, neither will there be any safety agst it if there be no compact. He could not sit down, without taking some notice of the language of the honorable gentleman from Delaware (Mr. Bedford). It was not he that had uttered a dictatorial language. This intemperance had marked the honorable Gentleman himself. It was not he who with a vehemence unprecedented in that House, had declared himself ready to turn his hopes from our common Country, and court the protection of some foreign hand. This too was the language of the Honbl member himself. He was grieved that such a thought had entered into his heart. He was more grieved that such an expression had dropped from his lips. The gentleman cd only excuse it to himself on the score of passion. For himself

whatever might be his distress, he w[d] never court relief from a foreign power.

Adjourned.

Monday July 2d in Convention.

On the question for allowing each State one vote in the second branch as moved by Mr. Elseworth, Masstts no. Contt ay. N. Y. ay. N. J. ay. Pa no. Del. ay. Md ay. Mr. Jenifer being not present Mr. Martin alone voted Va no. N. C. no. S. C. no. Geo. divd. Mr. Houston no. Mr. Baldwin ay.

Mr. Pinkney thought an equality of votes in the 2d branch inadmissible. At the same time candor obliged him to admit that the large States would feel a partiality for their own Citizens & give them a preference, in appointments: that they might also find some common points in their Commercial interests, and promote treaties favorable to them. There is a real distinction [between] the Northern & Southn interests. N. Carola S. Carol: & Geo. in their Rice & Indigo had a peculiar interest which might be sacrificed. How then shall the larger States be prevented from administering the Genl Govt as they please, without being themselves unduly subjected to the will of the smaller? By allowing them some but not a full, proportion. He was extremely anxious that something should be done, considering this as the last appeal to a regular experiment. Congs have failed in almost every effort for an amendment of the federal System. Nothing has prevented a dissolution of it, but the appointmt of this Convention; & he could not express his alarms for the consequence of such an event. He read his motion, to form the States into classes, with an apportionment of Senators among them (see Art: 4, of his plan).

General Pinkney was willing the motion might be considered. He did not entirely approve it. He liked better the motion of Docr Franklin (which see Saturday June 30). Some Compromise seemed to be necessary, the States being exactly divided on the question for an equality of votes in the 2d branch. He proposed that a Committee consisting of a member from each State should be appointed to devise & report some compromise.

Mr. L. Martin had no objection to a commitment, but no modifications whatever could reconcile the Smaller States to the least diminution of their

equal Sovereignty.

M^r^ Sherman. We are now at a full stop, and nobody he supposed meant that we sh^d^ break up without doing something. A committee he thought most likely to hit on some expedient.

[123]Mr. Gov^r^ Morris. thought a Com^e^ adviseable as the Convention had been equally divided. He had a stronger reason also. The mode of appointing the 2^d^ branch tended he was sure to defeat the object of it. What is this object? To check the precipitation, changeableness, and excesses of the first branch. Every man of observation had seen in the democratic branches of the State Legislatures, precipitation—in Congress changeableness, in every department excesses ag^st^ personal liberty private property & personal safety. What qualities are necessary to constitute a check in this case? *Abilities* and *virtue*, are equally necessary in both branches. Something more then is now wanted, 1. the checking branch must have a personal interest in checking the other branch, one interest must be opposed to another interest. Vices as they exist, must be turned ag^st^ each other. 2. It must have great personal property, it must have the aristocratic spirit; it must love to lord it thro' pride. Pride is indeed the great principle that actuates both the poor & the rich. It is this principle which in the former resists, in the latter abuses authority. 3. It should be independent. In Religion the Creature is apt to forget its Creator. That it is otherwise in Political Affairs, the late debates here are an unhappy proof. The aristocratic body, should be as independent & as firm as the democratic. If the members of it are to revert to a dependence on the democratic choice, the democratic scale will preponderate. All the guards contrived by America have not restrained the Senatorial branches of the Legislatures from a servile complaisance to the democratic. If the 2^d^ branch is to be dependent we are better without it. To make it independent, it should be for life. It will then do wrong, it will be said. He believed so; He hoped so. The Rich will strive to establish their dominion & enslave the rest. They always did. They always will. The proper security ag^st^ them is to form them into a separate interest. The two forces will then controul each other. Let the rich mix with the poor and in a Commercial Country, they will establish an Oligarchy. Take away commerce, and the democracy will triumph. Thus it has been all the world over. So it will be among us. Reason tells us we are

but men: and we are not to expect any particular interference of Heaven in our favor. By thus combining & setting apart, the aristocratic interest, the popular interest will be combined agst it. There will be a mutual check and mutual security. 4. An independence for life, involves the necessary permanency. If we change our measures nobody will trust us: and how avoid a change of measures, but by avoiding a change of men. Ask any man if he confides in Congs if he confides in the State of Pena if he will lend his money or enter into contract? He will tell you no. He sees no stability. He can repose no confidence. If G. B. were to explain her refusal to treat with us, the same reasoning would be employed.—He disliked the exclusion of the 2d branch from holding offices. It is dangerous. It is like the imprudent exclusion of the military officers during the war, from civil appointments. It deprives the Executive of the principal source of influence. If danger be apprehended from the Executive what a left-handed way is this of obviating it? If the son, the brother or the friend can be appointed, the danger may be even increased, as the disqualified father &c. can then boast of a disinterestedness which he does not possess. Besides shall the best, the most able, the most virtuous citizens not be permitted to hold offices? Who then are to hold them? He was also agst paying the Senators. They will pay themselves if they can. If they can not they will be rich and can do without it. Of such the 2d branch ought to consist; and none but such can compose it if they are not to be paid—He contended that the Executive should appoint the Senate & fill up vacancies. This gets rid of the difficulty in the present question. You may begin with any ratio you please; it will come to the same thing. The members being independt & for life, may be taken as well from one place as from another.—It should be considered too how the scheme could be carried through the States. He hoped there was strength of mind eno' in this House to look truth in the face. He did not hesitate therefore to say that loaves & fishes must bribe the Demagogues. They must be made to expect higher offices under the general than the State Govts. A Senate for life will be a noble bait. Without such captivating prospects, the popular leaders will oppose & defeat the plan. He perceived that the 1st branch was to be chosen by the people of the States; the 2d by those chosen by the people. Is not here a Govt by the States, a Governt by Compact between Virga in the 1st & 2d branch, Masstts in the 1st & 2d branch &c. This is going back to mere treaty. It it no Govt at all. It is altogether dependent on the

States, and will act over again the part which Cong^{s} has acted. A firm Govern^{t} alone can protect our liberties. He fears the influence of the rich. They will have the same effect here as elsewhere if we do not by such a Gov^{t} keep them within their proper sphere. We should remember that the people never act from reason alone. The Rich will take the advantage of their passions & make these the instruments for oppressing them. The Result of the Contest will be a violent aristocracy, or a more violent despotism. The schemes of the Rich will be favored by the extent of the Country. The people in such distant parts cannot communicate & act in concert. They will be the dupes of those who have more knowledge & intercourse. The only security agst encroachments will be a select & sagacious body of men, instituted to watch agst them on all sides. He meant only to hint these observations, without grounding any motion on them.

[123] He had just returned from N. Y. havg left ye Convention a few days after it commenced business.—Madison's Note.

Mr. Randolph favored the commitment though he did not expect much benefit from the expedient. He animadverted on the warm & rash language of Mr. Bedford on Saturday; reminded the small States that if the large States should combine some danger of which he did not deny there would be a check in the revisionary power of the Executive, and intimated that in order to render this still more effectual, he would agree that in the choice of an Executive each State should have an equal vote. He was persuaded that two such opposite bodies as Mr. Morris had planned, could never long co-exist. Dissentions would arise, as has been seen even between the Senate and H. of Delegates in Maryland, appeals would be made to the people; and in a little time commotions would be the result—He was far from thinking the large States could subsist of themselves any more than the small; an avulsion would involve the whole in ruin, and he was determined to pursue such a scheme of Government as would secure us agst such a calamity.

Mr. Strong was for the coñitment; and hoped the mode of constituting both branches would be referred. If they should be established on different principles, contentions would prevail, and there would never be a concurrence in necessary measures.

Docr Williamson. If we do not concede on both sides, our business must soon be at an end. He approved of the coñitment, supposing that as the Come wd be a smaller body, a compromise would be pursued with more coolness.

Mr. Wilson objected to the Committee, because it would decide according to that very rule of voting which was opposed on one side. Experience in Congs had also proved the inutility of Committees consisting of members from each State.

Mr. Lansing wd not oppose the commitment, though expecting little advantage from it.

Mr. Madison opposed the Comitment. He had rarely seen any other effect than delay from *such* Committees in Congs. Any scheme of compromise that could be proposed in the Committee might as easily be proposed in the House; and the report of the Committee where it contained merely the *opinion* of the Come would neither shorten the discussion, nor influence the decision of the House.

Mr. Gerry was for the commitmt. Something must be done, or we shall disappoint not only America, but the whole world. He suggested a consideration of the State we should be thrown into by the failure of the Union. We should be without an Umpire to decide controversies and must be at the mercy of events. What too is to become of our treaties—what of our foreign debts, what of our domestic? We must make concessions on both sides. Without these the Constitutions of the several States would never have been formed.

On the question "for comiting," generally:

Masts. ay. Cont. ay. N. Y. ay. N. J. no. P. ay. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

On the question for comiting it "to a member from each State,"

Masts. ay. Cont. ay. N. Y. ay. N. J. ay. Pa. no. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

The Comittee elected by ballot, were Mr. Gerry, Mr. Elseworth, Mr. Yates, Mr. Patterson, Dr. Franklin, Mr. Bedford, Mr. Martin, Mr. Mason, Mr. Davy, Mr. Rutlidge, Mr. Baldwin.

That time might be given to the Comittee, and to such as chose to attend to the celebrations on the anniversary of Independence, the Convention adjourned till Thursday.[124]

[124] "Tuesday, *July 3, 1787*.

"The *grand committee* met. Mr. Gerry was chosen chairman.

"The committee proceeded to consider in what manner they should discharge the business with which they were intrusted. By the proceedings in the Convention, they were so equally divided on the important question of *representation in the two branches*, that the idea of a conciliatory adjustment must have been in contemplation of the house in the appointment of this committee. But still, how to effect this salutory purpose was the question. Many of the members, impressed with the utility of a general government, connected with it the indispensable necessity of a representation from the states according to their numbers and wealth; while others, equally tenacious of the rights of the states, would admit of no other representation but such as *was strictly federal*, or, in other words, *equality of suffrage*. This brought on a discussion of the principles on which the house had divided, and a lengthy recapitulation of the arguments advanced in the house in support of these opposite propositions. As I had not openly explained my sentiments on any former occasion on this question, but constantly, in giving my vote, *showed my attachment to the national government on federal principles, I took this occasion to explain my motives*.

"These remarks gave rise to a motion of Dr. Franklin, which after some modification was agreed to, and made the basis of the following report of the Committee."—Yates, *Secret Proceedings*, etc., 205. The report is given by Madison.

Hamilton, who had gone to New York, wrote to Washington under date of July 3d:

"In my passage through the Jerseys, and since my arrival here, I have taken particular pains to discover the public sentiment, and I am more and more convinced that this is the critical opportunity for establishing the prosperity of this country on a solid foundation. I have conversed with men of information, not only in this city, but from different parts of the State, and they agree that there has been an astonishing revolution for the better in the minds of the people.

"The prevailing apprehension among thinking men is, that the Convention, from the fear of shocking the popular opinion, will not go far enough. They seem to be convinced that a strong, well-mounted government will better suit the popular palate than one of a different complexion. Men in office are indeed taking all possible pains to give an unfavorable impression of the Convention, but the current seems to be moving strongly the other way.

"A plain but sensible man, in a conversation I had with him yesterday, expressed himself nearly in this manner: The people begin to be convinced that 'their excellent form of government,' as they have been used to call it, will not answer their purpose, and that they must substitute something not very remote from that which they have lately quitted.

"These appearances, though they will not warrant a conclusion that the people are yet ripe for such a plan as I advocate, yet serve to prove that there is no reason to despair of their adopting one equally energetic, if the Convention should think proper to propose it. They serve to prove that we ought not to allow too much weight to objections drawn from the supposed repugnance of the people to an efficient constitution. I confess I am more and more inclined to believe that former habits of thinking are regaining their influence with more rapidity than is generally imagined.

"Not having compared ideas with you, sir, I cannot judge how far our sentiments agree; but, as I persuade myself the genuineness of my representations will receive credit with you, my anxiety for the event of the deliberations of the Convention induces me to make this communication of what appears to be the tendency of the public mind.

"I own to you, sir, that I am seriously and deeply distressed at the aspect of the counsels which prevailed when I left Philadelphia. I fear we shall let slip the golden opportunity of rescuing the American empire from disunion, anarchy, and misery.

"No motley or feeble measure can answer the end, or will finally receive the public support. Decision is true wisdom, and will not be less reputable to the Convention than salutary to the community.

"I shall of necessity remain here ten or twelve days. If I have reason to believe that my attendance at Philadelphia will not be mere waste of time, I shall, after that period, rejoin the Convention."—*Hamilton's Works* (Lodge).

Thursday July 5th in Convention

Mr. Gerry delivered in from the Committee appointed on Monday last the following Report.

"The Committee to whom was referred the 8th Resol. of the Report from the Committee of the Whole House, and so much of the 7th as has not been decided on, submit the following Report: That the subsequent propositions be recommended to the Convention on condition that both shall be generally adopted. I. that in the 1st branch of the Legislature each of the States now in the Union shall be allowed 1 member for every 40,000 inhabitants of the description reported in the 7th Resolution of the Come of the whole House: that each State not containing that number shall be allowed 1 member: that all bills for raising or appropriating money, and for fixing the salaries of the officers of the Governt of the U. States shall originate in the 1st branch of the Legislature, and shall not be altered or amended by the 2d branch; and that no money shall be drawn from the public Treasury but in pursuance of appropriations to be originated in the 1st branch. "II. That in the 2d branch each State shall have an equal vote."[125]

[125] This report was founded on a motion in the Comitte made by Dr. Franklin. It was barely acquiesced in by the members from the States opposed to an equity of votes in the 2d branch and was evidently considered by the members on the other side, as a gaining of their point. A motion was made by Mr. Sherman. He acted in the place of Mr. Elseworth who was kept away by indisposition, in the Committee to the following effect "that each State should have an equal vote in the 2d branch; provided that no decision therein should prevail unless the majority of States concurring should also comprise a majority of the inhabitants of the U. States." This motion was not much deliberated on nor approved in the Committee. A similar proviso had been proposed in the debates on the articles of Confederation in 1777, to the articles giving certain powers to "nine States." See Journals of Congs for 1777, p. 462.—Madison Note.

Mr. Ghoram observed that as the report consisted of propositions mutually conditional he wished to hear some explanations touching the grounds on which the conditions were estimated.

Mr. Gerry. The Committee were of different opinions as well as the Deputations from which the Come were taken, and agreed to the Report merely in order that some ground of accommodation might be proposed. Those opposed to the equality of votes have only assented conditionally; and if the other side do not generally agree will not be under any obligation to support the Report.

Mr. Wilson thought the Committee had exceeded their powers.

Mr. Martin was for taking the question on the whole report.

Mr. Wilson was for a division of the question; otherwise it wd be a leap in the dark.

Mr. Madison could not regard the privilege of originating money bills as any concession on the side of the small States. Experience proved that it had no effect. If seven States in the upper branch wished a bill to be originated, they might surely find some member from some of the same States in the lower branch who would originate it. The restriction as to amendments was of as little consequence. Amendments could be handed privately by the Senate to members in the other house. Bills could be negatived that they might be sent up in the desired shape. If the Senate should yield to the obstinacy of the 1st branch the use of that body as a check would be lost. If the 1st branch should yield to that of the Senate, the privilege would be nugatory. Experience had also shewn both in G. B. and the States having a similar regulation that it was a source of frequent & obstinate altercations. These considerations had produced a rejection of a like motion on a former occasion when judged by its own merits. It could not therefore be deemed any concession on the present, and left in force all the objections which had prevailed agst allowing each State an equal voice. He conceived that the Convention was reduced to the alternative of either departing from justice in order to conciliate the smaller States, and the minority of the people of the U. S. or of displeasing these by justly

gratifying the larger States and the majority of the people. He could not himself hesitate as to the option he ought to make. The Convention with justice & the majority of the people on their side, had nothing to fear. With injustice and the minority on their side they had every thing to fear. It was in vain to purchase concord in the Convention on terms which would perpetuate discord among their Constituents. The Convention ought to pursue a plan which would bear the test of examination, which would be espoused & supported by the enlightened and impartial part of America, & which they could themselves vindicate and urge. It should be considered that altho' at first many may judge of the system recom̃ended, by their opinion of the Convention, yet finally all will judge of the Convention by the System. The merits of the System alone can finally & effectually obtain the public suffrage. He was not apprehensive that the people of the small States would obstinately refuse to accede to a Gov^{t} founded on just principles, and promising them substantial protection. He could not suspect that Delaware would brave the consequences of seeking her fortunes apart from the other States, rather than submit to such a Gov^{t}; much less could he suspect that she would pursue the rash policy of courting foreign support, which the warmth of one of her representatives (M^{r} Bedford) had suggested, or if she sh^{d}, that any foreign nation w^{d} be so rash as to hearken to the overture. As little could he suspect that the people of N. Jersey notwithstanding the decided tone of the gentlemen from that State, would choose rather to stand on their own legs, and bid defiance to events, than to acquiesce under an establishment founded on principles the justice of which they could not dispute, and absolutely necessary to redeem them from the exactions levied on them by the com̃erce of the neighbouring States. A review of other States would prove that there was as little reason to apprehend an inflexible opposition elsewhere. Harmony in the Convention was no doubt much to be desired. Satisfaction to all the States, in the first instance still more so. But if the principal States comprehending a majority of the people of the U. S. should concur in a just & judicious plan, he had the firmest hopes, that all the other States would by degrees accede to it.[126]

[126] Yates, and his colleague, Lansing, left the Convention July 5, despairing of the result of its labors being satisfactory to them. Madison's speech is the last one reported by Yates.—Yates, *Secret Proceedings*, etc.

M[r] Butler said he could not let down his idea of the people, of America so far as to believe they would from mere respect to the Convention adopt a plan evidently unjust. He did not consider the privilege concerning money bills as of any consequence. He urged that the 2[d] branch ought to represent the States according to their property.

M[r] Gov[r] Morris, thought the form as well as the matter of the Report objectionable. It seemed in the first place to render amendments impracticable. In the next place, it seemed to involve a pledge to agree to the 2[d] part if the 1[st] sh[d] be agreed to. He conceived the whole aspect of it to be wrong. He came here as a Representative of America; he flattered himself he came here in some degree as a Representative of the whole human race; for the whole human race will be affected by the proceedings of this Convention. He wished gentlemen to extend their views beyond the present moment of time; beyond the narrow limits of place from which they derive their political origin. If he were to believe some things which he had heard, he should suppose that we were assembled to truck and bargain for our particular States. He can not descend to think that any gentlemen are really actuated by these views. We must look forward to the effects of what we do. These alone ought to guide us. Much has been said of the sentiments of the people. They were unknown. They could not be known. All that we can infer is that if the plan we recommend be reasonable & right; all Who have reasonable minds and sound intentions will embrace it, notwithstanding what had been said by some gentlemen. Let us suppose that the larger States shall agree; and that the smaller refuse; and let us trace the consequences. The opponents of the system in the smaller States will no doubt make a party, and a noise for a time, but the ties of interest, of kindred & of common habits which connect them with other States will be too strong to be easily broken. In N. Jersey particularly he was sure a great many would follow the sentiments of Pen[a] & N. York. This Country must be united. If persuasion does not unite it, the sword will. He begged that this consideration might have its due weight. The scenes of horror attending Civil commotion cannot be described, and the conclusion of them will be worse than the term of their continuance. The stronger party will then make traytors of the weaker; and the Gallows & Halter will finish the work of the sword. How far foreign powers would be ready to take part in the confusions he would not say. Threats that they will be invited have it seems

been thrown out. He drew the melancholy picture of foreign intrusions as exhibited in the History of Germany, & urged it as a standing lesson to other nations. He trusted that the Gentlemen who may have hazarded such expressions, did not entertain them till they reached their own lips. But returning to the Report he could not think it in any respect calculated for the Public good. As the 2d branch is now constituted, there will be constant disputes & appeals to the States which will undermine the Genl Government & controul & annihilate the 1st branch. Suppose that the delegates from Masts & Rho I. in the Upper House disagree, and that the former are outvoted. What Results? they will immediately declare that their State will not abide by the decision, and make such representations as will produce that effect. The same may happen as to Virga & other States. Of what avail then will be what is on paper. State attachments, and State importance have been the bane of this Country. We cannot annihilate; but we may perhaps take out the teeth of the serpents. He wished our ideas to be enlarged to the true interest of man, instead of being circumscribed within the narrow compass of a particular Spot. And after all how little can be the motive yielded by selfishness for such a policy. Who can say whether he himself, much less whether his children, will the next year be an inhabitant of this or that State.

Mr. Bedford. He found that what he had said as to the small States being taken by the hand, had been misunderstood; and he rose to explain. He did not mean that the small States would court the aid & interposition of foreign powers. He meant that they would not consider the federal compact as dissolved untill it should be so by the Acts of the large States. In this case The consequences of the breach of faith on their part, and the readiness of the small States to fulfill their engagements, would be that foreign Nations having demands on this Country would find it their interest to take the small States by the hand, in order to do themselves justice. This was what he meant. But no man can foresee to what extremities the small States may be driven by oppression. He observed also in apology that some allowance ought to be made for the habits of his profession in which warmth was natural & sometimes necessary. But is there not an apology in what was said by (Mr. Govr. Morris) that the sword is to unite: by Mr. Ghorum that Delaware must be annexed to Penna and N. Jersey divided between Pena and N. York. To hear such language without emotion, would be to renounce

the feelings of a man and the duty of a Citizen—As to the propositions of the Committee, the lesser States have thought it necessary to have a security somewhere. This has been thought necessary for the Executive Magistrate of the proposed Gov^{t} who has a sort of negative on the laws; and is it not of more importance that the States should be protected, than that the Executive branch of the Gov^{t} sh^{d} be protected. In order to obtain this, the smaller States have conceded as to the constitution of the first branch, and as to money bills. If they be not gratified by correspondent concessions as to the 2^{d} branch is it to be supposed they will ever accede to the plan; and what will be the consequence if nothing should be done? The condition of the U. States requires that something should be immediately done. It will be better that a defective plan should be adopted, than that none should be recommended. He saw no reason why defects might not be supplied with meetings 10, 15, or 20 years hence.

M^{r} Elseworth said he had not attended the proceedings of the Committee, but was ready to accede to the compromise they had reported. Some compromise was necessary; and he saw none more convenient or reasonable.

M^{r} Williamson hoped that the expressions of individuals would not be taken for the sense of their colleagues, much less of their States which was not & could not be known. He hoped also that the meaning of those expressions would not be misconstrued or exaggerated. He did not conceive that (M^{r} Gov^{r} Morris) meant that the sword ought to be drawn agst the smaller States. He only pointed out the probable consequences of anarchy in the U. S. A similar exposition ought to be given of the expressions of (M^{r} Ghorum). He was ready to hear the Report discussed; but thought the propositions contained in it, the most objectionable of any he had yet heard.

M^{r} Patterson said that he had when the Report was agreed to in the Com^{e} reserved to himself the right of freely discussing it. He acknowledged that the warmth complained of was improper; but he thought the Sword & the Gallows little calculated to produce conviction. He complained of the manner in which M^{r} M and M^{r} Gov^{r} Morris had treated the small States.

Mr. Gerry. Tho' he had assented to the Report in the Committee, he had very material objections to it. We were however in a peculiar situation. We were neither the same Nation nor different Nations. We ought not therefore to pursue the one or the other of these ideas too closely. If no compromise should take place what will be the consequence. A secession he foresaw would take place; for some gentlemen seem decided on it: two different plans will be proposed; and the result no man could foresee. If we do not come to some agreement among ourselves some foreign sword will probably do the work for us.

Mr. Mason. The Report was meant not as specific propositions to be adopted; but merely as a general ground of accommodation. There must be some accommodation on this point, or we shall make little further progress in the work. Accommodation was the object of the House in the appointment of the Committee; and of the Committee in the Report they had made. And however liable the Report might be to objections, he thought it preferable to an appeal to the world by the different sides, as had been talked of by some Gentlemen. It could not be more inconvenient to any gentleman to remain absent from his private affairs, than it was for him; but he would bury his bones in this City rather than expose his Country to the Consequences of a dissolution of the Convention without any thing being done.

The 1st proposition in the report for fixing the representation in the 1st branch, "one member for every 40,000 inhabitants," being taken up.

Mr. Govr. Morris objected to that scale of apportionment. He thought property ought to be taken into the estimate as well as the number of inhabitants. Life & liberty were generally said to be of more value than property. An accurate view of the matter would nevertheless prove that property was the main object of Society. The Savage State was more favorable to liberty than the Civilized; and sufficiently so to life. It was preferred by all men who had not acquired a taste for property; it was only renounced for the sake of property which could only be secured by the restraints of regular Government. These ideas might appear to some new, but they were nevertheless just. If property then was the main object of Govt. certainly it ought to be one measure of the influence due to those who

were to be affected by the Govern^{t}. He looked forward also to that range of New States which w^{d} soon be formed in the West. He thought the rule of representation ought to be so fixed as to secure to the Atlantic States a prevalence in the National Councils. The new States will know less of the public interest than these, will have an interest in many respects different, in particular will be little scrupulous of involving the Community in wars the burdens & operations of which would fall chiefly on the maritime States. Provision ought therefore to be made to prevent the maritime States from being hereafter outvoted by them. He thought this might be easily done by irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new State will have. This w^{d} not be unjust, as the Western settlers w^{d} previously know the conditions on which they were to possess their lands. It would be politic as it would recom̃end the plan to the present as well as future interest of the States which must decide the fate of it.

M^{r} Rutlidge. The gentleman last up had spoken some of his sentiments precisely. Property was certainly the principal object of Society. If numbers should be made the rule of representation, the Atlantic States will be subjected to the Western. He moved that the first proposition in the report be postponed in order to take up the following viz "that the suffrages of the several States be regulated and proportioned according to the sums to be paid towards the general revenue by the inhabitants of each State respectively: that an apportionment of suffrages, according to the ratio aforesaid shall be made and regulated at the end of —— years from the 1st meeting of the Legislature of the U. S., and at the end of every —— years but that for the present, and until the period above mentioned, the suffrages shall be for N. Hampshire —— for Massach^{ts} —— &c.

Col. Mason said the case of new States was not unnoticed in the Committee; but it was thought and he was himself decidedly of opinion that if they made a part of the Union, they ought to be subject to no unfavorable discriminations. Obvious considerations required it.

M^{r} Randolph concurred with Col. Mason.

On Question on M^{r} Rutlidges motion,

Mas^{ts} no. Con^{t} no. N. Y. no. N. J. no. P^{a} no. Del. no. Mary^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. not on floor.

Friday July 6TH in Convention

Mr. Govr. Morris moved to commit so much of the Report as relates to "1 member for every 40,000 inhabitants." His view was that they might absolutely fix the number for each State in the first instance; leaving the Legislature at liberty to provide for changes in the relative importance of the States, and for the case of new States.

Mr. Wilson 2ded the motion; but with a view of leaving the Committee under no implied shackles.

Mr. Ghorum apprehended great inconveniency from fixing directly the number of Representatives to be allowed to each State. He thought the number of Inhabitants the true guide; tho' perhaps some departure might be expedient from the full proportion. The States also would vary in their relative extent by separations of parts of the largest States. A part of Virga is now on the point of a separation. In the province of Mayne a Convention is at this time deliberating on a separation from Massts. In such events the number of representatives ought certainly to be reduced. He hoped to see all the States made small by proper divisions, instead of their becoming formidable as was apprehended, to the Small States. He conceived that let the Genl. Government be modified as it might, there would be a constant tendency in the State Governmts to encroach upon it: it was of importance therefore that the extent of the States shd be reduced as much & as fast as possible. The stronger the Govt. shall be made in the first instance the more easily will these divisions be effected; as it will be of less consequence in the opinion of the States whether they be of great or small extent.

Mr. Gerry did not think with his Colleague that the large States ought to be cut up. This policy has been inculcated by the middling and smaller States, ungenerously & contrary to the spirit of the Confederation. Ambitious men will be apt to solicit needless divisions, till the States be reduced to the size of Counties. If this policy should still actuate the small States, the large ones cou'd not confederate safely with them; but would be

obliged to consult their safety by confederating only with one another. He favored the commitment and thought that Representation ought to be in the Combined ratio of numbers of Inhabitants and of wealth, and not of either singly.

M[r]. King wished the clause to be committed, chiefly in order to detach it from the Report with which it had no connection. He thought also that the Ratio of Representation proposed could not be safely fixed, since in a century & a half our computed increase of population would carry the number of representatives to an enormous excess; that y[e]. number of inhabitants was not the proper index of ability & wealth; that property was the primary object of Society; and that in fixing a ratio this ought not to be excluded from the estimate.—With regard to new States, he observed that there was something peculiar in the business which had not been noticed. The U. S. were now admitted to be proprietors of the Country N. West of the Ohio. Cong[s]. by one of their ordinances have impoliticly laid it out into ten States, and have made it a fundamental article of compact with those who may become settlers, that as soon as the number in any one state shall equal that of the smallest of the 13 original States, it may claim admission into the Union. Delaware does not contain it is computed more than 35,000 souls, and for obvious reasons will not increase much for a considerable time. It is possible then that if this plan be persisted in by Cong[s]. 10 new votes may be added, without a greater addition of inhabitants than are represented by the single vote of Pen[a]. The plan as it respects one of the new States is already irrevocable, the sale of the lands having commenced, and the purchasers & settlers will immediately become entitled to all the privileges of the compact.

M[r]. Butler agreed to the Commitment if the Committee were to be left at liberty. He was persuaded that the more the subject was examined, the less it would appear that the number of inhabitants would be a proper rule of proportion. If there were no other objection the changeableness of the standard would be sufficient. He concurred with those who thought some balance was necessary between the old & the new States. He contended strenuously that property was the only just measure of representation. This was the great object of Govern[t]; the great cause of war; the great means of carrying it on.

Mr. Pinkney saw no good reason for committing. The value of land had been found on full investigation to be an impracticable rule. The contributions of revenue including imports & exports must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial States. The number of inhabitants appeared to him the only just & practicable rule. He thought the blacks ought to stand on an equality with the whites: But wd agree to the ratio settled by Congs. He contended that Congs had no right under the articles of Confederation to authorize the admission of new States; no such case having been provided for.

Mr. Davy was for committing the clause in order to get at the merits of the question arising on the Report. He seemed to think that wealth or property ought to be represented in the 2d branch; and numbers in the 1st branch.

On the Motion for committing as made by Mr. Govr Morris,

Masts ay. Cont ay. N. Y. no. N. J. no. Pa ay. Del. no. Md divd. Va ay. N. C. ay. S. C. ay. Geo. ay.

The members appd by Ballot were Mr Govr Morris, Mr Gorham, Mr Randolph, Mr Rutlidge, Mr King.

Mr Wilson signified that his view in agreeing to the comitmt was that the Come might consider the propriety of adopting a scale similar to that established by the Constitution of Masts which wd give an advantage to ye small States without substantially departing from the rule of proportion.

Mr Wilson & Mr Mason moved to postpone the clause relating to money bills in order to take up the clause relating to an equality of votes in the Second branch.

On the question Masts no. Cont no. N. Y. ay. N. J. ay. Pa ay. Del. ay. Md ay. Va ay. N. C. no. S. C. ay. Geo. ay.

The clause relating to equality of votes being under consideration,

Doc^{r} Franklin observed that this question could not be properly put by itself, the Com̃ittee having reported several propositions as mutual conditions of each other. He could not vote for it if separately taken, but should vote for the whole together.

Col. Mason perceived the difficulty & suggested a reference of the rest of the Report to y^{e} Committee just appointed, that the whole might be brought into one view.

M^{r} Randolph disliked y^{e} reference to that Committee, as it consisted of members from States opposed to the wishes of the smaller States, and could not therefore be acceptable to the latter.

M^{r} Martin & M^{r} Jenifer moved to postpone the clause till the Com^{e} last appointed sh^{d} report.

M^{r} Madison observed that if the uncommitted part of the Report was connected with the part just committed, it ought also to be committed; if not connected, it need not be postponed till report should be made.

On the question for postponing, moved by M^{r} Martin & M^{r} Jenifer,— Con^{t} N. J. Del. M^{d} V^{a} Geo. ay. P^{a} N. C. S. C. no. Mass. N. Y. divided.

The 1st clause relating to the originating of money bills was then resumed.

M^{r} Govern^{r} Morris was opposed to a restriction of this right in either branch, considered merely in itself and as unconnected with the point of representation in the 2^{d} branch. It will disable the 2^{d} branch from proposing its own money plans, and giving the people an opportunity of judging by comparison of the merits of those proposed by the 1st branch.

M^{r} Wilson could see nothing like a concession here on the part of the smaller States. If both branches were to say yes or no, it was of little consequence which should say yes or no first, which last. If either was indiscriminately to have the right of originating, the reverse of the Report, would he thought be most proper; since it was a maxim that the least numerous body was the fittest for deliberation; the most numerous for

decision. He observed that this discrimination had been transcribed from the British into several American constitutions. But he was persuaded that on examination of the American experiments it would be found to be a trifle light as air. Nor could he ever discover the advantage of it in the Parliamentary history of G. Britain. He hoped if there was any advantage in the privilege, that it would be pointed out.

Mr. Williamson thought that if the privilege were not common to both branches it ought rather to be confined to the 2d as the bills in that case would be more narrowly watched, than if they originated with the branch having most of the popular confidence.

Mr. Mason. The consideration which weighed with the Committee was that the 1st branch would be the immediate representatives of the people, the 2d would not. Should the latter have the power of giving away the people's money, they might soon forget the source from whence they received it. We might soon have an aristocracy. He had been much concerned at the principles which had been advanced by some gentlemen, but had the satisfaction to find they did not generally prevail. He was a friend to proportional representation in both branches; but supposed that some points must be yielded for the sake of accomodation.

Mr. Wilson. If he had proposed that the 2d branch should have an independent disposal of public money, the observations of (Col. Mason) would have been a satisfactory answer. But nothing could be farther from what he had said. His question was how is the power of the 1st branch increased or that of the 2d diminished by giving the proposed privilege to the former? Where is the difference, in which branch it begins, if both must concur, in the end?

Mr. Gerry would not say that the concession was a sufficient one on the part of the small States. But he could not but regard it in the light of a concession. It wd make it a constitutional principle that the 2d branch were not possessed of the Confidence of the people in money matters, which wd lessen their weight & influence. In the next place if the 2d branch were dispossessed of the privilege, they wd be deprived of the opportunity which

their continuance in office 3 times as long as the 1st branch would give them of making three successive essays in favor of a particular point.

Mr. Pinkney thought it evident that the Concession was wholly on one side, that of the large States, the privilege of originating money bills being of no account.

Mr. Govr. Morris had waited to hear the good effects of the restriction. As to the alarm sounded, of an aristocracy, his creed was that there never was, nor ever will be a civilized Society without an aristocracy. His endeavor was to keep it as much as possible from doing mischief. The restriction if it has any real operation, will deprive us of the services of the 2d branch in digesting & proposing money bills of which it will be more capable than the 1st branch. It will take away the responsibility of the 2d branch, the great security for good behavior. It will always leave a plea, as to an obnoxious money bill that it was disliked, but could not be constitutionally amended; nor safely rejected. It will be a dangerous source of disputes between the two Houses. We should either take the British Constitution altogether or make one for ourselves. The Executive there has dissolved two Houses as the only cure for such disputes. Will our Executive be able to apply such a remedy? Every law directly or indirectly takes money out of the pockets of the people. Again What use may be made of such a privilege in case of great emergency? Suppose an Enemy at the door, and money instantly & absolutely necessary for repelling him, may not the popular branch avail itself of this duress, to extort concessions from the Senate destructive of the Constitution itself. He illustrated this danger by the example of the Long Parliament's expedts for subverting the H. of Lords; concluding on the whole that the restriction would be either useless or pernicious.

Docr. Franklin did not mean to go into a justification of the Report, but as it had been asked what would be the use of restraining the 2d branch from medling with money bills, he could not but remark that it was always of importance that the people should know who had disposed of their money, & how it had been disposed of. It was a maxim that those who feel, can best judge. This end would, he thought, be best attained, if money affairs were to be confined to the immediate representatives of the people. This was his inducement to concur in the report. As to the danger or difficulty that might

arise from a Negative in the 2d where the people wd not be proportionately represented, it might easily be got over by declaring that there should be no such negative; or if that will not do, by declaring that there shall be no such branch at all.

Mr Martin said that it was understood in the Committee that the difficulties and disputes which had been apprehended, should be guarded agst in the detailing of the plan.

Mr Wilson. The difficulties & disputes will increase with the attempts to define & obviate them. Queen Anne was obliged to dissolve her Parliamt in order to terminate one of these obstinate disputes between the two Houses. Had it not been for the mediation of the Crown, no one can say what the result would have been. The point is still sub judice in England. He approved of the principles laid down by the Honble President (Doctr Franklin) his Colleague, as to the expediency of keeping the people informed of their money affairs. But thought they would know as much, and be as well satisfied, in one way as in the other.

Genl Pinkney was astonished that this point should have been considered as a concession. He remarked that the restriction to money bills had been rejected on the merits singly considered, by 8 States agst 3. and that the very States which now called it a concession, were then agst it as nugatory or improper in itself.

On the Question whether the clause relating to money bills in the Report of the Come consisting of a member from each State, shd stand as part of the Report

Massts divdd Cont ay. N. Y. divd. N. J. ay. Pa no. Del. ay. Md ay. Va no. N. C. ay. S. C. no. Geo. divd.

A Question was then raised whether the question was carried in the affirmative; there being but 5 ays out of 11. States present. The words of the rule are (see May 28).

On this question: Mas. Con^{t} N. J. P^{a} Del. M^{d} N. C. S. C. Geo. ay. N. Y. V^{a} no

(In several preceding instances like votes had sub silentio been entered as decided in the affirmative.)

Adjourned

Saturday, July 7. in Convention.

"Shall the clause allowing each State one vote in the 2d branch, stand as part of the Report,"? being taken up—

Mr. Gerry. This is the critical question. He had rather agree to it than have no accommodation. A Govern.t short of a proper national plan, if generally acceptable, would be preferable to a proper one which if it could be carried at all, would operate on discontented States. He thought it would be best to suspend the question till the Comm.e yesterday appointed, should make report.

Mr. Sherman Supposed that it was the wish of every one that some Gen.l Gov.t should be established. An equal vote in the 2d branch would, he thought, be most likely to give it the necessary vigor. The small States have more vigor in their Gov.ts than the large ones, the more influence therefore the large ones have, the weaker will be the Gov.t. In the large States it will be most difficult to collect the real & fair sense of the people. Fallacy & undue influence will be practised with most success; and improper men will most easily get into office. If they vote by States in the 2d branch, and each State has an equal vote, there must be always a majority of States as well as a majority of the people on the side of public measures, & the Gov.t will have decision and efficacy. If this be not the case in the 2d branch there may be a majority of States agst public measures, and the difficulty of compelling them to abide by the public determination, will render the Government feebler than it has ever yet been.

Mr. Wilson was not deficient in a conciliating temper, but firmness was sometimes a duty of higher obligation. Conciliation was also misapplied in this instance. It was pursued here rather among the Representatives, than among the Constituents; and it wd be of little consequence if not established among the latter; and there could be little hope of its being established among them if the foundation should not be laid in justice and right.

On Question shall the words stand as part of the Report?

Mass^{ts} div^{d}. Con^{t} ay. N. Y. ay. N. J, ay. P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. ay. S. C. no. Geo. div^{d}

(Note. several votes were given here in the affirmative or were div^{d} because another final question was to be taken on the whole report.)

M^{r} Gerry[127] thought it would be proper to proceed to enumerate & define the powers to be vested in the Gen^{l} Gov^{t} before a question on the report should be taken as to the rule of representation in the 2^{d} branch.

[127] King gives the three speeches of Gerry, Madison and Pattersonas follows:

"*Gerry.* I agree to the measure, provided that the first Br. (H. of Reps.) shall originate money bills and money appropriations. The prejudices as well as the interest of our Constituents must be regarded—two or three thousand men are in office in the States—their influence will be in favor of an Equality of votes among the States.

"*Madison.* Equality in the Senate will enable a minority to hold a majority, and to oblige them to submit to their interests, or they will withdraw their assent to measures essential and necessary to the general Good. I have known one man, when the State was represented by only two, and they were divided, oppose six States in Congress on an important occasion for three days, and finally compel them to gratify his caprice in order to obtain his suffrage. The Senate will possess certain exclusive Powers, such as the appointments to office, if the States have equal votes; a minority of People will appoint the Great Offices. Besides the small States may be near the Seat of Govt.—a bare Quorum of the H. of R. may be easily assembled, and carry a bill against the sense of a majority if all were present, and the Senate, tho' all were present, might confirm such Bill. Virginia has objected to every addition of the powers of Congress, because she has only 1/13 of the Power when she ought to have one sixth.

"*Paterson.* I hope the question will be taken: if we do not give equal votes in the Senate to the States, the small States agreeing that money Bills and appropriations shall originate in the H. of Reps., elected according to numbers, it must not be expected that the small States will agree to the amendments of the Confederation. Let us decide this question and lose no more time. I think that I shall vote against the provision, because I think that the exclusive originating of money Bills & appropriations by the H. of Reps. is giving up too much on the part of the small States."—King's *Life and Correspondence of Rufus King*, I., 613.

M^r^ Madison, observed that it w^d^ be impossible to say what powers could be safely & properly vested in the Gov^t^ before it was known, in what manner the States were to be represented in it. He was apprehensive that if a just representation were not the basis of the Gov^t^ it would happen, as it did when the Articles of Confederation were depending, that every effectual prerogative would be withdrawn or withheld, and the New Gov^t^ w^d^ be rendered as impotent and as shortlived as the old.

M^r^ Patterson would not decide whether the privilege concerning money bills were a valuable consideration or not: But he considered the mode & rule of representation in the 1^st^ branch as fully so; and that after the

establishment of that point, the small States would never be able to defend themselves without an equality of votes in the 2d branch. There was no other ground of accommodation. His resolution was fixt. He would meet the large States on that ground and no other. For himself he should vote agst the Report, because it yielded too much.

Mr. Govr Morris. He had no resolution unalterably fixed except to do what should finally appear to him right. He was agst the Report because it maintained the improper constitution of the 2d branch. It made it another Congress, a mere whisp of straw. It had been sd (by Mr. Gerry) that the new Governt would be partly national, partly federal; that it ought in the first quality to protect individuals; in the second, the States. But in what quality was it to protect the aggregate interest of the whole. Among the many provisions which had been urged, he had seen none for supporting the dignity and splendor of the American Empire. It had been one of our greatest misfortunes that the great objects of the nation had been sacrificed constantly to local views; in like manner as the general interests of States had been sacrificed to those of the Counties. What is to be the check in the Senate? none; unless it be to keep the majority of the people from injuring particular States. But particular States ought to be injured for the sake of a majority of the people, in case their conduct should deserve it. Suppose they should insist on claims evidently unjust, and pursue them in a manner detrimental to the whole body. Suppose they should give themselves up to foreign influence. Ought they to be protected in such cases. They were originally nothing more than colonial corporations. On the declaration of Independence, a Governmt was to be formed. The small States aware of the necessity of preventing anarchy, and taking advantage of the moment, extorted from the large ones an equality of votes. Standing now on that ground, they demand under the new system greater rights as men, than their fellow Citizens of the large States. The proper answer to them is that the same necessity of which they formerly took advantage, does not now exist, and that the large States are at liberty now to consider what is right, rather than what may be expedient. We must have an efficient Govt and if there be an efficiency in the local Govts the former is impossible. Germany alone proves it. Notwithstanding their common diet, notwithstanding the great prerogatives of the Emperor as head of the Empire, and his vast resources,

as sovereign of his particular dominions, no union is maintained; foreign influence disturbs every internal operation, & there is no energy whatever in the General Governm^{t}. Whence does this proceed? From the energy of the local authorities; from its being considered of more consequence to support the Prince of Hesse, than the Happiness of the people of Germany. Do Gentlemen wish this to be y^{e} case here. Good God, Sir, is it possible they can so delude themselves. What if all the Charters & Constitutions of the States were thrown into the fire, and all their demagogues into the Ocean. What would it be to the happiness of America. And will not this be the case here if we pursue the train in w^{ch} the business lies. We shall establish an Aulic Council without an Emperor to execute its decrees. The same circumstances which unite the people here, unite them in Germany. They have there a common language, a common law, common usages and manners, and a common interest in being united; Yet their local jurisdictions destroy every tie. The case was the same in the Grecian States. The United Netherlands are at this time torn in factions. With these examples before our eyes shall we form establishments which must necessarily produce the same effects. It is of no consequence from what districts the 2^{d} branch shall be drawn, if it be so constituted as to yield an asylum agst these evils. As it is now constituted he must be agst its being drawn from the States in equal portions. But still he was ready to join in devising such an amendment of the plan, as will be most likely to secure our liberty & happiness.

M^{r} Sherman & M^{r} Elseworth moved to postpone the Question on the Report from the Committee of a member from each State, in order to wait for the Report from the Com^{e} of 5 last appointed.

Mass^{ts} ay. Con^{t} ay. N. Y. no. N. J. ay. P^{a} ay. Del. ay. Maryland ay. V^{a} no. N. C. no. S. C. no. Geo. no.

Adj^{d}.

Monday July 9TH in Convention.

Mr. Daniel Carroll, from Maryland took his seat.

Mr. Govr. Morris delivered a report from the Come. of 5 members to whom was committed the clause in the Report of the Come. consisting of a member from each State, stating the proper ratio of Representatives in the 1st branch, to be as 1 to every 40,000 inhabitants, as follows viz

"The Committee to whom was referred the 1st clause of the 1st proposition reported from the grand Committee, beg leave to report:

I. that in the 1st meeting of the Legislature the 1st branch thereof consist of 56. members of which Number N. Hampshire shall have 2, Masts. 7, R. Id. 1, Cont. 4, N. Y. 5, N. J. 3, Pa. 8, Del. 1, Md. 4, Va. 9, N. C. 5, S. C. 5, Geo. 2.

II. But as the present situation of the States may probably alter as well in point of wealth as in the number of their inhabitants, that the Legislature be authorized from time to time to augment ye. number of Representatives. And in case any of the States shall hereafter be divided, or any two or more States united, or any new States created within the limits of the United States, the Legislature shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principles of their wealth and number of inhabitants."

Mr. Sherman wished to know on what principles or calculations the Report was founded. It did not appear to correspond with any rule of numbers, or of any requisition hitherto adopted by Congs.

Mr. Gorham. Some provision of this sort was necessary in the outset. The number of blacks & whites with some regard to supposed wealth was the general guide. Fractions could not be observed. The Legislre. is to make alterations from time to time as justice & propriety may require. Two

objections prevailed agst the rate of 1 member for every 40,000 inhts. The 1st was that the Representation would soon be too numerous: the 2d that the Westn States who may have a different interest, might if admitted on that principle by degrees, outvote the Atlantic. Both these objections are removed. The number will be small in the first instance and may be continued so. And the Atlantic States having ye Govt in their own hands, may take care of their own interest, by dealing out the right of Representation in safe proportions to the Western States. These were the views of the Committee.

Mr L. Martin wished to know whether the Come were guided in the ratio, by the wealth or number of inhabitants, of the States, or by both; noting its variations from former apportionments by Congs

Mr Govr Morris & Mr Rutlidge moved to postpone the 1st paragraph relating to the number of members to be allowed each State in the first instance, and to take up the 2d paragraph authorizing the Legislre to alter the number from time to time according to wealth & inhabitants. The motion was agreed to nem. con.

On Question on the 2d paragh taken without any debate

Massts ay. Cont ay. N. Y. no. N. J. no. Pa ay. Del. ay. Md ay. Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr Sherman moved to refer the 1st part apportioning the Representatives, to a Comme of a member from each State.

Mr Govr Morris seconded the motion; observing that this was the only case in which such committees were useful.

Mr Williamson thought it would be necessary to return to the rule of numbers, but that the Western States stood on different footing. If their property shall be rated as high as that of the Atlantic States, then their representation ought to hold a like proportion. Otherwise if their property was not to be equally rated.

Mr. Govr. Morris. The Report is little more than a guess. Wealth was not altogether disregarded by the Come. Where it was apparently in favor of one State, whose nos were superior to the numbers of another, by a fraction only, a member extraordinary was allowed to the former: and so vice versa. The Committee meant little more than to bring the matter to a point for the consideration of the House.

Mr. Reed asked why Georgia was allowed 2 members, when her number of inhabitants had stood below that of Delaware.

Mr. Govr. Morris. Such is the rapidity of the population of that State, that before the plan takes effect, it will probably be entitled to 2 Representatives.

Mr. Randolph, disliked the Report of the Come but had been unwilling to object to it. He was apprehensive that as the number was not be changed, till the Natl. Legislature should please, a pretext would never be wanting to postpone alterations, and keep the power in the hands of those possessed of it. He was in favor of the Commitmt. to a member from each State.

Mr. Patterson considered the proposed estimate for the future according to the combined rules of numbers and wealth, as too vague. For this reason N. Jersey was agst. it. He could regard negroes slaves in no light but as property. They are no free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, & like other property entirely at the will of the Master. Has a man in Virga. a number of votes in proportion to the number of his slaves? And if negroes are not represented in the States to which they belong, why should they be represented in the Genl. Govt.. What is the true principle of Representation? It is an expedient by which an assembly of certain individls. chosen by the people is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people was actually to take place, would the slaves vote? They would not. Why then shd. they be represented. He was also agst. such an indirect encouragemt. of the slave trade; observing that Congs. in their act relating to the change of the 8 art: of Confedn. had been ashamed to use the term "slaves" & had substituted a description.

Mr. Madison reminded Mr. Patterson that his doctrine of Representation which was in its principle the genuine one, must forever silence the pretensions of the small States to an equality of votes with the large ones. They ought to vote in the same proportion in which their Citizens would do, if the people of all the States were collectively met. He suggested as a proper ground of compromise, that in the first branch the States should be represented according to their number of free inhabitants; And in the 2d. which had for one of its primary objects the guardianship of property, according to the whole number, including slaves.

Mr. Butler urged warmly the justice & necessity of regarding wealth in the apportionment of Representation.

Mr. King had always expected that as the Southern States are the richest, they would not league themselves with the Northn. unless some respect were paid to their superior wealth. If the latter expect those preferential distinctions in Commerce, & other advantages which they will derive from the connexion they must not expect to receive them without allowing some advantages in return. Eleven out of 13 of the States had agreed to consider Slaves in the apportionment of taxation; and taxation and Representation ought to go together.

On the question for committing the first paragraph of the Report to a member from each State

Massts. ay. Conn. ay. N. Y. no. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. no. Geo. ay.

The Come. appointed were Mr. King, Mr. Sherman, Mr. Yates, Mr. Brearly, Mr. Govr. Morris, Mr. Reed, Mr. Carrol, Mr. Madison, Mr. Williamson, Mr. Rutlidge, Mr. Houston.

Adjd.

Tuesday July 10. In Convention.

Mr. King reported from the Come yesterday appointed that the States at the 1st meeting of the General Legislature, should be represented by 65 members, in the following proportions, to wit N. Hampshire by 3, Masts 8, R. Isd 1, Cont 5, N. Y. 6, N. J. 4, Pa 8, Del. 1, Md 6, Va 10, N. C. 5, S. C. 5, Georgia 3.

Mr. Rutlidge moved that N. Hampshire be reduced from 3 to 2. members. Her numbers did not entitle her to 3 and it was a poor State.

Genl Pinkney seconds the motion.

Mr. King. N. Hampshire has probably more than 120,000 Inhabts and has an extensive Country of tolerable fertility. Its inhabts therefore may be expected to increase fast. He remarked that the four Eastern States, having 800,000 souls, have 1/3 fewer representatives than the four Southern States, having not more than 700,000 souls, rating the blacks as 5 for 3. The Eastern people will advert to these circumstances, and be dissatisfied. He believed them to be very desirous of uniting with their Southern brethren, but did not think it prudent to rely so far on that disposition as to subject them to any gross inequality. He was fully convinced that the question concerning a difference of interests did not lie where it had hitherto been discussed, between the great & small States; but between the Southern & Eastern. For this reason he had been ready to yield something in the proportion of representatives for the security of the Southern. No principle would justify the giving them a majority. They were brought as near an equality as was possible. He was not averse to giving them a still greater security, but did not see how it could be done.

Genl Pinkney. The Report before it was committed was more favorable to the S. States than as it now stands. If they are to form so considerable a minority, and the regulation of trade is to be given to the Genl Government, they will be nothing more than overseers for the Northern States. He did not

expect the S. States to be raised to a majority of representatives, but wished them to have something like an equality. At present by the alterations of the Com^e^ in favor of the N. States they are removed farther from it than they were before. One member indeed had been added to Virg^a^ which he was glad of as he considered her as a Southern State. He was glad also that the members of Georgia were increased.

M^r^ Williamson was not for reducing N. Hampshire from 3 to 2, but for reducing some others. The South^n^ Interest must be extremely endangered by the present arrangement. The North^n^ States are to have a majority in the first instance and the means of perpetuating it.

M^r^ Dayton observed that the line between North^n^ & Southern interest had been improperly drawn; that P^a^ was the dividing State, there being six on each side of her.

Gen^l^ Pinkney urged the reduction, dwelt on the superior wealth of the Southern States, and insisted on its having its due weight in the Government.

M^r^ Gov^r^ Morris regretted the turn of the debate. The States he found had many Representatives on the floor. Few he fears were to be deemed the Representatives of America. He thought the Southern States have by the report more than their share of representation. Property ought to have its weight, but not all the weight. If the South^n^ States are to supply money. The North^n^ States are to spill their blood. Besides, the probable Revenue to be expected from the S. States has been greatly overrated. He was ag^st^ reducing N. Hampshire.

M^r^ Randolph was opposed to a reduction of N. Hampshire, not because she had a full title to three members; but because it was in his contemplation 1. to make it the duty instead of leaving it in the discretion of the Legislature to regulate the representation by a periodical census. 2. to require more than a bare majority of votes in the Legislature in certain cases & particularly in commercial cases.

On the question for reducing N. Hampshire from 3 to 2 Represent[s] it passed in the negative

Mass[ts] no. Con[t] no. N. J. no. P[a] no. Del. no. M[d] no. V[a] no. N. C. ay. S. C. ay. Geo. no.[128]

[128] In printed Journal. N. C. no. Geo. ay. Note in Madison's hand.

Gen[l] Pinkney and M[r] Alex[r] Martin moved that 6 Rep[s] instead of 5 be allowed to N. Carolina.

On the Question, it passed in the negative

Mass[ts] no. Con[t] no. N. J. no. P[a] no. Del. no. M[d] no. V[a] no. N. C. ay. S. C. ay. Geo. ay.

Gen[l] Pinkney & M[r] Butler made the same motion in favor of S. Carolina

On the Question it passed in the negative

Mass[ts] no. Con[t] no. N. Y. no. N. J. no. P[a] no. Del. ay. M[d] no. V[a] no. N. C. ay. S. C. ay. Geo. ay.

Gen[l] Pinckney & M[r] Houston moved that Georgia be allowed 4 instead of 3 Rep[s] urging the unexampled celerity of its population. On the Question, it passed in the Negative

Mass[ts] no. Con[t] no. N. Y. no. N. J. no. P[a] no. Del. no. M[d] no. V[a] ay. N. C. ay. S. C. ay. Geo. ay.

M[r] Madison, moved that the number allowed to each State be doubled. A *majority* of a *Quorum* of *65* members, was too small a number to represent the whole inhabitants of the U. States; They would not possess enough of the confidence of the people, and w[d] be too sparsely taken from the people, to bring with them all the local information which would be frequently wanted. Double the number will not be too great, even with the future additions from New States. The additional expence was too inconsiderable

to be regarded in so important a case. And as far as the augmentation might be unpopular on that score, the objection was overbalanced by its effect on the hopes of a greater number of the popular candidates.

Mr. Elseworth urged the objection of expence, & that the greater the number, the more slowly would the business proceed; and the less probably be decided as it ought, at last. He thought the number of Representatives too great in most of the State Legislatures; and that a large number was less necessary in the Genl. Legislature than in those of the States, as its business would relate to a few great national Objects only.

Mr. Sherman would have preferred 50 to 65. The great distance they will have to travel will render their attendance precarious and will make it difficult to prevail on a sufficient number of fit men to undertake the service. He observed that the expected increase from new States also deserved consideration.

Mr. Gerry was for increasing the number beyond 65. The larger the number, the less the danger of their being corrupted. The people are accustomed to & fond of a numerous representation, and will consider their rights as better secured by it. The danger of excess in the number may be guarded agst by fixing a point within which the number shall always be kept.

Col. Mason admitted that the objection drawn from the consideration of expence, had weight both in itself, and as the people might be affected by it. But he thought it outweighed by the objections agst the smallness of the number. 38, will he supposes, as being a majority of 65. form a quorum. 20 will be a majority of 38. This was certainly too small a number to make laws for America. They would neither bring with them all the necessary information relative to various local interests, nor possess the necessary confidence of the people. After doubling the number, the laws might still be made by so few as almost to be objectionable on that account.

Mr. Read was in favor of the Motion. Two of the States (Del. & R. I.) would have but a single member if the aggregate number should remain at 65. and in case of accident to either of these one State wd have no

representative present to give explanations or informations of its interests or wishes. The people would not place their confidence in so small a number. He hoped the objects of the Gen^{l} Gov^{t} would be much more numerous than seemed to be expected by some gentlemen, and that they would become more & more so. As to New States the highest number of Rep^{s} for the whole might be limited, and all danger of excess thereby prevented.

M^{r} Rutlidge opposed the motion. The Representatives were too numerous in all the States. The full number allotted to the States may be expected to attend, & the lowest possible quorum sh^{d} not therefore be considered. The interests of their Constituents will urge their attendance too strongly for it to be omitted: and he supposed the Gen^{l} Legislature would not sit more than 6 or 8 weeks in the year.

On the Question for doubling the number, it passed in the negative

Mas^{ts} no. Con^{t} no. N. Y. no. N. J. no. P^{a} no. Del. ay. M^{d} no. V^{a} ay. N. C. no. S. C. no. Geo. no.

On the question for agreeing to the apportionment of Rep^{s} as amended by the last committee, it passed in the affirmative

Mas. ay. Con^{t} ay. N. Y. ay. N. J. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. no. Geo. no.

M^{r} Broom gave notice to the House that he had concurred with a reserve to himself of an intention to claim for his State an equal voice in the 2^{d} branch; which he thought could not be denied after this concession of the small States as to the first branch.

M^{r} Randolph moved as an amendment to the report of the Comm^{e} of five "that in order to ascertain the alterations in the population & wealth of the several States the Legislature should be required to cause a census, and estimate to be taken within one year after its first meeting; and every —— years thereafter, and that the Legisl^{re} arrange the Representation accordingly."

Mr. Govr. Morris opposed it as fettering the Legislature too much. Advantage may be taken of it in time of war or the apprehension of it, by new States to extort particular favors. If the mode was to be fixed for taking a Census, it might certainly be extremely inconvenient: if unfixt the Legislature may use such a mode as will defeat the object: and perpetuate the inequality. He was always agst. such shackles on the Legislre.. They had been found very pernicious in most of the State Constitutions. He dwelt much on the danger of throwing such a preponderancy into the Western Scale, suggesting that in time the Western people wd. outnumber the Atlantic States. He wished therefore to put it in the power of the latter to keep a majority of votes in their own hands. It was objected he said that if the Legislre. are left at liberty, they will never readjust the Representation. He admitted that this was possible; but he did not think it probable unless the reasons agst. a revision of it were very urgent & in this case, it ought not to be done.

It was moved to postpone the proposition of Mr. Randolph in order to take up the following, viz. "that the Committee of Eleven, to whom was referred the report of the Committee of five on the subject of Representation, be requested to furnish the Convention with the principles on which they grounded the Report," which was disagreed to; S. C. alone voting in the affirmative.

Adjourned

Wednesday July 11. in Convention.

M[r] Randolph's motion requiring the Legisl[re] to take a periodical census for the purpose of redressing inequalities in the Representation was resumed.

M[r] Sherman was ag[st]. Shackling the Legislature too much. We ought to choose wise & good men, and then confide in them.

M[r] Mason. The greater the difficulty we find in fixing a proper rule of Representation, the more unwilling ought we to be, to throw the task from ourselves on the Gen[l] Legisl[re]. He did not object to the conjectural ratio which was to prevail in the outset; but considered a Revision from time to time according to some permanent & precise standard as essential to y[e] fair representation required in the 1[st] branch. According to the present population of America, the North[n] part of it had a right to preponderate, and he could not deny it. But he wished it not to preponderate hereafter when the reason no longer continued. From the nature of man we may be sure that those who have power in their hands will not give it up while they can retain it. On the contrary we know that they will always when they can rather increase it. If the S. States therefore should have 3/4 of the people of America within their limits, the Northern will hold fast the majority of Representatives. 1/4 will govern the 3/4. The S. States will complain; but they may complain from generation to generation without redress. Unless some principle therefore which will do justice to them hereafter shall be inserted in the Constitution, disagreable as the declaration was to him, he must declare he could neither vote for the system here, nor support it, in his State. Strong objections had been drawn from the danger to the Atlantic interests from new Western States. Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to States which are not yet in existence. If the Western States are to be admitted into the Union, as they arise, they must, he w[d] repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride & other passions which we have and will either not unite with or will speedily revolt from

the Union, if they are not in all respects placed on an equal footing with their brethren. It has been said they will be poor, and unable to make equal contributions to the general Treasury. He did not know but that in time they would be both more numerous & more wealthy than their Atlantic brethren. The extent & fertility of their soil, made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally yield to their demands. He urged that numbers of inhabitants; though not always a precise standard of wealth was sufficiently so for every substantial purpose.

Mr. Williamson was for making it a duty of the Legislature to do what was right & not leaving it at liberty to do or not to do it. He moved that Mr. Randolph's propositions be postpond. in order to consider the following "that in order to ascertain the alterations that may happen in the population & wealth of the several States, a census shall be taken of the free white inhabitants and 3/5ths of those of other descriptions on the 1st year after this Government shall have been adopted and every —— year thereafter; and that the Representation be regulated accordingly."

Mr. Randolph agreed that Mr. Williamson's proposition should stand in the place of his. He observed that the ratio fixt for the 1st meeting was a mere conjecture, that it placed the power in the hands of that part of America, which could not always be entitled to it, that this power would not be voluntarily renounced; and that it was consequently the duty of the Convention to secure its renunciation when justice might so require; by some constitutional provisions. If equality between great & small States be inadmissible, because in that case unequal numbers of Constituents wd. be represented by equal number of votes; was it not equally inadmissible that a larger & more populous district of America should hereafter have less representation, than a smaller & less populous district. If a fair representation of the people be not secured, the injustice of the Govt. will shake it to its foundations. What relates to suffrage is justly stated by the celebrated Montesquieu, as a fundamental article in Republican Govt.. If the danger suggested by Mr. Govr. Morris be real, of advantage being taken of the Legislature in pressing moments, it was an additional reason, for tying their hands in such a manner that they could not sacrifice their trust to momentary considerations. Congs. have pledged the public faith to New

States, that they shall be admitted on equal terms. They never would or ought to accede on any other. The census must be taken under the direction of the General Legislature. The States will be too much interested to take an impartial one for themselves.

M^r^ Butler & Gen^l^ Pinkney insisted that blacks be included in the rule of Representation *equally* with the whites; and for that purpose moved that the words "three-fifths" be struck out.

M^r^ Gerry thought that 3/5 of them was to say the least the full proportion that could be admitted.

M^r^ Ghorum. This ratio was fixed by Cong^s^ as a rule of taxation. Then it was urged by the Delegates representing the States having slaves that the blacks were still more inferior to freemen. At present when the ratio of representation is to be established, we are assured that they are equal to freemen. The arguments on y^e^ former occasion convinced him that 3/5 was pretty near the just proportion and he should vote according to the same opinion now.

M^r^ Butler insisted that the labour of a slave in S. Carol^a^ was as productive & valuable as that of a freeman in Mass^ts^, that as wealth was the great means of defence and utility to the Nation they were equally valuable to it with freemen; and that consequently an equal representation ought to be allowed for them in a Government which was instituted principally for the protection of property, and was itself to be supported by property.

M^r^ Mason could not agree to the motion, notwithstanding it was favorable to Virg^a^ because he thought it unjust. It was certain that the slaves were valuable, as they raised the value of land, increased the exports & imports, and of course the revenue, would supply the means of feeding & supporting an army, and might in cases of emergency become themselves soldiers. As in these important respects they were useful to the Community at large, they ought not to be excluded from the estimate of Representation. He could not however regard them as equal to freemen and could not vote for them as such. He added as worthy of remark, that the Southern States

have this peculiar species of property over & above the other species of property common to all the States.

Mr. Williamson reminded Mr. Ghorum that if the Southn. States contended for the inferiority of blacks to whites when taxation was in view, the Eastern States on the same occasion contended for their equality. He did not however either then or now concur in either extreme, but approved of the ratio of 3/5.

On Mr. Butler's motion for considering blacks as equal to Whites in the apportionmt. of Representation

Masstts. no. Contt. no. (N. Y. not on floor). N. J. no. Pa. no. Del. ay. Md. no. Va. no. N. C. no. S. C. ay. Geo. ay.

Mr. Govr. Morris said he had several objections to the proposition of Mr. Williamson. 1. It fettered the Legislature too much. 2. it would exclude some States altogether who would not have a sufficient number to entitle them to a single Representative. 3. it will not consist with the Resolution passed on Saturday last authorizing the Legislature to adjust the Representation from time to time on the principles of population & wealth or with the principles of equity. If slaves were to be considered as inhabitants, not as wealth then the sd. Resolution would not be pursued. If as wealth, then why is no other wealth but slaves included? These objections may perhaps be removed by amendments. His great objection was that the number of inhabitants was not a proper standard of wealth. The amazing difference between the comparative numbers & wealth of different countries, rendered all reasoning superfluous on the subject. Numbers might with greater propriety be deemed a measure of strength, than of wealth, yet the late defence made by G. Britain, agst. her numerous enemies proved in the clearest manner, that it is entirely fallacious even in this respect.

Mr. King thought there was great force in the objections of Mr. Govr. Morris: he would however accede to the proposition for the sake of doing something.

Mr. Rutlidge contended for the admission of wealth in the estimate by which Representation should be regulated. The Western States will not be able to contribute in proportion to their numbers; they shd. not therefore be represented in that proportion. The Atlantic States will not concur in such a plan. He moved that "at the end of —— years after the 1st. meeting of the Legislature, and of every —— years thereafter, the Legislature shall proportion the Representation according to the principles of wealth & population."

Mr. Sherman thought the number of people alone the best rule for measuring wealth as well as representation; and that if the Legislature were to be governed by wealth, they would be obliged to estimate it by numbers. He was at first for leaving the matter wholly to the discretion of the Legislature; but he had been convinced by the observation of (Mr. Randolph & Mr. Mason), that the *periods* & the *rule*, of revising the Representation ought to be fixt by the Constitution.

Mr. Reed thought the Legislature ought not to be too much shackled. It would make the Constitution like Religious Creeds, embarrassing to those bound to conform to them & more likely to produce dissatisfaction and scism, than harmony and union.

Mr. Mason objected to Mr. Rutlidge's motion, as requiring of the Legislature something too indefinite & impracticable, and leaving them a pretext for doing nothing.

Mr. Wilson had himself no objection to leaving the Legislature entirely at liberty. But considered wealth as an impracticable rule.

Mr. Ghorum. If the Convention who are comparatively so little biassed by local views are so much perplexed, How can it be expected that the Legislature hereafter under the full biass of those views, will be able to settle a standard. He was convinced by the arguments of others & his own reflections, that the Convention ought to fix some standard or other.

Mr. Govr. Morris. The argts of others & his own reflections had led him to a very different conclusion. If we can't agree on a rule that will be just at

this time, how can we expect to find one that will be just in all times to come. Surely those who come after us will judge better of things present, than we can of things future. He could not persuade himself that numbers would be a just rule at any time. The remarks of (M^{r} Mason) relative to the Western Country had not changed his opinion on that head. Among other objections it must be apparent they would not be able to furnish men equally enlightened, to share in the administration of our common interests. The Busy haunts of men not the remote wilderness, was the proper school of political Talents. If the Western people get the power into their hands they will ruin the Atlantic interests. The Back members are always most averse to the best measures. He mentioned the case of Pen^{a} formerly. The lower part of the State had y^{e} power in the first instance. They kept it in y^{r} own hands & the country was y^{e} better for it. Another objection with him agst admitting the blacks into the census, was that the people of Pen^{a} would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect. Two objections had been raised agst leaving the adjustment of the Representation from time, to time, to the discretion of the Legislature. The 1. was, they would be unwilling to revise it at all. The 2 that by referring to *wealth* they would be bound by a rule which if willing, they would be unable to execute. The 1st obj^{n} distrusts their fidelity. But if their duty, their honor & their oaths will not bind them, let us not put into their hands our liberty, and all our other great interests; let us have no Gov^{t} at all. 2. If these ties will bind them, we need not distrust the practicability of the rule. It was followed in part by the Com^{e} in the apportionment of Representatives yesterday reported to the House. The best course that could be taken would be to leave the interests of the people to the Representatives of the people.

M^{r} Madison was not a little surprised to hear this implicit confidence urged by a member who on all occasions, had inculcated so strongly, the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice & interest. If the Representatives of the people would be bound by the ties he had mentioned, what need was there of a Senate? What of a Revisionary power? But his reasoning was not only inconsistent with his former reasoning, but with itself. At the same time that he recommended this implicit confidence to the Southern States in

the Northern majority, he was still more zealous in exhorting all to a jealousy of a Western Majority. To reconcile the gentl[n] with himself, it must be imagined that he determined the human character by the points of the compass. The truth was that all men having power ought to be distrusted to a certain degree. The case of Pen[a] had been mentioned where it was admitted that those who were possessed of the power in the original settlement, never admitted the new settlem[ts] to a due share of it. England was a still more striking example. The power there had long been in the hands of the boroughs, of the minority; who had opposed & defeated every reform which had been attempted. Virg[a] was in a lesser degree another example. With regard to the Western States, he was clear & firm in opinion, that no unfavorable distinctions were admissible either in point of justice or policy. He thought also that the hope of contributions to the Treas[y] from them had been much underrated. Future contributions it seemed to be understood on all hands would be principally levied on imports & exports. The extent and fertility of the Western Soil would for a long time give to agriculture a preference over manufactures. Trials would be repeated till some articles could be raised from it that would bear a transportation to places where they could be exchanged for imported manufactures. Whenever the Mississippi should be opened to them, which would of necessity be y[e] case as soon as their population would subject them to any considerable share of the Public burden, imposts on their trade could be collected with less expence & greater certainty, than on that of the Atlantic States. In the mean time, as their supplies must pass through the *Atlantic States*, their contributions would be levied in the same manner with those of the Atlantic States. He could not agree that any substantial objection lay ag[st] fix[g] numbers for the perpetual standard of Representation. It was said that Representation & taxation were to go together; that taxation and wealth ought to go together, that population & wealth were not measures of each other. He admitted that in different climates, under different forms of Gov[t] and in different stages of civilization the inference was perfectly just. He would admit that in no situation, numbers of inhabitants were an accurate measure of wealth. He contended however that in the U. States it was sufficiently so for the object in contemplation. Altho' their climate varied considerably, yet as the Gov[ts] the laws, and the manners of all were nearly the same, and the intercourse between different parts perfectly free,

population, industry, arts, and the value of labour, would constantly tend to equalize themselves. The value of labour might be considered as the principal criterion of wealth and ability to support taxes; and this would find its level in different places where the intercourse should be easy & free, with as much certainty as the value of money or any other thing. Wherever labour would yield most, people would resort, till the competition should destroy the inequality. Hence it is that the people are constantly swarming from the more to the less populous places—from Europe to Am^{a}—from the North^{n} & Middle parts of the U. S. to the Southern & Western. They go where land is cheaper, because there labour is dearer. If it be true that the same quantity of produce raised on the banks of the Ohio is of less value, than on the Delaware, it is also true that the same labor will raise twice or thrice, the quantity in the former, that it will raise in the latter situation.

Col. Mason. Agreed with M^{r} Gov^{r} Morris that we ought to leave the interests of the people to the Representatives of the people; but the objection was that the Legislature would cease to be the Representatives of the people. It would continue so no longer than the States now containing a majority of the people should retain that majority. As soon as the Southern & Western population should predominate, which must happen in a few years, the power w^{d} be in the hands of the minority, and would never be yielded to the majority, unless provided for by the Constitution.

On the Question for postponing M^{r} Williamson's motion, in order to consider that of M^{r} Rutlidge, it passed in the negative, Mass^{ts} ay. Con^{t} no. N. J. no. P^{a} ay. Del. ay. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. ay.

On the question on the first clause of M^{r} Williamson's motion as to taking a census of the free inhabitants, it passed in the affirmative; Mass^{ts} ay. Con^{t} ay. N. J. ay. P^{a} ay. Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. no. Geo. no.

the next clause as to 3/5 of the negroes considered.

M^{r} King being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the

admission of them along with Whites at all, would excite great discontents among the States having no slaves. He had never said as to any particular point that he would in no event acquiesce in & support it; but he w^d^ say that if any in case such a declaration was to be made by him, it would be in this. He remarked that in the temporary allotment of Representatives made by the Committee, the Southern States had received more than the number of their white & Three fifths of their black inhabitants entitled them to.

M^r^ Sherman. S. Carol^a^ had not more beyond her proportion than N. York & N. Hampshire, nor either of them more than was necessary in order to avoid fractions or reducing them below their proportions. Georgia had more; but the rapid growth of that State seemed to justify it. In general the allotment might not be just, but considering all circumstances, he was satisfied with it.

M^r^ Ghorum. supported the propriety of establishing numbers as the rule. He said that in Mass^ts^ estimates had been taken in the different towns, and that persons had been curious enough to compare these estimates with the respective numbers of people; and it had been found even including Boston, that the most exact proportion prevailed between numbers & property. He was aware that there might be some weight in what had fallen from his colleague, as to the umbrage which might be taken by the people of the Eastern States. But he recollected that when the proposition of Cong^s^ for changing the 8^th^ art: of the Confed^n^ was before the Legislature of Mass^ts^ the only difficulty then was to satisfy them that the negroes ought not to have been counted equally with whites instead of being counted in ratio of three-fifths only.[129]

[129] They were then to have been a rule of taxation only. Note in Madison's handwriting.

M[r] Wilson did not well see on what principle the admission of blacks in the proportion of three fifths could be explained. Are they admitted as Citizens? then why are they not admitted on an equality with White Citizens? are they admitted as property? then why is not other property admitted into the computation? These were difficulties however which he thought must be overruled by the necessity of compromise. He had some apprehensions also from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pen[a], as had been intimated by his Colleague (M[r] Gov[r] Morris). But he differed from him in thinking numbers of inhab[ts] so incorrect a measure of wealth. He had seen the Western settlem[ts] of P[a] and on a comparison of them with the City of Philad[a] could discover little other difference, than that property was more unequally divided among individuals here than there. Taking the same number in the aggregate in the two situations he believed there would be little difference in their wealth and ability to contribute to the public wants.

M[r] Gov[r] Morris was compelled to declare himself reduced to the dilemma of doing injustice to the Southern States or to human nature, and he must therefore do it to the former. For he could never agree to give such encouragement to the Slave Trade as would be given by allowing them a representation for their negroes, and he did not believe those States would ever confederate on terms that would deprive them of that trade.

On Question for agreeing to include 3/5 of the blacks Mass[ts] no. Con[t] ay. N. J. no. P[a] no. Del. no. M[d][130] no. V[a] ay. N. C. ay. S. C. no. Geo. ay.

[130] (M[r] Carrol s[d] in explanation of the vote of M[d] that he wished the phraseology to be so altered as to obviate if possible the danger which had been expressed of giving umbrage to the Eastern & Middle States.) Note in Madison's hand.

On the question as to taking census "the first year after the meeting of the Legislature"

Mass^{ts} ay. Con^{t} no. N. J. ay. P^{a} ay. Del. ay. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. no.

On filling the blank for the periodical census, with 15 years. Agreed to nem. con.

M^{r} Madison moved to add, after "15 years," the words "at least" that the Legislature might anticipate when circumstances were likely to render a particular year inconvenient.

On this motion for adding "at least," it passed in the negative the States being equally divided.

Mas. ay. Con^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

A Change of the phraseology of the other clause so as to read, "and the Legislature shall alter or augment the representation accordingly," was agreed to nem. con.

On the question on the whole resolution of M^{r} Williamson as amended,

Mas. no. Con^{t} no. N. J. no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

Thursday, July 12. In Convention.

M[r] Gov[r] Morris moved to add to the clause empowering the Legislature to vary the Representation according to the principles of wealth & numbers of inhab[ts] a "proviso that taxation shall be in proportion to Representation."

M[r] Butler contended again that Representation s[d] be according to the full number of inhab[ts] including all the blacks; admitting the justice of M[r] Gov[r] Morris's motion.

M[r] Mason also admitted the justice of the principle, but was afraid embarrassments might be occasioned to the Legislature by it. It might drive the Legislature to the plan of Requisitions.

M[r] Gov[r] Morris, admitted that some objections lay ag[st] his Motion, but supposed they would be removed by restraining the rule to *direct* taxation. With regard to indirect taxes on *exports* & imports & on consumption the rule would be inapplicable. Notwithstanding what had been said to the contrary he was persuaded that the imports & consumption were pretty nearly equal throughout the Union.

General Pinkney liked the idea. He thought it so just that it could not be objected to. But foresaw that if the revision of the census was left to the discretion of the Legislature, it would never be carried into execution. The rule must be fixed, and the execution of it enforced by the Constitution. He was alarmed at what was said[131] yesterday, concerning the Negroes. He was now again alarmed at what had been thrown out concerning the taxing of exports. S. Carol[a] has in one year exported to the amount of £600,000 Sterling all which was the fruit of the labor of her blacks. Will she be represented in proportion to this amount? She will not. Neither ought she then to be subject to a tax on it. He hoped a clause would be inserted in the system, restraining the Legislature from taxing Exports.

[131] By M[r] Gov[r] Morris. Note in Madison's handwriting.

Mr. Wilson approved the principle, but could not see how it could be carried into execution; unless restrained to direct taxation.

Mr. Govr. Morris having so varied his Motion by inserting the word "direct." It passd. nem. con. as follows—"provided always that direct taxation ought to be proportioned to representation."

Mr. Davie said it was high time now to speak out. He saw that it was meant by some gentlemen to deprive the Southern States of any share of Representation for their blacks. He was sure that N. Carola. would never confederate on any terms that did not rate them at least as 3/5. If the Eastern States meant therefore to exclude them altogether the business was at an end.

Dr. Johnson, thought that wealth and population were the true, equitable rule of representation; but he conceived that these two principles resolved themselves into one; population being the best measure of wealth. He concluded therefore that ye. number of people ought to be established as the rule, and that all descriptions including blacks *equally* with the Whites, ought to fall within the computation. As various opinions had been expressed on the subject, he would move that a Committee might be appointed to take them into consideration and report thereon.

Mr. Govr. Morris. It has been said that it is high time to speak out, as one member, he would candidly do so. He came here to form a compact for the good of America. He was ready to do so with all the States. He hoped & believed that all would enter into such a Compact. If they would not he was ready to join with any States that would. But as the Compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southn. States will never agree to. It is equally vain for the latter to require what the other States can never admit; and he verily believed the people of Pena. will never agree to a representation of Negroes. What can be desired by these States more than has been already proposed; that the Legislature shall from time to time regulate Representation according to population & wealth.

Gen.l Pinkney desired that the rule of wealth should be ascertained and not left to the pleasure of the Legislature; and that property in slaves should not be exposed to danger under a Gov.t instituted for the protection of property.

The first clause in the Report of the first Grand Committee was postponed.

M.r Elseworth. In order to carry into effect the principle established, moved that to add to the last clause adopted by the House the words following, "and that the rule of contribution by direct taxation for the support of the Government of the U. States shall be the number of white inhabitants, and three fifths of every other description in the several States, until some other rule that shall more accurately ascertain the wealth of the several States can be devised and adopted by the Legislature."

M.r Butler seconded the motion in order that it might be committed.

M.r Randolph was not satisfied with the motion. The danger will be revived that the ingenuity of the Legislature may evade or pervert the rule so as to perpetuate the power where it shall be lodged in the first instance. He proposed in lieu of M.r Elseworth's motion, "that in order to ascertain the alterations in Representation that may be required from time to time by changes in the relative circumstances of the States, a Census shall be taken within two years from the 1.st meeting of the Gen.l Legislature of the U.S. and once within the term of every —— year afterwards, of all the inhabitants in the manner & according to the ratio recommended by Congress in their resolution of the 18.th day of Ap.l 1783, (rating the blacks at 3/5 of their number) and that the Legislature of the U. S. shall arrange the Representation accordingly." He urged strenuously that express security ought to be provided for including slaves in the ratio of Representation. He lamented that such a species of property existed. But as it did exist the holders of it would require this security. It was perceived that the design was entertained by some of excluding slaves altogether; the Legislature therefore ought not to be left at liberty.

M.r Elseworth withdraws his motion & seconds that of M.r Randolph.

Mr. Wilson observed that less umbrage would perhaps be taken agst an admission of the slaves into the Rule of representation, if it should be so expressed as to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation; and as representation was to be according to taxation, the end would be equally attained. He accordingly moved & was 2ded so to alter the last clause adopted by the House, that together with the amendment proposed the whole should read as follows—provided always that the representation ought to be proportioned according to direct taxation, and in order to ascertain the alterations in the direct taxation which may be required from time to time by the changes in the relative circumstances of the States, Resolved that a census be taken within two years from the first meeting of the Legislature of the U. States, and once within the term of every —— years afterwards of all the inhabitants of the U.S. in the manner and according to the ratio recommended by Congress in their Resolution of April 18. 1783; and that the Legislature of the U.S. shall proportion the direct taxation accordingly.

Mr. King. Altho' this amendment varies the aspect somewhat, he had still two powerful objections agst tying down the Legislature to the rule of numbers. 1. they were at this time an uncertain index of the relative wealth of the States. 2. if they were a just index at this time it can not be supposed always to continue so. He was far from wishing to retain any unjust advantage whatever in one part of the Republic. If justice was not the basis of the connection it could not be of long duration. He must be shortsighted indeed who does not foresee that whenever the Southern States shall be more numerous than the Northern, they can & will hold a language that will awe them into justice. If they threaten to separate now in case injury shall be done them, will their threats be less urgent or effectual, when force shall back their demands. Even in the intervening period, there will be no point of time at which they will not be able to say, do us justice or we will separate. He urged the necessity of placing confidence to a certain degree in every Govt and did not conceive that the proposed confidence as to a periodical readjustment of the representation exceeded that degree.

Mr. Pinkney moved to amend Mr. Randolph's motion so as to make "blacks equal to the whites in the ratio of representation." This he urged was nothing more than justice. The blacks are the labourers, the peasants of the

Southern States: they are as productive of pecuniary resources as those of the Northern States. They add equally to the wealth, and considering money as the sinew of war, to the strength of the nation. It will also be politic with regard to the Northern States, as taxation is to keep pace with Representation.

Gen^{l} Pinkney moves to insert 6 years instead of two, as the period computing from the 1st meeting of y^{e} Legis^{e} within which the first census should be taken. On this question for inserting six, instead of "two" in the proposition of M^{r} Wilson, it passed in the affirmative

Mass^{ts} no. C^{t} ay. N. J. ay. P^{a} ay. Del. div^{d}. May^{d} ay. V^{a} no. N. C. no. S. C. ay. Geo. no.

On a question for filling the blank for y^{e} periodical census with 20 years, it passed in the negative

Mass^{ts} no. C^{t} ay. N. J. ay. P. ay. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

On a question for 10 years, it passed in the affirmative.

Mass. ay. Con^{t} no. N. J. no. P. ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

On M^{r} Pinkney's motion for rating blacks as equal to Whites instead of as 3/5.

Mass. no. Con^{t} no. (D^{r} Johnson ay) N. J. no. P^{a} no. (3 agst 2.) Del. no. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo—ay.

M^{r} Randolph's proposition as varied by M^{r} Wilson being read for question on the whole—

M^{r} Gerry, urged that the principle of it could not be carried into execution as the States were not to be taxed as States. With regard to taxes

in imposts, he conceived they would be more productive Where there were no slaves than where there were; the consumption being greater—

Mr. Elseworth. In case of a poll tax there wd. be no difficulty. But there wd. probably be none. The sum allotted to a State may be levied without difficulty according to the plan used by the State in raising its own supplies. On the question of ye. whole proposition; as proportioning representation to direct taxation & both to the white & 3/5 of black inhabitants, & requiring a Census within six years—& within every ten years afterwards.

Mass. divd. Cont. ay. N. J. no. Pa. ay. Del. no. Md. ay. Va. ay. N. C. ay. S. C. divd. Geo. ay.

Friday, July 13. In Convention.

It being moved to postpone the clause in the Report of the Committee of Eleven as to the originating of money bills in *the first* branch, in order to take up the following—"that in the 2d branch each State shall have an equal voice,"

Mr. Gerry, moved to add as an amendment to the last clause agreed to by the House, "that from the first meeting of the Legislature of the U.S. till a census shall be taken all monies to be raised for supplying the public Treasury by direct taxation shall be assessed on the inhabitants of the several States according to the number of their Representatives respectively in the 1st branch." He said this would be as just before as after the Census; according to the general principle that taxation & Representation ought to go together.

Mr. Williamson feared that N. Hampshire will have reason to complain. 3 members were allotted to her as a liberal allowance, for this reason among others, that she might not suppose any advantage to have been taken of her absence. As she was still absent, and had no opportunity of deciding whether she would chuse to retain the number on the condition, of her being taxed in proportion to it, he thought the number ought to be reduced from three to two, before the question was taken on Mr. G's motion.

Mr. Read could not approve of the proposition. He had observed he said in the Committee a backwardness in some of the members from the large States, to take their full proportion of Representatives. He did not then see the motive. He now suspects it was to avoid their due share of taxation. He had no objection to a just & accurate adjustment of Representation & taxation to each other.

Mr. Govr. Morris & Mr. Madison answered that the charge itself involved an acquittal; since notwithstanding the augmentation of the number of members allotted to Masts. & Va. the motion for proportioning the burdens

thereto was made by a member from the former State & was approved by Mr. M. from the latter who was on the Come. Mr. Govr Morris said that he thought Pa had her due share in 8 members; and he could not in candor ask for more. Mr. M. said that having always conceived that the difference of interest in the U. States lay not between the large & small, but the N. & Southn States, and finding that the number of members allotted to the N. States was greatly superior, he should have preferred, an addition of two members to the S. States, to wit one to N. & 1 to S. Carla rather than of one member to Virga. He liked the present motion, because it tended to moderate the views both of the opponents & advocates for rating very high, the negroes.

Mr. Elseworth hoped the proposition would be withdrawn. It entered too much into detail. The general principle was already sufficiently settled. As fractions can not be regarded in apportioning the *No. of representatives*, the rule will be unjust, until an actual census shall be made. After that taxation may be precisely proportioned according to the principle established, to the *number of inhabitants*.

Mr. Wilson hoped the motion would not be withdrawn. If it shd it will be made from another quarter. The rule will be as reasonable & just before, as after a Census. As to fractional numbers, the Census will not destroy, but ascertain them. And they will have the same effect after as before the Census; for as he understands the rule, it is to be adjusted not to the number of *inhabitants*, but of *Representatives*.

Mr. Sherman opposed the motion. He thought the Legislature ought to be left at liberty: in which case they would probably conform to the principles observed by Congs.

Mr. Mason did not know that Virga would be a loser by the proposed regulation, but had some scruple as to the justice of it. He doubted much whether the conjectural rule which was to precede the Census, would be as just, as it would be rendered by an actual census.

Mr. Elseworth & Mr. Sherman moved to postpone the motion of Mr. Gerry. On ye question, it passed in the negative. Mass. no. Cont ay. N. J. ay.

P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. no. S. C. no. Geo. no.

Question on M^{r} Gerry's motion, it passed in the negative, the States being equally divided.

Mass. ay. Con^{t} no. N. J. no. *P^{a} ay.* Del. no. M^{d} no. *V^{a} no.* N. C. ay. S. C. ay. Geo. ay.

M^{r} Gerry finding that the loss of the question had proceeded from an objection with some, to the proposed assessment of direct taxes on the *inhabitants* of the States, which might restrain the Legislature to a poll tax, moved his proposition again, but so varied as to authorize the assessment on the *States*, which leaves the mode to the Legislature, viz "that from the 1st meeting of the Legislature of the U. S. untill a census shall be taken, all monies for supplying the public Treasury by direct taxation shall be raised from the said several States according to the number of their representatives respectively in the 1st branch."

On this varied question, it passed in the affirmative

Mas. ay. Con^{t} no. N. J. no. *P^{a} div^{d}* Del. no. M^{d} no. *V^{a} ay* N. C. ay. S. C. ay. Geo. ay.

On the motion of M^{r} Randolph, the vote of saturday last authorizing the Legisl^{re} to adjust from time to time, the representation upon the principles of *wealth* & numbers of inhabitants, was reconsidered by common consent in order to strike out "Wealth" and adjust the resolution to that requiring periodical revisions, according to the number of whites & three fifths of the blacks: the motion was in the words following:—"But as the present situation of the States may probably alter in the number of their inhabitants, that the Legislature of the U. S. be authorized from time to time to apportion the number of representatives; and in case any of the States shall hereafter be divided or any two or more States united or new States created within the limits of the U. S. the Legislature of U. S. shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principle of their number of inhabitants; according to the provisions hereafter mentioned."

M[r] Gov[r] Morris opposed the alteration as leaving still incoherence. If Negroes were to be viewed as inhabitants, and the revision was to proceed on the principle of numbers of inhab[ts] they ought to be added in their entire number, and not in the proportion of 3/5. If as property, the word wealth was right, and striking it out would produce the very inconsistency which it was meant to get rid of.—The train of business & the late turn which it had taken, had led him he said, into deep meditation on it, and He w[d] candidly state the result. A distinction had been set up & urged, between the N[n] and South[n] States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees however that it is persisted in, and the South[n] Gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public Councils. The consequence of such a transfer of power from the maritime to the interior & landed interest will he foresees be such an oppression of commerce that he shall be obliged to vote for y[e] vicious principle of equality in the 2[d] branch in order to provide some defence for the N. States ag[st] it. But to come more to the point; either this distinction is fictitious or real; if fictitious let it be dismissed & let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. There can be no end of demands for security if every particular interest is to be entitled to it. The Eastern States may claim it for their fishery, and for other objects, as the South[n] States claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the middle States in point of policy to take: to join their Eastern brethren according to his ideas. If the South[n] States get the power into their hands, and be joined as they will be with the interior Country, they will inevitably bring on a war with Spain for the Mississippi. This language is already held. The interior Country having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the North[n] & middle States will have ag[st] this danger. It has been said that N. C. S. C., and Georgia only will in a little time have a majority of the people of America. They must in that case include the great interior Country, and every thing was to be apprehended from their getting the power into their hands.

Mr. Butler. The security the Southn States want is that their negroes may not be taken from them, which some gentlemen within or without doors, have a very good mind to do. It was not supposed that N. C. S. C. & Geo. would have more people than all the other States, but many more relatively to the other States than they now have. The people & strength of America are evidently bearing Southwardly & S. westwdly.

Mr. Wilson. If a general declaration would satisfy any gentleman he had no indisposition to declare his sentiments. Conceiving that all men wherever placed have equal rights and are equally entitled to confidence, he viewed without apprehension the period when a few States should contain the superior number of people. The majority of people wherever found ought in all questions to govern the minority. If the interior Country should acquire this majority, it will not only have the right, but will avail itself of it whether we will or no. This jealousy misled the policy of G. Britain with regard to America. The fatal maxims espoused by her were that the Colonies were growing too fast, and that their growth must be stinted in time. What were the consequences?, first, enmity on our part, then actual separation. Like consequences will result on the part of the interior settlements, if like jealousy & policy be pursued on ours. Further, if numbers be not a proper rule, why is not some better rule pointed out. No one has yet ventured to attempt it. Congs have never been able to discover a better. No State as far as he had heard, had suggested any other. In 1783, after elaborate discussion of a measure of wealth all were satisfied then as they are now that the rule of numbers, does not differ much from the combined rule of numbers & wealth. Again he could not agree that property was the sole or primary object of Govt & society. The cultivation & improvement of the human mind was the most noble object. With respect to this object, as well as to other *personal* rights, numbers were surely the natural & precise measure of Representation. And with respect to property, they could not vary much from the precise measure. In no point of view however could the establishmt of numbers as the rule of representation in the 1st branch vary his opinion as to the impropriety of letting a vicious principle into the 2d branch.—On the Question to strike out *Wealth*, & to make the change as moved by Mr. Randolph, it passed in the affirmative.

Mas. ay. Con^{t} ay. N. J. ay. P^{a} ay. Del div^{d}. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Reed moved to insert after the word "divided," "or enlarged by addition of territory" which was agreed to nem con. (his object probably was to provide for such cases as an enlargem^{t} of Delaware by annexing to it the Peninsula on the East side of the Chesapeak.)

Adjourned.

Saturday, July 14. in Convention.

Mr. L. Martin called for the question on the whole report, including the parts relating to the origination of money bills, and the equality of votes in the 2d branch.

Mr. Gerry, wished before the question should be put, that the attention of the House might be turned to the dangers apprehended from Western States. He was for admitting them on liberal terms, but not for putting ourselves in their hands. They will if they acquire power like all men, abuse it. They will oppress commerce, and drain our wealth into the Western Country. To guard agst these consequences, he thought it necessary to limit the number of new States to be admitted into the Union, in such a manner, that they should never be able to outnumber the Atlantic States. He accordingly moved "that in order to secure the liberties of the States already confederated, the number of Representatives in the 1st branch, of the States which shall hereafter be established, shall never exceed in number, the Representatives from such of the States as shall accede to this Confederation.

Mr. King, seconded the motion.

Mr. Sherman, thought there was no probability that the number of future States would exceed that of the Existing States. If the event should ever happen, it was too remote to be taken into consideration at this time. Besides We are providing for our posterity, for our children & our grand Children; who would be as likely to be citizens of new Western States, as of the old States. On this consideration alone, we ought to make no such discrimination as was proposed by the motion.

Mr. Gerry. If some of our children should remove, others will stay behind, and he thought it incumbent on us to provide for their interests. There was a rage for emigration from the Eastern States to the Western Country, and he did not wish those remaining behind to be at the mercy of the emigrants. Besides foreigners are resorting to that Country, and it is

uncertain what turn things may take there.—On the question for agreeing to the Motion of Mr. Gerry, it passed in the negative.

Mass. ay. Cont. ay. N. J. no. Pa. divd. Del. ay. Md. ay. Va. no. N. C. no. S. C. no. Geo. no.

Mr. Rutlidge proposed to reconsider the two propositions touching the originating of money bills in the first & the equality of votes in the second branch.

Mr. Sherman was for the question on the whole at once. It was he said a conciliatory plan, it had been considered in all its parts, a great deal of time had been spent upon it, and if any part should now be altered, it would be necessary to go over the whole ground again.

Mr. L. Martin urged the question on the whole. He did not like many parts of it. He did not like having two branches, nor the inequality of votes in the 1st branch. He was willing however to make trial of the plan, rather than do nothing.

Mr. Wilson traced the progress of the report through its several stages, remarking yt when on the question concerning an equality of votes, the House was divided, our Constituents had they voted as their representatives did, would have stood as 2/3 agst the equality, and 1/3 only in favor of it. This fact would ere long be known, and it will appear that this fundamental point has been carried by 1/3 agst 2/3. What hopes will our Constituents entertain when they find that the essential principles of justice have been violated in the outset of the Governmt. As to the privilege of originating money bills, it was not considered by any as of much moment, and by many as improper in itself. He hoped both clauses wd be reconsidered. The equality of votes was a point of such critical importance, that every opportunity ought to be allowed, for discussing and collecting the mind of the Convention upon it.

Mr. L. Martin denies that there were 2/3 agst the equality of votes. The States that please to call themselves large, are the weakest in the Union. Look at Masts. Look at Virga. Are they efficient States? He was for letting a

separation take place if they desired it. He had rather there should be two Confederacies, than one founded on any other principle than an equality of votes in the 2d branch at least.

Mr. Wilson was not surprised that those who say that a minority is more than a majority should say the minority is stronger than the majority. He supposed the next assertion will be that they are richer also; though he hardly expected it would be persisted in when the States shall be called on for taxes & troops.

Mr. Gerry also animadverted on Mr. L. Martins remarks on the weakness of Masts. He favored the reconsideration with a view not of destroying the equality of votes; but of providing that the States should vote per Capita, which he said would prevent the delays & inconveniences that had been experienced in Congs and would give a national aspect & Spirit to the management of business. He did not approve of a reconsideration of the clause relating to money bills. It was of great consequence. It was the corner stone of the accommodation. If any member of the Convention had the exclusive privilege of making propositions, would any one say that it would give him no advantage over other members. The Report was not altogether to his mind. But he would agree to it as it stood rather than throw it out altogether.

The reconsideration being tacitly agreed to

Mr. Pinkney moved that instead of an equality of votes, the States should be represented in the 2d branch as follows: N. H. by 2 members. Mass. 4. R. I. 1. Cont 3. N. Y. 3. N. J. 2. Pa 4. Del. 1; Md 3. Virga 5. N. C. 3. S. C. 3. Geo. 2. making in the whole 36.

Mr. Wilson seconds the motion

Mr. Dayton. The smaller States can never give up their equality. For himself he would in no event yield that security for their rights.

Mr. Sherman, urged the equality of votes not so much as a Security for the small States; as for the State Govts which could not be preserved unless

they were represented & had a negative in the Gen^{l} Government. He had no objection to the members in the 2^{d} b. voting per capita, as had been suggested by (M^{r} Gerry).

M^{r} Madison concurred in this motion of M^{r} Pinkney as a reasonable compromise.

M^{r} Gerry said he should like the motion, but could see no hope of success. An accommodation must take place, and it was apparent from what had been seen that it could not do so on the ground of the motion. He was utterly against a partial confederacy, leaving other States to accede or not accede, as had been intimated.

M^{r} King said it was always with regret that he differed from his colleagues, but it was his duty to differ from (M^{r} Gerry) on this occasion. He considered the proposed Government as substantially and formally, a General and National Government over the people of America. There never will be a case in which it will act as a federal Government on the States and not on the individual Citizens. And is it not a clear principle that in a free Gov^{t} those who are to be the objects of a Gov^{t} ought to influence the operations of it? What reason can be assigned why the same rule of representation s^{d} not prevail in the 2^{d} branch as in the 1st.? He could conceive none. On the contrary, every view of the subject that presented itself, seemed to require it. Two objections had been raised agst it, drawn 1. from the terms of the existing compact. 2. from a supposed danger to the smaller States.—As to the first objection he thought it inapplicable. According to the existing Confederation, the rule by which the public burdens is to be apportioned is *fixed*, and must be pursued. In the proposed Govern^{t} it cannot be fixed, because indirect taxation is to be substituted. The Legislature therefore will have full discretion to impose taxes in such modes & proportions as they may judge expedient. As to the 2^{d} objection, he thought it of as little weight. The Gen^{l} Govern^{t} can never wish to intrude on the State Govern^{ts}. There could be no temptation. None had been pointed out. In order to prevent the interference of measures which seemed most likely to happen, he would have no objection to throwing all the State debts into the federal debt, making one aggregate debt of about 70,000,000 of

dollars, and leaving it to be discharged by the Gen^{l} Gov^{t}. According to the idea of securing the State Gov^{ts} there ought to be three distinct legislative branches. The 2^{d} was admitted to be necessary, and was actually meant, to check the 1st branch, to give more wisdom, system, & stability to the Gov^{t} and ought clearly as it was to operate on the people, to be proportioned to them. For the third purpose of securing the States, there ought then to be a 3^{d} branch, representing the States as such, and guarding by equal votes their rights & dignities. He would not pretend to be as thoroughly acquainted with his immediate Constituents as his colleagues, but it was his firm belief that Mas^{ts} would never be prevailed on to yield to an equality of votes. In N. York, (he was sorry to be obliged to say any thing relative to that State in the absence of its representatives, but the occasion required it), in N. York he had seen that the most powerful argument used by the considerate opponents to the grant of the Impost to Congress, was pointed agst the vicious constitution of Cong^{s} with regard to representation & suffrage. He was sure that no Gov^{t} could last that was not founded on just principles. He preferred the doing of nothing, to an allowance of an equal vote to all the States. It would be better he thought to submit to a little more confusion & convulsion, than to submit to such an evil. It was difficult to say what the views of different Gentlemen might be. Perhaps there might be some who thought no Governm^{t} co-extensive with the U. States could be established with a hope of its answering the purpose. Perhaps there might be other fixed opinions incompatible with the object we are pursuing. If there were, he thought it but candid that Gentlemen should speak out that we might understand one another.

M^{r} Strong. The Convention had been much divided in opinion. In order to avoid the consequences of it, an accommodation had been proposed. A Committee had been appointed: and though some of the members of it were averse to an equality of votes, a Report had been made in favor of it. It is agreed on all hands that Congress are nearly at an end. If no Accommodation takes place, the Union itself must soon be dissolved. It has been suggested that if we cannot come to any general agreement, the principal States may form & recommend a Scheme of Government. But will the small States in that case ever accede it. Is it probable that the large States themselves will under such circumstances embrace and ratify it. He

thought the small States had made a considerable concession in the article of money bills, and that they might naturally expect some concessions on the other side. From this view of the matter he was compelled to give his vote for the Report taken altogether.

Mr. Madison expressed his apprehensions that if the proper foundation of Governmt was destroyed, by substituting an equality in place of a proportional Representation, no proper superstructure would be raised. If the small States really wish for a Government armed with the powers necessary to secure their liberties, and to enforce obedience on the larger members as well as themselves he could not help thinking them extremely mistaken in their means. He reminded them of the consequences of laying the existing Confederation on improper principles. All the principal parties to its compilation joined immediately in mutilating & fettering the Governmt in such a manner that it has disappointed every hope placed in it. He appealed to the doctrine & arguments used by themselves on a former occasion. It had been very properly observed by (Mr. Patterson) that Representation was an expedient by which the meeting of the people themselves was rendered unnecessary; And that the representatives ought therefore to bear a proportion to the votes which their constituents if convened would respectively have. Was not this remark as applicable to one branch of the Representation as to the other? But it had been said that the Governt would in its operation be partly federal, partly national; that altho' in the latter respect the Representatives of the people ought to be in proportion to the people; yet in the former it ought to be according to the number of States. If there was any solidity in this distinction he was ready to abide by it, if there was none it ought to be abandoned. In all cases where the Genl Governmt is to act on the people, let the people be represented and the votes be proportional. In all cases where the Governt is to act on the States as such in like manner as Congs now acts on them, let the States be represented & the votes be equal. This was the true ground of compromise if there was any ground at all. But he denied that there was any ground. He called for a single instance in which the Genl Govt was not to operate on the people individually. The practicability of making laws, with coercive sanctions, for the States as Political bodies, had been exploded on all hands. He observed that the people of the large States would in some way or other

secure to themselves a weight proportioned to the importance accruing from their superior numbers. If they could not effect it by a proportional representation in the Gov^{t} they would probably accede to no Gov^{t} which did not in a great measure depend for its efficacy on their voluntary cooperation; in which case they would indirectly secure their object. The existing confederacy proved that where the Acts of the Gen^{l} Gov^{t} were to be executed by the particular Gov^{ts} the latter had a weight in proportion to their importance. No one would say that either in Cong^{s} or out of Cong^{s}. Delaware had equal weight with Pennsylv^{a}. If the latter was to supply ten times as much money as the former, and no compulsion could be used, it was of ten times more importance, that she should voluntarily furnish the supply. In the Dutch confederacy the votes of the Provinces were equal. But Holland which supplies about half the money, governed the whole republic. He enumerated the objections agst an equality of votes in the 2^{d} branch, notwithstanding the proportional representation in the first. 1. the minority could negative the will of the majority of the people. 2. they could extort measures by making them a condition of their assent to other necessary measures. 3. they could obtrude measures on the majority by virtue of the peculiar powers which would be vested in the Senate. 4. the evil instead of being cured by time, would increase with every new State that should be admitted, as they must all be admitted on the principle of equality. 5. the perpetuity it would give to the preponderance of the North^{n} agst the South^{n} Scale was a serious consideration. It seemed now to be pretty well understood that the real difference of interests lay, not between the large & small but between the N. & South^{n} States. The institution of slavery & its consequences formed the line of discrimination. There were 5 States on the South, 8 on the North^{n} side of this line. Should a proport^{l} representation take place it was true, the N. side would still outnumber the other; but not in the same degree, at this time; and every day would tend towards an equilibrium.

M^{r} Wilson would add a few words only. If equality in the 2^{d} branch was an error that time would correct, he should be less anxious to exclude it being sensible that perfection was unattainable in any plan; but being a fundamental and a perpetual error, it ought by all means to be avoided. A vice in the Representation, like an error in the first concoction, must be

followed by disease, convulsions, and finally death itself. The justice of the general principle of proportional representation has not in argument at least been yet contradicted. But it is said that a departure from it so far as to give the States an equal vote in one branch of the Legislature is essential to their preservation. He had considered this position maturely, but could not see its application. That the States ought to be preserved he admitted. But does it follow that an equality of votes is necessary for the purpose? Is there any reason to suppose that if their preservation should depend more on the large than on the small States the security of the States agst the Genl Government would be diminished? Are the large States less attached to their existence more likely to commit suicide, than the small? An equal vote then is not necessary as far as he can conceive: and is liable among other objections to this insuperable one: The great fault of the existing confederacy is its inactivity. It has never been a complaint agst Congs that they governed over much. The complaint has been that they have governed too little. To remedy this defect we were sent here. Shall we effect the cure by establishing an equality of votes as is proposed? no: this very equality carries us directly to Congress; to the system which it is our duty to rectify. The small States cannot indeed act, by virtue of this equality, but they may controul the Govt as they have done in Congs. This very measure is here prosecuted by a minority of the people of America. Is then the object of the Convention likely to be accomplished in this way? Will not our Constituents say? we sent you to form an efficient Govt and you have given us one more complex indeed, but having all the weakness of the former governt. He was anxious for uniting all the States under one Governt. He knew there were some respectable men who preferred three confederacies, united by offensive & defensive alliances. Many things may be plausibly said, some things may be justly said, in favor of such a project. He could not however concur in it himself; but he thought nothing so pernicious as bad first principles.

Mr Elseworth asked two questions, one of Mr Wilson, whether he had ever seen a good measure fail in Congs for want of a majority of States in its favor? He had himself never known such an instance: the other of Mr Madison whether a negative lodged with the majority of the States even the smallest, could be more dangerous than the qualified negative proposed to

be lodged in a single Executive Magistrate, who must be taken from some one State?

Mr. Sherman, signified that his expectation was that the Genl. Legislature would in some cases act on the *federal principle*, of requiring quotas. But he thought it ought to be empowered to carry their own plans into execution, if the States should fail to supply their respective quotas.

On the question for agreeing to Mr. Pinkney's motion for allowing N. H. 2. Mas. 4. &c—it passed in the negative,

Mass. no. Mr. King ay. Mr. Ghorum absent. Cont. no. N. J. no. Pa. ay. Del. no. Md. ay. Va. ay. N. C. no. S. C. ay. Geo. no.

Adjourned.[132]

[132] "Memorandum. "July 15, '87.

"About twelve days since the Convention appointed a Grand Comee, consisting of Gerry, Ellsworth, Yates, Paterson, Franklin, Bedford, Martin, Mason, Rutledge & Baldwin to adjust the Representation in the two Brs. of the Legislature of the U. S. They reported yt. every 40,000 Inhabs. taken agreeably to the Resolution of Cong. of ye 18 Ap. 1783, shd. send one member to the first Br. of the Legislature, yt. this Br. shd. originate exclusively Money Bills, & also originate ye appropriations of money; and that in ye Senate or upper Br. each State shd. have one vote & no more. The Representation as to the first Br. was twice recommitted altho' not to the same Committee; finally it was agreed yt Taxation of the direct sort & Representation shd. be in direct proportion with each other—that the first Br. shd. consist of 65 members, viz. N. H. 3, M. 8, R. I. 1, C. 5, N. Y. 6, N. J. 4, P. 8, D. 1, M. 6, V. 10, N. C. 5, S. C. 5, G. 3,—and that the origination of money Bills and the Appropriations of money shd. belong in the first instance to yt. Br., but yt in the Senate or 2nd Br. each State shd. have an equal Vote. In this situation of the Report it was moved by S. Car. that in the formation of the 2nd Br., instead of an equality of Votes among the States, that N. H. shd. have 2, M. 4, R. I. 1, C. 3, N. Y. 3, N. J. 2, P. 4, D. 1, M. 3, V. 5, N. C. 3, S. C. 3, G. 2 = total 36.

"On the question to agree to this apportionment, instead of the equality (Mr. Gorham being absent) Mass., Con., N. Jer., Del., N. Car., & Georg—No. Penn., Mar., Virg. & S. Car. Aye.

"This Question was taken and to my mortification by the vote of Mass. lost on the 14th July.

"(endorsed 'inequality lost by vote of Mass.')"—King's Note, King's *Life and Correspondence of Rufus King*, I., 615.

Monday, July 16. In Convention.

On the question for agreeing to the whole Report as amended & including the equality of votes in the 2d branch, it passed in the affirmative.

Mass. divided Mr Gerry, Mr Strong. ay. Mr King, Mr Ghorum no. Cont ay. N. J. ay. Pena no. Del. ay. Md ay. Va no. N. C. ay. Mr Spraight no. S. C. no. Geo. no.

The whole thus passed is in the words following, viz. "Resolved, that in the original formation of the Legislature of the U. S. the first branch thereof shall consist of sixty five members, of which number N. Hampshire shall send 3. Masts 8. Rh. I. 1. Connt 5. N. Y. 6. N. J. 4. Pena 8. Del. 1. Maryd 6. Virga 10. N. C. 5. S. C. 5. Geo. 3.—But as the present situation of the States may probably alter in the number of their inhabitants, the Legislature of the U. S. shall be authorized from time to time to apportion the number of Reps and in case any of the States shall hereafter be divided, or enlarged by addition of territory, or any two or more States united, or any new States created within the limits of the U. S. the Legislature of the U. S. shall possess authority to regulate the number of Reps in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned. namely—provided always that representation ought to be proportioned according to direct taxation; and in order to ascertain the alteration in the direct taxation, which may be required from time to time by the changes in the relative circumstances of the States—

Resolved, that a Census be taken within six years from the 1st meeting of the Legislature of the U. S., and once within the term of every 10 years afterwards of all the inhabitants of the U. S. in the manner and according to the ratio recommended by Congress in their Resolution of April 18. 1783, and that the Legislature of the U. S. shall proportion the direct taxation accordingly—

Resolved, that all bills for raising or appropriating money, and for fixing the salaries of officers of the Gov^{t} of the U. S. shall originate in the first branch of the Legislature of the U. S. and shall not be altered or amended in the 2^{d} branch: and that no money shall be drawn from the Public Treasury, but in pursuance of appropriations to be originated in the 1st branch.

Resolv^{d}, that in the 2^{d} branch of the Legislature of the U. S., each State shall have an equal vote.

The 6th Resol: in the Report from the Com^{e} of the whole House, which had been postponed in order to consider the 7 & 8th Resol^{ns}.; was now resumed. see the Resol^{n}:

The 1st member "That the Nat^{l} Legislature ought to possess the Legislative Rights vested in Cong^{s} by the Confederation" was agreed to nem. con.

The next, "And moreover to legislate in all cases to which the separate States are incompetent; or in which the harmony of the U. S. may be interrupted by the exercise of individual legislation," being read for a question.

M^{r} Butler calls for some explanation of the extent of this power; particularly of the word *incompetent*. The vagueness of the terms rendered it impossible for any precise judgment to be formed.

M^{r} Ghorum. The vagueness of the terms constitutes the propriety of them. We are now establishing general principles, to be extended hereafter into details which will be precise & explicit.

M^{r} Rutlidge, urged the objection started by M^{r} Butler and moved that the clause should be committed to the end that a specification of the powers comprised in the general terms, might be reported.

On the question for commitment, the States were equally divided

Mas. no. Con^{t} ay. N. J. no. P^{a} no. Del. no. M^{d} ay. V^{a} ay. N. C. no. S. C. ay. Geo. ay: So it was lost.

M[r] Randolph. The vote of this morning (involving an equality of suffrage in 2[d] branch) had embarrassed the business extremely. All the powers given in the Report from the Com[e] of the whole, were founded on the supposition that a Proportional representation was to prevail in both branches of the Legislature. When he came here this morning his purpose was to have offered some propositions that might if possible have united a great majority of votes, and particularly might provide ag[st] the danger suspected on the part of the smaller States, by enumerating the cases in which it might lie, and allowing an equality of votes in such cases.[133] But finding from the Preceding vote that they persist in demanding an equal vote in all cases, that they have succeeded in obtaining it, and that N. York, if present would probably be on the same side, he could not but think we were unprepared to discuss this subject further. It will probably be in vain to come to any final decision with a bare majority on either side. For these reasons he wished the Convention might adjourn, that the large States might consider the steps proper to be taken in the present solemn crisis of the business, and that the small States might also deliberate on the means of conciliation.

[133] See the paper, in the appendix, com̃unicated by M[r] R. to J. M. July 10.— Note in Madison's hand.

M[r] Patterson, thought with M[r] R. that it was high time for the Convention to adjourn that the rule of secrecy ought to be rescinded, and that our Constituents should be consulted. No conciliation could be admissible on the part of the smaller States on any other ground than that of an equality of votes in the 2[d] branch. If M[r] Randolph would reduce to form his motion for an adjournment sine die, he would second it with all his heart.

Gen[l] Pinkney wished to know of M[r] R. whether he meant an adjournment sine die, or only an adjournment for the day. If the former was meant, it differed much from his idea. He could not think of going to S. Carolina and returning again to this place. Besides it was chimerical to suppose that the States if consulted would ever accord separately, and beforehand.

M[r] Randolph, had never entertained an idea of an adjournment sine die; & was sorry that his meaning had been so readily & strangely misinterpreted. He had in view merely an adjournment till to-morrow, in order that some conciliatory experiment might if possible be devised, and that in case the smaller States should continue to hold back, the larger might then take such measures, he would not say what, as might be necessary.

M[r] Patterson seconded the adjournment till to-morrow, as an opportunity seemed to be wished by the larger States to deliberate further on conciliatory expedients.

On the question for adjourning till tomorrow, the States were equally divided,

Mas. no. Con[t] no. N. J. ay. P[a] ay. Del. no. M[d] ay. V[a] ay. N. C. ay. S. C. no. Geo. no, so it was lost.

M[r] Broome thought it his duty to declare his opinion ag[st] an adjournment sine die, as had been urged by M[r] Patterson. Such a measure he thought would be fatal. Something must be done by the Convention, tho' it should be by a bare majority.

M[r] Gerry observed that Mas[ts] was opposed to an adjournment, because they saw no new ground of compromise. But as it seemed to be the opinion of so many States that a trial sh[d] be made, the State would now concur in the adjournm[t].

M[r] Rutlidge could see no need of an adjourn[t] because he could see no chance of a compromise. The little States were fixt. They had repeatedly & solemnly declared themselves to be so. All that the large States then had to do was to decide whether they would yield or not. For his part he conceived that altho' we could not do what we thought best, in itself, we ought to do something. Had we not better keep the Gov[t] up a little longer, hoping that another Convention will supply our omissions, than abandon every thing to hazard. Our Constituents will be very little satisfied with us if we take the latter course.

M[r] Randolph & M[r] King renewed the motion to adjourn till tomorrow.

On the question. Mas. ay. Con[t] no. N. J. ay. P[a] ay. Del. no. M[d] ay. V[a] ay. N. C. ay. S. C. ay. Geo. div[d].

Adjourned

On the morning following before the hour of the Convention a number of the members from the larger States, by common agreement met for the purpose of consulting on the proper steps to be taken in consequence of the vote in favor of an equal Representation in the 2[d] branch, and the apparent inflexibility of the smaller States on that point. Several members from the latter States also attended. The time was wasted in vague conversation on the subject, without any specific proposition or agreement. It appeared indeed that the opinions of the members who disliked the equality of votes differed much as to the importance of that point, and as to the policy of risking a failure of any general act of the Convention by inflexibly opposing it. Several of them supposing that no good Governm[t] could or would be built on that foundation, and that as a division of the convention into two opinions was unavoidable; it would be better that the side comprising the principal States, and a majority of the people of America, should propose a scheme of Gov[t] to the States, than that a scheme should be proposed on the other side, would have concurred in a firm opposition to the smaller States, and in a separate recommendation, if eventually necessary. Others seemed inclined to yield to the smaller States, and to concur in such an Act however imperfect & exceptionable, as might be agreed on by the Convention as a body, tho' decided by a bare majority of States and by a minority of the people of the U. States. It is probable that the result of this consultation satisfied the smaller States that they had nothing to apprehend from a Union of the larger, in any plan whatever ag[st] the equality of votes in the 2[d] branch.

Tuesday July 17. in Convention.

Mr. Governr. Morris, moved to reconsider the whole Resolution agreed to yesterday concerning the constitution of the 2 branches of the Legislature. His object was to bring the House to a consideration in the abstract of the powers necessary to be vested in the general Government. It had been said, Let us know how the Govt. is to be modelled, and then we can determine what powers can be properly given to it. He thought the most eligible course was, first to determine on the necessary powers, and then so to modify the Governt. as that it might be justly & properly enabled to administer them. He feared if we proceeded to a consideration of the powers, whilst the vote of yesterday including an equality of the States in the 2d. branch, remained in force, a reference to it, either mental or expressed, would mix itself with the merits of every question concerning the powers.—This motion was not seconded. (It was probably approved by several members who either despaired of success, or were apprehensive that the attempt would inflame the jealousies of the smaller States.)

The 6th. Resoln. in the Report of the Come. of the Whole relating to the powers, which had been postponed in order to consider the 7 & 8th. relating to the constitution of the Natl. Legislature, was now resumed.

Mr. Sherman observed that it would be difficult to draw the line between the powers of the Genl. Legislature, and those to be left with the States; that he did not like the definition contained in the Resolution, and proposed in place of the words "individual legislation" line 4. inclusive, to insert "to make laws binding on the people of the United States in all cases which may concern the common interests of the Union; but not to interfere with the Government of the individual States in any matters of internal police which respect the Govt. of such States only, and wherein the general welfare of the U. States is not concerned."

Mr. Wilson 2ded. the amendment as better expressing the general principle.

Mr. Govr. Morris opposed it. The internal police, as it would be called & understood by the States ought to be infringed in many cases, as in the case of paper money & other tricks by which Citizens of other States may be affected.

Mr. Sherman, in explanation of his idea read an enumeration of powers, including the power of levying taxes on trade, but not the power of *direct taxation*.

Mr. Govr. Morris remarked the omission, and inferred that for the deficiencies of taxes on consumption, it must have been the meaning of Mr. Sherman, that the Genl. Govt. should recur to quotas & requisitions, which are subversive of the idea of Govt.

Mr. Sherman acknowledged that his enumeration did not include direct taxation. Some provision he supposed must be made for supplying the deficiency of other taxation, but he had not formed any.

On Question on Mr. Sherman's motion it passed in the negative

Mas. no. Cont. ay. N. J. no. Pa. no. Del. no. Md. ay. Va. no. N. C. no. S. C. no. Geo. no.

Mr. Bedford moved that the 2d member of Resolution 6. be so altered as to read, "and moreover to legislate in all cases for the general interests of the Union, and also in those to which the States are severally incompetent, or in which the harmony of the U. States may be interrupted by the exercise of individual Legislation."

Mr. Govr. Morris 2ds the motion.

Mr. Randolph. This is a formidable idea indeed. It involves the power of violating all the laws and constitutions of the States, and of intermeddling with their police. The last member of the sentence is also superfluous, being included in the first.

Mr. Bedford. It is not more extensive or formidable than the clause as it stands: *no State* being *separately* competent to legislate for the *general*

interest of the Union.

On question for agreeing to Mr. Bedford's motion it passed in the affirmative.

Mas. ay. Cont. no. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. no. N. C. ay. S. C. no. Geo. no.

On the sentence as amended, it passed in the affirmative.

Mas. ay. Cont. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. no. Geo. no.

The next. "To negative all laws passed by the several States contravening in the opinion of the Nat: Legislature the articles of Union, or any treaties subsisting under the authority of ye. Union."

Mr. Govr. Morris opposed this power as likely to be terrible to the States, and not necessary, if sufficient Legislative authority should be given to the Genl. Government.

Mr. Sherman thought it unnecessary; as the Courts of the States would not consider as valid any law contravening the Authority of the Union, and which the legislature would wish to be negatived.

Mr. L. Martin considered the power as improper & inadmissible. Shall all the laws of the States be sent up to the Genl. Legislature before they shall be permitted to operate?

Mr. Madison, considered the negative on the laws of the States as essential to the efficacy & security of the Genl. Govt. The necessity of a general Govt. proceeds from the propensity of the States to pursue their particular interests in opposition to the general interest. This propensity will continue to disturb the system, unless effectually controuled. Nothing short of a negative on their laws will controul it. They will pass laws which will accomplish their injurious objects before they can be repealed by the Genl. Legislre. or be set aside by the National Tribunals. Confidence can not be put

in the State Tribunals as guardians of the National authority and interests. In all the States these are more or less depend^{t} on the Legislatures. In Georgia they are appointed annually by the Legislature. In R. Island the Judges who refused to execute an unconstitutional law were displaced, and others substituted, by the Legislature who would be the willing instruments of the wicked & arbitrary plans of their masters. A power of negativing the improper laws of the States is at once the most mild & certain means of preserving the harmony of the system. Its utility is sufficiently displayed in the British system. Nothing could maintain the harmony & subordination of the various parts of the empire, but the prerogative by which the Crown, stifles in the birth every Act of every part tending to discord or encroachment. It is true the prerogative is sometimes misapplied thro' ignorance or a partiality to one particular part of y^{e} empire; but we have not the same reason to fear such misapplications in our System. As to the sending all laws up to the Nat^{l} Legisl: that might be rendered unnecessary by some emanation of the power into the States, so far at least as to give a temporary effect to laws of immediate necessity.

M^{r} Gov^{r} Morris was more & more opposed to the negative. The proposal of it would disgust all the States. A law that ought to be negatived will be set aside in the Judiciary departm^{t} and if that security should fail; may be repealed by a Nation^{l} law.

M^{r} Sherman. Such a power involves a wrong principle, to wit, that a law of a State contrary to the articles of the Union would if not negatived, be valid & operative.

M^{r} Pinkney urged the necessity of the Negative.

On the question for agreeing to the power of negativing laws of States &c. it passed in the negative.

Mas. ay. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. no. Geo. no.

M^{r} Luther Martin moved the following resolution "that the Legislative acts of the U. S. made by virtue & in pursuance of the articles of Union and

all Treaties made & ratified under the authority of the U. S. shall be the supreme law of the respective States, as far as those acts or treaties shall relate to the said States, or their Citizens and inhabitants—& that the Judiciaries of the several States shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding" which was agreed to nem: con:

9th Resol: "that Natl Executive consist of a single person," Agd to nem. con.

"To be chosen by the National Legisl:"

Mr. Governr Morris was pointedly agst his being so chosen. He will be the mere creature of the Legisl: if appointed & impeachable by that body. He ought to be elected by the people at large, by the freeholders of the Country. That difficulties attend this mode, he admits. But they have been found superable in N. Y. & in Cont and would he believed be found so, in the case of an Executive for the U. States. If the people should elect, they will never fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation. If the Legislature elect, it will be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment. He moved to strike out "National Legislature," & insert "citizens of the U. S."

Mr. Sherman thought that the sense of the Nation would be better expressed by the Legislature, than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own State, and the largest State will have the best chance for the appointment. If the choice be made by the Legislre a majority of voices may be made necessary to constitute an election.

Mr. Wilson. Two arguments have been urged agst an election of the Executive Magistrate by the people. 1 the example of Poland where an Election of the supreme Magistrate is attended with the most dangerous commotions. The cases he observed were totally dissimilar. The Polish nobles have resources & dependants which enable them to appear in force,

and to threaten the Republic as well as each other. In the next place the electors all assemble in one place; which would not be the case with us. The 2d arg.t is that a *majority* of the people would never concur. It might be answered that the concurrence of a majority of the people is not a necessary principle of election, nor required as such in any of the States. But allowing the objection all its force, it may be obviated by the expedient used in Mass.ts, where the Legislature by majority of voices, decide in case a majority of people do not concur in favor of one of the candidates. This would restrain the choice to a good nomination at least, and prevent in a great degree intrigue & cabal. A particular objection with him ag.st an absolute election by the Legisl.re was that the Exec: in that case would be too dependent to stand the mediator between the intrigues & sinister views of the Representatives and the general liberties & interests of the people.

M.r Pinkney did not expect this question would again have been brought forward: An Election by the people being liable to the most obvious & striking objections. They will be led by a few active & designing men. The most populous States by combining in favor of the same individual will be able to carry their points. The Nat.l Legislature being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution.

M.r Gov.r Morris. It is said that in case of an election by the people the populous States will combine & elect whom they please. Just the reverse. The people of such States cannot combine. If there be any combination it must be among their representatives in the Legislature. It is said the people will be led by a few designing men. This might happen in a small district. It can never happen throughout the continent. In the election of a Gov.r of N. York, it sometimes is the case in particular spots, that the activity & intrigues of little partizans are successful, but the general voice of the State is never influenced by such artifices. It is said the multitude will be uninformed. It is true they would be uninformed of what passed in the Legislative Conclave, if the election were to be made there; but they will not be uninformed of those great & illustrious characters which have merited their esteem & confidence. If the Executive be chosen by the Nat.l Legislature, he will not be independent on it; and if not independent, usurpation & tyranny on the part of the Legislature will be the consequence.

This was the case in England in the last Century. It has been the case in Holland, where their Senates have engrossed all power. It has been the case every where. He was surprised that an election by the people at large should ever have been likened to the polish election of the first Magistrate. An election by the Legislature will bear a real likeness to the election by the Diet of Poland. The great must be the electors in both cases, and the corruption & cabal w^{ch} are known to characterize the one would soon find their way into the other. Appointments made by numerous bodies, are always worse than those made by single responsible individuals, or by the people at large.

Col. Mason. It is curious to remark the different language held at different times. At one moment we are told that the Legislature is entitled to thorough confidence, and to indefinite power. At another, that it will be governed by intrigue & corruption, and cannot be trusted at all. But not to dwell on this inconsistency he would observe that a Government which is to last ought at least to be practicable. Would this be the case if the proposed election should be left to the people at large. He conceived it would be as unnatural to refer the choice of a proper character for Chief Magistrate to the people, as it would, to refer a trial of colours to a blind man. The extent of the Country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the Candidates.

M^{r} Wilson, could not see the contrariety stated (by Col. Mason.) The Legisl^{re} might deserve confidence in some respects, and distrust in others. In acts which were to affect them & y^{r} Constituents precisely alike confidence was due. In others jealousy was warranted. The appointment to great offices, where the Legisl^{re} might feel many motives, not common to the public confidence was surely misplaced. This branch of business it was notorious, was the most corruptly managed of any that had been committed to legislative bodies.

M^{r} Williamson, conceived that there was the same difference between an election in this case, by the people and by the legislature, as between an app^{t} by lot, and by choice. There are at present distinguished characters, who are known perhaps to almost every man. This will not always be the case. The people will be sure to vote for some man in their own State, and

the largest State will be sure to succeed. This will not be Virg^{a} however. Her slaves will have no suffrage. As the Salary of the Executive will be fixed, and he will not be eligible a 2^{d} time, there will not be such a dependence on the Legislature as has been imagined.

Question on an election by the people instead of the Legislature, which passed in the negative.

Mas. no. Con^{t} no. N. J. no. P^{a} ay. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

M^{r} L. Martin moved that the Executive be chosen by Electors appointed by the several Legislatures of the individual States.

M^{r} Broome 2^{ds}. On the Question, it passed in the negative.

Mas. no. Con^{t} no. N. J. no. P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. no. S. C. no. Geo. no.

On the question on the words, "to be chosen by the Nation^{l} Legislature" it passed unanimously in the affirmative

"For the term of seven years"—postponed nem. con. on motion of M^{r} Houston and Gov. Morris

"to carry into execution the nation^{l} laws"—agreed to nem. con.

"to appoint to offices in cases not otherwise provided for,"—agreed to nem. con.

"to be ineligible a second time"—M^{r} Houston moved to strike out this clause.

M^{r} Sherman 2^{ds} the motion.

M^{r} Gov^{r} Morris espoused the motion. The ineligibility proposed by the clause as it stood tended to destroy the great motive to good behavior, the

hope of being rewarded by a re-appointment. It was saying to him, make hay while the sun shines.

On the question for striking out, as moved by Mr. Houston, it passed in the affirmative

Mas. ay. Cont. ay. N. J. ay. Pa. ay. Del. no. Md. ay. Va. no. N. C. no. S. C. no. Geo. ay.

"For the term of 7 years," resumed.

Mr. Broom was for a shorter term since the Executive Magistrate was now to be re-eligible. Had he remained ineligible a 2d time, he should have preferred a longer term.

Docr. McClurg moved[134] to strike out 7 years, and insert "during good behavior." By striking out the words declaring him not re-eligible, he was put into a situation that would keep him dependent forever on the Legislature; and he conceived the independence of the Executive to be equally essential with that of the Judiciary department.

[134] The probable object of this motion was merely to enforce the argument against the re-eligibility of the Executive magistrate by holding out a tenure during good behaviour as the alternate for keeping him independent of the legislature.—Note in Madison's handwriting.

Mr. Govr. Morris 2ded the motion. He expressed great pleasure in hearing it. This was the way to get a good Government. His fear that so valuable an ingredient would not be attained had led him to take the part he had done. He was indifferent how the Executive should be chosen, provided he held his place by this tenure.

Mr. Broome highly approved the motion. It obviated all his difficulties

Mr. Sherman considered such a tenure as by no means safe or admissible. As the Executive Magistrate is now re-eligible, he will be on good behavior as far as will be necessary. If he behaves well he will be continued; if otherwise, displaced, on a succeeding election.

M[r] Madison.[135] If it be essential to the preservation of liberty that the Legisl: Execut: & Judiciary powers be separate, it is essential to a maintenance of the separation, that they should be independent of each other. The Executive could not be independent of the Legislure, if dependent on the pleasure of that branch for a re-appointment. Why was it determined that the Judges should not hold their places by such a tenure? Because they might be tempted to cultivate the Legislature, by an undue complaisance, and thus render the Legislature the virtual expositor, as well as the maker of the laws. In like manner a dependence of the Executive on the Legislature, would render it the Executor as well as the maker of laws; & then according to the observation of Montesquieu, tyrannical laws may be made that they may be executed in a tyrannical manner. There was an analogy between the Executive & Judiciary departments in several respects. The latter executed the laws in certain cases as the former did in others. The former expounded & applied them for certain purposes, as the latter did for others. The difference between them seemed to consist chiefly in two circumstances—1. the collective interest & security were much more in the power belonging to the Executive than to the Judiciary department. 2. in the administration of the former much greater latitude is left to opinion and discretion than in the administration of the latter. But if the 2[d] consideration proves that it will be more difficult to establish a rule sufficiently precise for trying the Execut: than the Judges, & forms an objection to the same tenure of office, both considerations prove that it might be more dangerous to suffer a Union between the Executive & Legisl: powers, than between the Judiciary & Legislative powers. He conceived it to be absolutely necessary to a well constituted Republic that the two first sh[d] be kept distinct & independent of each other. Whether the plan proposed by the motion was a proper one was another question, as it depended on the practicability of instituting a tribunal for impeachm[ts] as certain & as adequate in the one case as in the other. On the other hand, respect for the mover entitled his proposition to a fair hearing & discussion, until a less objectionable expedient should be applied for guarding ag[st] a dangerous union of the Legislative & Executive departments.

[135] The view here taken of the subject was meant to aid in parrying the animadversions likely to fall on the motion of D[r] M[c]Clurg, for whom J. M. had

a particular regard. The Doc^{r} though possessing talents of the highest order was modest & unaccustomed to exert them in public debate.—Note in Madison's handwriting.

Col. Mason. This motion was made some time ago & negatived by a very large majority. He trusted that it w^{d} be again negatived. It w^{d} be impossible to define the misbehaviour in such a manner as to subject it to a proper trial; and perhaps still more impossible to compel so high an offender holding his office by such a tenure to submit to a trial. He considered an Executive during good behavior as a softer name only for an Executive for life. And that the next would be an easy step to hereditary Monarchy. If the motion should finally succeed, he might himself live to see such a Revolution. If he did not it was probable his children or grand children would. He trusted there were few men in that House who wished for it. No state he was sure had so far revolted from Republican principles as to have the least bias in its favor.

M^{r} Madison, was not apprehensive of being thought to favor any step towards monarchy. The real object with him was to prevent its introduction. Experience had proved a tendency in our governments to throw all power into the Legislative vortex. The Executives of the States are in general little more than Cyphers; the legislatures omnipotent. If no effectual check be devised for restraining the instability & encroachments of the latter, a revolution of some kind or other would be inevitable. The preservation of Republican Gov^{t} therefore required some expedient for the purpose, but required evidently at the same time that in devising it, the genuine principles of that form should be kept in view.

M^{r} Gov^{r} Morris was as little a friend to monarchy as any gentleman. He concurred in the opinion that the way to keep out monarchical Gov^{t} was to establish such a Repub. Gov^{t} as w^{d} make the people happy and prevent a desire of change.

Doc^{r} McClurg was not so much afraid of the shadow of monarchy as to be unwilling to approach it; nor so wedded to Republican Gov^{t} as not to be sensible of the tyrannies that had been & may be exercised under that form. It was an essential object with him to make the Executive independent of

the Legislature; and the only mode left for effecting it, after the vote destroying his ineligibility a second time, was to appoint him during good behavior.

On the question for inserting "during good behavior" in place of '7 years (with a re-eligibility)' it passed in the negative,

Mas. no. C^{t} no. N. J. ay. P^{a} ay. Del. ay. M^{d} no. V^{a} ay. N. C. no. S. C. no. Geo. no.[136]

[136] (This vote is not considered as any certain index of opinion, as a number in the affirmative probably had it chiefly in view to alarm those attached to a dependence of the Executive on the Legislature, & thereby facilitate some final arrangement of a contrary tendency. The avowed friends of an Executive, during good behaviour were not more than three or four, nor is it certain they would finally have adhered to such a tenure, an independence of the three great departments of each other, as far as possible, and the responsibility of all to the will of the community seemed to be generally admitted as the true basis of a well constructed government.)—Note in Madison's hand, except from the words "nor is it certain" etc., which is in the hand of his wife's brother, John C. Payne.

On the motion "to strike out seven years" it passed in the negative,

Mas. ay. C^{t} no. N. J. no. P^{a} ay. Del. ay. M^{d} no. V^{a} no. N. C. ay. S. C. no. Geo. no.[137]

[137] (There was no debate on this motion. The apparent object of many in the affirmative was to secure the re-eligibility by shortening the term, and of many in the negative to embarrass the plan of referring the appointment and dependence of the Executive to the Legislature.)—Note in Madison's hand.

It was now unanimously agreed that the vote which had struck out the words "to be ineligible a second time" should be reconsidered to-morrow.

Adj^{d}.

Wednesday July 18. in Convention.

On motion of Mr. L. Martin to fix tomorrow for reconsidering the vote concerning "eligibility of the Exective a 2d time" it passed in the affirmative.

Mas. ay. Cont. ay. N. J. absent. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. absent.

The residue of the Resol. 9. concerning the Executive was postpd till tomorrow.

Resol. 10. that Executive shl. have a right to negative legislative acts not afterwards passed by 2/3 of each branch, agreed to nem. con.

Resol. 11. "that a Natl. Judiciary shall be estabd to consist of one supreme tribunal", agd to nem. con.

"The judges of which to be appointd by the 2d branch of the Natl. Legislature,"

Mr. Ghorum, wd prefer an appointment by the 2d branch to an appointmt by the whole Legislature; but he thought even that branch too numerous, and too little personally responsible, to ensure a good choice. He suggested that the Judges be appointed by the Executive with the advice & consent of the 2d branch, in the mode prescribed by the constitution of Masts. This mode had been long practised in that country, & was found to answer perfectly well.

Mr. Wilson, still wd prefer an appointmt by the Executive; but if that could not be attained, wd prefer in the next place, the mode suggested by Mr. Ghorum. He thought it his duty however to move in the first instance "that the Judges be appointed by the Executive." Mr. Govr. Morris 2ded the motion.

Mr. L. Martin was strenuous for an appt by the 2d branch. Being taken from all the States it wd be best informed of characters & most capable of making a fit choice.

Mr. Sherman concurred in the observations of Mr. Martin, adding that the Judges ought to be diffused, which would be more likely to be attended to by the 2d branch, than by the Executive.

Mr. Mason. The mode of appointing the Judges may depend in some degree on the mode of trying impeachments of the Executive. If the Judges were to form a tribunal for that purpose, they surely ought not to be appointed by the Executive. There were insuperable objections besides agst referring the appointment to the Executive. He mentioned as one, that as the Seat of Govt must be in some one State, and as the Executive would remain in office for a considerable time, for 4. 5. or 6 years at least, he would insensibly form local & personal attachments within the particular State that would deprive equal merit elsewhere, of an equal chance of promotion.

Mr. Ghorum. As the Executive will be responsible in point of character at least, for a judicious and faithful discharge of his trust, he will be careful to look through all the States for proper characters. The Senators will be as likely to form their attachments at the seat of Govt where they reside, as the Executive. If they cannot get the man of the particular State to which they may respectively belong, they will be indifferent to the rest. Public bodies feel no personal responsibility, and give full play to intrigue & cabal. Rh. Island is a full illustration of the insensibility to character produced by a participation of numbers in dishonorable measures, and of the length to which a Public body may carry wickedness & cabal.

Mr. Govr Morris supposed it would be improper for an impeachmt of the Executive to be tried before the Judges. The latter would in such case be drawn into intrigues with the Legislature and an impartial trial would be frustrated. As they wd be much about the Seat of Govt they might even be previously consulted & arrangements might be made for a prosecution of the Executive. He thought therefore that no argument could be drawn from the probability of such a plan of impeachments agst the motion before the House.

Mr. Madison suggested that the Judges might be appointed by the Executive, with the concurrence of 1/3 at least, of the 2d branch. This would unite the advantage of responsibility in the Executive with the security afforded in the 2d branch agst any incautious or corrupt nomination by the Executive.

Mr. Sherman, was clearly for an election by the Senate. It would be composed of men nearly equal to the Executive, and would of course have on the whole more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them, than with the Executive Magistrate. For these reasons he thought there would be a better security for a proper choice in the Senate than in the Executive.

Mr. Randolph. It is true that when the appt of the Judges was vested in the 2d branch an equality of votes had not been given to it. Yet he had rather leave the appointmt there than give it to the Executive. He thought the advantage of personal responsibility might be gained in the Senate by requiring the respective votes of the members to be entered on the Journal. He thought too that the hope of receiving appts would be more diffusive if they depended on the Senate, the members of which wd be diffusively known, than if they depended on a single man who could not be personally known to a very great extent; and consequently that opposition to the System, would be so far weakened.

Mr. Bedford thought there were solid reasons agst leaving the appointment to the Executive. He must trust more to information than the Senate. It would put it in his power to gain over the larger States, by gratifying them with a preference of their Citizens. The responsibility of the Executive so much talked of was chimerical. He could not be punished for mistakes.

Mr. Ghorum remarked that the Senate could have no better information than the Executive. They must like him, trust to information from the members belonging to the particular State where the candidate resided. The Executive would certainly be more answerable for a good appointment, as the whole blame of a bad one would fall on him alone. He did not mean that

he would be answerable under any other penalty than that of public censure, which with honorable minds was a sufficient one.

On the question for referring the appointment of the Judges to the Executive, instead of the 2d branch

Mas. ay. Cont no. Pa ay. Del. no. Md no. Va no. N. C. no. S. C. no. Geo. absent.

Mr Ghorum moved "that the Judges be nominated and appointed by the Executive, by & with the advice & consent of the 2d branch & every such nomination shall be made at least —— days prior to such appointment." This mode he said had been ratified by the experience of a 140 years in Massachusts. If the appt should be left to either branch of the Legislature, it will be a mere piece of jobbing.

Mr Govr Morris 2ded & supported the motion.

Mr Sherman thought it less objectionable than an absolute appointment by the Executive; but disliked it, as too much fettering the Senate.

Question on Mr Ghorum's motion

Mas. ay. Cont no. Pa ay. Del. no. Md ay. Va ay. N. C. no. S. C. no. Geo. absent.

Mr Madison moved that the Judges should be nominated by the Executive & such nomination should become an appointment if not disagreed to within —— days by 2/3 of the 2d branch.

Mr Govr Morris 2ded the motion. By coñon consent the consideration of it was postponed till tomorrow.

"To hold their offices during good behavior" & "to receive fixed salaries" agreed to nem: con:.

"In which (salaries of Judges) no increase or diminution shall be made so as to affect the persons at the time in office."

M^r^ Gov^r^ Morris moved to strike out "or increase." He thought the Legislature ought to be at liberty to increase salaries as circumstances might require, and that this would not create any improper dependence in the Judges.

Doc^r^ Franklin was in favor of the motion. Money may not only become plentier, but the business of the department may increase as the Country becomes more populous.

M^r^ Madison. The dependence will be less if the *increase alone* should be permitted, but it will be improper even so far to permit a dependence. Whenever an increase is wished by the Judges, or may be in agitation in the legislature, an undue complaisance in the former may be felt towards the latter. If at such a crisis there should be in Court suits to which leading members of the Legislature may be parties, the Judges will be in a situation which ought not to be suffered, if it can be prevented. The variations in the value of money, may be guarded ag^st^ by taking for a standard wheat or some other thing of permanent value. The increase of business will be provided for by an increase of the number who are to do it. An increase of salaries may easily be so contrived as not to affect persons in office.

M^r^ Gov^r^ Morris. The value of money may not only alter but the State of Society may alter. In this event the same quantity of wheat, the same value would not be the same compensation. The Amount of salaries must always be regulated by the manners & the style of living in a Country. The increase of business can not be provided for in the supreme tribunal in the way that has been mentioned. All the business of a certain description whether more or less must be done in that single tribunal. Additional labor alone in the Judges can provide for additional business. Additional compensation therefore ought not to be prohibited.

On the question for striking out "or increase"

Mas. ay. Con^t^ ay. P^a^ ay. Del. ay. M^d^ ay. V^a^ no. N. C. no. S. C. ay. Geo. absent

The whole clause as amended was then agreed to nem: con:

12. Resol: "that Nat^{l} Legislature be empowered to appoint inferior tribunals"

M^{r} Butler could see no necessity for such tribunals. The State Tribunals might do the business.

M^{r} L. Martin concurred. They will create jealousies & oppositions in the State tribunals, with the jurisdiction of which they will interfere.

M^{r} Ghorum. There are in the States already federal Courts with jurisdiction for trial of piracies &c. committed on the Seas. No complaints have been made by the States or the Courts of the States. Inferior tribunals are essential to render the authority of the Nat^{l} Legislature effectual.

M^{r} Randolph observed that the Courts of the States can not be trusted with the administration of the National laws. The objects of jurisdiction are such as will often place the General & local policy at variance.

M^{r} Gov^{r} Morris urged also the necessity of such a provision.

M^{r} Sherman was willing to give the power to the Legislature but wished them to make use of the State Tribunals whenever it could be done with safety to the general interest.

Col. Mason thought many circumstances might arise not now to be foreseen, which might render such a power absolutely necessary.

On question for agreeing to 12. Resol: empowering the National Legislature to appoint "inferior tribunals," Ag^{d} to nem. con.

"Impeachments of national officers," were struck out on motion for the purpose.

13. Resol: "The jurisdiction of the Nat^{l} Judiciary." Several criticisms having been made on the definition; it was proposed by M^{r} Madison so to alter it as to read thus—"that the jurisdiction shall extend to all cases arising under the Nat^{l} laws; And to such other questions as may involve the Nat^{l} peace & harmony," which was agreed to, nem. con.

Resol. 14. providing for the admission of new States agreed to, nem. con.

Resol. 15. that provision ought to be made for the continuance of Congs &c. & for the completion of their engagements."

Mr. Govr Morris thought the assumption of their engagements might as well be omitted; and that Congs ought not to be continued till all the States should adopt the reform; since it may become expedient to give effect to it whenever a certain number of States shall adopt it.

Mr. Madison the clause can mean nothing more than that provision ought to be made for preventing an interregnum; which must exist in the interval between the adoption of the New Govt and the commencement of its operation, if the old Govt should cease on the first of these events.

Mr. Wilson did not entirely approve of the manner in which the clause relating to the engagements of Congs was expressed; but he thought some provision on the subject would be proper in order to prevent any suspicion that the obligations of the Confederacy might be dissolved along with the Governt under which they were contracted.

On the question on the 1st part—relating to the continuance of Congs.

Mas. no. Cont no. Pa no. Del. no. Md no. Va ay. N. C. ay. S. C.[138] ay. Geo. no.

[138] In the printed Journal, S. Carolina—no. Note in Madison'shand.

The 2d part as to completion of their engagements, disagd to, nem. con.

Resol. 16. "That a Republican Constitution & its existing laws ought to be guaranteed to each State by the U. States."

Mr. Govr. Morris, thought the Resol: very objectionable. He should be very unwilling that such laws as exist in R. Island should be guaranteed.

Mr. Wilson. The object is merely to secure the States agst dangerous commotions, insurrections and rebellions.

Col. Mason. If the Genl. Govt should have no right to suppress rebellions agst particular States, it will be in a bad situation indeed. As Rebellions agst itself originate in & agst individual States, it must remain a passive Spectator of its own subversion.

Mr. Randolph. The Resoln has 2. objects. 1. to secure a Republican Government. 2. to suppress domestic commotions. He urged the necessity of both these provisions.

Mr. Madison moved to substitute "that the Constitutional authority of the States shall be guaranteed to them respectively agst domestic as well as foreign violence."

Docr McClurg seconded the motion.

Mr. Houston was afraid of perpetuating the existing Constitutions of the States. That of Georgia was a very bad one, and he hoped would be revised & amended. It may also be difficult for the Genl. Govt to decide between contending parties each of which claim the sanction of the Constitution.

Mr. L. Martin was for leaving the States to suppress Rebellions themselves.

Mr. Ghorum thought it strange that a Rebellion should be known to exist in the Empire, and the Genl. Govt. shd. be restrained from interposing to subdue it. At this rate an enterprising Citizen might erect the standard of Monarchy in a particular State, might gather together partizans from all quarters, might extend his views from State to State, and threaten to establish a tyranny over the whole & the Genl. Govt. be compelled to remain an inactive witness of its own destruction. With regard to different parties in a State; as long as they confine their disputes to words, they will be harmless to the Genl. Govt. & to each other. If they appeal to the sword, it will then be necessary for the Genl. Govt., however difficult it may be to decide on the merits of their contest, to interpose & put an end to it.

Mr. Carrol. Some such provision is essential. Every State ought to wish for it. It has been doubted whether it is a casus federis at the present. And no room ought to be left for such a doubt hereafter.

Mr. Randolph moved to add as an amendt. to the motion; "and that no State be at liberty to form any other than a Republican Govt." Mr. Madison seconded the motion.

Mr. Rutlidge thought it unnecessary to insert any guarantee. No doubt could be entertained but that Congs. had the authority if they had the means to co-operate with any State in subduing a rebellion. It was & would be involved in the nature of the thing.

Mr. Wilson moved as a better expression of the idea, "that a Republican form of Governmt. shall be guaranteed to each State & that each State shall be protected agst. foreign & domestic violence.

This seeming to be well received, Mr. Madison & Mr. Randolph withdrew their propositions & on the Question for agreeing to Mr. Wilson's motion, it passed nem. con.

Adjd.

END OF VOL. 1.

Transcriber Notes:

The illustrations have been moved so that they do not break up paragraphs and so that they are next to the text they illustrate. Thus the page number of the illustration might not match the page number in the List of Fac-Similes, and the order of illustrations may not be the same in the List of Fac-Similes and in the book.

This document was filled with errors and inconsistencies in punctuations and hyphenation. For example, usually the word re-eligible is hyphenated, but sometimes it is not; sometimes; reinstated is hyphenated but sometimes it is not; and usually the comma is used as a thousand mark, but sometimes a period is used for that purpose. Also, the abbreviations were not uniform (e.g., Mas. v. Mass.), which were only corrected when it was clear which abbreviation was considered correct at the time printed. Another example is the abbreviation for Resolution, which was sometimes Resol:n, sometimes Resoln, and sometimes Resol.n. Sometimes "nem: con." was used, and sometimes "nem. con." was used. The only time errors were corrected was when it was very clear that an error was made, and it was clear how the error should be corrected, and those corrections are listed below. One exception is the case where a period is missing at the end of a sentence, which happened so often that those corrections were made but were not listed below.

Similarly, since the English language has changed so much in the past two hundred years, variations in spelling were only corrected was when it was very clear that an error was made, and it was clear how the error should be corrected. Those corrections are listed below.

The Contents of Volume I. page incorrectly lists the Chronology as starting on page xix, where it starts on page xv.

In Footnote 25, two instances of "thier" was replaced with "their".

On page 23, a comma was added after "Massachusetts".

On page 23, a comma was added after "New York".

On page 39, a comma was added after "Savannah Georgian".

On page 42, the semicolon after "for general propositions" was replaced with a period.

On page 49, a quotation mark was added after "be instituted.".

On page 67, "tranquility" was replaced with "tranquillity".

On page 80, "is to to be" was replaced with "is to be".

On page 85, a period was added after "2".

On page 85, a period was added after "4".

On page 87, a comma was added after "the landed".

On page 104, "that" was replaced with "than".

On page 105, "M^{r} Bedford In" was replaced with "M^{r} Bedford, in".

On page 109, "M^{r} Randolph, urged" was replaced with "M^{r} Randolph urged".

On page 117, "against the 43." was replaced with "against the 43,".

On page 119, "it was formerly practised" was replaced with "It was formerly practised".

On page 119, "Wilsons" was replaced with "Wilson's".

On page 128, a closing quotation mark was placed after "7 years."

On page 143, a period was added after "2".

On page 159, "unamimous" was replaced with "unanimous".

On page 162, the quotation mark was removed before "The supreme Legislative power".

In Footnote 89, "conpensation" was replaced with "compensation".

In Footnote 89, "misdemesnor" was replaced with "misdemeanor".

In Footnote 89, "Where shall be" was replaced with "There shall be".

In Footnote 89, "§[2]" was replaced with "§ 2.".

On page 164, "Comittee" was replaced with "Committee".

On page 180, "tranquility" was replaced with "tranquillity".

On page 184, "necessaryly" was replaced with "necessarily".

In Footnote 95, "posseses" was replaced with "possesses".

On page 211, "Wiliamson" was replaced with "Williamson".

On page 217, in two instances, "Masst^{s}" was replaced with "Mass^{ts}".

On page 220, a comma was deleted after "M^{r} Sherman".

On page 233, a period was placed after "1".

On page 236, a quotation mark was placed after "behaviour".

On page 256, a comma was placed after "Antient Greece".

On page 264, a semicolon was replaced with a period.

On page 271, "Comittee" was replaced with "Committee".

On page 274, "prepondenancy" was replaced with "preponderancy".

On page 285, "Elsewth" was replaced with "Elseworth".

On page 285, "Contstitution" was replaced with "Constitution".

On page 286, "honorabl" was replaced with "honorable".

On page 292, "occcasion" was replaced with "occasion".

On page 293, "N J." was replaced with "N. J.".

On page 322, "Teusday" was replaced with "Tuesday".

On page 322, "Hamshire" was replaced with "Hampshire".

On page 323, "Hamshire" was replaced with "Hampshire".

On page 323, "inhabts" was replaced with "inhab^{ts}".

On page 323, "brethern" was replaced with "brethren".

On page 330, "brethern" was replaced with "brethren".

On page 336, "Mississpi" was replaced with "Mississippi".

On page 340, "Mard" was replaced with "M^{d}".

On page 340, "S." was replaced with "S. C.".

On page 348, "Hamshire" was replaced with "Hampshire".

On page 356, "weekest" was replaced with "weakest".

On page 365, "orginal" was replaced with "original".

On page 372, the quotation mark was removed before "or in which the harmony".

Throughout the document, there are instances of missing quotation marks, but it is unclear where quotation marks should be added. In those cases, the quotation marks were left as-is.

Throughout the document, "Maddison" was replaced with "Madison", and "Sharman" was replaced with "Sherman".

Although the document refers more often to a Mr. Patterson, instead of Mr. Paterson, some external sources indicate that the delegate's name was Mr. Paterson. Both spellings were retained as-is.

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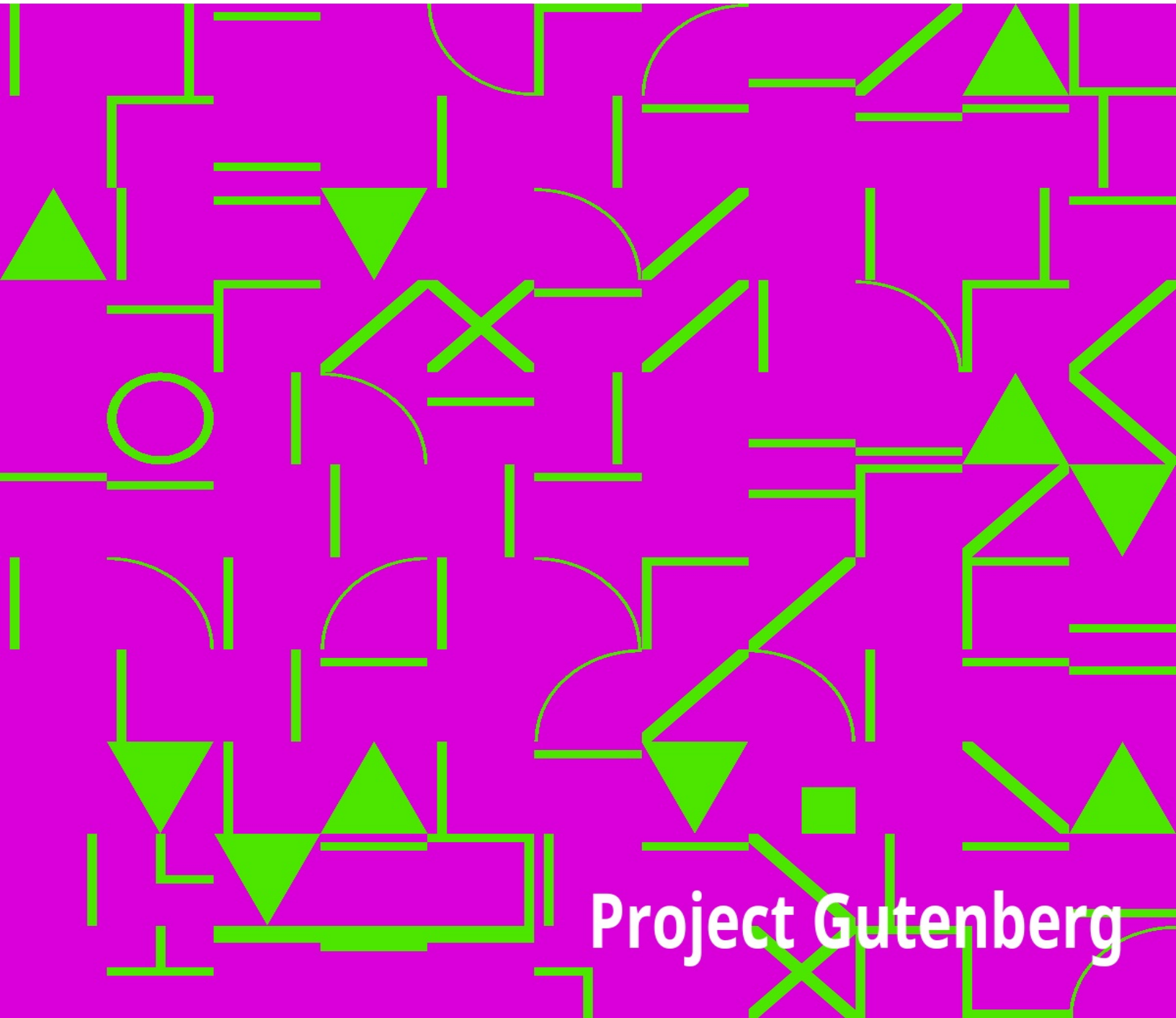
The Journal of the Debates in the Convention which Framed the Constitution of the United States, May-September 1787.

James Madison et al.



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CHRONOLOGY OF JAMES MADISON.

1787.

1787

July 19. Advocates election of the Executive by the people.

July 20. Speaks in favor of making the Executive impeachable.

July 21. Seconds proposition to include the Judiciary with the Executive in power to revise laws.

Moves that judges be appointed by the Executive with concurrence of two-thirds of Senate.

July 25. Shows the difficulty of devising satisfactory mode of selecting Executive.

August 7. Advocates liberal suffrage.

August 8. Moves that basis of representation in House of Representatives be one to not more than 40,000 inhabitants.

Opposes proposition that money bills originate only in House of Representatives.

August 9. Opposes incorporation in constitution of provision against persons of foreign birth holding office.

August 10. Moves that legislature have power to compel attendance of members.

August 11. Moves that Congress publish its journals, except such parts of Senate proceedings as may be ordered kept secret.

Advocates a centrally located capital.

August 13. Seconds motion in favor of liberal treatment of foreigners.

Speaks in favor of participation of Senate in making appropriations.

August 15. Moves that all bills be passed upon by the Executive and Judiciary before becoming laws.

August 16. Advocates national power to tax exports.

August 17. Moves that legislature have power to declare war.

August 18. Submits propositions for national power over public lands, to form governments for new States, over Indian affairs, over seat of government, to grant charters of incorporation, copyrights, to establish a university, grant patents, acquire forts, magazines, etc.

Speaks in favor of national control of militia.

August 22. Appointed on committee to consider navigation acts.

Moves that States have power to appoint militia officers under rank of general officers.

Moves to commit question of negative of State laws.

Moves to include the Executive in treaty-making power.

August 25. Declares it is wrong to admit the idea of property in men in constitution.

August 27. Suggests that in case of death of President his council may act.

Moves form of oath for President.

Moves that judges' salaries be fixed.

Expresses doubt whether Judiciary should have power over cases arising under constitution.

August 28. Moves that States be forbidden to lay embargoes, export and import duties.

August 29. Speaks in favor of navigation acts.

August 31. Moves that ratification of constitution be by a majority of States and people.

Advocates ratification by State conventions.

Appointed on committee to consider parts of constitution and propositions not yet acted upon.

Sept 3. Thinks eventual election of President by legislature should be made difficult.

Sept 7. Moves that Senate have power to make treaties of peace without President.

Sept 8. Moves that quorum of Senate be two-thirds of all the members.

Seconds motion to increase representation.

Sept 14. Suggests that legislature should have power to grant charters of incorporation.

Sept 17. Signs constitution.

JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1787.

Thursday July 19. in Convention.

On reconsideration of the vote rendering the Executive re-eligible a 2d time, Mr. Martin moved to re-instate the words, "to be ineligible a 2d time."

Mr. Governeur Morris. It is necessary to take into one view all that relates to the establishment of the Executive; on the due formation of which must depend the efficacy & utility of the Union among the present and future States. It has been a maxim in Political Science that Republican Government is not adapted to a large extent of Country, because the energy of the Executive Magistracy can not reach the extreme parts of it. Our Country is an extensive one. We must either then renounce the blessings of the Union, or provide an Executive with sufficient vigor to pervade every part of it. This subject was of so much importance that he hoped to be indulged in an extensive view of it. One great object of the Executive is to controul the Legislature. The Legislature will continually seek to aggrandize & perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose. It is necessary then that the Executive Magistrate should be the guardian of the people, even of the lower classes, agst Legislative tyranny, against the Great & the wealthy who in the course of things will necessarily compose the Legislative body. Wealth tends to corrupt the mind to nourish its love of power, and to stimulate it to oppression. History proves this to be the spirit of the opulent. The check provided in the 2d branch was not meant as a check on Legislative usurpations of power, but on the abuse of lawful powers, on the propensity in the 1st branch to legislate too much to run into projects of paper money & similar expedients. It is no check on Legislative tyranny. On the contrary it may favor it, and if the 1st branch can be seduced may find the means of success. The Executive therefore ought to be so constituted as to be the great protector of the Mass of the people.–It is the duty of the Executive to appoint the officers & to command the forces of the Republic: to appoint 1. ministerial officers for the administration of public affairs. 2. officers for the dispensation of Justice. Who will be the best Judges whether these appointments be well made? The people at large,

who will know, will see, will feel the effects of them. Again who can judge so well of the discharge of military duties for the protection & security of the people, as the people themselves who are to be protected & secured? He finds too that the Executive is not to be re-eligible. What effect will this have? 1. it will destroy the great incitement to merit public esteem by taking away the hope of being rewarded with a reappointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble & illustrious actions. Shut the Civil road to Glory & he may be compelled to seek it by the sword. 2. It will tempt him to make the most of the short space of time allotted him, to accumulate wealth and provide for his friends. 3. It will produce violations of the very constitution it is meant to secure. In moments of pressing danger the tried abilities and established character of a favorite magistrate will prevail over respect for the forms of the Constitution. The Executive is also to be impeachable. This is a dangerous part of the plan. It will hold him in such dependence that he will be no check on the Legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the Legislature. These then are the faults of the Executive establishment as now proposed. Can no better establish^{t} be devised? If he is to be the Guardian of the people let him be appointed by the people? If he is to be a check on the Legislature let him not be impeachable. Let him be of short duration, that he may with propriety be re-eligible. It has been said that the candidates for this office will not be known to the people. If they be known to the Legislature, they must have such a notoriety and eminence of Character, that they cannot possibly be unknown to the people at large. It cannot be possible that a man shall have sufficiently distinguished himself to merit this high trust without having his character proclaimed by fame throughout the Empire. As to the danger from an Unimpeachable magistrate he could not regard it as formidable. There must be certain great Officers of State; a minister of finance, of war, of foreign affairs &c. These he presumes will exercise their functions in subordination to the Executive, and will be amenable by impeachment to the Public Justice. Without these ministers the Executive can do nothing of consequence. He suggested a biennial election of the Executive at the time of electing the 1st branch, and the Executive to hold over, so as to prevent any interregnum in the administration. An election by the people at large throughout so great an extent of country could not be

influenced by those little combinations and those momentary lies, which often decide popular elections within a narrow sphere. It will probably, be objected that the election will be influenced by the members of the Legislature; particularly of the 1st branch, and that it will be nearly the same thing with an election by the Legislature itself. It could not be denied that such an influence would exist. But it might be answered that as the Legislature or the candidates for it would be divided, the enmity of one part would counteract the friendship of another; that if the administration of the Executive were good, it would be unpopular to oppose his re-election, if bad it ought to be opposed & a reappointmt prevented; and lastly that in every view this indirect dependence on the favor of the Legislature could not be so mischievous as a direct dependence for his appointment. He saw no alternative for making the Executive independent of the Legislature but either to give him his office for life, or make him eligible by the people. Again, it might be objected that two years would be too short a duration. But he believes that as long as he should behave himself well, he would be continued in his place. The extent of the Country would secure his re-election agst the factions & discontents of particular States. It deserved consideration also that such an ingredient in the plan would render it extremely palatable to the people. These were the general ideas which occurred to him on the subject, and which led him to wish & move that the whole constitution of the Executive might undergo reconsideration.

Mr. Randolph urged the motion of Mr. L. Martin for restoring the words making the Executive ineligible a 2d time. If he ought to be independent, he should not be left under a temptation to court a re-appointment. If he should be re-appointable by the Legislature, he will be no check on it. His revisionary power will be of no avail. He had always thought & contended as he still did that the danger apprehended by the little States was chimerical; but those who thought otherwise ought to be peculiarly anxious for the motion. If the Executive be appointed, as has been determined, by the Legislature, he will probably be appointed either by joint ballot of both houses, or be nominated by the 1st and appointed by the 2d branch. In either case the large States will preponderate. If he is to court the same influence for his re-appointment, will he not make his revisionary power, and all the other functions of his administration subservient to the views of the large States. Besides, is there not great reason to apprehend that in case he should

be re-eligible, a false complaisance in the Legislature might lead them to continue an unfit man in office in preference to a fit one. It has been said that a constitutional bar to re-appointment will inspire unconstitutional endeavours to perpetuate himself. It may be answered that his endeavours can have no effect unless the people be corrupt to such a degree as to render all precautions hopeless; to which may be added that this argument supposes him to be more powerful & dangerous, than other arguments which have been used, admit, and consequently calls for stronger fetters on his authority. He thought an election by the Legislature with an incapacity to be elected a second time would be more acceptable to the people than the plan suggested by M^{r} Gov^{r} Morris.

M^{r} King did not like the ineligibility. He thought there was great force in the remark of M^{r} Sherman, that he who has proved himself most fit for an Office, ought not to be excluded by the constitution from holding it. He would therefore prefer any other reasonable plan that could be substituted. He was much disposed to think that in such cases the people at large would chuse wisely. There was indeed some difficulty arising from the improbability of a general concurrence of the people in favor of any one man. On the whole he was of opinion that an appointment by electors chosen by the people for the purpose, would be liable to fewest objections.

M^{r} Patterson's ideas nearly coincided he said with those of M^{r} King. He proposed that the Executive should be appointed by Electors to be chosen by the States in a ratio that would allow one elector to the smallest and three to the largest States.

M^{r} Wilson. It seems to be the unanimous sense that the Executive should not be appointed by the Legislature, unless he be rendered in-eligible a 2^{d} time: he perceived with pleasure that the idea was gaining ground, of an election mediately or immediately by the people.

M^{r} Madison. If it be a fundamental principle of free Gov^{t} that the Legislative, Executive & Judiciary powers should be *separately* exercised, it is equally so that they be *independently* exercised. There is the same & perhaps greater reason why the Executive sh^{d} be independent of the Legislature, than why the Judiciary should. A coalition of the two former

powers would be more immediately & certainly dangerous to public liberty. It is essential then that the appointment of the Executive should either be drawn from some source, or held by some tenure that will give him a free agency with regard to the Legislature. This could not be if he was to be appointable from time to time by the Legislature. It was not clear that an appointment in the 1st instance even with an ineligibility afterwards would not establish an improper connection between the two departments. Certain it was that the appointment would be attended with intrigues and contentions that ought not to be unnecessarily admitted. He was disposed for these reasons to refer the appointment to some other source. The people at large was in his opinion the fittest in itself. It would be as likely as any that could be devised to produce an Executive Magistrate of distinguished Character. The people generally could only know & vote for some Citizen whose merits had rendered him an object of general attention & esteem. There was one difficulty however of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes. The substitution of electors obviated this difficulty and seemed on the whole to be liable to fewest objections.

Mr. Gerry. If the Executive is to be elected by the Legislature he certainly ought not to be re-eligible. This would make him absolutely dependent. He was agst a popular election. The people are uninformed, and would be misled by a few designing men. He urged the expediency of an appointment of the Executive by Electors to be chosen by the State Executives. The people of the States will then choose the 1st branch; the legislatures of the States the 2d branch of the National Legislature, and the Executives of the States, the National Executive. This he thought would form a strong attachmt in the States to the National System. The popular mode of electing the chief Magistrate would certainly be the worst of all. If he should be so elected & should do his duty, he will be turned out for it like Govr Bowdoin in Masts & President Sullivan in N. Hampshire.

On the question on Mr Govr Morris motion to reconsider generally the Constitution of the Executive

Mas. ay. C^{t} ay. N. J. ay. & all the others ay.

M^{r} Elseworth moved to strike out the appointm^{t} by the Nat^{l} Legislature, and to insert, to be chosen by electors appointed by the Legislatures of the States in the following ratio; to wit–one for each State not exceeding 200,000 [1] inhab^{ts} two for each above y^{t} number & not exceeding 300,000. and three for each State exceeding 300,000.–M^{r} Broome 2^{ded}. the motion. [2]

[1] The Journal gives it 100,000.—*Journal of the Federal Convention*, 190.

[2] "Mr. Broom is a plain good Man, with some abilities, but nothing to render him conspicuous. He is silent in public, but chearful and conversable in private. He is about 35 years old."–Pierce's Notes, *Am. Hist. Rev.*, iii., 330.

M^{r} Rutlidge was opposed to all the modes, except the appointm^{t} by the Nat^{l} Legislature. He will be sufficiently independent, if he be not re-eligible.

M^{r} Gerry preferred the motion of M^{r} Elseworth to an appointm^{t} by the Nat^{l} Legislature, or by the people; tho' not to an app^{t} by the State Executives. He moved that the electors proposed by M^{r} E. should be 25 in number, and allotted in the following proportion. to N. H. 1. to Mas. 3. to R. I. 1. to Con^{t} 2. to N. Y. 2. N. J. 2. P^{a} 3. Del. 1. M^{d} 2. V^{a} 3. N. C. 2. S. C. 2. Geo. 1.

The question as moved by M^{r} Elseworth being divided, on the 1st part shall y^{e} Nat^{l} Executive be appointed by Electors?

Mas. div^{d}. Con^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay.
N. C. no. S. C. no. Geo. no.

On 2^{d} part shall the Electors be chosen by the State Legislatures?

Mas. ay. Con^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} no.
N. C. ay. S. C. no. Geo. ay.

The part relating to the ratio in which the States s^{d} chuse electors was postponed nem. con.

M^{r} L. Martin moved that the Executive be ineligible a 2^{d} time.

M^{r} Williamson, 2^{ds} the motion. He had no great confidence in Electors to be chosen for the special purpose. They would not be the most respectable citizens; but persons not occupied in the high offices of Gov^{t}. They would be liable to undue influence, which might the more readily be practised as some of them will probably be in appointment 6 or 8 months before the object of it comes on.

M^{r} Elseworth supposed any persons might be appointed Electors, excepting, solely, members of the Nat^{l} Legislature.

On the question Shall he be ineligible a 2^{d} time?

> Mas. no. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} no.
> N. C. ay. S. C. ay. Geo. no.

On the question Shall the Executive continue for 7 years? It passed in the negative

> Mas. div^{d}. Con^{t} ay. [3] N. J. no. P^{a} no. Del. no. M^{d} no.
> V^{a} no. N. C. div^{d}. S. C. ay. Geo. ay.

[3] In the printed Journal Con^{t}, no: N. Jersey ay.–Madison's Note.

M^{r} King was afraid we sh^{d} shorten the term too much.

M^{r} Gov^{r} Morris was for a short term, in order to avoid impeach^{ts} which w^{d} be otherwise necessary.

M^{r} Butler was agst the frequency of the elections. Geo. & S. C. were too distant to send electors often.

Mr. Elseworth was for 6 years. If the elections be too frequent, the Executive will not be firm eno. There must be duties which will make him unpopular for the moment. There will be *outs* as well as *ins*. His administration therefore will be attacked and misrepresented.

Mr. Williamson was for 6 years. The expence will be considerable & ought not to be unnecessarily repeated. If the Elections are too frequent, the best men will not undertake the service and those of an inferior character will be liable to be corrupted.

On the question for 6 years?

Mas. ay. Cont. ay. N. J. ay. Pa. ay. Del. no. Md. ay. Va. ay.
N. C. ay. S. C. ay. Geo. ay.

Adjourned

Friday July 20. in Convention.

The postponed Ratio of Electors for appointing the Executive; to wit 1 for each State whose inhabitants do not exceed 100.000. &c. being taken up.

Mr. Madison observed that this would make in time all or nearly all the States equal. Since there were few that would not in time contain the number of inhabitants intitling them to 3 Electors; that this ratio ought either to be made temporary, or so varied as that it would adjust itself to the growing population of the States.

Mr. Gerry moved that in the *1st instance* the Electors should be allotted to the States in the following ratio: to N. H. 1. Mass. 3. R. I. 1. Cont. 2. N. Y. 2. N. J. 2. Pa. 3. Del. 1. Md. 2. Va. 3. N. C. 2. S. C. 2. Geo. 1.

On the question to postpone in order to take up this motion of Mr. Gerry. It passed in the affirmative

> Mass. ay. Cont. no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay.
> N. C. ay. S. C. ay. Geo. ay.

Mr. Elseworth moved that 2 Electors be allotted to N. H. Some rule ought to be pursued; and N. H. has more than 100,000 inhabitants. He thought it would be proper also to allot 2. to Georgia.

Mr. Broom & Mr. Martin moved to postpone Mr. Gerry's allotment of Electors, leaving a fit ratio to be reported by the Committee to be appointed for detailing the Resolutions.

On this motion,

> Mass. no. Ct. no. N. J. ay. Pa. no. Del. ay. Md. ay. Va. no.
> N. C. no. S. C. no. Geo. no.

M^{r} Houston 2^{ded} the motion of M^{r} Elseworth to add another Elector to N. H. & Georgia. On the Question;

Mass. no. C^{t} ay. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} no.
N. C. no. S. C. ay. Geo. ay.

M^{r} Williamson moved as an amendment to M^{r} Gerry's allotment of Electors in the 1st instance that in future elections of the Nat^{l} Executive, the number of Electors to be appointed by the several States shall be regulated by their respective numbers of Representatives in the 1st branch pursuing as nearly as may be the present proportions.

On question on M^{r} Gerry's ratio of Electors

Mass. ay. C^{t} ay. N. J. no. P^{a} ay. Del. no. M^{d} no. V^{a} ay.
N. C. ay. S. C. ay. Geo. no.

"to be removable on impeachment and conviction for malpractice or neglect of duty," see Resol. 9.

M^{r} Pinkney & M^{r} Gov^{r} Morris moved to strike out this part of the Resolution. M^{r} P. observ^{d} he ought not to be impeachable whilst in office.

M^{r} Davie. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behaviour of the Executive.

M^{r} Wilson concurred in the necessity of making the Executive impeachable whilst in office.

M^{r} Gov^{r} Morris. He can do no criminal act without Coadjutors who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence. Besides who is to impeach? Is the impeachment to suspend his functions. If it is not the mischief will go on. If it is the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach.

Col. Mason. No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors. There had been much debate & difficulty as to the mode of chusing the Executive. He approved of that which had been adopted at first, namely of referring the appointment to the Nat.l Legislature. One objection ag.st Electors was the danger of their being corrupted by the Candidates, & this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?

Doc.r Franklin was for retaining the clause as favorable to the Executive. History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out ag.st this as unconstitutional. What was the practice before this in cases where the Chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in w.ch he was not only deprived of his life but of the opportunity of vindicating his character. It w.d be the best way therefore to provide in the Constitution for the regular punishment of the Executive where his misconduct should deserve it, and for his honorable acquittal where he should be unjustly accused.

M.r Gov.r Morris admits corruption & some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated & defined.

M.r Madison thought it indispensable that some provision should be made for defending the Community ag.st the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the Legislature or any other public body, holding offices of limited duration. It could not be presumed that all or even a majority of the members of an

Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides the restraints of their personal integrity & honor, the difficulty of acting in concert for purposes of corruption was a security to the Public. And if one or a few members only should be seduced, the soundness of the remaining members, would maintain the integrity and fidelity of the body. In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

Mr. Pinkney did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature who would in that case hold them as a rod over the Executive and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

Mr. Gerry urged the necessity of impeachments. A good Magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the chief magistrate could do no wrong.

Mr. King expressed his apprehensions that an extreme caution in favor of liberty might enervate the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of Govts should be separate & independent: that the Executive & Judiciary should be so as well as the Legislative: that the Executive should be so equally with the Judiciary. Would this be the case, if the Executive should be impeachable? It had been said that the Judiciary would be impeachable. But it should have been remembered at the same time that the Judiciary hold their places not for a limited time, but during good behaviour. It is necessary therefore that a form should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour? The Executive was to hold his place for a limited term like the members of the Legislature. Like them, particularly the Senate whose members would continue in appointmt. the same term of 6 years he would periodically be tried for his behaviour by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like

them therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he held his office during good behavior, a tenure which would be most agreeable to him; provided an independent and effectual forum could be devised. But under no circumstances ought he to be impeachable by the Legislature. This would be destructive of his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.

Mr. Randolph. The propriety of impeachments was a favorite principle with him. Guilt wherever found ought to be punished. The Executive will have great opportunitys of abusing his power; particularly in time of war when the military force, and in some respects the Public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Col. Hamilton) of composing a forum out of the Judges belonging to the States: and even of requiring some preliminary inquest whether just ground of impeachment existed.

Doctr. Franklin mentioned the case of the Prince of Orange during the late war. An agreement was made between France & Holland; by which their two fleets were to unite at a certain time & place. The Dutch fleet did not appear. Every body began to wonder at it. At length it was suspected that the Statholder was at the bottom of the matter. This suspicion prevailed more & more. Yet as he could not be impeached and no regular examination took place, he remained in his office, and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities & contentions. Had he been impeachable, a regular & peaceable enquiry would have taken place and he would if guilty have been duly punished, if innocent restored to the confidence of the Public.

Mr. King remarked that the case of the Statholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behaviour. In the latter they are

unnecessary; the periodical responsibility to the electors being an equivalent security.

Mr. Wilson observed that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive, ought to be subject to impeachment & removal.

Mr. Pinkney apprehended that some gentlemen reasoned on a supposition that the Executive was to have powers which would not be committed to him: He presumed that his powers would be so circumscribed as to render impeachments unnecessary.

Mr. Govr. Morris's opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any length of time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay, without being able to guard agst it by displacing him. One would think the King of England well secured agst bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II. was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery: Corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King but the prime Minister. The people are the King. When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.

It was moved & 2ded to postpone the question of impeachments which was negatived, Mas. & S. Carolina only being ay.

On ye Question, Shall the Executive be removable on impeachments &c.?

Mass. no. Ct ay. N. J. ay. Pa ay. Del. ay. Md ay. Va ay.
N. C. ay. S. C. no. Geo. ay.

"Executive to receive fixed compensation." Agreed to nem. con.

"to be paid out of the national Treasury" agreed to, N. Jersey only in the negative.

Mr. Gerry & Govr. Morris moved that the Electors of the Executive shall not be members of the Natl. Legislature, nor officers of the U. States, nor shall the Electors themselves be eligible to the supreme magistracy. Agreed to nem. con.

Docr. McClurg [4] asked whether it would not be necessary, before a Committee for detailing the Constitution should be appointed, to determine on the means by which the Executive, is to carry the laws into effect, and to resist combinations agst. them. Is he to have a military force for the purpose, or to have the command of the Militia, the only existing force that can be applied to that use? As the Resolutions now stand the Committee will have no determinate directions on this great point.

[4] "Mr. McClurg is a learned physician, but having never appeared before in public life his character as a politician is not sufficiently known. He attempted once or twice to speak, but with no great success. It is certain that he has a foundation of learning, on which, if he pleases, he may erect a character of high renown. The Doctor is about 38 years of age, a Gentleman of great respectability, and of a fair and unblemished character."–Pierce's Notes, *Am. Hist. Rev.*, iii., 332.

Mr. Wilson thought that some additional directions to the Committee wd. be necessary.

Mr. King. The Committee are to provide for the end. Their discretionary power to provide for the means is involved according to an established axiom.

Adjourned.

Saturday July 21 in Convention

Mr. Williamson moved that the Electors of the Executive should be paid out of the National Treasury for the Service to be performed by them. Justice required this: as it was a national service they were to render. The motion was agreed to Nem. Con.

Mr. Wilson moved as an amendment to Resoln. 10. that the supreme Natl. Judiciary should be associated with the Executive in the Revisionary power. This proposition had been before made and failed: but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort: The Judiciary ought to have an opportunity of remonstrating agst. projected encroachments on the people as well as on themselves. It had been said that the Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet may not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the Revisionary power, and they will have an opportunity of taking notice of these characters of a law, and of counteracting, by the weight of their opinions the improper views of the Legislature.–Mr. Madison 2ded. the motion.

Mr. Ghorum did not see the advantage of employing the Judges in this way. As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures. Nor can it be necessary as a security for their constitutional rights. The Judges in England have no such additional provision for their defence, yet their jurisdiction is not invaded. He thought it would be best to let the Executive alone be responsible, and at most to authorize him to call on Judges for their opinions.

Mr. Elseworth approved heartily of the motion. The aid of the Judges will give more wisdom & firmness to the Executive. They will possess a

systematic and accurate knowledge of the Laws, which the Executive cannot be expected always to possess. The Law of Nations also will frequently come into question. Of this the Judges alone will have competent information.

Mr. Madison considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the Judiciary departmt by giving it an additional opportunity of defending itself agst Legislative encroachments: It would be useful to the Executive, by inspiring additional confidence & firmness in exerting the revisionary power: It would be useful to the Legislature by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity & technical propriety in the laws, qualities peculiarly necessary; & yet shamefully wanting in our republican Codes. It would moreover be useful to the Community at large as an additional check agst a pursuit of those unwise & unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged agst the motion, it must be on the supposition that it tended to give too much strength either to the Executive or Judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended that notwithstanding this co-operation of the two departments, the Legislature would still be an overmatch for them. Experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex. This was the real source of danger to the American Constitutions; & suggested the necessity of giving every defensive authority to the other departments that was consistent with Republican principles.

Mr. Mason said he had always been a friend to this provision. It would give a confidence to the Executive, which he would not otherwise have, and without which the Revisionary power would be of little avail.

Mr. Gerry did not expect to see this point which had undergone full discussion, again revived. The object he conceived of the Revisionary power was merely to secure the Executive department agst legislative encroachment. The Executive therefore who will best know and be ready to defend his rights ought alone to have the defence of them. The motion was liable to strong objections. It was combining & mixing together the Legislative & the other departments. It was establishing an improper

coalition between the Executive & Judiciary departments. It was making statesmen of the Judges; and setting them up as the guardians of the Rights of the people. He relied for his part on the Representatives of the people as the guardians of their Rights & interests. It was making the Expositors of the Laws, the Legislators which ought never to be done. A better expedient for correcting the laws, would be to appoint as had been done in Pen[a], a person or persons of proper skill, to draw bills for the Legislature.

M[r] Strong thought with M[r] Gerry that the power of making ought to be kept distinct from that of expounding, the laws. No maxim was better established. The Judges in exercising the function of expositors might be influenced by the part they had taken in framing the laws.

M[r] Gov[r] Morris. Some check being necessary on the Legislature, the question is in what hands it should be lodged. On one side it was contended that the Executive alone ought to exercise it. He did not think that an Executive appointed for 6 years, and impeachable whilst in office w[d] be a very effectual check. On the other side it was urged that he ought to be reinforced by the Judiciary department. Ag[st] this it was objected that Expositors of laws ought to have no hand in making them, and arguments in favor of this had been drawn from England. What weight was due to them might be easily determined by an attention to facts. The truth was that the Judges in England had a great share in y[e] Legislation. They are consulted in difficult & doubtful cases. They may be & some of them are members of the Legislature. They are or may be members of the privy Council, and can there advise the Executive as they will do with us if the motion succeeds. The influence the English Judges may have in the latter capacity in strengthening the Executive check can not be ascertained, as the King by his influence in a manner dictates the laws. There is one difference in the two cases however which disconcerts all reasoning from the British to our proposed Constitution. The British Executive has so great an interest in his prerogatives and such powerful means of defending them that he will never yield any part of them. The interest of our Executive is so inconsiderable & so transitory, and his means of defending it so feeble, that there is the justest ground to fear his want of firmness in resisting incroachments. He was extremely apprehensive that the auxiliary firmness & weight of the Judiciary would not supply the deficiency. He concurred in thinking the

public liberty in greater danger from Legislative usurpations than from any other source. It had been said that the Legislature ought to be relied on as the proper Guardians of liberty. The answer was short and conclusive. Either bad laws will be pushed or not. On the latter supposition no check will be wanted. On the former a strong check will be necessary: and this is the proper supposition. Emissions of paper money, largesses to the people–a remission of debts and similar measures, will at some times be popular, and will be pushed for that reason. At other times such measures will coincide with the interests of the Legislature themselves, & that will be a reason not less cogent for pushing them. It may be thought that the people will not be deluded and misled in the latter case. But experience teaches another lesson. The press is indeed a great means of diminishing the evil, yet it is found to be unable to prevent it altogether.

M[r] L. Martin, considered the association of the Judges with the Executive as a dangerous innovation; as well as one which could not produce the particular advantage expected from it. A knowledge of Mankind, and of Legislative affairs cannot be presumed to belong in a higher degree to the Judges than to the Legislature. And as to the Constitutionality of laws, that point will come before the Judges in their proper official character. In this character they have a negative on the laws. Join them with the Executive in the Revision and they will have a double negative. It is necessary that the Supreme Judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating ag[st] popular measures of the Legislature. Besides in what mode & proportion are they to vote in the Council of Revision?

M[r] Madison could not discover in the proposed association of the Judges with the Executive in the Revisionary check on the Legislature any violation of the maxim which requires the great departments of power to be kept separate & distinct. On the contrary he thought it an auxiliary precaution in favor of the maxim. If a Constitutional discrimination of the departments on paper were a sufficient security to each ag[st] encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security; and that it is necessary to introduce such a balance of powers and interests as will guarantee the provisions on paper. Instead therefore of contenting ourselves with laying

down the Theory in the Constitution that each department ought to be separate & distinct, it was proposed to add a defensive power to each which should maintain the Theory in practice. In so doing we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British Constitution. Yet it was not only the practice there to admit the Judges to a seat in the legislature, and in the Executive Councils, and to submit to their previous examination all laws of a certain description, but it was a part of their Constitution that the Executive might negative any law whatever; a part of *their* Constitution which had been universally regarded as calculated for the preservation of the whole. The objection agst a union of the Judiciary & Executive branches in the revision of the laws, had either no foundation or was not carried far enough. If such a Union was an improper mixture of powers, or such a Judiciary check on the laws, was inconsistent with the Theory of a free Constitution, it was equally so to admit the Executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

Col. Mason observed that the defence of the Executive was not the sole object of the Revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the Constitution of the Legislature, it would still so much resemble that of the individual States, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect not only of hindering the final passage of such laws; but would discourage demagogues from attempting to get them passed. It has been said (by Mr. L. Martin) that if the Judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of Judges they would have one negative. He would reply that in this capacity they could impede in one case only, the operation of laws. They could declare an unconstitutional law void. But with regard to every law however unjust oppressive or pernicious, which did not come plainly under this description, they would be under the necessity as Judges to give it a free course. He wished the further use to be made of the Judges, of giving aid in preventing every improper law. Their aid will be the more valuable as they are in the habit and practice of considering laws in their true principles, and in all their consequences.

Mr. Wilson. The separation of the departments does not require that they should have separate objects but that they should act separately tho' on the same objects. It is necessary that the two branches of the Legislature should be separate and distinct, yet they are both to act precisely on the same object.

Mr. Gerry had rather give the Executive an absolute negative for its own defence than thus to blend together the Judiciary & Executive departments. It will bind them together in an offensive and defensive alliance agst the Legislature, and render the latter unwilling to enter into a contest with them.

Mr. Govr Morris was surprised that any defensive provision for securing the effectual separation of the departments should be considered as an improper mixture of them. Suppose that the three powers, were to be vested in three persons, by compact among themselves; that one was to have the power of making, another of executing, and a third of judging, the laws. Would it not be very natural for the two latter after having settled the partition on paper, to observe, and would not candor oblige the former to admit, that as a security agst legislative acts of the former which might easily be so framed as to undermine the powers of the two others, the two others ought to be armed with a veto for their own defence, or at least to have an opportunity of stating their objections agst acts of encroachment? And would any one pretend that such a right tended to blend & confound powers that ought to be separately exercised? As well might it be said that If three neighbours had three distinct farms, a right in each to defend his farm agst his neighbours, tended to blend the farms together.

Mr. Ghorum. All agree that a check on the Legislature is necessary. But there are two objections agst admitting the Judges to share in it which no observations on the other side seem to obviate, the 1st is that the Judges ought to carry into the exposition of the laws no prepossessions with regard to them. 2d that as the Judges will outnumber the Executive, the revisionary check would be thrown entirely out of the Executive hands, and instead of enabling him to defend himself, would enable the Judges to sacrifice him.

Mr. Wilson. The proposition is certainly not liable to all the objections which have been urged agst it. According (to Mr. Gerry) it will unite the

Executive & Judiciary in an offensive & defensive alliance agst the Legislature. According to Mr. Ghorum it will lead to a subversion of the Executive by the Judiciary influence. To the first gentleman the answer was obvious: that the joint weight of the two departments was necessary to balance the single weight of the Legislature. To the 1st objection stated by the other Gentleman it might be answered that supposing the prepossession to mix itself with the exposition, the evil would be overbalanced by the advantages promised by the expedient. To the 2d objection, that such a rule of voting might be provided in the detail as would guard agst it.

Mr. Rutlidge thought the Judges of all men the most unfit to be concerned in the revisionary Council. The Judges ought never to give their opinion on a law till it comes before them. He thought it equally unnecessary. The Executive could advise with the officers of State, as of war, finance &c. and avail himself of their information & opinions.

On Question on Mr. Wilson's motion for joining the Judiciary in the Revision of laws it passed in the negative—

> Mass. no. Cont. ay. N. J. not present. Pa. divd. Del. no.
> Md ay. Va ay. N. C. no. S. C. no. Geo. divd.

Resol. 10, giving the Ex a qualified veto, without the amendt was then agd to nem. con.

The motion made by Mr. Madison July 18. & then postponed, "that the Judges shd be nominated by the Executive & such nominations become appointments unless disagreed to by 2/3 of the 2d branch of the Legislature," was now resumed.

Mr. Madison stated as his reasons for the motion, 1. that it secured the responsibility of the Executive who would in general be more capable & likely to select fit characters than the Legislature, or even the 2d b. of it, who might hide their selfish motives under the number concerned in the appointment. 2. that in case of any flagrant partiality or error, in the nomination it might be fairly presumed that 2/3 of the 2d branch would join in putting a negative on it. 3. that as the 2d b. was very differently

constituted when the appointment of the Judges was formerly referred to it, and was now to be composed of equal votes from all the States, the principle of compromise which had prevailed in other instances required in this that there sh^{d} be a concurrence of two authorities, in one of which the people, in the other the States should be represented. The Executive Magistrate w^{d} be considered as a national officer, acting for and equally sympathizing with every part of the U. States. If the 2^{d} branch alone should have this power, the Judges might be appointed by a minority of the people, tho' by a majority, of the States, which could not be justified on any principle as their proceedings were to relate to the people, rather than to the States: and as it would moreover throw the appointments entirely into the hands of y^{e} Northern States, a perpetual ground of jealousy & discontent would be furnished to the Southern States.

M^{r} Pinkney was for placing the appointm^{t} in the 2^{d} b. exclusively. The Executive will possess neither the requisite knowledge of characters, nor confidence of the people for so high a trust.

M^{r} Randolph w^{d} have preferred the mode of appointm^{t} proposed formerly by M^{r} Ghorum, as adopted in the Constitution of Mass^{ts} but thought the motion depending so great an improvement of the clause as it stands, that he anxiously wished it success. He laid great stress on the responsibility of the Executive as a security for fit appointments. Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications. The same inconveniences will proportionally prevail if the appointments be referred to either branch of the Legislature or to any other authority administered by a number of individuals.

M^{r} Elseworth would prefer a negative in the Executive on a nomination by the 2^{d} branch, the negative to be overruled by a concurrence of 2/3 of the 2^{d} b. to the mode proposed by the motion; but preferred an absolute appointment by the 2^{d} branch to either. The Executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses & intrigues than the Senate. The right to supersede his

nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment.

Mr. Govr. Morris supported the motion. 1. The States in their corporate capacity will frequently have an interest staked on the determination of the Judges. As in the Senate the States are to vote the Judges ought not to be appointed by the Senate. Next to the impropriety of being Judge in one's own cause, is the appointment of the Judge. 2. It had been said the Executive would be uninformed of characters. The reverse was ye truth. The Senate will be so. They must take the character of candidates from the flattering pictures drawn by their friends. The Executive in the necessary intercourse with every part of the U. S. required by the nature of his administration, will or may have the best possible information. 3. It had been said that a jealousy would be entertained of the Executive. If the Executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of Jealousy in the present case. He added that if the Objections agst an appointment of the Executive by the Legislature, had the weight that had been allowed there must be some weight in the objection to an appointment of the Judges by the Legislature or by any part of it.

Mr. Gerry. The appointment of the Judges like every other part of the Constitution shd be so modelled as to give satisfaction both to the people and to the States. The mode under consideration will give satisfaction to neither. He could not conceive that the Executive could be as well informed of characters throughout the Union, as the Senate. It appeared to him also a strong objection that 2/3 of the Senate were required to reject a nomination of the Executive. The Senate would be constituted in the same manner as Congress. And the appointments of Congress have been generally good.

Mr. Madison, observed that he was not anxious that 2/3 should be necessary to disagree to a nomination. He had given this form to his motion chiefly to vary it the more clearly from one which had just been rejected. He was content to obviate the objection last made, and accordingly so varied the motion as to let a majority reject.

Col. Mason found it his duty to differ from his colleagues in their opinions & reasonings on this subject. Notwithstanding the form of the proposition by which the appointment seemed to be divided between the Executive & Senate, the appointment was Substantially vested in the former alone. The false complaisance which usually prevails in such cases will prevent a disagreement to the first nominations. He considered the appointment by the Executive as a dangerous prerogative. It might even give him an influence over the Judiciary department itself. He did not think the difference of interest between the Northern and Southern States could be properly brought into this argument. It would operate & require some precautions in the case of regulating navigation, commerce & imposts; but he could not see that it had any connection with the Judiciary department.

On the question, the motion now being "that the executive should nominate & such nominations should become appointments unless disagreed to by the Senate"

Mass. ay. C^{t} no. P^{a} ay. Del. no. M^{d} no. V^{a} ay. N. C. no.
S. C. no. Geo. no.

On question for agreeing to the clause as it stands by which the Judges are to be appointed by the 2^{d} branch

Mass. no. C^{t} ay. P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. ay.
S. C. ay. Geo. ay.

Adjourned.

Monday July 23. in Convention

Mr. John Langdon & Mr. Nicholas Gilman [5] from N. Hampshire, [6] took their seats.

[5] Mr. Gilman is modest, genteel, and sensible. There is nothing brilliant or striking in his character, but there is something respectable and worthy in the man.–About 30 years of age."–Pierce's Notes, *Am. Hist. Rev.*, iii., 325.

He did not speak in the convention.

[6] The act appointing deputies to the convention was not passed by the New Hampshire Legislature till June 27, 1787.—*Journal of Federal Convention*, 17.

Resol:n 17. that provision ought to be made for future amendments of the Articles of Union, agreed to, nem. con.

Resoln 18. "requiring the Legis: Execut: & Judy of the States to be bound by oath to support the articles of Union," taken into consideration.

Mr. Williamson suggests that a reciprocal oath should be required from the National officers, to support the Governments of the States.

Mr. Gerry moved to insert as an amendmt that the oath of the officers of the National Government also should extend to the support of the Natl Govt which was agreed to nem. con.

Mr. Wilson said he was never fond of oaths, considering them as a left handed security only. A good Govt did not need them, and a bad one could not or ought not to be supported. He was afraid they might too much trammel the members of the existing Govt in case future alterations should be necessary; and prove an obstacle to Resol: 17. just agd to.

Mr. Ghorum did not know that oaths would be of much use; but could see no inconsistency between them and the 17. Resol. or any regular amendt of

the Constitution. The oath could only require fidelity to the existing Constitution. A constitutional alteration of the Constitution, could never be regarded as a breach of the Constitution, or of any oath to support it.

Mr. Gerry thought with Mr. Ghorum there could be no shadow of inconsistency in the case. Nor could he see any other harm that could result from the Resolution. On the other side he thought one good effect would be produced by it. Hitherto the officers of the two Governments had considered them as distinct from, and not as parts of the General System, & had in all cases of interference given a preference to the State Govts. The proposed oath will cure that error.

The Resoln (18) was agreed to nem. con.

Resol: 19. referring the new Constitution to Assemblies to be chosen by the people for the express purpose of ratifying it was next taken into consideration.

Mr. Elseworth moved that it be referred to the Legislatures of the States for ratification. Mr. Patterson 2ded the motion.

Col. Mason considered a reference of the plan to the authority of the people as one of the most important and essential of the Resolutions. The Legislatures have no power to ratify it. They are the mere creatures of the State Constitutions, and cannot be greater than their creators. And he knew of no power in any of the Constitutions, he knew there was no power in some of them, that could be competent to this object. Whither then must we resort? To the people with whom all power remains that has not been given up in the Constitutions derived from them. It was of great moment he observed that this doctrine should be cherished as the basis of free Government. Another strong reason was that admitting the Legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding Legislatures having equal authority could undo the acts of their predecessors; and the National Govt. would stand in each State on the weak and tottering foundation of an Act of Assembly. There was a remaining consideration of some weight. In some of the States the Govts were not derived from the clear & undisputed authority of the people. This

was the case in Virginia. Some of the best & wisest citizens considered the Constitution as established by an assumed authority. A national Constitution derived from such a source would be exposed to the severest criticisms.

Mr. Randolph. One idea has pervaded all our proceedings, to wit, that opposition as well from the States as from individuals, will be made to the System to be proposed. Will it not then be highly imprudent, to furnish any unnecessary pretext by the mode of ratifying it. Added to other objections agst a ratification by the Legislative authority only, it may be remarked that there have been instances in which the authority of the Common law has been set up in particular States agst that of the Confederation which has had no higher sanction than Legislative ratification.–Whose opposition will be most likely to be excited agst the System? That of the local demagogues who will be degraded by it from the importance they now hold. These will spare no efforts to impede that progress in the popular mind which will be necessary to the adoption of the plan, and which every member will find to have taken place in his own, if he will compare his present opinions with those brought with him into the Convention. It is of great importance therefore that the consideration of this subject should be transferred from the Legislatures where this class of men, have their full influence to a field in which their efforts can be less mischievous. It is moreover worthy of consideration that some of the States are averse to any change in their Constitution, and will not take the requisite steps, unless expressly called upon to refer the question to the people.

Mr. Gerry. The arguments of Col. Mason & Mr. Randolph prove too much. They prove an unconstitutionality in the present federal system & even in some of the State Govts. Inferences drawn from such a source must be inadmissible. Both the State Govts & the federal Govt have been too long acquiesced in, to be now shaken. He considered the Confederation to be paramount to any State Constitution. The last article of it authorizing alterations must consequently be so as well as the others, and every thing done in pursuance of the article must have the same high authority with the article. Great confusion he was confident would result from a recurrence to the people. They would never agree on any thing. He could not see any

ground to suppose that the people will do what their rulers will not. The rulers will either conform to, or influence the sense of the people.

Mr. Ghorum was agst. referring the plan to the Legislatures. 1. Men chosen by the people for the particular purpose, will discuss the subject more candidly than members of the Legislature who are to lose the power which is to be given up to the Genl. Govt.. 2. Some of the Legislatures are composed of several branches. It will consequently be more difficult in these cases to get the plan through the Legislatures, than thro' a Convention. 3. in the States many of the ablest men are excluded from the Legislatures, but may be elected into a convention. Among these may be ranked many of the Clergy who are generally friends to good Government. Their services were found to be valuable in the formation & establishment of the Constitution of Massachts.. 4. the Legislatures will be interrupted with a variety of little business, by artfully pressing which designing men will find means to delay from year to year, if not to frustrate altogether the national system. 5. If the last art: of the Confederation is to be pursued the unanimous concurrence of the States will be necessary. But will any one say, that all the States are to suffer themselves to be ruined, if Rho. Island should persist in her opposition to general measures. Some other States might also tread in her steps. The present advantage which N. York seems to be so much attached to, of taxing her neighbours by the regulation of her trade, makes it very probable, that she will be of the number. It would therefore deserve serious consideration whether provision ought not to be made for giving effect to the System without waiting for the unanimous concurrence of the States.

Mr. Elseworth. If there be any Legislatures who should find themselves incompetent to the ratification, he should be content to let them advise with their constituents and pursue such a mode as wd. be competent. He thought more was to be expected from the Legislatures than from the people. The prevailing wish of the people in the Eastern States is to get rid of the public debt; and the idea of strengthening the Natl. Govt. carries with it that of strengthening the public debt. It was said by Col. Mason 1. that the Legislatures have no authority in this case. 2. that their successors having equal authority could rescind their acts. As to the 2d. point he could not admit it to be well founded. An Act to which the States by their

Legislatures, make themselves parties, becomes a compact from which no one of the parties can recede of itself. As to the 1st point, he observed that a new sett of ideas seemed to have crept in since the articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The Legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Congs applied on subsequent occasions for further powers? To the Legislatures; not to the people. The fact is that we exist at present, and we need not enquire how, as a federal Society, united by a charter one article of which is that alterations therein may be made by the Legislative authority of the States. It has been said that if the confederation is to be observed, the States must *unanimously* concur in the proposed innovations. He would answer that if such were the urgency & necessity of our situation as to warrant a new compact among a part of the States, founded on the consent of the people; the same pleas would be equally valid in favor of a partial compact, founded on the consent of the Legislatures.

Mr. Williamson thought the Resol:n (19) so expressed as that it might be submitted either to the Legislatures or to Conventions recommended by the Legislatures. He observed that some Legislatures were evidently unauthorized to ratify the system. He thought too that Conventions were to be preferred as more likely to be composed of the ablest men in the States.

Mr. Govr Morris considered the inference of Mr. Elseworth from the plea of necessity as applied to the establishment of a new System on ye consent of the people of a part of the States, in favor of a like establishmt on the consent of a part of the Legislatures, as a non sequitur. If the Confederation is to be pursued no alteration can be made without the unanimous consent of the Legislatures: Legislative alterations not conformable to the federal compact, would clearly not be valid. The Judges would consider them as null & void. Whereas in case of an appeal to the people of the U. S., the supreme authority, the federal compact may be altered by a *majority of them*; in like manner as the Constitution of a particular State may be altered by a majority of the people of the State. The amendmt moved by Mr. Elseworth erroneously supposes that we are proceeding on the basis of the Confederation. This Convention is unknown to the Confederation.

Mr. King thought with Mr. Elseworth that the Legislatures had a competent authority, the acquiescence of the people of America in the Confederation, being equivalent to a formal ratification by the people. He thought with Mr. E. also that the plea of necessity was as valid in the one case as the other. At the same time he preferred a reference to the authority of the people expressly delegated to Conventions, as the most certain means of obviating all disputes & doubts concerning the legitimacy of the new Constitution; as well as the most likely means of drawing forth the best men in the States to decide on it. He remarked that among other objections made in the State of N. York to granting powers to Congs. one had been that such powers as would operate within the State, could not be reconciled to the Constitution; and therefore were not grantible by the Legislative authority. He considered it as of some consequence also to get rid of the scruples which some members of the State Legislatures might derive from their oaths to support & maintain the existing Constitutions.

Mr. Madison thought it clear that the Legislatures were incompetent to the proposed changes. These changes would make essential inroads on the State Constitutions, and it would be a novel & dangerous doctrine that a Legislature could change the constitution under which it held its existence. There might indeed be some Constitutions within the Union, which had given a power to the Legislature to concur in alterations of the federal Compact. But there were certainly some which had not; and in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the Legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty*, and a *Constitution*. The former in point of *moral obligation* might be as inviolable as the latter. In point of *political operation*, there were two important distinctions in favor of the latter. 1. A law violating a treaty ratified by a pre-existing law, might be respected by the Judges as a law, though an unwise or perfidious one. A law violating a constitution established by the people themselves, would be considered by the Judges as null & void. 2. The doctrine laid down by the law of Nations in the case of treaties is that a breach of any one article by any of the parties, frees the other parties from their engagements. In the case of a union of people under one Constitution, the nature of the pact has always been understood to exclude such an interpretation. Comparing the two

modes in point of expediency he thought all the considerations which recommended this Convention in preference to Congress for proposing the reform were in favor of State Conventions in preference to the Legislatures for examining and adopting it.

On question on Mr. Elseworth's motion to refer the plan to the Legislatures of the States

N. H. no. Mass. no. Ct. ay. Pa. no. Del. ay. Md. ay. Va. no.
N. C. no. S. C. no. Geo. no.

Mr. Govr. Morris moved that the reference of the plan be made to one general Convention, chosen & authorized by the people to consider, *amend*, & establish the same.–Not seconded.

On question for agreeing to Resolution 19. touching the mode of Ratification as reported from the Committee of the Whole; viz, to refer the Constn, after the approbation of Congs to assemblies chosen by the people;

N. H. ay. Mass. ay. Ct. ay. Pa. ay. Del. no. Md. ay. Va. ay.
N. C. ay. S. C. ay. Geo. ay.

Mr. Govr. Morris & Mr. King moved that the representation in the second branch consist of —— members from each State, who shall vote per capita.

Mr. Elseworth said he had always approved of voting in that mode.

Mr. Govr. Morris moved to fill the *blank* with *three*. He wished the Senate to be a pretty numerous body. If two members only should be allowed to each State, and a majority be made a quorum, the power would be lodged in 14 members, which was too small a number for such a trust.

Mr. Ghorum preferred two to three members for the blank. A small number was most convenient for deciding on peace & war &c. which he expected would be vested in the 2d branch. The number of States will also increase. Kentucky, Vermont, the Province of Mayne & Franklin will probably soon be added to the present number. He presumed also that some

of the largest States would be divided. The strength of the General Govt will lie not in the largeness, but in the smallness of the States.

Col. Mason thought 3 from each State including new States would make the 2d branch too numerous. Besides other objections, the additional expence ought always to form one, where it was not absolutely necessary.

Mr Williamson. If the number be too great, the distant States will not be on an equal footing with the nearer States. The latter can more easily send & support their ablest Citizens. He approved of the voting per capita.

On the question for filling the blank with "*three*"

N. H. no. Mass. no. Cont no. Pa ay. Del. no. Va no.
N. C. no. S. C. no. Geo. no.

On question for filling it with "two." Agreed to nem. con.

Mr L Martin was opposed to voting per Capita, as departing from the idea of the *States* being represented in the 2d branch.

Mr Carroll, [7] was not struck with any particular objection agst the mode; but he did not wish so hastily to make so material an innovation.

[7] "Mr. Carrol is a Man of large fortune, and influence in his State. He possesses plain good sense, and is in the full confidence of his Countrymen. This Gentleman is about [blank] years of age."–Pierce's Notes, *Am. Hist. Rev.*, iii., 330.

On the question on the whole motion viz. the 2d b. to consist of 2 members from each State and to vote per Capita,

N. H. ay. Mass. ay. Ct ay. Pa ay. Del. ay. Md no. Va ay.
N. C. ay. S. C. ay. Geo. ay.

Mr Houston [8] & Mr Spaight moved "that the appointment of the Executive by Electors chosen by the Legislatures of the States, be reconsidered." Mr Houston urged the extreme inconveniency & the

considerable expence, of drawing together men from all the States for the single purpose of electing the Chief Magistrate.

[8] "Mr. Houston is an Attorney at Law, and has been Member of Congress for the State of Georgia. He is a Gentleman of Family, and was educated in England. As to his legal or political knowledge he has very little to boast of. Nature seems to have done more for his corporeal than mental powers. His Person is striking, but his mind very little improved with useful or elegant knowledge. He has none of the talents requisite for the Orator, but in public debate is confused and irregular. Mr. Houston is about 30 years of age of an amiable and sweet temper, and of good and honorable principles."–Pierce's Notes, *Am. Hist. Rev.*, iii., 334.

On the question which was put without any debate

N. H. ay. Mass. ay. Ct. ay. P^{a} no. Del. ay. M^{d} no. Virg^{a} no. N. C. ay. S. C. ay. Geo. ay.

Ordered that tomorrow be assigned for the reconsideration, Con^{t} & Pen^{a} no–all the rest ay.

M^{r} Gerry moved that the proceedings of the Convention for the establishment of a Nat^{l} Gov^{t} (except the part relating to the Executive), be referred to a Committee to prepare & report a Constitution conformable thereto.

Gen^{l} Pinkney reminded the Convention that if the Committee should fail to insert some security to the Southern States agst an emancipation of slaves, and taxes on exports, he sh^{d} be bound by duty to his State to vote agst their Report. The app^{t} of a Com^{e} as moved by M^{r} Gerry. Ag^{d} to nem. con.

Shall the Com^{e} consist of 10 members one from each State pres^{t}–All the States were *no*, except Delaware, *ay*.

Shall it consist of 7. members

N. H. ay. Mas. ay. C^{t} ay. P^{a} no. Del. no. M^{d} ay. V^{a} no. N. C. no. S. C. ay. Geo. no.

The question being lost by an equal division of Votes.

It was agreed, nem-con- that the Committee consist of 5 members to be appointed tomorrow.

Adjourned.

Tuesday July 24. in Convention

The appointment of the Executive by Electors reconsidered.

Mr. Houston moved that he be appointed by the "Natl. Legislature," instead of "Electors appointed by the State Legislatures" according to the last decision of the mode. He dwelt chiefly on the improbability, that capable men would undertake the service of Electors from the more distant States.

Mr. Spaight seconded the motion.

Mr. Gerry opposed it. He thought there was no ground to apprehend the danger urged by Mr. Houston. The election of the Executive Magistrate will be considered as of vast importance and will create great earnestness. The best men, the Governours of the States will not hold it derogatory from their character to be the electors. If the motion should be agreed to, it will be necessary to make the Executive ineligible a 2d. time, in order to render him independent of the Legislature; which was an idea extremely repugnant to his way of thinking.

Mr. Strong supposed that there would be no necessity, if the Executive should be appointed by the Legislature, to make him ineligible a 2d. time; as new elections of the Legislature will have intervened; and he will not depend for his 2d. appointment on the same sett of men as his first was recd. from. It had been suggested that *gratitude* for his past appointment wd. produce the same effect as dependence for his future appointment. He thought very differently. Besides this objection would lie agst. the Electors who would be objects of gratitude as well as the Legislature. It was of great importance not to make the Govt. too complex which would be the case if a new sett of men like the Electors should be introduced into it. He thought also that the first characters in the States would not feel sufficient motives to undertake the office of Electors.

M[r] Williamson was for going back to the original ground; to elect the Executive for 7 years and render him ineligible a 2[d] time. The proposed Electors would certainly not be men of the 1[st] nor even of the 2[d] grade in the States. These would all prefer a seat either in the Senate or the other branch of the Legislature. He did not like the Unity in the Executive. He had wished the Executive power to be lodged in three men taken from three districts into which the States should be divided. As the Executive is to have a kind of veto on the laws, and there is an essential difference of interests between the N. & S. States, particularly in the carrying trade, the power will be dangerous, if the Executive is to be taken from part of the Union, to the part from which he is not taken. The case is different here from what it is in England; where there is a sameness of interests throughout the Kingdom. Another objection ag[st] a single Magistrate is that he will be an elective King, and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children. It was pretty certain he thought that we should at some time or other have a King; but he wished no precaution to be omitted that might postpone the event as long as possible.–Ineligibility a 2[d] time appeared to him to be the best precaution. With this precaution he had no objection to a longer term than 7 years. He would go as far as 10 or 12 years.

M[r] Gerry moved that the Legislatures of the States should vote by ballot for the Executive in the same proportions as it had been proposed they should chuse electors; and that in case a majority of the votes should not centre on the same person, the 1[st] branch of the Nat[l] Legislature should chuse two out of the 4 candidates having most votes, and out of these two, the 2[d] branch should chuse the Executive.

M[r] King seconded the motion–and on the Question to postpone in order to take it into consideration. The *noes* were so predominant, that the States were not counted.

Question on M[r] Houston's motion that the Executive be app[d] by the Na[l] Legislature.

N. H. ay. Mass. ay. C[t] no. N. J. ay. P[a] no. Del. ay. M[d] no.
V[a] no. N. C. ay. S. C. ay. Geo. ay.

Mr. L. Martin & Mr. Gerry moved to re-instate the ineligibility of the Executive a 2d time.

Mr. Elseworth. With many this appears a natural consequence of his being elected by the Legislature. It was not the case with him. The Executive he thought should be reelected if his conduct proved him worthy of it. And he will be more likely to render himself, worthy of it if he be rewardable with it. The most eminent characters also, will be more willing to accept the trust under this condition, than if they foresee a necessary degradation at a fixt period.

Mr. Gerry. That the Executive shd be independent of the Legislature is a clear point. The longer the duration of his appointment the more will his dependence be diminished. It will be better then for him to continue 10. 15. or even 20. years and be ineligible afterwards.

Mr. King was for making him re-eligible. This is too great an advantage to be given up for the small effect it will have on his dependence, if impeachments are to lie. He considered these as rendering the tenure during pleasure.

Mr. L. Martin, suspending his motion as to the ineligibility, moved "that the appointmt of the Executive shall continue for Eleven years.

Mr. Gerry suggested fifteen years.

Mr. King twenty years. This is the medium life of princes. [9]

[9] This might possibly be meant as a carricature of the previous motions in order to defeat the object of them.–Madison's Note.

Mr. Davie eight years.

Mr. Wilson. The difficulties & perplexities into which the House is thrown proceed from the election by the Legislature which he was sorry had been reinstated. The inconveniency of this mode was such that he would agree to almost any length of time in order to get rid of the dependence

which must result from it. He was persuaded that the longest term would not be equivalent to a proper mode of election, unless indeed it should be during good behaviour. It seemed to be supposed that at a certain advance of life, a continuance in office would cease to be agreeable to the officer, as well as desirable to the public. Experience had shewn in a variety of instances that both a capacity & inclination for public service existed in very advanced stages. He mentioned the instance of a Doge of Venice who was elected after he was 80 years of age. The Popes have generally been elected at very advanced periods, and yet in no case had a more steady or a better concerted policy been pursued than in the Court of Rome. If the Executive should come into office at 35 years of age, which he presumes may happen & his continuance should be fixt at 15 years, at the age of 50. in the very prime of life, and with all the aid of experience, he must be cast aside like a useless hulk. What an irreparable loss would the British Jurisprudence have sustained, had the age of 50. been fixt there as the ultimate limit of capacity or readiness to serve the public. The great luminary (L^{d} Mansfield) held his seat for thirty years after his arrival at that age. Notwithstanding what had been done he could not but hope that a better mode of election would yet be adopted; and one that would be more agreeable to the general sense of the House. That time might be given for further deliberation he w^{d} move that the present question be postponed till tomorrow.

M^{r} Broom seconded the motion to postpone.

M^{r} Gerry. We seem to be entirely at a loss on this head. He would suggest whether it would not be advisable to refer the clause relating to the Executive to the Committee of detail to be appointed. Perhaps they will be able to hit on something that may unite the various opinions which have been thrown out.

M^{r} Wilson. As the great difficulty seems to spring from the mode of election, he w^{d} suggest a mode which had not been mentioned. It was that the Executive be elected for 6 years by a small number, not more than 15 of the Nat^{l} Legislature, to be drawn from it, not by ballot, but by lot and who should retire immediately and make the election without separating. By this mode intrigue would be avoided in the first instance, and the dependence

would be diminished. This was not he said a digested idea and might be liable to strong objections.

M^{r} Gov^{r} Morris. Of all possible modes of appointment that by the Legislature is the worst. If the Legislature is to appoint, and to impeach or to influence the impeachment, the Executive will be the mere creature of it. He had been opposed to the impeachment but was now convinced that impeachments must be provided for, if the app^{t} was to be of any duration. No man w^{d} say, that an Executive known to be in the pay of an Enemy, should not be removable in some way or other. He had been charged heretofore (by Col. Mason) with inconsistency in pleading for confidence in the Legislature on some occasions, & urging a distrust on others. The charge was not well founded. The Legislature is worthy of unbounded confidence in some respects, and liable to equal distrust in others. When their interest coincides precisely with that of their Constituents, as happens in many of their Acts, no abuse of trust is to be apprehended. When a strong personal interest happens to be opposed to the general interest, the Legislature cannot be too much distrusted. In all public bodies there are two parties. The Executive will necessarily be more connected with one than with the other. There will be a personal interest therefore in one of the parties to oppose as well as in the other to support him. Much had been said of the intrigues, that will be practised by the Executive to get into office. Nothing had been said on the other side of the intrigues to get him out of office. Some leader of a party will always covet his seat, will perplex his administration, will cabal with the Legislature, till he succeeds in supplanting him. This was the way in which the King of England was got out, he meant the real King, the Minister. This was the way in which Pitt (L^{d} Chatham) forced himself into place. Fox was for pushing the matter still farther. If he had carried his India bill, which he was very near doing, he would have made the Minister, the King in form almost as well as in substance. Our President will be the British Minister, yet we are about to make him appointable by the Legislature. Something had been said of the danger of Monarchy. If a good government should not now be formed, if a good organization of the Executive should not be provided, he doubted whether we should not have something worse than a limited monarchy. In order to get rid of the dependence of the Executive on the Legislature, the expedient of making him ineligible a 2^{d} time had been devised. This was as

much as to say we sh^{d} give him the benefit of experience, and then deprive ourselves of the use of it. But make him ineligible a 2^{d} time–and prolong his duration even to 15 years, will he by any wonderful interposition of providence at that period cease to be a man? No he will be unwilling to quit his exaltation, the road to his object thro' the Constitution will be shut; he will be in possession of the sword, a civil war will ensue, and the Coñander of the victorious army on which ever side, will be the despot of America. This consideration renders him particularly anxious that the Executive should be properly constituted. The vice here would not, as in some other parts of the system be curable. It is the most difficult of all rightly to balance the Executive. Make him too weak: The Legislature will usurp his powers. Make him too strong. He will usurp on the Legislature. He preferred a short period, a re-eligibility, but a different mode of election. A long period would prevent an adoption of the plan: it ought to do so. He sh^{d} himself be afraid to trust it. He was not prepared to decide on M^{r} Wilson's mode of election just hinted by him. He thought it deserved consideration. It would be better that chance sh^{d} decide than intrigue.

On a question to postpone the consideration of the Resolution on the subject of the Executive

N. H. no. Mass. no. C^{t} ay. N. J. no. P^{a} ay. Del. div^{d}.
M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

M^{r} Wilson then moved that the Executive be chosen every —— years by —— Electors to be taken by lot from the Nat^{l} Legislature who shall proceed immediately to the choice of the Executive and not separate until it be made."

M^{r} Carrol 2^{ds} the motion.

M^{r} Gerry. This is committing too much to chance. If the lot should fall on a sett of unworthy men, an unworthy Executive must be saddled on the Country. He thought it had been demonstrated that no possible mode of electing by the Legislature could be a good one.

Mr. King. The lot might fall on a majority from the same State which wd ensure the election of a man from that State. We ought to be governed by reason, not by chance. As nobody seemed to be satisfied, he wished the matter to be postponed.

Mr. Wilson did not move this as the best mode. His opinion remained unshaken that we ought to resort to the people for the election. He seconded the postponement.

Mr. Govr. Morris observed that the chances were almost infinite agst a majority of Electors from the same State.

On a question whether the last motion was in order, it was determined in the affirmative: 7 ays. 4 noes.

On the question of postponemt it was agreed to nem. con.

Mr. Carrol took occasion to observe that he considered the clause declaring that direct taxation on the States should be in proportion to representation, previous to the obtaining an actual census, as very objectionable, and that he reserved to himself the right of opposing it, if the Report of the Committee of detail should leave it in the plan.

Mr. Govr. Morris hoped the Committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge [10] to assist us over a certain gulph; having passed the gulph the bridge may be removed. He thought the principle laid down with so much strictness, liable to strong objections.

[10] The object was to lessen the eagerness on one side, & the opposition on the other, to the share of representation claimed by the S. States on account of the Negroes.–Madison's Note.

On a ballot for a Committee to report a Constitution conformable to the Resolutions passed by the Convention, the members chosen were

Mr. Rutlidge, Mr. Randolph, Mr. Ghorum, Mr. Elseworth, Mr. Wilson—

On motion to discharge the Com[e] of the whole from the propositions submitted to the Convention by M[r] C. Pinkney as the basis of a constitution, and to refer them to the Committee of detail just appointed, it was ag[d] to nem: con.

A like motion was then made & agreed to nem: con: with respect to the propositions of M[r] Patterson.

Adjourned.

Wednesday July 25. In Convention

Clause relating to the Executive being again under consideration [11]

> [11] "Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the command in chief of the American army shall not be given to, nor devolve on, any but a natural *born* citizen."–John Jay to Washington, July 25, 1787 (Wash. MSS.).

Mr. Elseworth moved "that the Executive be appointed by the Legislature," except when the magistrate last chosen shall have continued in office the whole term for which he was chosen, & be reeligible, in which case the choice shall be by Electors appointed by the Legislatures of the States for that purpose. By this means a deserving magistrate may be reelected without making him dependent on the Legislature.

Mr. Gerry repeated his remark that an election at all by the Natl. Legislature was radically and incurably wrong; and moved that the Executive be appointed by the Governours & Presidents of the States, with advice of their Councils, and where there are no Councils by Electors chosen by the Legislatures. The executives to vote in the following proportions: viz—

Mr. Madison. There are objections agst. every mode that has been, or perhaps can be proposed. The election must be made either by some existing authority under the Natl. or State Constitutions–or by some special authority derived from the people–or by the people themselves.–The two Existing authorities under the Natl. Constitution wd. be the Legislative & Judiciary. The latter he presumed was out of the question. The former was in his Judgment liable to insuperable objections. Besides the general influence of that mode on the independence of the Executive, 1. the election of the Chief Magistrate would agitate & divide the legislature so much that the public interest would materially suffer by it. Public bodies are always apt to be thrown into contentions, but into more violent ones by such

occasions than by any others. 2. the candidate would intrigue with the Legislature, would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. 3. The Ministers of foreign powers would have and would make use of, the opportunity to mix their intrigues & influence with the Election. Limited as the powers of the Executive are, it will be an object of great moment with the great rival powers of Europe who have American possessions, to have at the head of our Governm^{t} a man attached to their respective politics & interests. No pains, nor perhaps expence, will be spared, to gain from the Legislature an appointm^{t} favorable to their wishes. Germany & Poland are witnesses of this danger. In the former, the election of the Head of the Empire, till it became in a manner hereditary, interested all Europe, and was much influenced by foreign interference. In the latter, altho' the elective Magistrate has very little real power, his election has at all times produced the most eager interference of foreign princes, and has in fact at length slid entirely into foreign hands. The existing authorities in the States are the Legislative, Executive & Judiciary. The appointment of the Nat^{l} Executive by the first was objectionable in many points of view, some of which had been already mentioned. He would mention one which of itself would decide his opinion. The Legislatures of the States had betrayed a strong propensity to a variety of pernicious measures. One object of the Nat^{l} Legisl^{re} was to controul this propensity. One object of the Nat^{l} Executive, so far as it would have a negative on the laws, was to controul the Nat^{l} Legislature so far as it might be infected with a similar propensity. Refer the appointm^{t} of the Nat^{l} Executive to the State Legislatures, and this controuling purpose may be defeated. The Legislatures can & will act with some kind of regular plan, and will promote the appointm^{t} of a man who will not oppose himself to a favorite object. Should a majority of the Legislatures at the time of election have the same object, or different objects of the same kind, The Nat^{l} Executive would be rendered subservient to them.–An appointment by the State Executives, was liable among other objections to this insuperable one, that being standing bodies, they could & would be courted, and intrigued with by the Candidates, by their partizans, and by the Ministers of foreign powers. The State Judiciary had not & he presumed w^{d} not be proposed as a proper source of appointment. The option before us then lay between an appointment by Electors chosen by the

people–and an immediate appointment by the people. He thought the former mode free from many of the objections which had been urged agst it, and greatly preferable to an appointment by the Natl Legislature. As the electors would be chosen for the occasion, would meet at once, & proceed immediately to an appointment, there would be very little opportunity for cabal, or corruption. As a further precaution, it might be required that they should meet at some place, distinct from the seat of Govt and even that no person within a certain distance of the place at the time shd be eligible. This Mode however had been rejected so recently & by so great a majority that it probably would not be proposed anew. The remaining mode was an election by the people or rather by the qualified part of them, at large: With all its imperfections he liked this best. He would not repeat either the general argumts. for or the objections agst this mode. He would only take notice of two difficulties which he admitted to have weight. The first arose from the disposition in the people to prefer a Citizen of their own State, and the disadvantage this wd throw on the smaller States. Great as this objection might be he did not think it equal to such as lay agst every other mode which had been proposed. He thought too that some expedient might be hit upon that would obviate it. The second difficulty arose from the disproportion of qualified voters in the N. & S. States, and the disadvantages which this mode would throw on the latter. The answer to this objection was 1. that this disproportion would be continually decreasing under the influence of the Republican laws introduced in the S. States, and the more rapid increase of their population. 2. That local considerations must give way to the general interest. As an individual from the S. States, he was willing to make the sacrifice.

Mr Elseworth. The objection drawn from the different sizes of the States, is unanswerable. The Citizens of the largest States would invariably prefer the candidate within the State; and the largest States wd invariably have the man.

Question on Mr Elseworth's motion as above.

N. H. ay. Mass. no. Ct ay. N. J. no. Pa ay. Del. no. Md ay. Va no. N. C. no. S. C. no. Geo. no.

M^r^ Pinkney moved that the election by the Legislature be qualified with a proviso that no person be eligible for more than 6 years in any twelve years. He thought this would have all the advantage & at the same time avoid in some degree the inconveniency, of an absolute ineligibility a 2^d^ time.

Col. Mason approved the idea. It had the sanction of experience in the instance of Cong^s^ and some of the Executives of the States. It rendered the Executive as effectually independent, as an ineligibility after his first election, and opened the way at the same time for the advantage of his future services. He preferred on the whole the election by the Nat^l^ Legislature: Tho' Candor obliged him to admit, that there was great danger of foreign influence, as had been suggested. This was the most serious objection with him that had been urged.

M^r^ Butler. The two great evils to be avoided are cabal at home, & influence from abroad. It will be difficult to avoid either if the Election be made by the Nat^l^ Legislature. On the other hand. The Gov^t^ should not be made so complex & unwieldy as to disgust the States. This would be the case, if the election sh^d^ be referred to the people. He liked best an election by Electors chosen by the Legislatures of the States. He was ag^st^ a re-eligibility at all events. He was also ag^st^ a ratio of votes in the States. An equality should prevail in this case. The reasons for departing from it do not hold in the case of the Executive as in that of the Legislature.

M^r^ Gerry approved of M^r^ Pinkney's motion as lessening the evil.

M^r^ Gov^r^ Morris was ag^st^ a rotation in every case. It formed a political School, in w^ch^ we were always governed by the scholars, and not by the Masters. The evils to be guarded ag^st^ in this case are. 1. the undue influence of the Legislature. 2. instability of Councils. 3. misconduct in office. To guard ag^st^ the first, we run into the second evil. We adopt a rotation which produces instability of Councils. To avoid Sylla we fall into Charibdis. A change of men is ever followed by a change of measures. We see this fully exemplified in the vicissitudes among ourselves, particularly in the State of Pen^a^. The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not imitate Soloman. 2. the Rotation

in office will not prevent intrigue and dependence on the Legislature. The man in office will look forward to the period at which he will become re-eligible. The distance of the period, the improbability of such a protraction of his life will be no obstacle. Such is the nature of man, formed by his benevolent author no doubt for wise ends, that altho' he knows his existence to be limited to a span, he takes his measures as if he were to live for ever. But taking another supposition, the inefficacy of the expedient will be manifest. If the magistrate does not look forward to his re-election to the Executive, he will be pretty sure to keep in view the opportunity of his going into the Legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part; and will be very unwilling to take any step that may endanger his popularity with the Legislature, on his influence over which the figure he is to make will depend. 3. To avoid the third evil, impeachments will be essential. And hence an additional reason agst an election by the Legislature. He considered an election by the people as the best, by the Legislature as the worst, mode. Putting both these aside, he could not but favor the idea of M^{r} Wilson, of introducing a mixture of lot. It will diminish, if not destroy both cabal & dependence.

M^{r} Williamson was sensible that strong objections lay agst an election of the Executive by the Legislature, and that it opened a door for foreign influence. The principal objection agst an election by the people seemed to be, the disadvantage under which it would place the smaller States. He suggested as a cure for this difficulty, that each man should vote for 3 candidates, one of them he observed would be probably of his own State, the other 2. of some other States; and as probably of a small as a large one.

M^{r} Gov^{r} Morris liked the idea, suggesting as an amendment that each man should vote for two persons one of whom at least should not be of his own State.

M^{r} Madison also thought something valuable might be made of the suggestion with the proposed amendment of it. The second best man in this case would probably be the first, in fact. The only objection which occurred was that each Citizen after hav^{g} given his vote for his favorite fellow Citizen, w^{d} throw away his second on some obscure Citizen of another

State, in order to ensure the object of his first choice. But it could hardly be supposed that the Citizens of many States would be so sanguine of having their favorite elected, as not to give their second vote with sincerity to the next object of their choice. It might moreover be provided in favor of the smaller States that the Executive should not be eligible more than —— times in —— years from the same State.

Mr. Gerry. A popular election in this case is radically vicious. The ignorance of the people would put it in the power of some one set of men dispersed through the Union & acting in Concert to delude them into any appointment. He observed that such a Society of men existed in the Order of the Cincinnati. They are respectable, united, and influential. They will in fact elect the chief Magistrate in every instance, if the election be referred to the people. His respect for the characters composing this Society could not blind him to the danger & impropriety of throwing such a power into their hands.

Mr. Dickinson. As far as he could judge from the discussions which had taken place during his attendance, insuperable objections lay agst an election of the Executive by the Natl Legislature; as also by the Legislatures or Executives of the States. He had long leaned towards an election by the people which he regarded as the best & purest source. Objections he was aware lay agst this mode, but not so great he thought as agst the other modes. The greatest difficulty in the opinion of the House seemed to arise from the partiality of the States to their respective Citizens. But might not this very partiality be turned to a useful purpose. Let the people of each State chuse its best Citizen. The people will know the most eminent characters of their own States, and the people of different States will feel an emulation in selecting those of which they will have the greatest reason to be proud. Out of the thirteen names thus selected, an Executive Magistrate may be chosen either by the Natl Legislature, or by Electors appointed by it.

On a Question which was moved for postponing Mr. Pinkney's motion, in order to make way for some such proposition as had been hinted by Mr. Williamson & others, it passed in the negative.

N. H. no. Mass. no. C^{t} ay. N. J. ay. P^{a} ay. Del. no. M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

On M^{r} Pinkney's motion that no person shall serve in the Executive more than 6 years in 12. years, it passed in the negative.

N. H. ay. Mass. ay. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. ay. S. C. ay. Geo. ay.

On a motion that the members of the Committee be furnished with copies of the proceedings it was so determined; S. Carolina alone being in the negative.

It was then moved that the members of the House might take copies of the Resolutions which had been agreed to; which passed in the negative.

N. H. no. Mas. no. Con. ay. N. J. ay. P^{a} no. Del. ay. Mary^{d} no. V^{a} ay. N. C. ay. S. C. no. Geo. no.

M^{r} Gerry & M^{r} Butler moved to refer the resolution relating to the Executive (except the clause making it consist of a single person) to the Coṁittee of detail.

M^{r} Wilson hoped that so important a branch of the System w^{d} not be committed untill a general principle sh^{d} be fixed by a vote of the House.

M^{r} Langdon. was for the commitment–Adj^{d}.

Thursday July. 26. in Convention. [12]

[12] "The affairs of the federal government are, I believe, in the utmost confusion: The convention is an expedient that will produce a decisive effect. It will either recover us from our present embarrassments or complete our ruin; for I do suspect that if what they recommend shod be rejected this wod be the case. But I trust that the presence of Genl Washington will have great weight in the body itself so as to overawe & keep under the demon of party, & that the signature of his name to whatever act shall be the result of their deliberations will secure its passage thro' the union."–Monroe to Jefferson, July 27, 1787 (*Writings of Monroe*, i., 173).

Col. Mason. In every stage of the Question relative to the Executive, the difficulty of the subject and the diversity of the opinions concerning it have appeared. Nor have any of the modes of constituting that department been satisfactory. 1. It has been proposed that the election should be made by the people at large; that is that an act which ought to be performed by those who know most of Eminent characters, & qualifications, should be performed by those who know least. 2. that the election should be made by the Legislatures of the States. 3. by the Executives of the States. Agst these modes also strong objections have been urged. 4. It has been proposed that the election should be made by Electors chosen by the people for that purpose. This was at first agreed to: But on further consideration has been rejected. 5. Since which, the mode of Mr Williamson, requiring each freeholder to vote for several candidates has been proposed. This seemed like many other propositions, to carry a plausible face, but on closer inspection is liable to fatal objections. A popular election in any form, as Mr Gerry has observed, would throw the appointment into the hands of the Cincinnati, a Society for the members of which he had a great respect, but which he never wished to have a preponderating influence in the Govt. 6. Another expedient was proposed by Mr Dickinson, which is liable to so palpable & material an inconvenience that he had little doubt of its being by this time rejected by himself. It would exclude every man who happened not to be popular within his own State; tho' the causes of his local unpopularity might be of such a nature as to recommend him to the States at large. 7. Among other expedients, a lottery has been introduced. But as the tickets do not appear to be in much demand, it will probably, not be carried on, and nothing therefore need be said on that subject. After reviewing all these various modes, he was led to conclude, that an election by the Natl

Legislature as originally proposed, was the best. If it was liable to objections, it was liable to fewer than any other. He conceived at the same time that a second election ought to be absolutely prohibited. Having for his primary object for the pole-star of his political conduct, the preservation of the rights of the people, he held it as an essential point, as the very palladium of civil liberty, that the Great officers of State, and particularly the Executive should at fixed periods return to that mass from which they were at first taken, in order that they may feel & respect those rights & interests, Which are again to be personally valuable to them. He concluded with moving that the constitution of the Executive as reported by the Com^{e} of the whole be reinstated, viz. "that the Executive be appointed for seven years, & be ineligible a 2^{d} time."

M^{r} Davie seconded the motion.

Doc^{r} Franklin. It seems to have been imagined by some that the returning to the mass of the people was degrading the magistrate. This he thought was contrary to republican principles. In free Governments the rulers are the servants, and the people their superiors & sovereigns. For the former therefore to return among the latter was not to *degrade* but to *promote* them. And it would be imposing an unreasonable burden on them, to keep them always in a State of servitude, and not allow them to become again one of the Masters.

Question on Col. Masons motion as above; which passed in the affirmative

N. H. ay. Mass^{ts} not on floor. C^{t} no. N. J. ay. P^{a} no.
Del. no. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Gov^{r} Morris was now agst the whole paragraph. In answer to Col. Mason's position that a periodical return of the great officers of the State into the mass of the people, was the palladium of Civil liberty he w^{d} observe that on the same principle the Judiciary ought to be periodically degraded; certain it was that the Legislature ought on every principle, yet no one had proposed, or conceived that the members of it should not be re-eligible. In answer to Doc^{r} Franklin, that a return into the mass of the

people would be a promotion, instead of a degradation, he had no doubt that our Executive like most others would have too much patriotism to shrink from the burthen of his office, and too much modesty not to be willing to decline the promotion.

On the question on the whole resolution as amended in the words following–"that a National Executive be instituted–to consist of a single person–to be chosen by the Nat^{l} legislature–for the term of seven years–to be ineligible a 2^{d} time–with power to carry into execution the nat^{l} laws–to appoint to offices in cases not otherwise provided for–to be removable on impeachment & conviction of mal-practice or neglect of duty–to receive a fixt compensation for the devotion of his time to the public service, to be paid out of the Nat^{l} treasury"–it passed in the affirmative

> N. H. ay. Mass. not on floor. C^{t} ay. N. J. ay. P^{a} no. Del. no. M^{d} no. V^{a} div^{d}. M^{r} Blair & Col. Mason ay. Gen^{l} Washington & M^{r} Madison no. M^{r} Randolph happened to be out of the House. N. C. ay. S. C. ay. Geo. ay.

M^{r} Mason moved "that the Coñittee of detail be instructed to receive a clause requiring certain qualifications of landed property & citizenship of the U. States, in members of the Legislature, and disqualifying persons having unsettled Acc^{ts} with or being indebted to the U. S., from being members of the Nat^{l} Legislature."–He observed that persons of the latter descriptions had frequently got into the State Legislatures, in order to promote laws that might shelter their delinquencies; and that this evil had crept into Cong^{s} if Report was to be regarded.

M^{r} Pinckney seconded the motion.

Mr. Gov^{r} Morris. If qualifications are proper, he w^{d} prefer them in the electors rather than the elected. As to debtors of the U. S. they are but few. As to persons having unsettled accounts he believed them to be pretty many. He thought however that such a discrimination would be both odious & useless, and in many instances, unjust & cruel. The delay of settlem^{t} had been more the fault of the Public than of the individuals. What will be done with those patriotic Citizens who have lent money, or services or property

to their Country, without having been yet able to obtain a liquidation of their claims? Are they to be excluded?

Mr. Ghorum was for leaving to the Legislature the providing agst such abuses as had been mentioned.

Col. Mason mentioned the parliamentary qualifications adopted in the Reign of Queen Anne, which he said had met with universal approbation.

Mr. Madison had witnessed the zeal of men having accts with the public, to get into the Legislatures for sinister purposes. He thought however that if any precaution were taken for excluding them, the one proposed by Col. Mason ought to be new modelled. It might be well to limit the exclusion to persons who had recd money from the public, and had not accounted for it.

Mr. Govr Morris. It was a precept of great antiquity as well as of high authority that we should not be righteous overmuch. He thought we ought to be equally on our guard agst being wise overmuch. The proposed regulation would enable the Governt to exclude particular persons from office as long as they pleased. He mentioned the case of the Coñander in Chief's presenting his account for secret services, which he said was so moderate that every one was astonished at it; and so simple that no doubt could arise on it. Yet had the Auditor been disposed to delay the settlement, how easily he might have effected it, & how cruel wd it be in such a case to keep a distinguished & meritorious Citizen under a temporary disability & disfranchisement. He mentioned this case merely to illustrate the objectionable nature of the proposition. He was opposed to such minutious regulations in a Constitution. The parliamentary qualifications quoted by Col. Mason, had been disregarded in practice; and was but a scheme of the landed agst the monied interest.

Mr. Pinckney & Genl Pinckney moved to insert by way of amendmt the words Judiciary & Executive so as to extend the qualifications to those departments which was agreed to nem con.

Mr. Gerry thought the inconveniency of excluding a few worthy individuals who might be public debtors or have unsettled accts ought not to

be put in the scale agst the public advantages of the regulation, and that the motion did not go far enough.

Mr. King observed that there might be great danger in requiring landed property as a qualification since it would exclude the monied interest, whose aids may be essential in particular emergencies to the public safety.

Mr. Dickinson, was agst any recital of qualifications in the Constitution. It was impossible to make a compleat one, and a partial one wd by implication tie up the hands of the Legislature from supplying the omissions. The best defence lay in the freeholders who were to elect the Legislature. Whilst this Source should remain pure, the Public interest would be safe. If it ever should be corrupt, no little expedients would repel the danger. He doubted the policy of interweaving into a Republican constitution a veneration for wealth. He had always understood that a veneration for poverty & virtue, were the objects of republican encouragement. It seemed improper that any man of merit should be subjected to disabilities in a Republic where merit was understood to form the great title to public trust, honors & rewards.

Mr. Gerry if property be one object of Government, provisions to secure it cannot be improper.

Mr. Madison moved to strike out the word *landed*, before the word "qualifications." If the proposition sd be agreed to he wished the Committee to be at liberty to report the best criterion they could devise. Landed possessions were no certain evidence of real wealth. Many enjoyed them to a great extent who were more in debt than they were worth. The unjust Laws of the States had proceeded more from this class of men, than any others. It had often happened that men who had acquired landed property on credit, got into the Legislatures with a view of promoting an unjust protection agst their Creditors. In the next place, if a small quantity of land should be made the standard, it would be no security; if a large one, it would exclude the proper representatives of those classes of Citizens who were not landholders. It was politic as well as just that the interests & rights of every class should be duly represented & understood in the public Councils. It was a provision every where established that the Country should be divided into districts & representatives taken from each, in order

that the Legislative Assembly might equally understand & sympathize with the rights of the people in every part of the Community. It was not less proper that every class of Citizens should have an opportunity of making their rights be felt & understood in the public Councils. The three principal classes into which our citizens were divisible, were the landed the commercial, & the manufacturing. The 2d & 3d class, bear as yet a small proportion to the first. The proportion however will daily increase. We see in the populous Countries in Europe now, what we shall be hereafter. These classes understand much less of each others interests & affairs, than men of the same class inhabiting different districts. It is particularly requisite therefore that the interests of one or two of them should not be left entirely to the care, or impartiality of the third. This must be the case if landed qualifications should be required; few of the mercantile, & scarcely any of the manufacturing class chusing whilst they continue in business to turn any part of their Stock into landed property. For these reasons he wished if it were possible that some other criterion than the mere possession of land should be devised. He concurred with Mr. Govr. Morris in thinking that qualifications in the Electors would be much more effectual than in the elected. The former would discriminate between real & ostensible property in the latter; But he was aware of the difficulty of forming any uniform standard that would suit the different circumstances & opinions prevailing in the different States.

Mr. Govr. Morris 2ded the motion.

On the Question for striking out "landed"

N. H. ay. Mass. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. no.
Va. ay. N. C. ay. S. C. ay. Geo. ay.

On Question on 1st part of Col. Masons proposition as to "qualification of property & citizenship," as so amended

N. H. ay. Masts. ay. Ct. no. N. J. ay. Pa. no. Del. no. Md. ay.
Va. ay. N. C. ay. S. C. ay. Geo. ay.

"The 2d part, for disqualifying debtors, and persons having unsettled accounts," being under consideration

Mr. Carrol moved to strike out "having unsettled accounts"

Mr. Ghorum seconded the motion; observing that it would put the commercial & manufacturing part of the people on a worse footing than others as they would be most likely to have dealings with the public.

Mr. L. Martin, if these words should be struck out, and the remaining words concerning debtors retained, it will be the interest of the latter class to keep their accounts unsettled as long as possible.

Mr. Wilson was for striking them out. They put too much power in the hands of the Auditors, who might combine with rivals in delaying settlements in order to prolong the disqualifications of particular men. We should consider that we are providing a Constitution for future generations, and not merely for the peculiar circumstances of the moment. The time has been, and will again be, when the public safety may depend on the voluntary aids of individuals which will necessarily open accts with the public, and when such accts will be a characteristic of patriotism. Besides a partial enumeration of cases will disable the Legislature from disqualifying odious & dangerous characters.

Mr. Langdon [13] was for striking out the whole clause for the reasons given by Mr. Wilson. So many exclusions he thought too would render the system unacceptable to the people.

[13] "Mr. Langdon is a man of considerable fortune, possesses a liberal mind, and a good plain understanding–about 40 years old."–Pierce's Notes, *Am. Hist. Rev.*, iii., 325.

Mr. Gerry. If the argumts used today were to prevail, we might have a Legislature composed of Public debtors, pensioners, placemen & contractors. He thought the proposed qualifications would be pleasing to the people. They will be considered as a security agst unnecessary or undue

burdens being imposed on them. He moved to add "pensioners" to the disqualified characters which was negatived.

N. H. no. Mas. ay. Con. no. N. J. no. P^{a} no. Del. no. Mary^{d} ay. V^{a} no. N. C. divided. S. C. no. Geo. ay.

M^{r} Gov^{r} Morris. The last clause, relating to public debtors will exclude every importing merchant. Revenue will be drawn it is foreseen as much as possible, from trade. Duties of course will be bonded, and the Merch^{ts} will remain debtors to the public. He repeated that it had not been so much the fault of individuals as of the public that transactions between them had not been more generally liquidated & adjusted. At all events to draw from our short & scanty experience rules that are to operate through succeeding ages, does not savour much of real wisdom.

On question for striking out, "persons having unsettled accounts with the U. States."

N. H. ay. Mass. ay. C^{t} ay. N. J. no. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. no.

M^{r} Elseworth was for disagreeing to the remainder of the clause disqualifying Public debtors; and for leaving to the wisdom of the Legislature and the virtue of the Citizens, the task of providing agst such evils. Is the smallest as well as the largest debtor to be excluded? Then every arrear of taxes will disqualify. Besides how is it to be known to the people when they elect who are or are not public debtors. The exclusion of pensioners & placemen in Engl^{d} is founded on a consideration not existing here. As persons of that sort are dependent on the Crown, they tend to increase its influence.

M^{r} Pinkney s^{d} he was at first a friend to the proposition, for the sake of the clause relating to qualifications of property; but he disliked the exclusion of public debtors; it went too far. It w^{d} exclude persons who had purchased confiscated property or should purchase Western territory of the public, and might be some obstacle to the sale of the latter.

On the question for agreeing to the clause disqualifying public debtors

N. H. no. Mass. no. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. ay. S. C. no. Geo. ay.

Col. Mason, observed that it would be proper, as he thought, that some provision should be made in the Constitution agst choosing for the Seat of the Gen^{l} Gov^{t} the City or place at which the Seat of any State Gov^{t} might be fixt. There were 2 objections agst having them at the same place, which without mentioning others, required some precaution on the subject. The 1st was that it tended to produce disputes concerning jurisdiction. The 2^{d} & principal one was that the intermixture of the two Legislatures tended to give a provincial tincture to y^{e} Nat^{l} deliberations. He moved that the Com^{e} be instructed to receive a clause to prevent the seat of the Nat^{l} Gov^{t} being in the same City or town with the Seat of the Gov^{t} of any State longer than untill the necessary public buildings could be erected.

M^{r} Alex. Martin 2^{ded} the motion.

M^{r} Gov^{r} Morris did not dislike the idea, but was apprehensive that such a clause might make enemies of Philad^{a} & N. York which had expectations of becoming the Seat of the Gen^{l} Gov^{t}.

M^{r} Langdon approved the idea also: but suggested the case of a State moving its seat of Gov^{t} to the nat^{l} Seat after the erection of the Public buildings.

M^{r} Ghorum. The precaution may be evaded by the Nat^{l} Legisl^{re} by delaying to erect the Public buildings.

M^{r} Gerry conceived it to be the gen^{l} sense of America, that neither the Seat of a State Gov^{t} nor any large commercial City should be the seat of the Gen^{l} Gov^{t}.

M^{r} Williamson liked the idea, but knowing how much the passions of men were agitated by this matter, was apprehensive of turning them agst the

System. He apprehended also that an evasion, might be practised in the way hinted by Mr. Ghorum.

Mr. Pinkney thought the Seat of a State Govt. ought to be avoided; but that a large town or its vicinity would be proper for the Seat of the Genl. Govt.

Col. Mason did not mean to press the motion at this time, nor to excite any hostile passions agst. the system. He was content to withdraw the motion for the present.

Mr. Butler was for fixing by the Constitution the place, & a central one, for the seat of the Natl. Govt.

The proceedings since Monday last were referred unanimously to the Come. of detail, and the Convention then unanimously adjourned till Monday, Augst. 6. that the Come. of detail might have time to prepare & report the Constitution. The whole proceedings as referred are as follow [14].

[14] Madison's note says: "here copy them from the Journal p. 207." In the *Journal* they are given as having been "collected from the proceedings of the convention, as they are spread over the journal from June 19th to July 26th."—*Journal of Federal Convention*, 207. The dates show when the resolutions were agreed to, and are correct.

June 20. I. RESOLVED, That the Government of the United States ought to consist of a supreme legislative, judiciary, and executive.

June 21. II. RESOLVED, That the legislature consist of two branches.

June 22. III. RESOLVED, That the members of the first branch of the legislature ought to be elected by the people of the several states, for the term of two years; to be paid out of the publick treasury; to receive an adequate June 23. compensation for their services; to be of the age of twenty-five years at least; to be ineligible and incapable of holding any office under the authority of the United States (except

those peculiarly belonging to the functions of the first branch) during the term of service of the first branch.

June 25. IV. RESOLVED, That the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; to be of June 26. the age of thirty years at least; to hold their offices for six years, one third to go out biennally; to receive a compensation for the devotion of their time to the publick service; to be ineligible to and incapable of holding any office, under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter.

V. RESOLVED, That each branch ought to possess the right of originating acts.

Postponed 27.
July 16. VI. RESOLVED, That the national legislature ought to possess the legislative rights vested in Congress by the confederation; and moreover, to legislate in all cases for the general interests July 17. of the union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

July 17 VII. RESOLVED, That the legislative acts of the United States, made by virtue and in pursuance of the articles of union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary, notwithstanding.

July 16. VIII. RESOLVED, That in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number

New Hampshire shall send . three,
Massachusetts . . . . . eight,

Rhode Island . . . . . one,
Connecticut . . . . . five,
New York . . . . . six,
New Jersey . . . . . four,
Pennsylvania . . . . . eight,
Delaware . . . . . one,
Maryland . . . . . six,
Virginia . . . . . ten,
North Carolina . . . . . five,
South Carolina . . . . . five,
Georgia . . . . . three.

But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants according to the provisions hereafter mentioned, namely–Provided always, that representation ought to be proportioned to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time to time by the changes in the relative circumstances of the states—

IX. Resolved, That a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of April 18, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

X. Resolved, That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature of the United States, and shall not be altered or amended by the second branch; and

that no money shall be drawn from the publick treasury, but in pursuance of appropriations to be originated by the first branch.

XI. RESOLVED, That in the second branch of the legislature of the United States, each state shall have an equal vote.

July 26. XII. RESOLVED, That a national executive be instituted, to consist of a single person; to be chosen by the national legislature, for the term of seven years; to be ineligible a second time; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be removable on impeachment, and conviction of mal-practice or neglect of duty; to receive a fixed compensation for the devotion of his time to the publick service; to be paid out of the publick treasury.

July 21. XIII. RESOLVED, That the national executive shall have a right to negative any legislative act, which shall not be afterwards passed, unless by two third parts of each branch of the national legislature.

July 18. XIV. RESOLVED, That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch July 21. of the national legislature; to hold their offices during good July 18. behaviour; to receive punctually, at stated times, a fixed compensation for their services, in which no diminution shall be made, so as to affect the persons actually in office at the time of such diminution.

XV. RESOLVED, That the national legislature be empowered to appoint inferior tribunals.

XVI. RESOLVED, That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature; and to such other questions as involve the national peace and harmony.

XVII. RESOLVED, That provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or

otherwise, with the consent of a number of voices in the national legislature less than the whole.

XVIII. RESOLVED, That a republican form of government shall be guarantied to each state; and that each state shall be protected against foreign and domestick violence.

July 23. XIX. RESOLVED, That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary.

XX. RESOLVED, That the legislative, executive, and judiciary powers within the several states, and of the national government, ought to be bound, by oath, to support the articles of union.

XXI. RESOLVED, That the amendments which shall be offered to the confederation by the convention ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

XXII. RESOLVED, That the representation in the second branch of the legislature of the United States consist of two members from each state, who shall vote per capita.

July 26.

XXIII. RESOLVED, That it be an instruction to the committee, to whom were referred the proceedings of the convention for the establishment of a national government, to receive a clause or clauses, requiring certain qualifications of property and citizenship, in the United States, for the executive, the judiciary, and the members of both branches of the legislature of the United States.

With the above resolutions were referred the propositions offered by M^r^ C. Pinckney on the 29^th^ of May, & by M^r^ Patterson on the 15^th^ of June. [15]

[15]"Aug 1. 1787 Williamsb.

Dear Col.

"We are here & I believe every where all Impatience to know something of your conventional Deliberations. If you cannot tell us what you are doing, you might at least give us some Information of what you are not doing. This wd afford food for political conjecture, and perhaps be sufficient to satisfy present Impatience. I hope you have already discovered the means of preserving the American Empire united–& that the scheme of a Disunion has been found pregnant with ye greatest Evils–But we are not at this distance able to judge with any accuracy upon subjects so truly important & interesting as those wch must engage you at present–We can only hope, that you will all resemble Cæsar, at least in one particular: 'nil actum reputans si quid superesset agendum';–& that your Exertions will be commensurate to ye great Expectations wch have been formed....

"J. Madison." [A]

[A] President of William and Mary College, and the first Bishop of the Episcopal Church in Virginia. He was a second cousin of James Madison, of Orange.

(Mad. MSS.)

Richmond Augt 5. 87.

"Dear Sir,

"I am much obliged to you for your communication of the proceedings of ye Convention, since I left them; for I feel that anxiety about ye result, which it's Importance must give to every honest citizen. If I thought that my return could contribute in the smallest degree to it's Improvement, nothing should Keep me away. But as I know that the talents, knowledge, & well-established character, of our present delegates have justly inspired the country with ye most entire confidence in their determinations; & that my vote could only *operate* to produce a division, & so destroy ye vote of ye State, I think that my attendance now would certainly be useless, perhaps injurious.

"I am credibly inform'd that Mr Henry has openly express'd his disapprobation of the circular letter of Congress, respecting ye payment of British debts; & that he has declared his opinion that ye Interests of this state cannot safely be trusted with that body. The doctrine of three confederacies, or great Republics, has its advocates here. I have heard Hervie support it, along with ye extinction of State Legislatures within each great Department. The necessity of some independent power to controul the Assembly by a negative,

seems now to be admitted by y^e^ most zealous republicans–they only differ about y^e^ mode of constituting such a power. B. Randolph seems to think that a magistrate annually elected by y^e^ people might exercise such a controul as independently as y^e^ King of G. B. I hope that our representative, Marshall, will be a powerful aid to Mason in the next Assembly. He has observ'd the actual depravation of mens manners, under y^e^ corrupting Influence of our Legislature; and is convinc'd that nothing but y^e^ adoption of some efficient plan from y^e^ Convention can prevent anarchy first, & civil convulsions afterwards. M^r^ H——y has certainly converted a majority of Prince Edward, formerly y^e^ most averse to paper money, to y^e^ patronage of it....

"Your friend & humble serv^t^.

"JAMES MCCLURG."
(Mad. MSS.)

Monday August 6TH. in Convention

Mr. John Francis Mercer from Maryland took his seat.

Mr. Rutlidge delivered in the Report of the Committee of detail as follows: a printed copy being at the same time furnished to each member [16].

"We the people of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the Government of Ourselves and our Posterity.

[16] Madison's printed copy is marked: "As Reported by Come of Detail viz of five. Aug. 6. 1787." It is a large folio of seven pages. In the enumeration of the Articles by a misprint VI. was repeated, and the alterations in Article VII. and succeeding articles were made by Madison. In Sect. II of Article VI., as it was printed, it appeared: "The enacting stile of the laws of the United States shall be. 'Be it enacted and it is hereby enacted by the House of Representatives, and by the Senate of the United States, in Congress assembled,'" which Madison altered to read: "The enacting stile of the laws of the United States shall be. 'Be it enacted by the Senate & representatives, in Congress assembled.'" The printed copy among the Madison papers is a duplicate of the copy filed by General Washington with the papers of the Constitution, and Sec. II is there given as actually printed.—*Journal of the Federal Convention*, 219. (Const. MSS.)

Madison accurately transcribed the report for his journal and it is this copy which is used in the text.

Article I

The stile of the Government shall be, "The United States of America."

II

The Government shall consist of supreme legislative, executive, and judicial powers.

III

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The Legislature shall meet on the first Monday in December in every year.

IV

Sect. 1. The members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five Members, of whom three shall be chosen in New-Hampshire, eight in Massachusetts, one in Rhode-Island and Providence Plantations, five in Connecticut, six in New-York, four in New-Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North-Carolina, five in South-Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in different States will alter from time to time; as some of the States may hereafter be divided; as others may be enlarged by addition of territory; as two or more States may be united; as new States will be erected within the limits of the United States, the Legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions herein after made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of Government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the Public Treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the State, in the representation from which they shall happen.

V

Sect. 1. The Senate of the United States shall be chosen by the Legislatures of the several States. Each Legislature shall chuse two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote.

Sect. 2. The Senators shall be chosen for six years; but immediately after the first election they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two and three. The seats of the members of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, of the third class at the expiration of the sixth year, so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Sect. 4. The Senate shall chuse its own President and other officers.

VI

Sect. 1. The times and places and manner of holding the elections of the members of each House shall be prescribed by the Legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States.

Sect. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient.

Sect. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each House shall be the judge of the elections, returns and qualifications of its own members.

Sect. 5. Freedom of speech and debate in the Legislature shall not be impeached or questioned in any Court or place out of the Legislature; and the members of each House shall, in all cases, except treason felony and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect. 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behaviour; and may expel a member.

Sect. 7. The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a journal of their proceedings, and shall, from time to time, publish them: and the yeas

and nays of the members of each House, on any question, shall at the desire of one-fifth part of the members present, be entered on the journal.

Sect. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate, when it shall exercise the powers mentioned in the —— article.

Sect. 9. The members of each House shall be ineligible to, and incapable of holding any office under the authority of the United States, during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding any such office for one year afterwards.

Sect. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the State, in which they shall be chosen.

Sect. 11. The enacting stile of the laws of the United States shall be, "Be it enacted by the Senate and Representatives in Congress assembled."

Sect. 12. Each House shall possess the right of originating bills, except in the cases beforementioned.

Sect. 13. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States for his revision: if, upon such revision, he approve of it, he shall signify his approbation by signing it: But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider the bill. But if after such reconsideration, two thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall together with his objections, be sent to the other House, by which it shall likewise be reconsidered, and if approved by two

thirds of the other House also, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return; in which case it shall not be a law.

VII

Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several States;

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish Post-offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a Treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

To subdue a rebellion in any State, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States, or in any department or officer thereof;

Sect. 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

Sect. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes) which number shall, within six years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such manner as the said Legislature shall direct.

Sect. 4. No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.

Sect. 5. No capitation tax shall be laid, unless in proportion to the Census hereinbefore directed to be taken.

Sect. 6. No navigation act shall be passed without the assent of two thirds of the members present in each House.

Sect. 7. The United States shall not grant any title of Nobility.

VIII

The acts of the Legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States shall be the supreme law of the several States, and of the citizens and inhabitants; and the judges in the several States shall be bound thereby in their decisions; any thing in the Constitutions or laws of the several States to the contrary notwithstanding.

IX

Sect 1. The Senate of the United States shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court.

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist between two or more States, respecting jurisdiction or territory, the Senate shall possess the following powers. Whenever the Legislature, or the Executive authority, or lawful agent of any State, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing; notice of such memorial and application shall be given by order of the Senate, to the Legislature or the Executive authority of the other State in Controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before the House. The Agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a Court for hearing and determining the matter in question. But if the Agents cannot agree, the Senate shall name three persons out of each of the several States; and from the list of such persons each party shall alternately strike out one, until the number shall be reduced to thirteen;

and from that number not less than seven nor more than nine names, as the Senate shall direct, shall in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them shall be commissioners or Judges to hear and finally determine the controversy; provided a majority of the Judges, who shall hear the cause, agree in the determination. If either party shall neglect to attend at the day assigned, without shewing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each State, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such Court; or shall not appear to prosecute or defend their claim or cause, the Court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records for the security of the parties concerned. Every Commissioner shall, before he sit in judgment, take an oath, to be administered by one of the Judges of the Supreme or Superior Court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward."

Sect. 3. All controversies concerning lands claimed under different grants of two or more States, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequent to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different States.

X

Sect. 1. The Executive Power of the United States shall be vested in a single person. His stile shall be, "The President of the United States of America;" and his title shall be, "His Excellency." He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the Legislature, of the state of the Union: he may recommend to their consideration such measures as he shall judge necessary, and expedient: he may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper: he shall take care that the laws of the United States be duly and faithfully executed: he shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive Ambassadors, and may correspond with the supreme Executives of the several States. He shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. He shall be commander in chief of the Army and Navy of the United States, and of the militia of the several States. He shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I —— solemnly swear, (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.

XI

Sect. 1. The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as shall, when necessary, from time to time, be constituted by the Legislature of the United States.

Sect. 2. The Judges of the Supreme Court, and of the Inferior Courts, shall hold their offices during good behaviour. They shall, at

stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Sect. 3. The Jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting Ambassadors, other Public Ministers and Consuls; to the trial of impeachments of officers of the United States; to all cases of Admiralty and maritime jurisdiction; to controversies between two or more States, (except such as shall regard Territory or Jurisdiction) between a State and Citizens of another State, between Citizens of different States, and between a State or the Citizens thereof and foreign States, citizens or subjects. In cases of impeachment, cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be party, this jurisdiction shall be original. In all the other cases beforementioned, it shall be appellate, with such exceptions and under such regulations as the Legislature shall make. The Legislature may assign any part of the jurisdiction abovementioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such Inferior Courts, as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachments) shall be in the State where they shall be committed; and shall be by Jury.

Sect. 5. Judgment, in cases of Impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit, under the United States. But the party convicted shall, nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

XII

No State shall coin money; nor grant letters of marque and reprisal; nor enter into any Treaty, alliance, or confederation; nor grant any title of Nobility.

XIII

No State, without the consent of the Legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another State, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent, as not to admit of a delay, until the Legislature of the United States can be consulted.

XIV

The Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

XV

Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.

XVI

Full faith shall be given in each State to the acts of the Legislatures, and to the records and judicial proceedings of the Courts and magistrates of every other State.

XVII

New States lawfully constituted or established within the limits of the United States may be admitted, by the Legislature, into this government; but to such admission the consent of two thirds of the members present in each House shall be necessary. If a new State shall arise within the limits of any of the present States, the consent of the Legislatures of such States shall be also necessary to its admission. If the admission be consented to, the new States shall be admitted on the

same terms with the original States. But the Legislature may make conditions with the new States, concerning the Public debt which shall be then subsisting.

XVIII

The United States shall guaranty to each State a Republican form of Government; and shall protect each State against foreign invasions, and, on the application of its Legislature, against domestic violence.

XIX

On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a convention for that purpose.

XX

The members of the Legislatures, and the Executive and Judicial officers of the United States, and of the several States, shall be bound by oath to support this Constitution.

XXI

The ratification of the Conventions of —— States shall be sufficient for organizing this Constitution.

XXII

This Constitution shall be laid before the United States in Congress Assembled, for their approbation; and it is the opinion of this Convention, that it should be afterwards submitted to a Convention chosen, under the recommendation of its legislature, in order to receive the ratification of such Convention.

XXIII

To introduce this government, it is the opinion of this Convention, that each assenting Convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the Conventions of —— States, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that after such publication, the Legislatures of the several States should elect members of the Senate, and direct the election of members of the House of Representatives; and that the members of the Legislature should meet at the time and place assigned by Congress, and should, as soon as may be, after their meeting, choose the President of the United States, and proceed to execute this Constitution.

A motion was made to adjourn till Wednesday, in order to give leisure to examine the Report; which passed in the negative—

N. H. no. Mas. no. C^{t} no. P^{a} ay. M^{d} ay. Virg. ay.
N. C. no. S. C. no.

The House then adjourned till to-morrow 11 OC.

Tuesday August 7. [17] In Convention

[17] Although the secrecy of the proceedings was guarded carefully, the reason of the long adjournment was generally known outside of the Convention.

"The Convention adjourned about three weeks ago and appointed a Committee consisting of Mr. Rutlege, Mr. Randolph, Mr. Wilson, Mr. Elsworth, & Mr. Gorham to draw into form the measures which had been agreed upon–they reassembled last Monday sen'night to receive the report–I suppose we shall have the result of this great business in a few weeks more."–Edward Carrington to Monroe, August 7, 1787.

Monroe MSS.

Cf. King's account of the debate confirming the accuracy of Madison's report (King's *Life and Correspondence of Rufus King*, i., 617).

The Report of the Committee of detail being taken up,

Mr. Pinkney moved that it be referred to a Committee of the whole. This was strongly opposed by Mr. Ghorum & several others, as likely to produce unnecessary delay; and was negatived, Delaware Maryd & Virga only being in the affirmative.

The preamble of the Report was agreed to nem. con. So were Art: I & II.

Art: III considered. Col. Mason doubted the propriety of giving each branch a negative on the other "in all cases." There were some cases in which it was he supposed not intended to be given as in the case of balloting for appointments.

Mr. Govr. Morris moved to insert "legislative acts" instead of "all cases."

Mr. Williamson 2ds him.

Mr. Sherman. This will restrain the operation of the clause too much. It will particularly exclude a mutual negative in the case of ballots, which he

hoped would take place.

Mr. Ghorum contended that elections ought to be made by *joint ballot*. If separate ballots should be made for the President, and the two branches should be each attached to a favorite, great delay contention & confusion may ensue. These inconveniences have been felt in Masts. in the election of officers of little importance compared with the Executive of the U. States. The only objection agst. a joint ballot is that it may deprive the Senate of their due weight; but this ought not to prevail over the respect due to the public tranquility & welfare.

Mr. Wilson was for a joint ballot in several cases at least; particularly in the choice of the President, and was therefore for the amendment. Disputes between the two Houses during & concerng. the vacancy of the Executive might have dangerous consequences.

Col. Mason thought the amendment of Mr. Govr. Morris extended too far. Treaties are in a subsequent part declared to be laws, they will therefore be subjected to a negative; altho' they are to be made as proposed by the Senate alone. He proposed that the mutual negative should be restrained to "cases requiring the distinct assent" of the two Houses.

Mr. Govr. Morris thought this but a repetition of the same thing; the mutual negative and distinct assent, being equivalent expressions. Treaties he thought were not laws.

Mr. Madison moved to strike out the words each of which shall in all cases, have a negative on the other; the idea being sufficiently expressed in the preceding member of the article; vesting the "legislative power" in "distinct bodies," especially as the respective powers and mode of exercising them were fully delineated in a subsequent article.

Genl. Pinkney 2ded. the motion.

On question for inserting legislative Acts as moved by Mr. Govr. Morris

N. H. ay. Mas. ay. Ct. ay. Pa. ay. Del. no. Md. no. Va. no.
N. C. ay. S. C. no. Geo. no.

On question for agreeing to Mr. M's motion to strike out &c.——

N. H. ay. Mas. ay. Ct. no. Pa. ay. Del. ay. Md. no. Va. ay.
N. C. no. S. C. ay. Geo. ay.

Mr. Madison wished to know the reasons of the Come. for fixing by ye. Constitution the time of Meeting for the Legislature; and suggested, that it be required only that one meeting at least should be held every year leaving the time to be fixed or varied by law.

Mr. Govr. Morris moved to strike out the sentence. It was improper to tie down the Legislature to a particular time, or even to require a meeting every year. The public business might not require it.

Mr. Pinkney concurred with Mr. Madison.

Mr. Ghorum. If the time be not fixed by the Constitution, disputes will arise in the Legislature; and the States will be at a loss to adjust thereto, the times of their elections. In the N. England States the annual time of meeting had been long fixed by their Charters & Constitutions, and no inconvenience had resulted. He thought it necessary that there should be one meeting at least every year as a check on the Executive department.

Mr. Elseworth was agst. striking out the words. The Legislature will not know till they are met whether the public interest required their meeting or not. He could see no impropriety in fixing the day, as the Convention could judge of it as well as the Legislature.

Mr. Wilson thought on the whole it would be best to fix the day.

Mr. King could not think there would be a necessity for a meeting every year. A great vice in our system was that of legislating too much. The most numerous objects of legislation belong to the States. Those of the Natl. Legislature were but few. The chief of them were commerce & revenue. When these should be once settled alterations would be rarely necessary & easily made.

M^r^ Madison thought if the time of meeting should be fixed by a law it w^d^ be sufficiently fixed & there would be no difficulty then as had been suggested, on the part of the States in adjusting their elections to it. One consideration appeared to him to militate strongly ag^st^ fixing a time by the Constitution. It might happen that the Legislature might be called together by the public exigencies & finish their Session but a short time before the annual period. In this case it would be extremely inconvenient to reassemble so quickly & without the least necessity. He thought one annual meeting ought to be required; but did not wish to make two unavoidable.

Col. Mason thought the objections against fixing the time insuperable: but that an annual meeting ought to be required as essential to the preservation of the Constitution. The extent of the Country will supply business. And if it should not, the Legislature, besides *legislative*, is to have *inquisitorial* powers, which cannot safely be long kept in a state of suspension.

M^r^ Sherman was decided for fixing the time, as well as for frequent meetings of the Legislative body. Disputes and difficulties will arise between the two Houses, & between both & the States, if the time be changeable–frequent meetings of Parliament were required at the Revolution in England as an essential safeguard of liberty. So also are annual meetings in most of the American charters & constitutions. There will be business eno' to require it. The Western Country, and the great extent and varying state of our affairs in general will supply objects.

M^r^ Randolph was ag^st^ fixing any day irrevocably; but as there was no provision made any where in the Constitution for regulating the periods of meeting, and some precise time must be fixed, untill the Legislature shall make provision, he could not agree to strike out the words altogether. Instead of which he moved to add the words following–"unless a different day shall be appointed by law."

M^r^ Madison 2^ded^ the motion, & on the question

N. H. no. Mass. ay. C^t^ no. P^a^ ay. Del. ay. M^d^ ay. V^a^ ay.
N. C. ay. S. C. ay. Geo. ay.

Mr. Govr. Morris moved to strike out Decr. & insert May. It might frequently happen that our measures ought to be influenced by those in Europe, which were generally planned during the Winter and of which intelligence would arrive in the Spring.

Mr. Madison 2ded the motion, he preferred May to Decr. because the latter would require the travelling to & from the seat of Govt. in the most inconvenient seasons of the year.

Mr. Wilson. The Winter is the most convenient season for business.

Mr. Elseworth. The summer will interfere too much with private business, that of almost all the probable members of the Legislature being more or less connected with agriculture.

Mr. Randolph. The time is of no great moment now, as the Legislature can vary it. On looking into the Constitutions of the States, he found that the times of their elections with which the election of the Natl. Representatives would no doubt be made to coincide, would suit better with Decr. than May. And it was advisable to render our innovations as little incommodious as possible.

On the question for "May" instead of "Decr."

N. H. no. Mass. no. Ct. no. Pa. no. Del. no. Md. no. Va. no.
N. C. no. S. C. ay. Geo. ay.

Mr. Read moved to insert after the word "Senate," the words, "subject to the Negative to be hereafter provided." His object was to give an absolute Negative to the Executive–He considered this as so essential to the Constitution, to the preservation of liberty, & to the public welfare, that his duty compelled him to make the Motion.

Mr. Govr. Morris 2ded him. And on the question

N. H. no. Mass. no. Ct. no. Pa. no. Del. ay. Md. no. Va. no.
N. C. no. S. C. no. Geo. no.

Mr. Rutlidge. Altho' it is agreed on all hands that an annual meeting of the Legislature should be made necessary, yet that point seems not to be free from doubt as the clause stands. On this suggestion, "Once at least in every year," were inserted, nem. con.

Art. III with the foregoing alterations was agd to nem. con., and is as follows: "The Legislative power shall be vested in a Congress to consist of 2 separate & distinct bodies of men; a House of Reps & a Senate. The Legislature shall meet at least once in every year, and such meeting shall be on the 1st Monday in Decr unless a different day shall be appointed by law."

"Article IV. Sect. 1. taken up."

Mr. Govr Morris moved to strike out the last member of the section beginning with the words "qualifications of Electors," in order that some other provision might be substituted which wd restrain the right of suffrage to freeholders.

Mr. Fitzsimons 2ded the motion.

Mr. Williamson was opposed to it.

Mr. Wilson. This part of the Report was well considered by the Committee, and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications for all the States. Unnecessary innovations he thought too should be avoided. It would be very hard & disagreeable for the same persons at the same time, to vote for representatives in the State Legislature and to be excluded from a vote for those in the Natl Legislature.

Mr. Govr Morris. Such a hardship would be neither great nor novel. The people are accustomed to it and not dissatisfied with it, in several of the States. In some the qualifications are different for the choice of the Govr & Representatives; In others for different Houses of the Legislature. Another objection agst the clause as it stands is that it makes the qualifications of the Natl Legislature depend on the will of the States, which he thought not proper.

Mr. Elseworth. thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State Constitutions. The people will not readily subscribe to the Natl. Constitution if it should subject them to be disfranchised. The States are the best Judges of the circumstances & temper of their own people.

Col. Mason. The force of habit is certainly not attended to by those Gentlemen who wish for innovations on this point. Eight or nine States have extended the right of suffrage beyond the freeholders. What will the people there say, if they should be disfranchised. A power to alter the qualifications would be a dangerous power in the hands of the Legislature.

Mr. Butler. There is no right of which the people are more jealous than that of suffrage. Abridgments of it tend to the same revolution as in Holland where they have at length thrown all power into the hands of the Senates, who fill up vacancies themselves, and form a rank aristocracy.

Mr. Dickinson. had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the Country. He considered them as the best guardians of liberty; And the restriction of the right to them as a necessary defence agst. the dangerous influence of those multitudes without property & without principle with which our Country like all others, will in time abound. As to the unpopularity of the innovation it was in his opinion chimerical. The great mass of our Citizens is composed at this time of freeholders, and will be pleased with it.

Mr. Elseworth. How shall the freehold be defined? Ought not every man who pays a tax, to vote for the representative who is to levy & dispose of his money? Shall the wealthy merchants & manufacturers, who will bear a full share of the public burthens be not allowed a voice in the imposition of them. Taxation & representation ought to go together.

Mr. Govr. Morris. He had long learned not to be the dupe of words. The sound of aristocracy therefore had no effect on him. It was the thing, not the name, to which he was opposed, and one of his principal objections to the Constitution as it is now before us, is that it threatens this Country with an

aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this Country will abound with mechanics & manufacturers who will receive their bread from their employers. Will such men be the secure & faithful guardians of liberty? Will they be the impregnable barrier agᵗ aristocracy?–He was as little duped by the association of the words, "taxation & Representation." The man who does not give his vote freely is not represented. It is the man who dictates the vote. Children do not vote. Why? because they want prudence, because they have no will of their own. The ignorant & the dependent can be as little trusted with the public interest. He did not conceive the difficulty of defining "freeholders" to be insuperable. Still less that the restriction could be unpopular. 9/10 of the people are at present freeholders and these will certainly be pleased with it. As to Merchᵗˢ. &c. if they have wealth & value the right they can acquire it. If not they don't deserve it.

Col. Mason. We all feel too strongly the remains of antient prejudices, and view things too much through a British medium. A Freehold is the qualification in England, & hence it is imagined to be the only proper one. The true idea in his opinion was that every man having evidence of attachment to & permanent common interest with the Society ought to share in all its rights & privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? does nothing besides property mark a permanent attachment. Ought the merchant, the monied man, the parent of a number of children whose fortunes are to be pursued in his own Country to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow Citizens.

Mʳ Madison. the right of suffrage is certainly one of the fundamental articles of republican Government, and ought not to be left to be regulated by the Legislature. A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the Constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in

States where the right was now exercised by every description of people. In several of the States a freehold was now the qualification. Viewing the subject in its merits alone, the freeholders of the Country would be the safest depositories of Republican liberty. In future times a great majority of the people will not only be without landed, but any other sort of property. These will either combine, under the influence of their common situation: in which case, the rights of property & the public liberty, will not be secure in their hands: or which is more probable, they will become the tools of opulence & ambition, in which case there will be equal danger on another side. The example of England has been misconceived (by Col. Mason.) A very small proportion of the Representatives are there chosen by freeholders. The greatest part are chosen by the Cities & boroughs, in many of which the qualification of suffrage is as low as it is in any one of the U. S. and it was in the boroughs & Cities rather than the Counties, that bribery most prevailed, & the influence of the Crown on elections was most dangerously exerted. [18]

[18] "Note to speech of J. M. in Convention of 1787, August 7th.:

"As appointments for the General Government here contemplated will, in part, be made by the State Govts, all the Citizens in States where the right of suffrage is not limited to the holders of property, will have an indirect share of representation in the General Government. But this does not satisfy the fundamental principle that men cannot be justly bound by laws in making which they have no part. Persons & property being both essential objects of Government, the most that either can claim, is such a structure of it as will leave a reasonable security for the other. And the most obvious provision, of this double character, seems to be that of confining to the holders of property the object deemed least secure in popular Govts the right of suffrage for one of the two Legislative branches. This is not without example among us, as well as other constitutional modifications, favouring the influence of property in the Government. But the U. S. have not reached the stage of Society in which conflicting feelings of the Class with, and the Class without property, have the operation natural to them in Countries fully peopled. The most difficult of all political arrangements is that of so adjusting the claims of the two Classes as to give security to each and to promote the welfare of all. The federal principle,– which enlarges the sphere of power without departing from the elective basis of it and controuls in various ways the propensity in small republics to rash measures & the facility of forming & executing them, will be found the best expedient yet tried for solving the problem."–Madison's Note.

"Note to the speech of J. M. on the [7th.] day of [August].

"These observations (in the speech of J. M. see debates in the Convention of 1787, on the [7th.] day of [August]) do not convey the speaker's more full & matured view of the subject, which is subjoined. He felt too much at the time the example of Virginia.

"The right of suffrage is a fundamental Article in Republican Constitutions. The regulation of it is, at the same time, a task of peculiar delicacy. Allow the right exclusively to property, and the rights of persons may be oppressed. The feudal polity, alone sufficiently proves it. Extend it equally to all, and the rights of property, or the claims of justice, may be overruled by a majority without property or interested in measures of injustice. Of this abundant proof is afforded by other popular Govts and is not without examples in our own, particularly in the laws impairing the obligation of contracts.

"In civilized communities, property as well as personal rights is an essential object of the laws, which encourage industry by securing the enjoyment of its fruits; that industry from which property results, & that enjoyment which consists not merely in its immediate use, but in its posthumous destination to objects of choice and of kindred affection.

"In a just & a free Government, therefore, the rights both of property & of persons ought to be effectually guarded. Will the former be so in case of a universal & equal suffrage? Will the latter be so in case of a suffrage confined to the holders of property?

"As the holders of property have at stake all the other rights common to those without property, they may be the more restrained from infringing, as well as the less tempted to infringe the rights of the latter. It is nevertheless certain, that there are various ways in which the rich may oppress the poor; in which property may oppress liberty; and that the world is filled with examples. It is necessary that the poor should have a defence against the danger.

"On the other hand, the danger to the holders of property cannot be disguised, if they be undefended against a majority without property. Bodies of men are not less swayed by interest than individuals, and are less controlled by the dread of reproach and the other motives felt by individuals. Hence the liability of the rights of property, and of the impartiality of laws affecting it, to be violated by Legislative majorities having an interest real or supposed in the injustice: Hence agrarian laws, and other leveling schemes: Hence the cancelling or evading of debts, and other violations of contracts. We must not shut our eyes to the nature of man, nor to the light of experience. Who would rely on a fair decision from three individuals if two had an interest in the case opposed to the rights of the third? Make the number as great as you please, the impartiality will not be increased; nor any further security against injustice be obtained, than what may result from the greater difficulty of uniting the wills of a greater number.

"In all Govts there is a power which is capable of oppressive exercise. In Monarchies and Aristocracies oppression proceeds from a want of sympathy &

responsibility in the Govt towards the people. In popular Governments the danger lies in an undue sympathy among individuals composing a majority, and a want of responsibility in the majority to the minority. The characteristic excellence of the political System of the U. S. arises from a distribution and organization of its powers, which at the same time that they secure the dependence of the Govt on the will of the nation, provides better guards than are found in any other popular Govt against interested combinations of a Majority against the rights of a Minority.

"The U. States have a precious advantage also in the actual distribution of property particularly the landed property; and in the universal hope of acquiring property. This latter peculiarity is among the happiest contrasts in their situation to that of the old world, where no anticipated change in this respect, can generally inspire a like sympathy with the rights of property. There may be at present, a Majority of the Nation, who are even freeholders, or the heirs or aspirants to Freeholds. And the day may not be very near when such will cease to make up a Majority of the community. But they cannot always so continue. With every admissible subdivision of the Arable lands, a populousness not greater than that of England or France will reduce the holders to a Minority. And whenever the majority shall be without landed or other equivalent property and without the means or hope of acquiring it, what is to secure the rights of property agst the danger from an equality & universality of suffrage, vesting compleat power over property in hands without a share in it: not to speak of a danger in the meantime from a dependence of an increasing number on the wealth of a few? In other Countries this dependence results in some from the relations between Landlords & Tenants in others both from that source & from the relations between wealthy capitalists and indigent labourers. In the U. S. the occurrence must happen from the last source; from the connection between the great Capitalists in Manufactures & Commerce and the numbers employed by them. Nor will accumulations of Capital for a certain time be precluded by our laws of descent & of distribution; Such being the enterprise inspired by free Institutions, that great wealth in the hands of individuals and associations may not be unfrequent. But it may be observed, that the opportunities may be diminished, and the permanency defeated by the equalizing tendency of our laws.

"No free Country has ever been without parties, which are a natural offspring of Freedom. An obvious and permanent division of every people is into the owners of the soil, and the other inhabitants. In a certain sense the country may be said to belong to the former. If each landholder has an exclusive property in his share, the Body of Landholders have an exclusive property in the whole. As the Soil becomes subdivided, and actually cultivated by the owners, this view of the subject derives force from the principle of natural law, which vests in individuals an exclusive right to the portions of ground with which he has incorporated his labour & improvements. Whatever may be the rights of others derived from their birth in the Country, from their interest in the highways & other parcels left open for common use, as well as in the national edifices and monuments; from their share in the public defence, and from their concurrent support of the Govt, it would seem unreasonable to extend the right so far as to

give them when become the majority, a power of Legislation over the landed property without the consent of the proprietors. Some barrier agst the invasion of their rights would not be out of place in a just and provident System of Govt. The principle of such an arrangement has prevailed in all Govts where peculiar privileges or interests held by a part were to be secured agst violation, and in the various associations where pecuniary or other property forms the stake. In the former case a defensive right has been allowed; and if the arrangement be wrong, it is not in the defense but in the kind of privilege to be defended. In the latter case, the shares of suffrage, allotted to individuals have been with acknowledged justice apportioned more or less to their respective interests in the Common Stock.

"These reflections suggest the expediency of such a modification of Govt as would give security to the part of the Society having most at stake and being most exposed to danger. Three modifications present themselves.

"1. *Confining* the right of suffrage to freeholders, & to such as hold an equivalent property, convertible of course into freeholds. The objection to this regulation is obvious. It violates the vital principle of free Govt that those who are to be bound by laws, ought to have a voice in making them. And the violation wd be more strikingly unjust as the law makers become the minority. The regulation would be as unpropitious, also, as it would be unjust. It would engage the numerical & physical force in a constant struggle agst the public authority; unless kept down by a standing army fatal to all parties.

"2. Confining the right of suffrage for one Branch to the holders of property, and for the other Branch to those without property. This arrangement which wd give a mutual defence, where there might be mutual danger of encroachment, has an aspect of equality & fairness. But it wd not be in fact either equal or fair, because the rights to be defended would be unequal, being on one side those of property as well as of persons, and on the other those of persons only. The temptation also to encroach tho' in a certain degree mutual, wd be felt more strongly on one side than on the other: It would be more likely to beget an abuse of the Legislative Negative in extorting concessions at the expence of property, than the reverse. The division of the State into two Classes, with distinct & independt Organs of power, and without any intermingled agency whatever, might lead to contests & antipathies not dissimilar to those between the Patricians & Plebeians at Rome.

"3. Confining the right of electing one Branch of the Legislature to freeholders, and admitting all others to a common right with holders of property in electing the other Branch. This wd give a defensive power to holders of property, and to the class also without property when becoming a majority of electors, without depriving them in the meantime of a participation in the Public Councils. If the holders of property would thus have a two-fold share of representation, they wd have at the same time a two-fold stake in it, the rights of

property as well as of persons, the two-fold object of political Institutions. And if no exact & safe equilibrium can be introduced, it is more reasonable that a preponderating weight sh[d] be allowed to the greater interest than to the lesser. Experience alone can decide how far the practice in this case would correspond with the Theory. Such a distribution of the right of suffrage was tried in N. York and has been abandoned whether from experienced evils, or party calculations, may possibly be a question. It is still on trial in N. Carolina, with what practical indications is not known. It is certain that the trial, to be satisfactory ought to be continued for no inconsiderable period; untill in fact the non-freeholders should be the majority.

"4. Should experience or public opinion require an equal & universal suffrage for each branch of the Gov[t] such as prevails generally in the U. S., a resource favorable to the rights of the landed & other property, when its possessors become the minority, may be found in an enlargement of the Election Districts for one branch of the Legislature, and an extension of its period of service. Large districts are manifestly favorable to the election of persons of general respectability, and of probable attachment to the rights of property, over competitors depending on the personal solicitation practicable on a contracted theatre. And altho' an ambitious candidate, of personal distinction, might occasionally recommend himself to popular choice by espousing a popular though unjust object, it might rarely happen to many districts at the same time. The tendency of a longer period of service would be, to render the Body more stable in its policy, and more capable of stemming popular currents taking a wrong direction, till reason & justice could regain their ascendancy.

"5. Should even such a modification as the last be deemed inadmissible, and universal suffrage and very short periods of elections within contracted spheres, be required for each branch of the Gov[t], the security for the holders of property when the minority, can only be derived from the ordinary influence possessed by property, & the superior information incident to its holders; from the popular sense of justice enlightened & enlarged by a diffusive education; and from the difficulty of combining & effectuating unjust purposes throughout an extensive country; a difficulty essentially distinguishing the U. S. & even most of the individual States, from the small communities where a mistaken interest or contagious passion, could readily unite a majority of the whole under a factious leader, in trampling on the rights of the minor party.

"Under every view of the subject, it seems indispensable that the Mass of Citizens should not be without a voice, in making the laws which they are to obey, & in chusing the Magistrates who are to administer them, and if the only alternative be between an equal & universal right of suffrage for each branch of the Gov[t] and a confinement of the *entire* right to a part of the Citizens, it is better that those having the greater interest at stake namely that of property & persons both, should be deprived of half their share in the Gov[t] than, that those having the lesser interest, that of personal rights only, should be deprived of the whole."–Madison's Note.

Doc^{r} Franklin. It is of great consequence that we sh^{d} not depress the virtue & public spirit of our common people; of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it. He related the honorable refusal of the American seamen who were carried in great numbers into the British Prisons during the war, to redeem themselves from misery or to seek their fortunes, by entering on board the Ships of the Enemies to their Country; contrasting their patriotism with a contemporary instance in which the British seamen made prisoners by the Americans, readily entered on the ships of the latter on being promised a share of the prizes that might be made out of their own Country. This proceeded he said from the different manner in which the common people were treated in America & G. Britain. He did not think that the elected had any right in any case to narrow the privileges of the electors. He quoted as arbitrary the British Statute setting forth the danger of tumultuous meetings, and under that pretext narrowing the right of suffrage to persons having freeholds of a certain value; observing that this Statute was soon followed by another under the succeeding Parliam^{t} subjecting the people who had no votes to peculiar labors & hardships. He was persuaded also that such a restriction as was proposed would give great uneasiness in the populous States. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description.

M^{r} Mercer. The Constitution is objectionable in many points, but in none more than the present. He objected to the footing on which the qualification was put, but particularly to the *mode of election* by the people. The people can not know & judge of the characters of Candidates. The worse possible choice will be made. He quoted the case of the Senate in Virg^{a} as an example in point. The people in Towns can unite their votes in favor of one favorite; & by that means always prevail over the people of the Country, who being dispersed will scatter their votes among a variety of candidates.

M^{r} Rutlidge thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people & make enemies of all those who should be excluded.

On the question for striking out as moved by M^{r} Gov^{r} Morris, from the word "qualifications" to the end of the III article

N. H. no. Mass. no. C^{t} no. P^{a} no. Del. ay. M^{d} div^{d}. V^{a} no. N. C. no. S. C. no. Geo. not pres^{t}.

Adjourned

Wednesday AugST 8. In Convention

Art: IV. sect. 1.–M^{r} Mercer expressed his dislike of the whole plan, and his opinion that it never could succeed.

M^{r} Ghorum. he had never seen any inconveniency from allowing such as were not freeholders to vote, though it had long been tried. The elections in Phil^{a}, N. York & Boston where the Merchants & Mechanics vote are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday (by M^{r} Madison). The Cities & large towns are not the seat of Crown influence & corruption. These prevail in the Boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America, and will never allow it to be abridged. We must consult their rooted prejudices if we expect their concurrence in our propositions.

M^{r} Mercer did not object so much to an election by the people at large including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that Candidates ought to be nominated by the State Legislatures.

On the question for agreeing to Art: IV–Sect, 1 it pass^{d} nem. con.

Art. IV. Sect. 2. taken up.

Col. Mason was for opening a wide door for emigrants; but did not chuse to let foreigners and adventurers make laws for us & govern us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the Representative. This was the principal ground of his objection to so short a term. It might also happen that a rich foreign Nation, for example Great Britain, might send over her tools who might bribe their way into the Legislature for insidious purposes. He moved that "seven" years instead of "three," be inserted.

M^r^ Gov^r^ Morris 2^ded^ the Motion, & on the question, all the States agreed to it except Connecticut.

M^r^ Sherman moved to strike out the word "resident" and insert "inhabitant," as less liable to misconstruction.

M^r^ Madison 2^ded^ the motion, both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on public or private business. Great disputes had been raised in Virg^a^ concerning the meaning of residence as a qualification of Representatives which were determined more according to the affection or dislike to the man in question, than to any fixt interpretation of the word.

M^r^ Wilson preferred "inhabitant."

M^r^ Gov^r^ Morris, was opposed to both and for requiring nothing more than a freehold. He quoted great disputes in N. York occasioned by these terms, which were decided by the arbitrary will of the majority. Such a regulation is not necessary. People rarely chuse a nonresident–It is improper as in the 1^st^ branch, *the people at large*, not the *States*, are represented.

M^r^ Rutlidge urged & moved, that a residence of 7 years sh^d^ be required in the State Wherein the Member sh^d^ be elected. An emigrant from N. England to S. C. or Georgia would know little of its affairs and could not be supposed to acquire a thorough knowledge in less time.

M^r^ Read reminded him that we were now forming a *Nat^l^* Gov^t^ and such a regulation would correspond little with the idea that we were one people.

M^r^ Wilson. enforced the same consideration.

M^r^ Madison suggested the case of new States in the West, which could have perhaps no representation on that plan.

M^r^ Mercer. Such a regulation would present a greater alienship among the States than existed under the old federal system. It would interweave local prejudices & State distinctions in the very Constitution which is meant

to cure them. He mentioned instances of violent disputes raised in Maryland concerning the term "residence."

Mr. Elseworth thought seven years of residence was by far too long a term: but that some fixt term of previous residence would be proper. He thought one year would be sufficient, but seemed to have no objection to three years.

Mr. Dickinson proposed that it should read "inhabitant actually resident for —— years." This would render the meaning less indeterminate.

Mr. Wilson. If a short term should be inserted in the blank, so strict an expression might be construed to exclude the members of the Legislature, who could not be said to be actual residents in their States whilst at the Seat of the Genl. Government.

Mr. Mercer. It would certainly exclude men, who had once been inhabitants, and returning from residence elsewhere to resettle in their original State; although a want of the necessary knowledge could not in such cases be presumed.

Mr. Mason thought 7 years too long, but would never agree to part with the principle. It is a valuable principle. He thought it a defect in the plan that the Representatives would be too few to bring with them all the local knowledge necessary. If residence be not required, Rich men of neighbouring States, may employ with success the means of corruption in some particular district and thereby get into the public Councils after having failed in their own State. This is the practice in the boroughs of England.

On the question for postponing in order to consider Mr. Dickinsons motion

> N. H. no. Mass. no. Ct. no. N. J. no. Pa. no. Del. no.
> Md. ay. Va. no. N. C. no. S. C. ay. Geo. ay.

On the question for inserting "inhabitant" in place of "resident"–agd. to nem. con.

Mr. Elseworth & Col. Mason move to insert "one year" for previous inhabitancy.

Mr. Williamson liked the Report as it stood. He thought "resident" a good eno' term. He was agst requiring any period of previous residence. New residents if elected will be most zealous to conform to the will of their constituents, as their conduct will be watched with a more jealous eye.

Mr. Butler & Mr. Rutlidge moved "three years" instead of "one year" for previous inhabitancy.

On the question for 3 years,

N. H. no. Mass. no. Ct. no. N. J. no. Pa. no. Del. no.
Md. no. Va. no. N. C. no. S. C. ay. Geo. ay.

On the question for "1 year"

N. H. no.–Mass. no. Ct. no. N. J. ay. Pa. no. Del. no.
Md. divd. Va. no. N. C. ay. S. C. ay. Geo. ay.

Art. IV. Sect. 2. as amended in manner preceding, was agreed to nem. con.

Art. IV. Sect. 3. taken up.

Genl. Pinkney & Mr. Pinkney moved that the number of Representatives allotted to S. Carola. be "six." On the question,

N. H. no. Mass. no. Ct. no. N. J. no. Pa. no. Delaware ay.
Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay.

The 3. Sect of Art: IV, was then agreed to.

Art: IV. Sect. 4. taken up.

Mr. Williamson moved to strike out "according to the provisions hereinafter made" and to insert the words "according to the rule hereafter to

be provided for direct taxation."–See Art. VII. Sect. 3.

On the question for agreeing to M^r^ Williamson's amendment

N. H. ay. Mass. ay. C^t^ ay. N. J. no. P^a^ ay. Del. no. M^d^ ay. V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

M^r^ King wished to know what influence the vote just passed was meant to have on the succeeding part of the Report, concerning the admission of Slaves into the rule of Representation. He could not reconcile his mind to the article if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, & he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore because he had hoped that this concession would have produced a readiness which had not been manifested, to strengthen the Gen^l^ Gov^t^ and to mark a full confidence in it. The Report under consideration had by the tenor of it, put an end to all those hopes. In two great points the hands of the Legislature were absolutely tied. The importation of slaves could not be prohibited–exports could not be taxed. Is this reasonable? What are the great objects of the Gen^l^ System? 1. defence ag^st^ foreign invasion. 2. ag^st^ internal sedition. Shall all the States then be bound to defend each; & shall each be at liberty to introduce a weakness which will render defence more difficult? Shall one part of the U. S. be bound to defend another part, and that other part be at liberty not only to increase its own danger, but to withhold the compensation for the burden? If slaves are to be imported shall not the exports produced by their labor, supply a revenue the better to enable the Gen^l^ Gov^a^ to defend their Masters? There was so much inequality & unreasonableness in all this, that the people of the Northern States could never be reconciled to it. No candid man could undertake to justify it to them. He had hoped that some accommodation w^d^ have taken place on this subject; that at least a time w^d^ have been limited for the importation of slaves. He never could agree to let them be imported without limitation & then be represented in the Nat^l^ Legislature. Indeed he could so little persuade himself of the rectitude of such a practice, that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented, or exports should be taxable.

Mr. Sherman regarded the slave trade as iniquitous; but the point of representation having been settled after much difficulty & deliberation, he did not think himself bound to make opposition; especially as the present article as amended did not preclude any arrangement whatever on that point in another place of the Report.

Mr. Madison objected to 1 for every 40.000 inhabitants as a perpetual rule. The future increase of population if the Union shd. be permanent, will render the number of Representatives excessive.

Mr. Ghorum. It is not to be supposed that the Govt. will last so long as to produce this effect. Can it be supposed that this vast Country including the Western territory will 150 years hence remain one nation?

Mr. Elseworth. If the Govt. should continue so long, alterations may be made in the Constitution in the manner proposed in a subsequent article.

Mr. Sherman & Mr. Madison moved to insert the words "not exceeding," before the words "1 for every 40.000." which was agreed to nem. con.

Mr. Govr. Morris moved to insert "free" before the word inhabitants. Much he said would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the States where it prevailed. Compare the free regions of the Middle States, where a rich & noble cultivation marks the prosperity & happiness of the people, with the misery & poverty which overspread the barren wastes of Va. Maryd. & the other States having slaves. Travel thro' ye. whole Continent & you behold the prospect continually varying with the appearance & disappearance of slavery. The moment you leave ye. E. States & enter N. York, the effects of the institution become visible, passing thro' the Jerseys & entering Pa. every criterion of superior improvement witnesses the change. Proceed southwdly. & every step you take thro' ye. great regions of slaves presents a desert increasing, with ye. increasing [word is illegible] proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them Citizens and let them vote. Are they property? Why then is no other property included? The Houses in this city (Philada.) are worth more than all

the wretched Slaves which cover the rice swamps of South Carolina. The admission of slaves into the Representation when fairly explained comes to this: that the inhabitant of Georgia and S. C. who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections & damns them to the most cruel bondages, shall have more votes in a Gov^{t} instituted for protection of the rights of mankind, than the Citizen of P^{a} or N. Jersey who views with a laudable horror, so nefarious a practice. He would add that Domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. The vassalage of the poor has ever been the favorite offspring of Aristocracy. And What is the proposed compensation to the Northern States for a sacrifice of every principle of right, of every impulse of humanity. They are to bind themselves to march their militia for the defence of the S. States; for their defence agst those very slaves of whom they complain. They must supply vessels & seamen in case of foreign Attack. The Legislature will have indefinite power to tax them by excises, and duties on imports: both of which will fall heavier on them than on the Southern inhabitants; for the bohae tea used by a Northern freeman, will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack, and the difficulty of defence; nay they are to be encouraged to it by an assurance of having their votes in the Nat^{l} Gov^{t} increased in proportion, and are at the same time to have their exports & their slaves exempt from all contributions for the public service. Let it not be said that direct taxation is to be proportioned to representation. It is idle to suppose that the Gen^{l} Gov^{t} can stretch its hand directly into the pockets of the people scattered over so vast a Country. They can only do it through the medium of exports imports & excises. For What then are all the sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the U. States, than saddle posterity with such a Constitution.

M^{r} Dayton 2^{ded} the motion. He did it he said that his sentiments on the subject might appear whatever might be the fate of the amendment.

Mr. Sherman, did not regard the admission of the Negroes into the ratio of representation, as liable to such insuperable objections. It was the freemen of the Southn. States who were in fact to be represented according to the taxes paid by them, and the Negroes are only included in the Estimate of the taxes. This was his idea of the matter.

Mr. Pinkney, considered the fisheries & the Western frontier as more burthensome to the U. S. than the slaves. He thought this could be demonstrated if the occasion were a proper one.

Mr. Wilson, thought the motion premature. An agreement to the clause would be no bar to the object of it.

Question On motion to insert "free" before "inhabitants,"

N. H. no. Mass. no. Ct. no. N. J. ay. Pa. no. Del. no.
Md. no. Va. no. N. C. no. S. C. no. Geo. no.

On the suggestion of Mr. Dickinson the words, "provided that each State shall have one representative at least,"–were added nem. con.

Art. IV. Sect. 4. as amended was agreed to con. nem.

Art. IV. Sect. 5. taken up.

Mr. Pinkney moved to strike out Sect. 5. As giving no peculiar advantage to the House of Representatives, and as clogging the Govt. If the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills.

Mr. Ghorum. was agst allowing the Senate to *originate*; but only to *amend*.

Mr. Govr Morris. It is particularly proper that the Senate shd have the right of originating money bills. They will sit constantly, will consist of a smaller number, and will be able to prepare such bills with due correctness; and so as to prevent delay of business in the other House.

Col. Mason was unwilling to travel over this ground again. To strike out the Section, was to unhinge the compromise of which it made a part. The duration of the Senate made it improper. He does not object to that duration. On the Contrary he approved of it. But joined with the smallness of the number, it was an argument against adding this to the other great powers vested in that body. His idea of an Aristocracy was that it was the govern^{t} of the few over the many. An aristocratic body, like the screw in mechanics, work^{g} its way by slow degrees, and holding fast whatever it gains, should ever be suspected of an encroaching tendency. The purse strings should never be put into its hands.

M^{r} Mercer, considered the exclusive power of originating Money bills as so great an advantage, that it rendered the equality of votes in the Senate ideal & of no consequence.

M^{r} Butler was for adhering to the principle which had been settled.

M^{r} Wilson was opposed to it on its merits without regard to the compromise.

M^{r} Elseworth did not think the clause of any consequence, but as it was thought of consequence by some members from the larger States, he was willing it should stand.

M^{r} Madison was for striking it out; considering it as of no advantage to the large States as fettering the Gov^{t} and as a source of injurious altercations between the two Houses.

On the question for striking out "Sect. 5, Art. IV".

N. H. no. Mass. no. C^{t} no. N. J. ay. P^{a} ay. Del. ay. M^{d} ay.
V^{a} ay. N. C. no. S. C. ay. Geo. ay.

Adj^{d}.

Thursday, Augst 9. in Convention

Art: IV. Sect. 6. M^{r} Randolph expressed his dissatisfaction at the disagreement yesterday to Sect. 5. concerning money bills, as endangering the success of the plan, and extremely objectionable in itself; and gave notice that he should move for a reconsideration of the vote.

M^{r} Williamson said he had formed a like intention.

M^{r} Wilson, gave notice that he sh^{d} move to reconsider the vote, requiring seven instead of three years of Citizenship as a qualification of candidates for the House of Representatives.

Art. IV. Sec. 6. & 7. Agreed to nem. con.

Art. V. Sect. 1. taken up.

M^{r} Wilson objected to vacancies in the Senate being supplied by the Executives of the States. It was unnecessary as the Legislatures will meet so frequently. It removes the appointment too far from the people; the Executives in most of the States being elected by the Legislatures. As he had always thought the appointment of the Executives by the Legislative department wrong; so it was still more so that the Executive should elect into the Legislative department.

M^{r} Randolph thought it necessary in order to prevent inconvenient chasms in the Senate. In some States the Legislatures meet but once a year. As the Senate will have more power & consist of a smaller number than the other House, vacancies there will be of more consequence. The Executives might be safely trusted he thought with the appointment for so short a time.

M^{r} Elseworth. It is only said that the Executive *may* supply vacancies. When the Legislative meeting happens to be near, the power will not be exerted. As there will be but two members from a State vacancies may be of great moment.

M^r^ Williamson. Senators may resign or not accept. This provision is therefore absolutely necessary.

On the question for striking out "vacancies shall be supplied by the Executives"

N. H. no. Mass. no. C^t^ no. N. J. no. P^a^ ay. M^d^ div^d^.
V^a^ no. N. C. no. S. C. no. Geo. no.

M^r^ Williamson moved to insert after "vacancies shall be supplied by the Executives," the following words "unless other provision shall be made by the Legislature" (of the State).

M^r^ Elseworth. He was willing to trust the Legislature, or the Executive of a State, but not to give the former a discretion to refer appointments for the Senate to whom they pleased.

Question on M^r^ Williamson's motion

N. H. no. Mass. no. C^t^ no. N. J. no. P^a^ no. M^d^ ay. V^a^ no.
N. C. ay. S. C. ay. Geo. ay.

M^r^ Madison in order to prevent doubts whether resignations could be made by Senators, or whether they could refuse to accept, moved to strike out the words after "vacancies," & insert the words "happening by refusals to accept, resignations or otherwise, may be supplied by the Legislature of the State in the representation of which such vacancies shall happen, or by the Executive thereof until the next meeting of the Legislature."

M^r^ Gov^r^ Morris this is absolutely necessary, otherwise, as members chosen into the Senate are disqualified from being appointed to any office by Sect. 9. of this art: it will be in the power of a Legislature by appointing a man a Senator ag^st^ his consent, to deprive the U. S. of his services.

The motion of M^r^ Madison was agreed to nem. con.

M^r^ Randolph called for division of the Section, so as to leave a distinct question on the last words "each member shall have one vote." He wished

this last sentence to be postponed until the reconsideration should have taken place on Sect. 5. Art. IV. concerning money bills. If that section should not be reinstated his plan would be to vary the representation in the Senate.

Mr. Strong concurred in Mr. Randolph's ideas on this point.

Mr. Read did not consider the section as to money bills of any advantage to the larger States and had voted for striking it out as being viewed in the same light by the larger States. If it was considered by them as of any value, and as a condition of the equality of votes in the Senate, he had no objection to its being re-instated.

Mr. Wilson–Mr. Elseworth & Mr. Madison urged that it was of no advantage to the larger States, and that it might be a dangerous source of contention between the two Houses. All the principal powers of the Natl. Legislature had some relation to money.

Docr. Franklin, considered the two clauses, the originating of money bills, and the equality of votes in the Senate, as essentially connected by the compromise which had been agreed to.

Col. Mason said this was not the time for discussing this point. When the originating of money bills shall be reconsidered, he thought it could be demonstrated that it was of essential importance to restrain the right to the House of Representatives the immediate choice of the people.

Mr. Williamson. The State of N. C. had agreed to an equality in the Senate, merely in consideration that money bills should be confined to the other House: and he was surprised to see the smaller States forsaking the condition on which they had received their equality.

Question on the section 1. down to the last sentence

> N. H. ay. Mass. no. Ct. ay. N. J. ay. Pa. [19] no. Del. ay. Md. ay. Virga. ay. N. C. no. S. C. divd. Geo. ay.

[19] "In the printed Journal Pennsylvania ay."–Madison's Note.

Mr. Randolph moved that the last sentence "each member shall have one vote," be postponed.

It was observed that this could not be necessary; as in case the sanction as to originating money bills should not be reinstated, and a revision of the Constitution should ensue, it wd still be proper that the members should vote per Capita. A postponement of the preceding sentence allowing to each State 2 members wd have been more proper.

Mr. Mason, did not mean to propose a change of this mode of voting per capita in any event. But as there might be other modes proposed, he saw no impropriety in postponing the sentence. Each State may have two members, and yet may have unequal votes. He said that unless the exclusive originating of money bills should be restored to the House of Representatives, he should, not from obstinacy but duty and conscience, oppose throughout the equality of Representation in the Senate.

Mr. Govr Morris. Such declarations were he supposed, addressed to the smaller States in order to alarm them for their equality in the Senate, and induce them agst their judgments, to concur in restoring the section concerning money bills. He would declare in his turn that as he saw no prospect of amending the Constitution of the Senate & considered the section relating to money bills as intrinsically bad, he would adhere to the section establishing the equality at all events.

Mr. Wilson. It seems to have been supposed by some that the section concerning money bills is desirable to the large States. The fact was that two of those States (Pa & Va) had uniformly voted agst it without reference to any other part of the system.

Mr. Randolph, urged as Col. Mason had done that the sentence under consideration was connected with that relating to Money bills, and might possibly be affected by the result of the motion for reconsidering the latter. That the postponement was therefore not improper.

Question for postponing "each member shall have one vote,"

N. H. div^{d}. Mass. no. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. no. Geo. no.

The words were then agreed to as part of the section.

M^{r} Randolph then gave notice that he should move to reconsider this whole Sect: 1. Art. V. as connected with the 5. Sect. Art. IV. as to which he had already given such notice.

Art. V. Sect. 2^{d} taken up.

M^{r} Gov^{r} Morris moved to insert after the words, "immediately after," the following "they shall be assembled in consequence of," which was agreed to nem. con. as was then the whole sect. 2.

Art: V. Sect. 3. taken up.

M^{r} Gov^{r} Morris moved to insert 14 instead of 4 years citizenship as a qualification for Senators: urging the danger of admitting strangers into our public Councils. M^{r} Pinkney 2^{d} him.

M^{r} Elseworth, was opposed to the motion as discouraging meritorious aliens from emigrating to this Country.

M^{r} Pinkney. As the Senate is to have the power of making treaties & managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject who made it death for any stranger to intrude his voice into their Legislative proceedings.

Col. Mason highly approved of the policy of the motion. Were it not that many not natives of this Country had acquired great merit during the revolution, he should be for restraining the eligibility into the Senate, to natives.

Mr. Madison was not averse to some restrictions on this subject; but could never agree to the proposed amendment. He thought any restriction however in the *Constitution* unnecessary, and improper, unnecessary; because the Natl. Legislre is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence or conditions of enjoying different privileges of Citizenship: Improper; because it will give a tincture of illiberality to the Constitution: because it will put it out of the power of the Natl. Legislature even by special acts of naturalization to confer the full rank of Citizens on meritorious strangers & because it will discourage the most desirable class of people from emigrating to the U. S. Should the proposed Constitution have the intended effect of giving stability & reputation to our Govts great numbers of respectable Europeans; men who love liberty and wish to partake its blessings, will be ready to transfer their fortunes hither. All such would feel the mortification of being marked with suspicious incapacitations though they sd not covet the public honors. He was not apprehensive that any dangerous number of strangers would be appointed by the State Legislatures, if they were left at liberty to do so: nor that foreign powers would make use of strangers as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather stifle than excite jealousy & watchfulness in the public.

Mr. Butler was decidedly opposed to the admission of foreigners without a long residence in the Country. They bring with them, not only attachments to other Countries; but ideas of Govt so distinct from ours that in every point of view they are dangerous. He acknowledged that if he himself had been called into public life within a short time after his coming to America, his foreign habits opinions & attachments would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject.

Docr Franklin was not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the Constitution. The people in Europe are friendly to this Country. Even in the Country with which we have been lately at war, we have now & had during the war, a great many friends not only among the people at large but in both houses of Parliament. In every other Country in Europe all the people are our friends.

We found in the course of the Revolution, that many strangers served us faithfully, and that many natives took part agst their Country. When foreigners after looking about for some other Country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence & affection.

Mr. Randolph did not know but it might be problematical whether emigrations to this Country were on the whole useful or not: but he could never agree to the motion for disabling them for 14 years to participate in the public honours. He reminded the Convention of the language held by our patriots during the Revolution, and the principles laid down in all our American Constitutions. Many foreigners may have fixed their fortunes among us under the faith of these invitations. All persons under this description, with all others who would be affected by such a regulation, would enlist themselves under the banners of hostility to the proposed System. He would go as far as seven years, but no further.

Mr. Wilson said he rose with feelings which were perhaps peculiar; mentioning the circumstance of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of his being incapacitated from holding a place under the very Constitution, which he had shared in the trust of making. He remarked the illiberal complexion which the motion would give to the System & the effect which a good system would have in inviting meritorious foreigners among us, and the discouragement & mortification they must feel from the degrading discrimination now proposed. He had himself experienced this mortification. On his removal into Maryland, he found himself, from defect of residence, under certain legal incapacities which never ceased to produce chagrin, though he assuredly did not desire & would not have accepted the offices to which they related. To be appointed to a place may be matter of indifference. To be incapable of being appointed, is a circumstance grating and mortifying.

Mr. Govr. Morris. The lesson we are taught is that we should be governed as much by our reason, and as little by our feelings as possible. What is the language of Reason on this subject? That we should not be polite at the expence of prudence. There was a moderation in all things. It is said that some tribes of Indians, carried their hospitality so far as to offer to strangers

their wives & daughters. Was this a proper model for us? He would admit them to his house, he would invite them to his table, would provide for them comfortable lodgings; but would not carry the complaisance so far as, to bed them with his wife. He would let them worship at the same altar, but did not choose to make Priests of them. He ran over the privileges which emigrants would enjoy among us, though they should be deprived of that of being eligible to the great offices of Government; observing that they exceeded the privileges allowed to foreigners in any part of the world; and that as every Society from a great nation down to a club had the right of declaring the conditions on which new members should be admitted, there could be no room for complaint. As to those philosophical gentlemen, those Citizens of the World as they called themselves, He owned he did not wish to see any of them in our public Councils. He would not trust them. The men who can shake off their attachments to their own Country can never love any other. These attachments are the wholesome prejudices which uphold all Governments. Admit a Frenchman into your Senate, and he will study to increase the commerce of France: an Englishman, he will feel an equal bias in favor of that of England. It has been said that The Legislatures will not chuse foreigners, at least improper ones. There was no knowing what Legislatures would do. Some appointments made by them, proved that every thing ought to be apprehended from the cabals practised on such occasions. He mentioned the case of a foreigner who left this State in disgrace, and worked himself into an appointment from another to Congress.

Question on the motion of M^{r} Gov^{r} Morris to insert 14 in place of 4 years

N.H. ay. Mass. no. C^{t} no. N.J. ay. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. ay.

On 13 years, moved by M^{r} Gov^{r} Morris

N. H. ay. Mass. no. C^{t} no. N. J. ay. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. ay.

On 10 years moved by Gen^{l} Pinkney

N. H. ay. Mass. no. C^{t} no. N. J. ay. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. ay. S. C. ay. Geo. ay.

D^{r} Franklin reminded the Convention that it did not follow from an omission to insert the restriction in the Constitution that the persons in question w^{d} be actually chosen into the Legislature.

M^{r} Rutlidge. 7 years of Citizenship have been required for the House of Representatives. Surely a longer time is requisite for the Senate, which will have more power.

M^{r} Williamson. It is more necessary to guard the Senate in this case than the other House. Bribery & cabal can be more easily practised in the choice of the Senate which is to be made by the Legislatures composed of a few men, than of the House of Represent^{s} who will be chosen by the people.

M^{r} Randolph will agree to 9 years with the expectation that it will be reduced to seven if M^{r} Wilson's motion to reconsider the vote fixing 7 years for the House of Representatives should produce a reduction of that period.

On a question for 9 years

N. H. ay. Mass. no. C^{t} no. N. J. ay. P^{a} no. Del. ay. M^{d} no. V^{a} ay. N. C. div^{d}. S. C. ay. Geo. ay.

The term "Resident" was struck out, & "inhabitant" inserted nem. con.

Art. V. Sect. 3. as amended agreed to nem. con.

Sect. 4. agreed to nem. con.

Article VI. Sect. 1. taken up.

M^{r} Madison & M^{r} Gov^{r} Morris moved to strike out "each House" & to insert "the House of Representatives;" the right of the Legislatures to regulate the times & places &c. in the election of Senators being involved in the right of appointing them, which was disagreed to.

Division of the question being called, it was taken on the first part down to "but their provisions concerning &c."

The first part was agreed to nem. con.

Mr. Pinkney & Mr. Rutlidge moved to strike out the remaining part viz but their provisions concerning them may at any time be altered by the Legislature of the United States. The States they contended could & must be relied on in such cases.

Mr. Ghorum. It would be as improper take this power from the Natl. Legislature, as to Restrain the British Parliament from regulating the circumstances of elections, leaving this business to the Counties themselves —

Mr. Madison. [20] The necessity of a Genl. Govt. supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expence of their local conveniency or prejudices. The policy of referring the appointment of the House of Representatives to the people and not to the Legislatures of the States, supposes that the result will be somewhat influenced by the mode. This view of the question seems to decide that the Legislatures of the States ought not to have the uncontrouled right of regulating the times places & manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot or viva voce, should assemble at this place or that place; should be divided into districts or all meet at one place, shd. all vote for all the representatives; or all in a district vote for a number allotted to the district; these & many other points would depend on the Legislatures, and might materially affect the appointments. Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in their representation in the Natl. Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter. What danger could there be in giving a controuling power to the Natl. Legislature? Of whom was it to consist? 1. of

a Senate to be chosen by the State Legislatures. If the latter therefore could be trusted, their representatives could not be dangerous. 2. of Representatives elected by the same people who elect the State Legislatures; Surely then if confidence is due to the latter, it must be due to the former. It seemed as improper in principle, though it might be less inconvenient in practice, to give to the State Legislatures this great authority over the election of the Representatives of the people in the Gen[l] Legislature, as it would be to give to the latter a like power over the election of their Representatives in the State Legislatures.

[20] Madison wrote to Jefferson, July 18:

> "I have taken lengthy notes of everything that has yet passed, and mean to go on with the drudgery, if no indisposition obliges me to discontinue it. It is not possible to form any judgment of the future duration of the Session. I am led by sundry circumstances to guess that the residue of the work will not be very quickly despatched. The public mind is very impatient for ye event, and various reports are circulating which tend to inflame curiosity. I do not learn however that any discontent is expressed at the concealment; and have little doubt that the people will be as ready to receive as we shall be able to propose, a Government that will secure their liberties & happiness."–Mad. MSS.

M[r] King. If this power be not given to the Nat[l] Legislature, their right of judging of the returns of their members may be frustrated. No probability has been suggested of its being abused by them. Altho this scheme of erecting the Gen[l] Gov[t] on the authority of the State Legislatures has been fatal to the federal establishment, it would seem as if many gentlemen, still foster the dangerous idea.

M[r] Gov[r] Morris observed that the States might make false returns and then make no provisions for new elections.

M[r] Sherman did not know but it might be best to retain the clause, though he had himself sufficient confidence in the State Legislatures. The motion of M[r] P. & M[r] R. did not prevail.

The word "respectively" was inserted after the word "State."

On the motion of M[r]. Read the word "their" was struck out, & "regulations in such cases" inserted in place of "provisions concerning them" the clause then reading–"but regulations in each of the foregoing cases may at any time, be made or altered by the Legislature of the U. S." This was meant to give the Nat[l]. Legislature a power not only to alter the provisions of the States, but to make regulations in case the States should fail or refuse altogether.

Art. VI. Sect. 1. as thus amended was agreed to nem. con.

Adjourned.

Friday AugST 10. in Convention

Art. VI. Sect. 2. taken up.

M^{r} Pinkney. The Committee as he had conceived were instructed to report the proper qualifications of property for the members of the Nat^{l} Legislature; instead of which they have referred the task to the Nat^{l} Legislature itself. Should it be left on this footing, the first Legislature will meet without any particular qualifications of property; and if it should happen to consist of rich men they might fix such qualifications as may be too favorable to the rich; if of poor men, an opposite extreme might be run into. He was opposed to the establishment of an undue aristocratic influence in the Constitution but he thought it essential that the members of the Legislature, the Executive, and the Judges, should be possessed of competent property to make them independent & respectable. It was prudent when such great powers were to be trusted to connect the tie of property with that of reputation in securing a faithful administration. The Legislature would have the fate of the Nation put into their hands. The President would also have a very great influence on it. The Judges would have not only important causes between Citizen & Citizen but also where foreigners are concerned. They will even be the Umpires between the U. States and individual States as well as between one State & another. Were he to fix the quantum of property which should be required, he should not think of less than one hundred thousand dollars for the President, half of that sum for each of the Judges, and in like proportion for the members of the Nat^{l} Legislature. He would however leave the sums blank. His motion was that the President of the U. S. the Judges, and members of the Legislature should be required to swear that they were respectively possessed of a cleared unincumbered Estate to the amount of —— in the case of the President &c &c.

M^{r} Rutlidge seconded the motion, observing that the Committee had reported no qualifications because they could not agree on any among themselves, being embarrassed by the danger on one side of displeasing the

people by making them high, and on the other of rendering them nugatory by making them low.

M[r]. Elseworth. The different circumstances of different parts of the U. S. and the probable difference between the present and future circumstances of the whole, render it improper to have either *uniform* or *fixed* qualifications. Make them so high as to be useful in the S. States, and they will be inapplicable to the E. States. Suit them to the latter, and they will serve no purpose in the former. In like manner what may be accommodated to the existing State of things among us, may be very inconvenient in some future state of them. He thought for these reasons that it was better to leave this matter to the Legislative discretion than to attempt a provision for it in the Constitution.

Doct[r]. Franklin expressed his dislike of every thing that tended to debase the spirit of the common people. If honesty was often the companion of wealth, and if poverty was exposed to peculiar temptation, it was not less true that the possession of property increased the desire of more property. Some of the greatest rogues he was ever acquainted with, were the richest rogues. We should remember the character which the Scripture requires in Rulers, that they should be men hating covetousness. This Constitution will be much read and attended to in Europe, and if it should betray a great partiality to the rich will not only hurt us in the esteem of the most liberal and enlightened men there, but discourage the common people from removing to this Country.

The Motion of M[r]. Pinkney was rejected by so general a *no*, that the States were not called.

M[r]. Madison was opposed to the Section as vesting an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Gov[t]. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorized to elect. In all cases where the representatives of the people will have a personal interest distinct from that

of their Constituents, there was the same reason for being jealous of them, as there was for relying on them with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages, or their own privileges. It was a power also which might be made subservient to the views of one faction agst another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partizans of a weaker faction.

Mr. Elseworth, admitted that the power was not unexceptionable; but he could not view it as dangerous. Such a power with regard to the electors would be dangerous because it would be much more liable to abuse.

Mr. Govr. Morris moved to strike out "with regard to property" in order to leave the Legislature entirely at large.

Mr. Williamson. This would surely never be admitted. Should a majority of the Legislature be composed of any particular description of men, of lawyers for example, which is no improbable supposition, the future elections might be secured to their own body.

Mr. Madison observed that the British Parliamt possessed the power of regulating the qualifications both of the electors, and the elected; and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or Religious parties.

Question on the motion to strike out with regard to property

N. H. no. Mass. no. Ct ay. N. J. ay. Pa ay. Del. [21] no.
Md no. Va no. N. C. no. S. C. no. Geo. ay.

[21] In the printed Journal Delaware did not vote–Madison's Note.

Mr. Rutlidge was opposed to leaving the power to the Legislature–He proposed that the qualifications should be the same as for members of the State Legislatures.

M[r] Wilson thought it would be best on the whole to let the Section go out. A uniform rule would probably never be fixed by the Legislature, and this particular power would constructively exclude every other power of regulating qualifications.

On the question for agreeing to Art. VI. Sect. 2[d]

N. H. ay. Mass. ay. C[t] no. N. J. no. P[a] no. M[d] no. V[a] no. N. C. no. S. C. no. Geo. ay.

On motion of M[r] Wilson to reconsider Art: IV. Sect. 2; so as to restore 3 in place of seven years of citizenship as a qualification for being elected into the House of Represent[s].

N. H. no. Mass. no. C[t] ay. N. J. no. P[a] ay. Del. ay. M[d] ay. V[a] ay. N. C. ay. S. C. no. Geo. no.

Monday next was then assigned for the reconsideration; all the States being ay. except Mass[ts]. & Georgia.

Art: VI. Sect. 3. taken up.

M[r] Ghorum contended that less than a majority in each House should be made a Quorum, otherwise great delay might happen in business, and great inconvenience from the future increase of numbers.

M[r] Mercer was also for less than a majority. So great a number will put it in the power of a few by seceding at a critical moment to introduce convulsions, and endanger the Governm[t]. Examples of secession have already happened in some of the States. He was for leaving it to the Legislature to fix the Quorum, as in Great Britain, where the requisite number is small & no inconveniency has been experienced.

Col. Mason. This is a valuable & necessary part of the plan. In this extended Country, embracing so great a diversity of interests, it would be dangerous to the distant parts to allow a small number of members of the two Houses to make laws. The Central States could always take care to be on the Spot and by meeting earlier than the distant ones, or wearying their

patience, and outstaying them, could carry such measures as they pleased. He admitted that inconveniences might spring from the secession of a small number; But he had also known good produced by an apprehension, of it. He had known a paper emission prevented by that cause in Virginia. He thought the Constitution as now moulded was founded on sound principles, and was disposed to put into it extensive powers. At the same time he wished to guard agst abuses as much as possible. If the Legislature should be able to reduce the number at all, it might reduce it as low as it pleased & the U. States might be governed by a Juncto–A majority of the number which had been agreed on, was so few that he feared it would be made an objection agst the plan.

M^{r} King admitted there might be some danger of giving an advantage to the Central States; but he was of opinion that the public inconveniency on the other side was more to be dreaded.

M^{r} Gov^{r} Morris moved to fix the quorum at 33 members in the H. of Rep^{s} & 14 in the Senate. This is a majority of the present number, and will be a bar to the Legislature: fix the number low and they will generally attend knowing that advantage may be taken of their absence, the Secession of a small number ought not to be suffered to break a quorum. Such events in the States may have been of little consequence. In the national Councils they may be fatal. Besides other mischiefs, if a few can break up a quorum, they may seize a moment when a particular part of the Continent may be in need of immediate aid, to extort, by threatening a secession, some unjust & selfish measure.

M^{r} Mercer 2^{ded} the motion.

M^{r} King said he had just prepared a motion which instead of fixing the numbers proposed by M^{r} Gov^{r} Morris as Quorums, made those the lowest numbers, leaving the Legislature at liberty to increase them or not. He thought the future increase of members would render a majority of the whole extremely cumbersome.

M^{r} Mercer agreed to substitute M^{r} King's motion in place of M^{r} Morris's.

Mr. Elseworth was opposed to it. It would be a pleasing ground of confidence to the people that no law or burden could be imposed on them by a few men. He reminded the movers that the Constitution proposed to give such a discretion with regard to the number of Representatives that a very inconvenient number was not to be apprehended. The inconveniency of secessions may be guarded agst by giving to each House an authority to require the attendance of absent members.

Mr. Wilson concurred in the sentiments of Mr. Elseworth.

Mr. Gerry seemed to think that some further precautions than merely fixing the quorum might be necessary. He observed that as 17 wd be a majority of a quorum of 33, and 8 of 14, questions might by possibility be carried in the H. of Reps by 2 large States, and in the Senate by the same States with the aid of two small ones.–He proposed that the number for a quorum in the H. of Reps should not exceed 50, nor be less than 33, leaving the intermediate discretion to the Legislature.

Mr. King. As the quorum could not be altered witht the concurrence of the President by less than 2/3 of each House, he thought there could be no danger in trusting the Legislature.

Mr. Carrol. This would be no security agst a continuance of the quorums at 33 & 14. when they ought to be increased.

On question on Mr. King's motion "that not less than 33 in the H. of Reps nor less than 14 in the Senate shd constitute a Quorum which may be increased by a law, on additions of the members in either House.

N. H. no. Mass. ay. Ct no. N. J. no. Pa no. Del. ay.
Md no. Va no. N. C. no. S. C. no. Geo. no.

Mr. Randolph & Mr. Madison moved to add to the end of Art. VI. Sect. 3, "and may be authorized to compel the attendance of absent members in such manner & under such penalties as each House may provide." Agreed to by all except Pena which was divided.

Art. VI. Sect. 3. agreed to as amended nem. con.

Sect. 4.
Sect. 5. } Agreed to nem. con.

Mr. Madison observed that the right of expulsion (Art. VI. Sect. 6.) was too important to be exercised by a bare majority of a quorum: and in emergencies of faction might be dangerously abused. He moved that, "with the concurrence of 2/3," might be inserted between may & expel.

Mr. Randolph & Mr. Mason approved the idea.

Mr. Govr. Morris. This power may be safely trusted to a majority. To require more may produce abuses on the side of the minority. A few men from factious motives may keep in a member who ought to be expelled.

Mr. Carrol thought that the concurrence of 2/3 at least ought to be required.

On the question requiring 2/3 in cases of expelling a member.

N. H. ay. Mass. ay. Ct. ay. N. J. ay. Pa. divd. Del. ay.
Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Art. VI. Sect. 6. as thus amended agreed to nem. con.

Art: VI. Sect. 7. taken up.

Mr. Govr. Morris urged that if the yeas & nays were proper at all any individual ought to be authorized to call for them; and moved an amendment to that effect.–The small States may otherwise be under a disadvantage, and find it difficult to get a concurrence of 1/5.

Mr. Randolph 2ded ye motion.

Mr. Sherman had rather strike out the yeas & nays altogether. They never have done any good, and have done much mischief. They are not proper as the reasons governing the voter never appear along with them.

M[r] Elseworth was of the same opinion.

Col. Mason liked the Section as it stood, it was a middle way between two extremes.

M[r] Ghorum was opposed to the motion for allowing a single member to call the yeas & nays, and recited the abuses of it in Mass[ts]. 1 in stuffing the journals with them on frivolous occasions. 2 in misleading the people who never know the reasons determing the votes.

The motion for allowing a single member to call the yeas & nays was disag[d] to nem. con.

M[r] Carrol. & M[r] Randolph moved to strike out the words, "each House" and to insert the words, "the House of Representatives" in Sect. 7. Art. 6. and to add to the section the words "and any member of the Senate shall be at liberty to enter his dissent."

M[r] Gov[r] Morris & M[r] Wilson observed that if the minority were to have a right to enter their votes & reasons, the other side would have a right to complain, if it were not extended to them: & to allow it to both, would fill the Journals, like the records of a Court, with replications, rejoinders &c.

Question on M[r] Carrol's motion to allow a member to enter his dissent

N. H. no. Mass. no. Con[t] no. N. J. no. P[a] no. Del. no.
M[d] ay. V[a] ay. N. C. no. S. C. ay. Geo. ay.

M[r] Gerry moved to strike out the words "when it shall be acting in its legislative capacity" in order to extend the provision to the Senate when exercising its peculiar authorities and to insert "except such parts thereof as in their judgment require secrecy" after the words "publish them."—(It was thought by others that provision should be made with respect to these when that part came under consideration which proposed to vest those additional authorities in the Senate.)

On this question for striking out the words "when acting in its legislative capacity"

N. H. div^{d}. Mass. ay. C^{t} no. N. J. no. P^{a} no. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Adjourned.

Saturday AugST 11 in Convention

M^{r} Madison & M^{r} Rutlidge moved "that each House shall keep a journal of its proceedings, & shall publish the same from time to time; except such part of the proceedings of the Senate, when acting not in its Legislative capacity as may be judged by that House to require secrecy."

M^{r} Mercer. This implies that other powers than legislative will be given to the Senate which he hoped would not be given.

M^{r} Madison & M^{r} R's motion was disag^{d} to by all the States except Virg^{a}.

M^{r} Gerry & M^{r} Sherman moved to insert after the words "publish them" the following "except such as relate to treaties & military operations." Their object was to give each House a discretion in such cases.–On this question

N. H. no. Mass. ay. C^{t} ay. N. J. no. P^{a} no. Del. no. V^{a} no.
N. C. no. S. C. no. Geo. no.

M^{r} Elseworth. As the clause is objectionable in so many shapes, it may as well be struck out altogether. The Legislature will not fail to publish their proceedings from time to time. The people will call for it if it should be improperly omitted.

M^{r} Wilson thought the expunging of the clause would be very improper. The people have a right to know what their Agents are doing or have done, and it should not be in the option of the Legislature to conceal their proceedings. Besides as this is a clause in the existing confederation, the not retaining it would furnish the adversaries of the reform with a pretext by which weak & suspicious minds may be easily misled.

M^{r} Mason thought it would give a just alarm to the people, to make a conclave of their Legislature.

M^{r} Sherman thought the Legislature might be trusted in this case if in any.

Question on 1st part of the section down to "*publish them*" inclusive: Agreed to nem. con.

Question on the words to follow, to wit "except such parts thereof as may in their Judgment require secrecy."

N. H. div^{d}. Mass. ay. C^{t} ay. N. J. ay. P^{a} no. Del. no.
M^{d} no. V^{a} ay. N. C. ay. S. C. no. Geo. ay.

The remaining part as to yeas & nays,–agreed to nem. con.

Art VI. Sect. 8. taken up.

M^{r} King remarked that the section authorized the 2 Houses to adjourn to a new place. He thought this inconvenient. The mutability of place had dishonored the federal Gov^{t} and would require as strong a cure as we could devise. He thought a law at least should be made necessary to a removal of the Seat of Gov^{t}.

M^{r} Madison viewed the subject in the same light, and joined with M^{r} King in a motion requiring a law.

Mr. Govern^{r} Morris proposed the additional alteration by inserting the words, "during the Session" &c.

M^{r} Spaight. This will fix the seat of Gov^{t} at N. Y. The present Congress will convene them there in the first instance, and they will never be able to remove, especially if the Presid^{t} should be [a] Northern Man.

M^{r} Gov^{r} Morris such a distrust is inconsistent with all Gov^{t}.

M^{r} Madison supposed that a central place for the seat of Gov^{t} was so just and w^{d} be so much insisted on by the H. of Representatives, that though a law should be made requisite for the purpose, it could & would be obtained. The necessity of a central residence of the Gov^{t} w^{d} be much greater under

the new than old Gov^{t}. The members of the new Gov^{t} w^{d} be more numerous. They would be taken more from the interior parts of the States; they w^{d} not like members of y^{e} present Cong^{s} come so often from the distant States by water. As the powers & objects of the new Gov^{t} would be far greater y^{e} heretofore, more private individuals w^{d} have business calling them to the seat of it, and it was more necessary that the Gov^{t} should be in that position from which it could contemplate with the most equal eye, and sympathize most equally with, every part of the nation. These considerations he supposed would extort a removal even if a law were made necessary. But in order to quiet suspicions both within & without doors, it might not be amiss to authorize the 2 Houses by a concurrent vote to adjourn at their first meeting to the most proper place, and to require thereafter, the sanction of a law to their removal.

The motion was accordingly moulded into the following form: "the Legislature shall at their first assembling determine on a place at which their future sessions shall be held; neither House shall afterwards, during the session of the House of Rep^{s} without the consent of the other, adjourn for more than three days, nor shall they adjourn to any other place than such as shall have been fixt by law."

M^{r} Gerry thought it would be wrong to let the Presid^{t} check the will of the 2 Houses on this subject at all.

M^{r} Williamson supported the ideas of M^{r} Spaight.

M^{r} Carrol was actuated by the same apprehensions.

M^{r} Mercer, it will serve no purpose to require the two Houses at their first meeting to fix on a place. They will never agree.

After some further expressions from others denoting an apprehension that the seat of Gov^{t} might be continued at an improper place if a law should be made necessary to a removal, and the motion above stated with another for recommitting the section had been negatived, the section was left in the shape in which it was reported as to this point. The words, "during the session of the Legislature" were prefixed to the 8th section–and

the last sentence "But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the —— article" struck out. The 8th section as amended was then agreed to.

Mr. Randolph moved according to notice to reconsider Art: IV. Sect. 5. concerning money bills which had been struck out. He argued 1. that he had not wished for this privilege whilst a proportional Representation in the Senate was in contemplation, but since an equality had been fixed in that house, the large States would require this compensation at least. 2. that it would make the plan more acceptable to the people, because they will consider the Senate as the more aristocratic body, and will expect that the usual guards agst its influence be provided according to the example in G. Britain. 3. the privilege will give some advantage to the House of Reps if it extends to the originating only–but still more if it restrains the Senate from amendg. 4. he called on the smaller States to concur in the measure, as the condition by which alone the compromise had entitled them to an equality in the Senate. He signified that he should propose instead of the original section, a clause specifying that the bills in question should be for the purpose of Revenue, in order to repel ye objection agst the extent of the words, "*raising money*," which might happen incidentally, and that the Senate should not so amend or alter as to increase or diminish the sum; in order to obviate the inconveniences urged agst a restriction of the Senate to a simple affirmation or negative.

Mr. Williamson 2ded the motion.

Mr. Pinkney was sorry to oppose the opportunity gentlemen asked to have the question again opened for discussion, but as he considered it a mere waste of time he could not bring himself to consent to it. He said that notwithstanding what had been said as to the compromise, he always considered this section as making no part of it. The rule of Representation in the 1st branch was the true condition of that in the 2d branch.–Several others spoke for & agst the reconsideration, but without going into the merits.–On the Question to reconsider

N. H. ay. Mass. ay. Ct ay. N. J. [22] ay. Pa ay. Del. ay. Md no. Va ay. N. C. ay. S. C. divd. Geo. ay.–Monday was

then assigned—

[22] In the printed Journal N. Jersey–no.–Madison's Note.

Adj^{d}. [23]

[23] The next day being Sunday, Madison wrote to his father:

"PHILAD^{A} Augst 12, 1787.

"HON^{D} SIR

"I wrote to you lately inclosing a few newspapers. I now send a few more, not because they are interesting but because they may supply the want of intelligence that might be more so. The Convention reassembled at the time my last mentioned that they had adjourned to. It is not possible yet to determine the period to which the Session will be spun out. It must be some weeks from this date at least, and possibly may be computed by months. Eleven states are on the ground, and have generally been so since the second or third week of the Session. Rhode Island is one of the absent States. She has never yet appointed deputies. N. H. till of late was the other. That State is now represented. But just before the arrival of her deputies, those of N. York left us.–We have till within a few days had very cool weather. It is now pleasant, after a fine rain. Our acc^{ts} from Virg^{a} give us but an imperfect idea of the prospects with you. In particular places the drouth we hear has been dreadful. Gen^{l} Washington's neighbourhood is among the most suffering of them. I wish to know how your neighbourhood is off. But my chief anxiety is to hear that your health is re-established. The hope that this may procure me that information is the principal motive for writing it, having as you will readily see not been led to it by any thing worth communicating. With my love to my mother & the rest of the family I remain Dear Sir

"Y^{r} aff^{t} son."
(Mad. MSS.)

Edward Carrington wrote to Madison from New York, August 11, showing the solicitude of federalist members of Congress:

"... The President has been requested to write to the states unrepresented, pressing upon them the objects which require the attendance of their delegations, & urging them to come forward, amongst the objects is that of the report of the convention, which, it is supposed, is now in the State of parturition–this bantling must receive the blessing of Congress this session, or, I fear, it will expire before the new one will assemble; every experiment has its critical stages which must be taken as they occur, or the whole will fail–the peoples expectations are rising with the progress of this work, but will desert it, should it remain long with Congress–permit me to suggest

one idea as to the mode of obtaining the accession of the States to the new plan of government–let the convention appoint *one* day, say the 1st of May, upon which a convention appointed by the people shall be held in each state, for the purpose of accepting or rejecting in toto, the project–supposing an act of the ordinary legislatures to be equally authentic, which would not be true, yet many reasons present themselves in favor of–special conventions–many men would be admitted who are excluded from the legislatures–the business would be taken up unclogged with any other–and it would effectually call the attention of all the people to the object as seriously affecting them. All the States being in convention at the same time, opportunities of speculating upon the views of each other would be cut off–the project should be decided upon without an attempt to alter it–you have doubtless found it difficult to reconcile the different opinions in your body–will it not be impossible then, to reconcile those which will arise amongst numerous assemblies in the different states? It is possible there never may be a general consent to the project as it goes out; but it is absolutely certain there will never be an agreement in amendments. It is the lot of but few to be able to discern the remote principles upon which their happiness & prosperity essentially depend—."—(Mad. MSS.)

Monday, AugST 13. In Convention

Art. IV. Sect. 2. reconsidered—

M^{r} Wilson & M^{r} Randolph moved to strike out "7 years" and insert "4 years," as the requisite term of Citizenship to qualify for the House of Rep^{s}. M^{r} Wilson said it was very proper the electors should govern themselves by this consideration; but unnecessary & improper that the Constitution should chain them down to it.

M^{r} Gerry wished that in future the eligibility might be confined to Natives. Foreign powers will intermeddle in our affairs, and spare no expence to influence them. Persons having foreign attachments will be sent among us & insinuated into our councils, in order to be made instruments for their purposes. Every one knows the vast sums laid out in Europe for secret services. He was not singular in these ideas. A great many of the most influential men in Mass^{ts} reasoned in the same manner.

M^{r} Williamson moved to insert 9 years instead of seven. He wished this Country to acquire as fast as possible national habits. Wealthy emigrants do more harm by their luxurious examples, than good, by the money, they bring with them.

Col. Hamilton was in general agst embarrassing the Gov^{t} with minute restrictions. There was on one side the possible danger that had been suggested. On the other side, the advantage of encouraging foreigners was obvious & admitted. Persons in Europe of moderate fortunes will be fond of coming here where they will be on a level with the first Citizens. He moved that the section be so altered as to require merely citizenship & inhabitancy. The right of determining the rule of naturalization will then leave a discretion to the Legislature on this subject which will answer every purpose.

M^r^ Madison seconded the motion. He wished to maintain the character of liberality which had been professed in all the Constitutions & publications of America. He wished to invite foreigners of merit & republican principles among us. America was indebted to emigration for her settlement & Prosperity. That part of America which had encouraged them most had advanced most rapidly in population, agriculture & the arts. There was a possible danger he admitted that men with foreign predilections might obtain appointments but it was by no means probable that it would happen in any dangerous degree. For the same reason that they would be attached to their native Country, our own people w^d^ prefer natives of this Country to them. Experience proved this to be the case. Instances were rare of a foreigner being elected by the people within any short space after his coming among us. If bribery was to be practised by foreign powers, it would not be attempted among the electors but among the elected, and among natives having full Confidence of the people not among strangers who would be regarded with a jealous eye.

M^r^ Wilson cited Pennsylv^a^ as a proof of the advantage of encouraging emigrations. It was perhaps the youngest (except Georgia) settlem^t^ on the Atlantic; yet it was at least among the foremost in population & prosperity. He remarked that almost all the Gen^l^ officers of the Pen^a^ line of the late army were foreigners. And no complaint had ever been made against their fidelity or merit. Three of her deputies to the Convention (M^r^ R. Morris, M^r^ Fitzsimons & himself) were also not natives. He had no objection to Col. Hamilton's motion & would withdraw the one made by himself.

M^r^ Butler was strenuous ag^st^ admitting foreigners into our public Councils.

Question on Col. Hamilton's Motion

N. H. no. Mass. no. C^t^ ay. N. J. no. P^a^ ay. Del. no.
Md. ay. V^a^ ay. N. C. no. S. C. no. Geo. no.

Question on M^r^ Williamson's motion to insert 9 years instead of seven.

N. H. ay. Mass^{ts} no. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. ay.

M^{r} Wilson renewed the motion for 4 years instead of 7; & on question

N. H. no. Mass. no. C^{t} ay. N. J. no. P^{a} no. Del. no. M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

M^{r} Gov^{r} Morris moved to add to the end of the section (Art IV. S. 2) a proviso that the limitation of seven years should not affect the rights of any person now a Citizen.

M^{r} Mercer 2^{ded} the motion. It was necessary he said to prevent a disfranchisement of persons who had become Citizens under and on the faith & according to the laws & Constitution from being on a level in all respects with natives.

M^{r} Rutlidge. It might as well be said that all qualifications are disfranchisem^{ts} and that to require the age of 25 years was a disfranchisement. The policy of the precaution was as great with regard to foreigners now Citizens; as to those who are to be naturalized in future.

M^{r} Sherman. The U. States have not invited foreigners nor pledged their faith that they should enjoy equal privileges with native Citizens. The Individual States alone have done this. The former therefore are at liberty to make any discriminations they may judge requisite.

M^{r} Ghorum. When foreigners are naturalized it w^{d} seem as if they stand on an equal footing with natives. He doubted then the propriety of giving a retrospective force to the restriction.

M^{r} Madison animadverted on the peculiarity of the doctrine of M^{r} Sherman. It was a subtilty by which every national engagement might be evaded. By parity of reason, Whenever our public debts, or foreign treaties become inconvenient nothing more would be necessary to relieve us from them, than to new model the Constitution. It was said that the *U. S.* as such have not pledged their faith to the naturalized foreigners, & therefore

are not bound. Be it so, & that the States alone are bound. Who are to form the New Constitution by which the condition of that class of citizens is to be made worse than the other class? Are not the States y^e^ Agents? Will they not be the members of it? Did they not appoint this Convention? Are not they to ratify its proceedings? Will not the new Constitution be their Act? If the new Constitution then violates the faith pledged to any description of people will not the makers of it, will not the States, be the violaters? To justify the doctrine it must be said that the States can get rid of their obligation by revising the Constitution, though they could not do it by repealing the law under which foreigners held their privileges. He considered this a matter of real importance. It would expose us to the reproaches of all those who should be affected by it, reproaches which w^d^ soon be echoed from the other side of the Atlantic; and would unnecessarily enlist among the Adversaries of the reform a very considerable body of Citizens: We should moreover reduce every State to the dilemma of rejecting it or of violating the faith pledged to a part of its Citizens.

M^r^ Gov^r^ Morris considered the case of persons under 25 years, as very different from that of foreigners. No faith could be pleaded by the former in bar of the regulation. No assurance had ever been given that persons under that age should be in all cases on a level with those above it. But with regard to foreigners among us, the faith had been pledged that they should enjoy the privileges of Citizens. If the restriction as to age had been confined to natives, & had left foreigners under 25 years, eligible in this case, the discrimination w^d^ have been an equal injustice on the other side.

M^r^ Pinkney remarked that the laws of the States had varied much the terms of naturalization in different parts of America; and contended that the U. S. could not be bound to respect them on such an occasion as the present. It was a sort of recurrence to first principles.

Col. Mason was struck not like (Mr. Madison) with the *peculiarity*, but the *propriety* of the doctrine of M^r^ Sherman. The States have formed different qualifications themselves, for enjoying different rights of citizenship. Greater caution w^d^ be necessary in the outset of the Gov^t^ than afterwards. All the great objects w^d^ then be provided for. Every thing would be then set in motion. If persons among us attached to G. B. should work

themselves into our Councils, a turn might be given to our affairs & particularly to our Commercial regulations which might have pernicious consequences. The Great Houses of British Merchants will spare no pains to insinuate the instruments of their views into the Gov^{t}.

M^{r} Wilson read the clause in the Constitution of Pen^{a} giving to foreigners after two years residence all the rights whatsoever of Citizens. Combined it with the article of Confederation making the Citizens of one State Citizens of all, inferred the obligation Pen^{a} was under to maintain the faith thus pledged to her citizens of foreign birth, and the just complaints which her failure would authorize: He observed likewise that the Princes & States of Europe would avail themselves of such breach of faith to deter their subjects from emigration to the U. S.

M^{r} Mercer enforced the same idea of a breach of faith.

M^{r} Baldwin could not enter into the force of the arguments agst extending the disqualification to foreigners now Citizens. The discrimination of the place of birth, was not more objectionable than that of age which all had concurred in the propriety of.

Question on the proviso of M^{r} Gov^{r} Morris in favor of foreigners now Citizens

N. H. no. Mass. no. C^{t} ay. N. J. ay. P^{a} ay. Del. no.
Mary^{d} ay. V^{t} ay. N. C. no. S. C. no. Geo. no.

M^{r} Carrol moved to insert "5 years" instead of "seven" in Sect. 2^{d} Art: IV

N. H. no. Mass. no. C^{t} ay. N. J. no. P^{a} div^{d}. Del. no.
M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

The Section (Art IV. Sec. 2.) as formerly amended was then agreed to nem. con.

M^r^ Wilson moved that (in Art: V. Sect. 3.) 9 years be reduced to seven, which was disag^d^ to and the 3^d^ section (Art. V.) confirmed by the following vote.

N. H. ay. Mass. ay. C^t^ no. N. J. ay. P^a^ no. Del. ay. M^d^ no.
V^a^ ay. N. C. ay. S. C. ay. Geo. ay.

Art. IV. Sec. 5. being reconsidered.

M^r^ Randolph moved that the clause be altered so as to read–"Bills for raising money for the *purpose of revenue* or for appropriating the same shall originate in the House of Representatives and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the object of its appropriation."–He would not repeat his reasons, but barely remind the members from the smaller States of the compromise by which the larger States were entitled to this privilege.

Col. Mason. This amendment removes all the objections urged ag^st^ the section as it stood at first. By specifying *purposes of revenue*, it obviated the objection that the section extended to all bills under which money might incidentally arise. By authorizing amendments in the Senate it got rid of the objections that the Senate could not correct errors of any sort, & that it would introduce into the House of Rep^s^ the practice of tacking foreign matter to money bills. These objections being removed, the arguments in favor of the proposed restraint on the Senate ought to have their full force. 1. the Senate did not represent the *people*, but the *States* in their political character. It was improper therefore that it should tax the people. The reason was the same ag^st^ their doing it; as it had been ag^st^ Cong^s^ doing it. Nor was it in any respect necessary in order to cure the evils of our Republican system. He admitted that notwithstanding the superiority of the Republican form over every other, it had its evils. The chief ones, were the danger of the majority oppressing the minority, and the mischievous influence of demagogues. The Gen^l^ Government of itself will cure them. As the States will not concur at the same time in their unjust & oppressive plans, the General Gov^t^ will be able to check & defeat them, whether they result from the wickedness of the majority, or from the misguidance of

demagogues. Again, the Senate is not like the H. of Rep^{s} chosen frequently and obliged to return frequently among the people. They are to be chosen by the Sts for 6 years, will probably settle themselves at the seat of Gov^{t} will pursue schemes for their own aggrandisement–will be able by weary^{g} out the H. of Rep^{s} and taking advantage of their impatience at the close of a long Session, to extort measures for that purpose. If they should be paid as he expected would be yet determined & wished to be so, out of the Nat^{l} Treasury, they will particularly extort an increase of their wages. A bare negative was a very different thing from that of originating bills. The practice in Engl^{d} was in point. The House of Lords does not represent nor tax the people, because not elected by the people. If the Senate can originate, they will in the recess of the Legislative Sessions, hatch their mischievous projects, for their own purposes, and have their money bills ready cut & dried (to use a common phrase) for the meeting of the H. of Rep^{s}. He compared the case to Poyning's law–and signified that the House of Rep^{s} might be rendered by degrees like the Parliament of Paris, the mere depository of the decrees of the Senate. As to the compromise so much had passed on that subject that he would say nothing about it. He did not mean by what he had said to oppose the permanency of the Senate. On the contrary he had no repugnance to an increase of it–nor to allowing it a negative, though the Senate was not by its present constitution entitled to it. But in all events he would contend that the purse-strings should be in the hands of the Representatives of the people.

M^{r} Wilson was himself directly opposed to the equality of votes granted to the Senate by its present Constitution. At the same time he wished not to multiply the vices of the system. He did not mean to enlarge on a subject which had been so much canvassed, but would remark that as an insuperable objection agst the proposed restriction of money bills to the H. of Rep^{s} that it would be a source of perpetual contentions where there was no mediator to decide them. The Presid^{t} here could not like the Executive Magistrate in England interpose by a prorogation, or dissolution. This restriction had been found pregnant with altercation in every State where the Constitution had established it. The House of Rep^{s} will insert other things in money bills, and by making them conditions of each other, destroy the deliberate liberty of the Senate. He stated the case of a Preamble to a

money bill sent up by the House of Commons in the reign of Queen Anne, to the H. of Lords, in which the conduct of the displaced Ministry, who were to be impeached before the Lords, was condemned; the Coñons thus extorting a premature judgm^{t} without any hearing of the Parties to be tried, and the H. of Lords being thus reduced to the poor & disgraceful expedient of opposing to the authority of a law, a protest on their Journals agst its being drawn into precedent. If there was anything like Poynings law in the present case, it was in the attempt to vest the exclusive right of originating in the H. of Rep^{s} and so far he was agst it. He should be equally so if the right were to be exclusively vested in the Senate. With regard to the purse strings, it was to be observed that the purse was to have two strings, one of which was in the hands of the H. of Rep^{s} the other in those of the Senate. Both houses must concur in untying, and of what importance could it be which untied first, which last. He could not conceive it to be any objection to the Senate's preparing the bills, that they would have leisure for that purpose and would be in the habits of business. War, Commerce, & Revenue were the great objects of the Gen^{l} Government. All of them are connected with money. The restriction in favor of the H. of Represent^{s} would exclude the Senate from originating any important bills whatever—

M^{r} Gerry considered this as a part of the plan that would be much scrutinized. Taxation & representation are strongly associated in the minds of the people, and they will not agree that any but their immediate representatives shall meddle with their purses. In short the acceptance of the plan will inevitably fail, if the Senate be not restrained from originating money bills.

M^{r} Govern^{r} Morris. All the arguments suppose the right to originate & to tax, to be exclusively vested in the Senate.–The effects commented on may be produced by a Negative only in the Senate. They can tire out the other House, and extort their concurrence in favorite measures, as well by withholding their negative, as by adhering to a bill introduced by themselves.

M^{r} Madison thought If the substitute offered by M^{r} Randolph for the original section is to be adopted it would be proper to allow the Senate at least so to amend as to *diminish* the sums to be raised. Why should they be

restrained from checking the extravagance of the other House? One of the greatest evils incident to Republican Gov^{t} was the spirit of contention & faction. The proposed substitute, which in some respects lessened the objections agst the section, had a contrary effect with respect to this particular. It laid a foundation for new difficulties and disputes between the two houses. The word *revenue* was ambiguous. In many acts, particularly in the regulation of trade, the object would be twofold. The raising of revenue would be one of them. How could it be determined which was the primary or predominant one; or whether it was necessary that revenue sh^{d} be the sole object, in exclusion even of other incidental effects. When the Contest was first opened with G. B. their power to regulate trade was admitted. Their power to raise revenue rejected. An accurate investigation of the subject afterwards proved that no line could be drawn between the two cases. The words *amend or alter* form an equal source of doubt & altercation. When an obnoxious paragraph shall be sent down from the Senate to the House of Rep^{s}, it will be called an origination under the name of an amendment. The Senate may actually couch extraneous matter under that name. In these cases, the question will turn on the *degree* of connection between the matter & object of the bill and the alteration or amendment offered to it. Can there be a more fruitful source of dispute, or a kind of dispute more difficult to be settled? His apprehensions on this point were not conjectural. Disputes had actually flowed from this source in Virg^{a} where the Senate can originate no bill. The words, "so as to *increase or diminish* the sum to be raised," were liable to the same objections. In levying indirect taxes, which it seemed to be understood were to form the principal revenue of the new Gov^{t} the sum to be raised, would be increased or diminished by a variety of collateral circumstances influencing the consumption, in general, the consumption of foreign or of domestic articles–of this or that particular species of articles and even by the mode of collection which may be closely connected with the productiveness of a tax.–The friends of the section had argued its necessity from the permanency of the Senate. He could not see how this argum^{t} applied. The Senate was not more permanent now than in the form it bore in the original propositions of M^{r} Randolph and at the time when no objection whatever was hinted agst its originating money bills. Or if in consequence of a loss of the present question, a proportional vote in the Senate should be reinstated

as has been urged as the indemnification the permanency of the Senate will remain the same.–If the right to originate be vested exclusively in the House of Repˢ either the Senate must yield agˢᵗ its judgment to that House, in which case the Utility of the check will be lost–or the Senate will be inflexible & the H. of Repˢ must adapt its money bill to the views of the Senate, in which case, the exclusive right will be of no avail.–As to the Compromise of which so much had been said, he would make a single observation. There were 5 States which had opposed the equality of votes in the Senate, viz, Massᵗˢ. Pennᵃ Virgᵃ N. Carolina & South Carolᵃ. As a compensation for the sacrifice extorted from them on this head, the exclusive origination of money bills in the other House had been tendered. Of the five States a majority viz. Pennᵃ Virgᵃ & S. Carolᵃ have uniformly voted agˢᵗ the proposed compensation, on its own merits, as rendering the plan of Govᵗ still more objectionable. Massᵗˢ has been divided. N. Carolina alone has set a value on the compensation, and voted on that principle. What obligation then can the small States be under to concur agˢᵗ their judgments in reinstating the section?

Mʳ Dickenson. Experience must be our only guide. Reason may mislead us. It was not Reason that discovered the singular & admirable mechanism of the English Constitution. It was not Reason that discovered or ever could have discovered the odd & in the eye of those who are governed by reason, the absurd mode of trial by Jury. Accidents probably produced these discoveries, and experience has given a sanction to them. This is then our guide. And has not experience verified the utility of restraining money bills to the immediate representatives of the people. Whence the effect may have proceeded he could not say: whether from the respect with which this privilege inspired the other branches of Govᵗ to the H. of Coⁿons, or from the turn of thinking it gave to the people at large with regard to their rights, but the effect was visible & could not be doubted–Shall we oppose to this long experience, the short experience of 11 years which we had ourselves, on this subject. As to disputes, they could not be avoided any way. If both Houses should originate, each would have a different bill to which it would be attached, and for which it would contend.–He observed that all the prejudices of the people would be offended by refusing this exclusive privilege to the H. of Represˢ and these prejudices shᵈ never be disregarded

by us when no essential purpose was to be served. When this plan goes forth it will be attacked by the popular leaders. Aristocracy will be the watchword; the Shiboleth among its adversaries. Eight States have inserted in their Constitutions the exclusive right of originating money bills in favor of the popular branch of the Legislature. Most of them however allowed the other branch to amend. This he thought would be proper for us to do.

Mr. Randolph regarded this point as of such consequence, that as he valued the peace of this Country, he would press the adoption of it. We had numerous & monstrous difficulties to combat. Surely we ought not to increase them. When the people behold in the Senate, the countenance of an aristocracy; and in the president, the form at least of a little monarch, will not their alarms be sufficiently raised without taking from their immediate representatives, a right which has been so long appropriated to them.–The Executive will have more influence over the Senate, than over the H. of Reps. Allow the Senate to originate in this Case, & that influence will be sure to mix itself in their deliberations & plans. The Declaration of War he conceived ought not to be in the Senate composed of 26 men only, but rather in the other House. In the other House ought to be placed the origination of the means of war. As to Commercial regulations which may involve revenue, the difficulty may be avoided by restraining the definition to bills, for the *mere* or *sole*, purpose of raising revenue. The Senate will be more likely to be corrupt than the H. of Reps. and should therefore have less to do with money matters. His principal object however was to prevent popular objections against the plan, and to secure its adoption.

Mr. Rutlidge. The friends of this motion are not consistent in their reasoning. They tell us that we ought to be guided by the long experience of G. B. & not our own experience of 11 years; and yet they themselves propose to depart from it. The *H. of Comons* not only have the exclusive right of originating, but the *Lords* are not allowed to alter or amend a money bill. Will not the people say that this restriction is but a mere tub to the whale. They cannot but see that it is of no real consequence; and will be more likely to be displeased with it as an attempt to bubble them, than to impute it to a watchfulness over their rights. For his part, he would prefer giving the exclusive right to the Senate, if it was to be given exclusively at all. The Senate being more conversant in business, and having more leisure,

will digest the bills much better, and as they are to have no effect, till examined & approved by the H. of Rep^{s} there can be no possible danger. These clauses in the Constitutions of the States had been put in through a blind adherence to the British model. If the work was to be done over now, they would be omitted. The experiment in S. Carolina, where the Senate can originate or amend money bills, has shewn that it answers no good purpose; and produces the very bad one of continually dividing & heating the two houses. Sometimes indeed if the matter of the amendment of the Senate is pleasing to the other House they wink at the encroachment; if it be displeasing, then the Constitution is appealed to. Every Session is distracted by altercations on this subject. The practice now becoming frequent is for the Senate not to make formal amendments; but to send down a schedule of the alterations which will procure the bill their assent.

M^{r} Carrol. The most ingenious men in Mary^{d} are puzzled to define the case of money bills, or explain the Constitution on that point, tho it seemed to be worded with all possible plainness & precision. It is a source of continual difficulty & squabble between the two houses.

M^{r} McHenry [24] mentioned an instance of extraordinary subterfuge, to get rid of the apparent force of the Constitution.

[24] "Mr. McHenry was bred a physician, but he afterwards turned Soldier and acted as Aid to Gen^{l} Washington and the Marquis de la Fayette. He is a Man of Specious talents, with nothing of genious to improve them. As a politician there is nothing remarkable in him, nor has he any of the graces of the Orator. He is however, a very respectable young Gentleman, and deserves the honor which his country has bestowed on him. Mr. McHenry is about 32 years of age."–Pierce's Notes, *Am. Hist. Rev.*, iii., 330.

On Question on the first part of the motion as to the exclusive originating of Money bills in the H. of Rep^{s}

N. H. ay. Mass. ay. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} no. Virg^{a} ay. M^{r} Blair & M^{r} M. no. M^{r} R, Col. Mason and Gen^{l} Washington [25] ay. N. C. ay. S. C. no. Geo. no.

[25] He disapproved & till now voted agst the exclusive privilege, he gave up his judgment he said because it was not of very material weight with him & was made an essential point with others who if disappointed, might be less cordial in other points of real weight.–Madison's Note.

Question on Originating by H. of Reps & *amending* by Senate, as reported Art IV. Sect. 5.

N. H. ay. Mass. ay. Ct no. N. J. no. Pa no. Del. no. Md no. Va [26] ay. N. C. ay. S. C. no. Geo. no.

[26] In the printed Journ Virga–no.–Madison's Note.

Question on the last clause of Sect. 5, Art: IV–viz "No money shall be drawn from the Public Treasury, but in pursuance of *appropriations* that shall originate in the House of Reps. It passed in the negative—

N. H. no. Mas. ay. Con. no. N. J. no. Pa no. Del. no. Md no. Va no. N. C. no. S. C. no. Geo. no.

Adjd.

Tuesday Aug. 14 [27]. In Convention

[27] General Henry Knox wrote to Washington from New York under date of August 14th:

"Influenced by motives of delicacy I have hitherto forborne the pleasure my dear Sir of writing to you since my return from Philadelphia.

"I have been apprehensive that the stages of the business of the convention, might leak out, and be made an ill use of, by some people. I have therefore been anxious that you should escape the possibility of imputation. But as the subjects seem now to be brought to a point, I take the liberty to indulge myself in communicating with you.

"Although I frankly confess that the existence of the State governments is an insuperable evil in a national point of view, yet I do not well see how in this stage of the business they could be annihilated–and perhaps while they continue the frame of government could not with propriety be much higher toned than the one proposed. It is so infinitely preferable to the present constitution, and gives such a bias to a proper line of conduct in future that I think all men anxious for a national government should zealously embrace it.

"The education, genius, and habits of men on this continent are so various even at this moment, and of consequence their views of the same subject so different, that I am satisfied with the result of the convention, although it is short of my wishes and of my judgment.

"But when I find men of the purest intentions concur in embracing a system which on the highest deliberation, seems to be the best which can be obtained, under present circumstances, I am convinced of the propriety of its being strenuously supported by all those who have wished for a national republic of higher and more durable powers.

"I am persuaded that the address of the convention to accompany their proposition will be couched in the most persuasive terms.

"I feel anxious that there should be the fullest representation in Congress, in order that the propositions should receive their warmest concurrence and strongest impulse...."–Wash. MSS.

Article VI. Sect. 9. taken up.

Mr. Pinkney argued that the making the members ineligible to offices was *degrading* to them, and the more improper as their election into the Legislature implied that they had the confidence of the people; that it was *inconvenient*, because the Senate might be supposed to contain the fittest men. He hoped to see that body become a School of public Ministers, a nursery of Statesmen: that it was *impolitic*, because the Legislature would cease to be a magnet to the first talents and abilities. He moved to postpone the section in order to take up the following proposition viz–"the members of each House shall be incapable of holding any office under the U. S. for which they or any of others for their benefit receive any salary, fees, or emoluments of any kind–and the acceptance of such office shall vacate their seats respectively."

Gens. Mifflin [28] 2ded the motion.

[28] "General Mifflin is well known for the activity of his mind, and the brilliancy of his parts. He is well-informed and a graceful Speaker. The General is about 40 years of age and a very handsome man."–Pierce's Notes, *Am. Hist. Rev.*, iii., 328.

Col. Mason ironically proposed to strike out the whole section, as a more effectual expedient for encouraging that exotic corruption which might not otherwise thrive so well in the American Soil–for compleating that Aristocracy which was probably in the contemplation of some among us, and for inviting into the Legislative Service, those generous & benevolent characters who will do justice to each other's merit, by carving out offices & rewards for it. In the present state of American morals & manners, few friends it may be thought will be lost to the plan, by the opportunity of giving premiums to a mercenary & depraved ambition.

Mr. Mercer. It is a first principle in political science, that whenever the rights of property are secured, an aristocracy will grow out of it. Elective Governments also necessarily become aristocratic, because the rulers being few can & will draw emoluments for themselves from the many. The Governments of America will become aristocracies. They are so already. The public measures are calculated for the benefit of the Governors, not of the people. The people are dissatisfied & complain. They change their

rulers, and the public measures are changed, but it is only a change of one scheme of emolument to the rulers, for another. The people gain nothing by it, but an addition of instability & uncertainty to their other evils.– Governm^{ts} can only be maintained by *force* or *influence*. The Executive has not *force*, deprive him of influence by rendering the members of the Legislature ineligible to Executive offices, and he becomes a mere phantom of authority. The Aristocratic part will not even let him in for a share of the plunder. The Legislature must & will be composed of wealth & abilities, and the people will be governed by a Junto. The Executive ought to have a Council, being members of both Houses. Without such an influence, the war will be between the aristocracy & the people. He wished it to be between the Aristocracy & the Executive. Nothing else can protect the people agst those speculating Legislatures which are now plundering them throughout the U. States.

M^{r} Gerry read a Resolution of the Legislature of Mass^{ts} passed before the Act of Cong^{s} recommending the Convention, in which her deputies were instructed not to depart from the rotation established in the 5th art: of Confederation, nor to agree in any case to give to the members of Cong^{s} a capacity to hold offices under the Government. This he said was repealed in consequence of the Act of Cong^{s} with which the State thought it proper to comply in an unqualified manner. The Sense of the State however was Still the same. He could not think with M^{r} Pinkney that the disqualification was degrading. Confidence is the road to tyranny. As to Ministers & Ambassadors few of them were necessary. It is the opinion of a great many that they ought to be discontinued, on our part; that none may be sent among us, & that source of influence be shut up. If the Senate were to appoint Ambassadors as seemed to be intended, they will multiply embassies for their own sakes. He was not so fond of those productions as to wish to establish nurseries for them. If they are once appointed, the House of Rep^{s} will be obliged to provide salaries for them, whether they approve of the measures or not. If men will not serve in the Legislature without a prospect of such offices, our situation is deplorable indeed. If our best Citizens are actuated by such mercenary views we had better chuse a single despot at once. It will be more easy to satisfy the rapacity of one than of many. According to the idea of one Gentleman (M^{r} Mercer) our

Government it seems is to be a Gov^{t} of plunder. In that case it certainly would be prudent to have but one rather than many to be employed in it. We cannot be too circumspect in the formation of this System. It will be examined on all sides and with a very suspicious eye. The people who have been so lately in arms agst G. B. for their liberties, will not easily give them up. He lamented the evils existing at present under our Governments, but imputed them to the faults of those in office, not to the people. The misdeeds of the former will produce a critical attention to the opportunities afforded by the new system to like or greater abuses. As it now stands it is as compleat an aristocracy as ever was framed. If great powers should be given to the Senate we shall be governed in reality by a Junto as has been apprehended. He remarked that it would be very differently constituted from Cong^{s}. 1. there will be but 2 deputies from each State, in Cong^{s} there may be 7. and are generally 5.—2. they are chosen for six years, those of Congress annually. 3. they are not subject to recall; those of Cong^{s} are. 4. In Congress 9 *States* are necessary for all great purposes, here 8 *persons* will suffice. Is it to be presumed that the people will ever agree to such a system? He moved to render the members of the H. of Rep^{s} as well as of the Senate ineligible not only during, but for one year after the expiration of their terms.–If it should be thought that this will injure the Legislature by keeping out of it men of abilities who are willing to serve in other offices it may be required as a qualification for other offices, that the Candidate shall have served a certain time in the Legislature.

M^{r} Gov^{r} Morris. Exclude the officers of the army & navy, and you form a band having a different interest from & opposed to the civil power: you stimulate them to despise & reproach those "talking Lords who dare not face the foe." Let this spirit be roused at the end of a war, before your troops shall have laid down their arms, and though the Civil authority "be intrenched in parchment to the teeth" they will cut their way to it. He was agst rendering the members of the Legislature ineligible to offices. He was for rendering them eligible ag^{n} after having vacated their Seats by accepting office. Why should we not avail ourselves of their services if the people chuse to give them their confidence. There can be little danger of corruption either among the people or the Legislatures who are to be the Electors. If they say, we see their merits, we honor the men, we chuse to renew our

confidence in them, have they not a right to give them a preference; and can they be properly abridged of it.

M[r] Williamson; introduced his opposition to the motion by referring to the question concerning "money bills." That clause he said was dead. Its Ghost he was afraid would notwithstanding haunt us. It had been a matter of conscience with him, to insist upon it as long as there was hope of retaining it. He had swallowed the vote of rejection, with reluctance. He could not digest it. All that was said on the other side was that the restriction was not *convenient*. We have now got a House of Lords which is to originate money-bills.–To avoid another *inconveniency*, we are to have a whole Legislature at liberty to cut out offices for one another. He thought a self-denying ordinance for ourselves would be more proper. Bad as the Constitution has been made by expunging the restriction on the Senate concerning money bills he did not wish to make it worse by expunging the present Section. He had scarcely seen a single corrupt measure in the Legislature of N. Carolina, which could not be traced up to office hunting.

M[r] Sherman. The Constitution sh[d] lay as few temptations as possible in the way of those in power. Men of abilities will increase as the Country grows more populous and as the means of education are more diffused.

M[r] Pinkney. No State has rendered the members of the Legislature ineligible to offices. In S. Carolina the Judges are eligible into the Legislature. It cannot be supposed then that the motion will be offensive to the people. If the State Constitutions should be revised he believed restrictions of this sort w[d] be rather diminished than multiplied.

M[r] Wilson could not approve of the section as it stood, and could not give up his judgment to any supposed objections that might arise among the people. He considered himself as acting & responsible for the welfare of millions not immediately represented in this House. He had also asked himself the serious question what he should say to his constituents in case they should call upon him to tell them why he sacrificed his own Judgment in a case where they authorized him to exercise it? Were he to own to them that he sacrificed it in order to flatter their prejudices, he should dread the retort: did you suppose the people of Penn[a] had not good sense enough to

receive a good Government? Under this impression he should certainly follow his own Judgment which disapproved of the section. He would remark in addition to the objections urged agst it, that as one branch of the Legislature was to be appointed by the Legislatures of the States, the other by the people of the States, as both are to be paid by the States, and to be appointable to State offices, nothing seemed to be wanting to prostrate the Natl Legislature, but to render its members ineligible to Natl offices, & by that means take away its power of attracting those talents which were necessary to give weight to the Governt and to render it useful to the people. He was far from thinking the ambition which aspired to Offices of dignity and trust, an ignoble or culpable one. He was sure it was not politic to regard it in that light, or to withhold from it the prospect of those rewards, which might engage it in the career of public service. He observed that the State of Penna which had gone as far as any State into the policy of fettering power, had not rendered the members of the Legislature ineligible to offices of Govt.

Mr Elsworth did not think the mere postponement of the reward would be any material discouragement of merit. Ambitious minds will serve 2 years or 7 years in the Legislature for the sake of qualifying themselves for other offices. This he thought a sufficient security for obtaining the services of the ablest men in the Legislature, although whilst members they should be ineligible to Public offices. Besides, merit will be most encouraged, when most impartially rewarded. If rewards are to circulate only within the Legislature, merit out of it will be discouraged.

Mr Mercer was extremely anxious on this point. What led to the appointment of this Convention? The corruption & mutability of the Legislative Councils of the States. If the plan does not remedy these, it will not recommend itself; and we shall not be able in our private capacities to support & enforce it: nor will the best part of our Citizens exert themselves for the purpose.–It is a great mistake to suppose that the paper we are to propose will govern the U. States. It is The men whom it will bring into the Governt and interest in maintaining it that is to govern them. The paper will only mark out the mode & the form. Men are the substance and must do the business. All Govt must be by force or influence. It is not the King of France–but 200,000 janisaries of power that govern that Kingdom. There

will be no such force here; influence then must be substituted; and he would ask whether this could be done, if the members of the Legislature should be ineligible to offices of State; whether such a disqualification would not determine all the most influential men to stay at home, & prefer appointments within their respective States.

Mr. Wilson was by no means satisfied with the answer given by Mr. Elseworth to the argument as to the discouragement of merit. The members must either go a second time into the Legislature, and disqualify themselves–or say to their Constituents, we served you before only from the mercenary view of qualifying ourselves for offices, and have answered this purpose we do not chuse to be again elected.

Mr. Govr. Morris put the case of a war, and the Citizen the most capable of conducting it, happening to be a member of the Legislature. What might have been the consequence of such a regulation at the commencement, or even in the Course of the late contest for our liberties?

On question for postponing in order to take up Mr. Pinkney's motion, it was lost,

N. H. ay. Mas. no. Ct. no. N. J. no. Pa. ay. Del. ay. Md. ay.
Va. ay. N. C. no. S. C. no. Geo. divd.

Mr. Govr. Morris moved to insert, after "office," except offices in the army or navy: but in that case their offices shall be vacated.

Mr. Broom 2ds him.

Mr. Randolph had been & should continue uniformly opposed to the striking out of the clause; as opening a door for influence & corruption. No arguments had made any impression on him, but those which related to the case of war, and a co-existing incapacity of the fittest commanders to be employed. He admitted great weight in these, and would agree to the exception proposed by Mr. Govr. Morris.

Mr. Butler & Mr. Pinkney urged a general postponemt. of 9. Sect. Art. VI. till it should be seen what powers would be vested in the Senate, when it

would be more easy to judge of the expediency of allowing the officers of State to be chosen out of that body.–A general postponement was agreed to nem. con.

Art: VI. Sect. 10. taken up–"that members be paid by their respective States."

Mr. Elseworth said that in reflecting on this subject he had been satisfied that too much dependence on the States would be produced by this mode of payment. He moved to strike it out and insert that they should "be paid out of the Treasury of the U. S. an allowance not exceeding ([blank]) dollars per day or the present value thereof."

Mr. Govr. Morris, remarked that if the members were to be paid by the States it would throw an unequal burden on the distant States, which would be unjust as the Legislature, was to be a national Assembly. He moved that the payment be out of the Natl. Treasury; leaving the quantum to the discretion of the Natl. Legislature. There could be no reason to fear that they would overpay themselves.

Mr. Butler contended for payment by the States; particularly in the case of the Senate, who will be so long out of their respective States, that they will lose sight of their Constituents unless dependent on them for their support.

Mr. Langdon was agst payment by the States. There would be some difficulty in fixing the sum; but it would be unjust to oblige the distant States to bear the expence of their members in travelling to and from the Seat of Govt.

Mr. Madison. If the H. of Reps is to be chosen *biennially*–and the Senate to be *constantly* dependent on the Legislatures which are chosen *annually*, he could not see any chance for that stability in the Genl. Govt the want of which was a principal evil in the State Govts. His fear was that the organization of the Govt supposing the Senate to be really independt for six years, would not effect our purpose. It was nothing more than a combination of the peculiarities of two of the State Govts which separately

had been found insufficient. The Senate was formed on the model of that of Maryl[d]. The Revisionary check, on that of N. York. What the effect of a union of these provisions might be, could not be foreseen. The enlargement of the sphere of the Government was indeed a circumstance which he thought would be favorable as he had on several occasions undertaken to show. He was however for fixing at least two extremes not to be exceeded by the Nat[l] Legisl[re] in the payment of themselves.

M[r] Gerry. There are difficulties on both sides. The observation of M[r] Butler has weight in it. On the other side, the State Legislatures may turn out the Senators by reducing their salaries. Such things have been practised.

Col. Mason. It has not yet been noticed that the clause as it now stands makes the House of Represent[s] also dependent on the State Legislatures: so that both houses will be made the instruments of the politics of the States whatever they may be.

M[r] Broom could see no danger in trusting the Gen[l] Legislature with the payment of themselves. The State Legislatures had this power, and no complaint had been made of it.

M[r] Sherman was not afraid that the Legislature would make their own wages too high; but too low, so that men ever so fit could not serve unless they were at the same time rich. He thought the best plan would be to fix a moderate allowance to be paid out of the Nat[l] Treas[y] and let the States make such additions as they might judge fit. He moved that 5 dollars per day be the sum, any further emoluments to be added by the States.

M[r] Carrol had been much surprised at seeing this clause in the Report. The dependence of both Houses on the State Legislatures is compleat; especially as the members of the former are eligible to State offices. The States can now say: if you do not comply with our wishes, we will starve you; if you do we will reward you. The new Gov[t] in this form was nothing more than a second edition of Congress in two volumes, instead of one, and perhaps with very few amendments—

Mr. Dickenson took it for granted that all were convinced of the necessity of making the Genl. Govt. independent of the prejudices, passions, and improper views of the State Legislatures. The contrary of This was effected by the section as it stands. On the other hand there were objections agst. taking a permanent standard as wheat which had been suggested on a former occasion, as well as against leaving the matter to the pleasure of the Natl. Legislature. He proposed that an Act should be passed every 12 years by the Natl. Legislre. settling the quantum of their wages. If the Genl. Govt. should be left dependent on the State Legislatures, it would be happy for us if we had never met in this Room.

Mr. Elseworth was not unwilling himself to trust the Legislature with authority to regulate their own wages, but well knew that an unlimited discretion for that purpose would produce strong, tho' perhaps not insuperable objections. He thought changes in the value of money, provided for by his motion in the words, "or the present value thereof."

Mr. L. Martin. As the Senate is to represent the States, the members of it ought to be paid by the States.

Mr. Carrol. The Senate was to represent & manage the affairs of the whole, and not to be the advocates of State interests. They ought then not to be dependent on nor paid by the States.

On the question for paying the Members of the Legislature out of the Natl. Treasury,

N. H. ay. Mass. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay.
Va. ay. N. C. ay. S. C. no. Geo. ay.

Mr. Elseworth moved that the pay be fixed at 5 dollrs. or the present value thereof per day during their attendance & for every thirty miles in travelling to & from Congress.

Mr. Strong preferred 4 dollars, leaving the Sts. at liberty to make additions.

On question for fixing the pay at 5 dollars.

N. H. no. Mass. no. C^{t} ay. N. J. no. P^{a} no. Del. no. M^{d} no. V^{a} ay. N. C. no. S. C. no. Geo. no.

M^{r} Dickenson proposed that the wages of the members of both houses s^{d} be required to be the same.

M^{r} Broome seconded him.

M^{r} Ghorum. this would be unreasonable. The Senate will be detained longer from home, will be obliged to remove their families, and in time of war perhaps to sit constantly. Their allowance should certainly be higher. The members of the Senates in the States are allowed more, than those of the other house.

M^{r} Dickenson withdrew his motion.

It was moved & agreed to amend the section by adding–"to be ascertained by law."

The section (Art. VI. Sect. 10) as amended, agreed to nem. con.

Adj^{d}.

Wednesday August 15. in Convention.

Art: VI. Sect. 11. Agreed to nem. con.

Art: VI. Sect 12. taken up.

M^r^ Strong moved to amend the article so as to read–"Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same and for fixing the salaries of the officers of the Gov^t^ which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases".

Col. Mason, 2^ds^ the motion. He was extremely earnest to take this power from the Senate, who he said could already sell the whole Country by means of Treaties.

M^r^ Ghorum urged the amendment as of great importance. The Senate will first acquire the habit of preparing money bills, and then the practice will grow into an exclusive right of preparing them.

M^r^ Govern^r^ Morris opposed it as unnecessary and inconvenient.

M^r^ Williamson, some think this restriction on the Senate essential to liberty, others think it of no importance. Why should not the former be indulged. He was for an efficient and stable Gov^t^: but many would not strengthen the Senate if not restricted in the case of money bills. The friends of the Senate would therefore lose more than they would gain by refusing to gratify the other side. He moved to postpone the subject till the powers of the Senate should be gone over.

M^r^ Rutlidge 2^ds^ the motion.

M^r^ Mercer should hereafter be ag^st^ returning to a reconsideration of this section. He contended (alluding to M^r^ Mason's observations) that the Senate

ought not to have the power of treaties. This power belonged to the Executive department; adding that Treaties would not be final so as to alter the laws of the land, till ratified by legislative authority. This was the case of Treaties in Great Britain; particularly the late Treaty of Coñerce with France.

Col. Mason, did not say that a Treaty would repeal a law; but that the Senate by means of treaty might alienate territory &c., without legislative sanction. The cessions of the British Islands in W. Indies by Treaty alone were an example. If Spain should possess herself of Georgia therefore the Senate might by treaty dismember the Union. He wished the motion to be decided now, that the friends of it might know how to conduct themselves.

On the question for postponing Sect: 12. it passed in the affirmative.

> N. H. ay. Mass. ay. C^{t} no. N. J. no. Pen^{a} no. Del: no. Mary^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Madison moved that all acts before they become laws should be submitted both to the Executive and supreme Judiciary Departments, that if either of these should object 2/3 of each House, if both should object, 3/4 of each House, should be necessary to overrule the objections and give to the acts the force of law. [29]

[29] Madison's Note says: "See the motion at large in the Journal of this date, page 253, and insert it here." The Journal gives it as follows:

"It was moved by Mr. Madison, and seconded, to agree to the following amendment of the thirteenth section of the sixth article:

"Every bill which shall have passed the two houses, shall, before it become a law, be severally presented to the President of the United States, and to the judges of the supreme court for the revision of each. If, upon such revision, they shall approve of it, they shall respectively signify their approbation by signing it; but if, upon such revision, it shall appear improper to either, or both, to be passed into a law, it shall be returned, with the objections against it, to that house, in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill: but if, after such reconsideration, two thirds of that house, when either the President, or a majority of the judges shall object, or three fourths, where both shall object, shall agree to pass it, it shall, together with the objections, be sent to the other house, by which it shall likewise be reconsidered; and, if approved by two thirds, or three fourths of the other house, as the case may be, it shall become a law."

M[r]. Wilson seconds the motion.

M[r]. Pinkney opposed the interference of the Judges in the Legislative business: it will involve them in parties, and give a previous tincture to their opinions.

M[r]. Mercer heartily approved the motion. It is an axiom that the Judiciary ought to be separate from the Legislative; but equally so that it ought to be independent of that department. The true policy of the axiom is that legislative usurpation and oppression may be obviated. He disapproved of the Doctrine that the Judges as expositors of the Constitution should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontroulable.

M[r]. Gerry. This motion comes to the same thing with what has been already negatived.

Question on the motion of M[r]. Madison

N. H. no. Mass. no. C[t]. no. N. J. no. P[a]. no. Del. ay. Mary[d]. ay. Virg[a]. ay. N. C. no. S. C. no. Geo. no.

Mr. Govr. Morris regretted that something like the proposed check could not be agreed to. He dwelt on the importance of public Credit, and the difficulty of supporting it without some strong barrier against the instability of legislative Assemblies. He suggested the idea of requiring three fourths of each house to *repeal* laws where the President should not concur. He had no great reliance on the revisionary power as the Executive was now to be constituted (elected by Congress.) The legislature will contrive to soften down the President. He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the distressing effects of such measures before their eyes. Were the National legislature formed, and a war was now to break out, this ruinous expedient would be again resorted to, if not guarded against. The requiring 3/4 to repeal would, though not a compleat remedy, prevent the hasty passage of laws, and the frequency of those repeals which destroy faith in the public, and which are among our greatest calamities.

Mr. Dickenson was strongly impressed with the remark of Mr. Mercer as to the power of the Judges to set aside the law. He thought no such power ought to exist. He was at the same time at a loss what expedient to substitute. The Justiciary of Arragon he observed became by degrees the lawgiver.

Mr. Govr. Morris, suggested the expedient of an absolute negative in the Executive. He could not agree that the Judiciary which was part of the Executive, should be bound to say that a direct violation of the Constitution was law. A controul over the legislature might have its inconveniences. But view the danger on the other side. The most virtuous Citizens will often as members of a legislative body concur in measures which afterwards in their private capacity they will be ashamed of. Encroachments of the popular branch of the Government ought to be guarded agst. The Ephori at Sparta became in the end absolute. The Report of the Council of Censors in Pennsylva. points out the many invasions of the legislative department on the Executive numerous as the latter [30] is, within the short term of seven years, and in a State where a strong party is opposed to the Constitution, and watching every occasion of turning the public resentments agst it. If the Executive be overturned by the popular branch, as happened in England, the tyranny of one man will ensue. In Rome where the Aristocracy overturned

the throne, the consequence was different. He enlarged on the tendency of the legislative Authority to usurp on the Executive and wished the section to be postponed, in order to consider of some more effectual check than requiring 2/3 only to overrule the negative of the Executive.

[30] The Executive consists at this time of abt 20 members.–Madison's Note.

Mr Sherman. Can one man be trusted better than all the others if they all agree? This was neither wise nor safe. He disapproved of Judges meddling in politics and parties. We have gone far enough in forming the negative as it now stands.

Mr Carrol. When the negative to be overruled by 2/3 only was agreed to, the *quorum* was not fixed. He remarked that as a majority was now to be the quorum, 17. in the larger, and 8 in the smaller house might carry points. The advantage that might be taken of this seemed to call for greater impediments to improper laws. He thought the controuling power however of the Executive could not be well decided, till it was seen how the formation of that department would be finally regulated. He wished the consideration of the matter to be postponed.

Mr Ghorum saw no end to these difficulties and postponements. Some could not agree to the form of Government before the powers were defined. Others could not agree to the powers till it was seen how the Government was to be formed. He thought a majority as large a quorum as was necessary. It was the quorum almost every where fixt in the U. States.

Mr Wilson; after viewing the subject with all the coolness and attention possible was most apprehensive of a dissolution of the Govt from the legislature swallowing up all the other powers. He remarked that the prejudices agst the Executive resulted from a misapplication of the adage that the parliament was the palladium of liberty. Where the Executive was really formidable, *King* and *Tyrant*, were naturally associated in the minds of people; not *legislature* and *tyranny*. But where the Executive was not formidable, the two last were most properly associated. After the destruction of the King in Great Britain, a more pure and unmixed tyranny

sprang up in the parliament than had been exercised by the monarch. He insisted that we had not guarded agst the danger on this side by a sufficient self-defensive power either to the Executive or Judiciary department.

M^{r} Rutlidge was strenuous agst postponing; and complained much of the tediousness of the proceedings.

M^{r} Elseworth held the same language. We grow more & more sceptical as we proceed. If we do not decide soon, we shall be unable to come to any decision.

The question for postponement passed in the negative: Del: & Mary^{d} only being in the affirmative.

M^{r} Williamson moved to change, "2/3 of each House" into "3/4" as requisite to overrule the dissent of the President. He saw no danger in this, and preferred giving the power to the Presid^{t} alone, to admitting the Judges into the business of legislation.

M^{r} Wilson 2^{ds} the motion; referring to and repeating the ideas of M^{r} Carroll.

On this motion for 3/4, instead of two-thirds; it passed in the affirmative.

> N. H. no. Mass. no. C^{t} ay. N. J. no. Pen^{a} div^{d}. Del. ay.
> M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. no.

M^{r} Madison, observing that if the negative of the President was confined to *bills*; it would be evaded by acts under the form and name of Resolutions, votes &c., proposed that "or resolve" should be added after "*bill*" in the beginning of sect 13. with an exception as to votes of adjournment &c. After a short and rather confused conversation on the subject, the question was put & rejected, the States being as follows,

> N. H. no. Mass. ay. C^{t} no. N. J. no. Pen^{a} no. Del. ay.
> M^{d} no. V^{a} no. N. C. ay. S. C. no. Geo. no.

"*Ten* days (Sundays excepted)" instead of "*seven*" were allowed to the President for returning bills with his objections N. H. & Mas: only voting agst it.

The 13 Sect: of Art. VI as amended was then agreed to.

Adjourned.

Thursday. August 16. in Convention.

Mr. Randolph having thrown into a new form the motion putting votes, Resolutions &c. on a footing with Bills, renewed it as follows–"Every order resolution or vote, to which the concurrence of the Senate & House of Reps. may be necessary (except on a question of adjournment and in the cases hereinafter mentioned) shall be presented to the President for his revision; and before the same shall have force shall be approved by him, or being disapproved by him shall be repassed by the Senate & House of Reps. according to the rules & limitations prescribed in the case of a Bill."

Mr. Sherman thought it unnecessary, except as to votes taking money out of the Treasury which might be provided for in another place.

On Question as moved by Mr. Randolph

> N. H. ay. Mass. not present. Ct. ay. N. J. no. Pa. ay.
> Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

The Amendment was made section 14. of Art. VI.

Art: VII. Sect. 1. taken up.

Mr. L. Martin asked what was meant by the Committee of detail in the expression,–"*duties*" and "*imposts*." If the meaning were the same, the former was unnecessary; if different, the matter ought to be made clear.

Mr. Wilson. *Duties* are applicable to many objects to which the word *imposts* does not relate. The latter are appropriated to commerce; the former extend to a variety of objects, as stamp duties &c.

Mr. Carroll reminded the Convention of the great difference of interests among the States, and doubts the propriety in that point of view of letting a majority be a quorum.

Mr. Mason urged the necessity of connecting with the power of levying taxes duties &c., the prohibition in Sect. 4 Art. VI that no tax should be laid on exports. He was unwilling to trust to its being done in a future article. He hoped the Northn. States did not mean to deny the Southern this security. It would hereafter be as desirable to the former when the latter should become the most populous. He professed his jealousy for the productions of the Southern or as he called them, the staple States. He moved to insert the following amendment: "provided that no tax duty or imposition shall be laid by the Legislature of the U. States on articles exported from any State."

Mr. Sherman had no objection to the proviso here, other than it would derange the parts of the report as made by the Committee, to take them in such an order.

Mr. Rutlidge. It being of no consequence in what order points are decided, he should vote for the clause as it stood, but on condition that the subsequent part relating to negroes should also be agreed to.

Mr. Governeur Morris considered such a proviso as inadmissible any where. It was so radically objectionable, that it might cost the whole system the support of some members. He contended that it would not in some cases be equitable to tax imports without taxing exports; and that taxes on exports would be often the most easy and proper of the two.

Mr. Madison. 1. the power of laying taxes on exports is proper in itself, and as the States cannot with propriety exercise it separately, it ought to be vested in them collectively. 2. it might with particular advantage be exercised with regard to articles in which America was not rivalled in foreign markets, as Tobo. &c. The contract between the French Farmers Genl. and Mr. Morris stipulating that if taxes sd. be laid in america on the export of Tobo. they sd. be paid by the Farmers, shewed that it was understood by them, that the price would be thereby raised in America, and consequently the taxes be paid by the European Consumer. 3. it would be unjust to the States whose produce was exported by their neighbours, to leave it subject to be taxed by the latter. This was a grievance which had already filled N.H. Cont. N. Jery. Del: and N. Carolina with loud complaints, as it related to imports, and they would be equally authorized by taxes by the States on

exports. 4. The South[n] States being most in danger and most needing naval protection, could the less complain if the burthen should be somewhat heaviest on them. 5. we are not providing for the present moment only, and time will equalize the situation of the States in this matter. He was for these reasons ag[st] the motion.

M[r] Williamson considered the clause proposed ag[st] taxes on exports as reasonable and necessary.

M[r] Elseworth was ag[st] Taxing exports; but thought the prohibition stood in the most proper place, and was ag[st] deranging the order reported by the Committee.

M[r] Wilson was decidedly ag[st] prohibiting general taxes on exports. He dwelt on the injustice and impolicy of leaving N. Jersey Connecticut &c. any longer subject to the exactions of their commercial neighbours.

M[r] Gerry thought the legislature could not be trusted with such a power. It might ruin the Country. It might be exercised partially, raising one and depressing another part of it.

M[r] Gov[r] Morris. However the legislative power may be formed, it will if disposed be able to ruin the Country. He considered the taxing of exports to be in many cases highly politic. Virginia has found her account in taxing Tobacco. All Countries having peculiar articles tax the exportation of them; as France her wines and brandies. A tax here on lumber, would fall on the W. Indies & punish their restrictions on our trade. The same is true of live stock and in some degree of flour. In case of a dearth in the West Indies, we may extort what we please. Taxes on exports are a necessary source of revenue. For a long time the people of America will not have money to pay direct taxes. Seize and sell their effects and you push them into Revolts.

M[r] Mercer was strenuous against giving Congress power to tax exports. Such taxes are impolitic, as encouraging the raising of articles not meant for exportation. The States had now a right where their situation permitted, to tax both the imports and the exports of their uncommercial neighbours. It was enough for them to sacrifice one half of it. It had been said the Southern States had most need of naval protection. The reverse was the

case. Were it not for promoting the carrying trade of the North^{n} States, the South^{n} States could let the trade go into foreign bottoms, where it would not need our protection. Virginia by taxing her tobacco had given an advantage to that of Maryland.

M^{r} Sherman. To examine and compare the States in relation to imports and exports will be opening a boundless field. He thought the matter had been adjusted, and that imports were to be subject, and exports not, to be taxed. He thought it wrong to tax exports except it might be such articles as ought not to be exported. The complexity of the business in America would render an equal tax on exports impracticable. The oppression of the uncommercial States was guarded agst by the power to regulate trade between the States. As to compelling foreigners, that might be done by regulating trade in general. The Government would not be trusted with such a power. Objections are most likely to be excited by considerations relating to taxes & money. A power to tax exports would shipwreck the whole.

M^{r} Carrol was surprised that any objection should be made to an exception of exports from the power of taxation.

It was finally agreed that the question concerning exports sh^{d} lie over for the place in which the exception stood in the report: Mary^{d} alone voting agst it.

Sect: 1. (Art. VII) agreed to; M^{r} Gerry alone answering, no.

Clause for regulating commerce with foreign nations &c.
agreed to nem. con.
for coining money. ag^{d} to nem. con.
for regulating foreign coin. d^{o} d^{o}.
for fixing standard of weights & measures. d^{o} d^{o}.

"To establish post-offices," M^{r} Gerry moved to add, and post-roads. M^{r} Mercer 2^{ded}. & on question

N.H. no. Mass. ay. C^{t} no. N.J. no. Pen^{a} no. Del. ay.
M^{d} ay. V^{a} ay. N.C. no. S.C. ay. Geo. ay.

M^r^ Gov^r^ Morris moved to strike out "and emit bills on the credit of the U. States"–If the United States had credit such bills would be unnecessary; if they had not, unjust & useless.

M^r^ Butler, 2^ds^ the motion.

M^r^ Madison, will it not be sufficient to prohibit the making them a *tender*? This will remove the temptation to emit them with unjust views. And promissory notes in that shape may in some emergencies be best.

M^r^ Gov^r^ Morris, striking out the words will leave room still for notes of a *responsible* minister which will do all the good without the mischief. The Monied interest will oppose the plan of Government, if paper emissions be not prohibited.

M^r^ Ghorum was for striking out, without inserting any prohibition, if the words stand they may suggest and lead to the measure.

Col. Mason had doubts on the subject. Cong^s^ he thought would not have the power unless it were expressed. Though he had a mortal hatred to paper money, yet as he could not forsee all emergencies, he was unwilling to tie the hands of the Legislature. He observed that the late war could not have been carried on, had such a prohibition existed.

Mr. Ghorum. The power as far as it will be necessary or safe, is involved in that of borrowing.

M^r^ Mercer was a friend to paper money, though in the present state & temper of America, he should neither propose nor approve of such a measure. He was consequently opposed to a prohibition of it altogether. It will stamp suspicion on the Government to deny it a discretion on this point. It was impolitic also to excite the opposition of all those who were friends to paper money. The people of property would be sure to be on the side of the plan, and it was impolitic to purchase their further attachment with the loss of the opposite class of Citizens.

M^r^ Elseworth thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had

been made, were now fresh in the public mind and had excited the disgust of all the respectable part of America. By withholding the power from the new Govern[t] more friends of influence would be gained to it than by almost any thing else. Paper money can in no case be necessary. Give the Government credit, and other resources will offer. The power may do harm, never good.

M[r] Randolph, notwithstanding his antipathy to paper money, could not agree to strike out the words, as he could not foresee all the occasions that might arise.

M[r] Wilson. It will have a most salutary influence on the credit of the U. States to remove the possibility of paper money. This expedient can never succeed whilst its mischiefs are remembered. And as long as it can be resorted to, it will be a bar to other resources.

M[r] Butler remarked that paper was a legal tender in no Country in Europe. He was urgent for disarming the Government of such a power.

M[r] Mason was still averse to tying the hands of the Legislature *altogether*. If there was no example in Europe as just remarked it might be observed on the other side, that there was none in which the Government was restrained on this head.

M[r] Read, thought the words, if not struck out, would be as alarming as the mark of the Beast in Revelations.

M[r] Langdon had rather reject the whole plan than retain the three words ("and emit bills").

On the motion for striking out

N.H. ay. Mass. ay. C[t] ay. N.J. no. P[a] ay. Del. ay. M[d] no. V[a] ay. [31] N.C. ay. S.C. ay. Geo. ay.

[31] This vote in the affirmative by Virg[a] was occasioned by the acquiescence of M[r] Madison who became satisfied that striking out the words would not disable

the Gov.t from the use of public notes as far as they could be safe & proper; & would only cut off the pretext for a paper currency and particularly for making the bills a tender either for public or private debts.–Madison's Note.

The clause for borrowing money, agreed to nem. con.

Adj.d.

Friday August 17. in Convention

Art. VII. Sect. 1. resumed, on the clause, "to appoint Treasurer by ballot,"

M^{r} Ghorum moved to insert "joint" before ballot, as more convenient as well as reasonable, than to require the separate concurrence of the Senate.

M^{r} Pinkney 2^{ds} the motion. M^{r} Sherman opposed it as favoring the larger States.

M^{r} Read moved to strike out the clause, leaving the appointment of the Treasurer as of other officers to the Executive. The Legislature was an improper body for appointments. Those of the State legislatures were a proof of it. The Executive being responsible would make a good choice.

M^{r} Mercer 2^{ds} the motion of M^{r} Read.

On the motion for inserting the word "joint" before ballot

> N.H. ay. Mass. ay. C^{t} no. N.J. no. P^{a} ay. M^{d} no. V^{a} ay.
> N.C. ay. S.C. ay. Geo. ay.

Col. Mason in opposition to M^{r} Read's motion desired it might be considered to whom the money would belong; if to the people, the legislature representing the people ought to appoint the keepers of it.

On striking out the clause as amended by inserting "Joint"

> N.H. no. Mass. no. C^{t} no. P^{a} ay. Del. ay. M^{d} ay. V^{a} no.
> N.C. no. S.C. ay. Geo. no.

"To constitute inferior tribunals" agreed to nem. con.

"To make rules as to captures on land & water" d^{o} d^{o}.

"To declare the law and punishment of piracies and felonies &c &c." considered.

Mr. Madison moved to strike out "and punishment &c."

Mr. Mason doubts the safety of it, considering the strict rule of construction in criminal cases. He doubted also the propriety of taking the power in all these cases wholly from the States.

Mr. Govern[r] Morris thought it would be necessary to extend the authority further, so as to provide for the punishment of counterfeiting in general. Bills of exchange for example might be forged in one State and carried into another.

It was suggested by some other member that *foreign* paper might be counterfeited by Citizens; and that it might be politic to provide by national authority for the punishment of it.

Mr. Randolph did not conceive that expunging "the punishment" would be a constructive exclusion of the power. He doubted only the efficacy of the word "declare."

Mr. Wilson was in favor of the motion. Strictness was not necessary in giving authority to enact penal laws; though necessary in enacting & expounding them.

On motion for striking out "and punishment" as moved by Mr. Madison

N.H. no. Mass. ay. Ct. no. Pa. ay. Del. ay. Md. no. Va. ay.
N.C. ay. S.C. ay. Geo. ay.

Mr. Govr. Morris moved to strike out "declare the law" and insert "punish" before "piracies," and on the question.

N.H. ay. Mass. ay. Ct. no. Pa. ay. Del. ay. Md. ay. Va. no.
N.C. no. S.C. ay. Geo. ay.

M^{r} Madison & M^{r} Randolph moved to insert "define &," before "punish."

M^{r} Wilson thought "felonies" sufficiently defined by common law.

M^{r} Dickenson concurred with M^{r} Wilson.

M^{r} Mercer was in favor of the amendment.

M^{r} Madison. Felony at common law is vague. It is also defective. One defect is supplied by Stat: of Anne as to running away with vessels which at com̃on law was a breach of trust only. Besides no foreign law should be a standard farther than is expressly adopted. If the laws of the States were to prevail on this subject, the Citizens of different States would be subject to different punishments for the same offence at Sea. There would be neither uniformity nor stability in the law–The proper remedy for all these difficulties was to vest the power proposed by the term "define" in the Nat^{l} legislature.

M^{r} Gov^{r} Morris would prefer *designate* to *define*, the latter being as he conceived, limited to the preexisting meaning.

It was said by others to be applicable to the creating of offences also, and therefore suited the case both of felonies & of piracies. The motion of M^{r} M. & M^{r} R. was agreed to.

M^{r} Elseworth enlarged the motion so as to read "to define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the U. States, and offences agst the law of Nations" which was agreed to nem. con.

"To subdue a rebellion in any State, on the application of its legislature"

M^{r} Pinkney moved to strike out, "on the application of its legislature".

M^{r} Gov^{r} Morris 2^{ds}.

M[r] L. Martin opposed it as giving a dangerous & unnecessary power. The consent of the State ought to precede the introduction of any extraneous force whatever.

M[r] Mercer supported the opposition of M[r] Martin.

M[r] Elseworth proposed to add after "legislature," "or Executive."

M[r] Gov[r] Morris. The Executive may possibly be at the head of the Rebellion. The Gen[l] Gov[t] should enforce obedience in all cases where it may be necessary.

M[r] Elseworth. In many cases The Gen[l] Gov[t] ought not to be able to interpose, unless called upon. He was willing to vary his motion so as to read "or without it when the legislature cannot meet."

M[r] Gerry was ag[st] letting loose the myrmidons of the U. States on a State without its own consent. The States will be the best Judges in such cases. More blood would have been spilt in Mass[ts] in the late insurrection, if the Gen[l] Authority had intermeddled.

M[r] Langdon was for striking out as moved by M[r] Pinkney. The apprehension of the national force, will have a salutary effect in preventing insurrections.

M[r] Randolph. If the Nat[l] Legislature is to judge whether the State legislature can or cannot meet, that amendment would make the clause as objectionable as the motion of M[r] Pinkney.

M[r] Gov[r] Morris. We are acting a very strange part. We first form a strong man to protect us, and at the same time wish to tie his hands behind him. The legislature may surely be trusted with such a power to preserve the public tranquillity.

On the motion to add, "or without it (application) when the legislature cannot meet"

N.H. ay. Mass. no. C^{t} ay. P^{a} div^{d}. Del. no. M^{d} no. V^{a} ay. N.C. div^{d}. S. C. ay. Geo. ay. So agreed to.

M^{r} Madison and M^{r} Dickenson moved to insert as explanatory, after "State"–"against the Government thereof". There might be a rebellion agst the U. States–which was agreed to nem. con.

On the clause as amended

N.H. ay. Mass. [32] abs^{t}. C^{t} ay. Pen. abs^{t}. Del. no. M^{d} no. V^{a} ay. N.C. no. S.C. no. Georg. ay.–so it was lost.

[32] In the printed Journal, Mas. no.–Madison's Note.

"To make war"

M^{r} Pinkney opposed the vesting this power in the Legislature. Its proceedings were too slow. It w^{d} meet but once a year, the H^{s} of Rep^{s} would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the States are equally represented in the Senate, so as to give no advantage to the large States, the power will notwithstanding be safe, as the small have their all at stake in such cases as well as the large States. It would be singular for one authority to make war, and another peace.

M^{r} Butler. The Objections agst the Legislature lie in a great degree agst the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.

M^{r} Madison and M^{r} Gerry moved to insert "*declare*," striking out "*make*" war; leaving to the Executive the power to repel sudden attacks.

M^{r} Sherman thought it stood very well. The Executive sh^{d} be able to repel and not to commence war. "Make" is better than "declare" the latter narrowing the power too much.

M^r^ Gerry never expected to hear in a republic a motion to empower the Executive alone to declare war.

M^r^ Elsworth. There is a material difference between the cases of making *war* and making *peace*. It sh^d^ be more easy to get out of war, than into it. War also is a simple and overt declaration, peace attended with intricate & secret negociations.

M^r^ Mason was ag^st^ giving the power of war to the Executive because not safely to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging rather than facilitating war; but for facilitating peace. He preferred "*declare*" to "*make*."

On the motion to insert "*declare*"–in place of "*make*," it was agreed to.

> N.H. no. Mass, abs^t^. Con^t^ no. [33] P^a^ ay. Del. ay. M^d^ ay. V^a^ ay. N.C. ay. S.C. ay. Geo. ay.

[33] On the remark by M^r^ King that "*make*" war might be understood to "conduct" it which was an Executive function. M^r^ Elsworth gave up his objection, and the vote of Con. was changed to *ay*.–Madison's Note.

M^r^ Pinkney's motion to strike out whole clause, disag^d^ to without call of States.

M^r^ Butler moved to give the Legislature the power of peace, as they were to have that of war.

M^r^ Gerry 2^ds^ him. 8 Senators may possibly exercise the power if vested in that body, and 14 if all should be present; and may consequently give up part of the U. States. The Senate are more liable to be corrupted by an Enemy than the whole Legislature.

On the motion for adding "and peace" after "war,"

> N.H. no. Mas. no. C^t^ no. P^a^ no. Del. no. M^d^ no. V^a^ no. N.C. no. S.C. no. Geo. no.

Adjourned.

Saturday August 18. in Convention

Mr. Madison submitted, in order to be referred to the Committee of detail the following powers as proper to be added to those of the General Legislature:

"To dispose of the unappropriated lands of the U. States."

"To institute temporary Governments for new States arising therein."

"To regulate affairs with the Indians as well within as without the limits of the U. States."

"To exercise exclusively Legislative authority at the seat of the General Government, and over a district around the same, not exceeding —— square miles; the Consent of the Legislature of the State or States comprising the same, being first obtained."

"To grant charters of incorporation in cases where the public good may require them, and the authority of a single State may be incompetent"

"To secure to literary authors their copy rights for a limited time."

"To establish an University."

"To encourage by premiums & provisions, the advancement of useful knowledge and discoveries."

"To authorize the Executive to procure and hold for the use of the U. S. landed property for the erection of Forts, magazines, and other necessary buildings."

These propositions were referred to the Committee of detail which had prepared the Report and at the same time the following which were moved

by M[r]. Pinkney:–in both cases unanimously:

"To fix and permanently establish the seat of Government of the U. S. in which they shall possess the exclusive right of soil & jurisdiction."

"To establish seminaries for the promotion of literature and the arts & sciences."

"To grant charters of incorporation."

"To grant patents for useful inventions."

"To secure to Authors exclusive rights for a certain time."

"To establish public institutions, rewards and immunities for the promotion of agriculture, commerce, trades and manufactures."

"That funds which shall be appropriated for the payment of public Creditors, shall not during the time of such appropriation, be diverted or applied to any other purpose and that the Committee prepare a clause or clauses for restraining the Legislature of the U. S. from establishing a perpetual revenue."

"To secure the payment of the public debt."

"To secure all creditors under the new Constitution from a violation of the public faith when pledged by the authority of the Legislature."

"To grant letters of mark and reprisal."

"To regulate Stages on the post roads."

M[r]. Mason introduced the subject of regulating the militia. He thought such a power necessary to be given to the Gen[l]. Government. He hoped there would be no standing army in time of peace, unless it might be for a few garrisons. The Militia ought therefore to be the more effectually prepared for the public defence. Thirteen States will never concur in any one system, if the disciplining of the Militia be left in their hands. If they will not give up the power over the whole, they probably will over a part as

a select militia. He moved as an addition to the propositions just referred to the Comittee of detail, & to be referred in like manner, "a power to regulate the militia."

Mr. Gerry remarked that some provision ought to be made in favor of public Securities, and something inserted concerning letters of marque, which he thought not included in the power of war. He proposed that these subjects should also go to a Committee.

Mr. Rutlidge moved to refer a clause "that funds appropriated to public creditors should not be diverted to other purposes."

Mr. Mason was much attached to the principle, but was afraid such a fetter might be dangerous in time of war. He suggested the necessity of preventing the danger of perpetual revenue which must of necessity subvert the liberty of any country. If it be objected to on the principle of Mr. Rutlidge's motion that public Credit may require perpetual provisions, that case might be excepted; it being declared that in other cases, no taxes should be laid for a longer term than —— years. He considered the caution observed in Great Britain on this point as the paladium of public liberty.

Mr. Rutlidge's motion was referred–He then moved that a Grand Committee be appointed to consider the necessity and expediency of the U. States assuming all the State debts–A regular settlement between the Union & the several States would never take place. The assumption would be just as the State debts were contracted in the common defence. It was necessary, as the taxes on imports the only sure source of revenue were to be given up to the Union. It was politic, as by disburdening the people of the State debts it would conciliate them to the plan.

Mr. King and Mr. Pinkney seconded the motion. (Col. Mason interposed a motion that the Committee prepare a clause for restraining perpetual revenue, which was agreed to nem. con.)

Mr. Sherman thought it would be better to authorize the Legislature to assume the State debts, than to say positively it should be done. He considered the measure as just and that it would have a good effect to say something about the matter.

Mr. Elseworth differed from Mr. Sherman. As far as the State debts ought in equity to be assumed, he conceived that they might and would be so.

Mr. Pinkney observed that a great part of the State debts were of such a nature that although in point of policy and true equity they ought, yet would they not be viewed in the light of federal expenditures.

Mr. King thought the matter of more consequence than Mr. Elseworth seemed to do; and that it was well worthy of commitment. Besides the considerations of justice and policy which had been mentioned, it might be remarked that the State Creditors an active and formidable party would otherwise be opposed to a plan which transferred to the Union the best resources of the States without transferring the State debts at the same time. The State Creditors had generally been the strongest foes to the impost-plan. The State debts probably were of greater amount than the federal. He would not say that it was practicable to consolidate the debts, but he thought it would be prudent to have the subject considered by a Committee.

On Mr. Rutlidge's motion, that a Come. be appointed to consider of the assumption &c.

> N. H. no. Mass. ay. Ct. ay. N. J. no. Pa. div^d. Del. no.
> Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Gerry's motion to provide for public securities, for stages on post roads, and for letters of marque & reprisal, were committed nem. con.

Mr. King suggested that all unlocated lands of particular States ought to be given up if State debts were to be assumed:–Mr. Williamson concurred in the idea.

A Grand Committee was appointed consisting of Mr. Langdon, Mr. King, Mr. Sherman, Mr. Livingston, Mr. Clymer, Mr. Dickenson, Mr. McHenry, Mr. Mason, Mr. Williamson, Mr. C. C. Pinkney, Mr. Baldwin.

Mr. Rutlidge remarked on the length of the Session, the probable impatience of the public and the extreme anxiety of many members of the

Convention to bring the business to an end; concluding with a motion that the Convention meet henceforward precisely at 10 Oc A.M. and that precisely at 4 Oc P.M. the President adjourn the House without motion for the purpose, and that no motion to adjourn sooner be allowed.

On this question

N. H. ay. Mass. ay. C^{t} ay. N. J. ay. P^{a} no. Del. ay. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Elseworth observed that a Council had not yet been provided for the President. He conceived there ought to be one. His proposition was that it should be composed of the President of the Senate, the Chief Justice, and the ministers as they might be estab^{d} for the departments of foreign & domestic affairs, war finance and marine, who should advise but not conclude the President.

M^{r} Pinkney wished the proposition to lie over, as notice had been given for a like purpose by M^{r} Gov^{r} Morris who was not then on the floor. His own idea was that the President sh^{d} be authorized to call for advice or not as he might chuse. Give him an able Council and it will thwart him; a weak one and he will shelter himself under their sanction.

M^{r} Gerry was agst letting the heads of the Departments, particularly of finance have any thing to do in business connected with legislation. He mentioned the Chief Justice also as particularly exceptionable. These men will also be so taken up with other matters as to neglect their own proper duties.

M^{r} Dickenson urged that the great appointments should be made by the Legislature in which case they might properly be consulted by the Executive, but not if made by the Executive himself–This subject by general consent lay over; & the House proceeded to the clause "To raise armies."

M^{r} Ghorum moved to add "and support" after "raise." Agreed to nem. con. and then the clause was agreed to nem. con. as amended.

Mr. Gerry took notice that there was no check here agst standing armies in time of peace. The existing Congs is so constructed that it cannot of itself maintain an army. This wd not be the case under the new system. The people were jealous on this head, and great opposition to the plan would spring from such an omission. He suspected that preparations of force were now making agst it. (he seemed to allude to the activity of the Govr of N. York at this crisis in disciplining the militia of that State.) He thought an army dangerous in time of peace & could never consent to a power to keep up an indefinite number. He proposed that there shall not be kept up in time of peace more than —— thousand troops. His idea was that the blank should be filled with two or three thousand.

Instead of "to build and equip fleets"–"to provide and maintain a navy" agreed to nem. con. as a more convenient definition of the power.

"To make rules for the Government and regulation of the land & naval forces," added from the existing Articles of Confederation.

Mr. L. Martin and Mr. Gerry now regularly moved "provided that in time of peace the army shall not consist of more than —— thousand men."

Genl. Pinkney asked whether no troops were ever to be raised untill an attack should be made on us?

Mr. Gerry. If there be no restriction, a few States may establish a military Govt.

Mr. Williamson, reminded him of Mr. Mason's motion for limiting the appropriation of revenue as the best guard in this case.

Mr. Langdon saw no room for Mr. Gerry's distrust of the Representatives of the people.

Mr. Dayton. Preparations for war are generally made in peace; and a standing force of some sort may, for ought we know, become unavoidable. He should object to no restrictions consistent with these ideas.

The motion of Mr. Martin and Mr. Gerry was disagreed to nem. con.

M^r^ Mason moved as an additional power "to make laws for the regulation and discipline of the militia of the several States, reserving to the States the appointment of the officers." He considered uniformity as necessary in the regulation of the Militia throughout the Union.

Gen^l^ Pinkney mentioned a case during the war in which a dissimilarity in the militia of different States had produced the most serious mischiefs. Uniformity was essential. The States would never keep up a proper discipline of their militia.

M^r^ Elseworth was for going as far in submitting the militia to the Gen^l^ Government as might be necessary, but thought the motion of M^r^ Mason went too far. He moved that the militia should have the same arms & exercise and be under rules established by the Gen^l^ Gov^t^ when in actual service of the U. States and when States neglect to provide regulations for militia, it sh^d^ be regulated & established by the Legislature of U. S. The whole authority over the militia ought by no means to be taken away from the States whose consequence would pine away to nothing after such a sacrifice of power. He thought the Gen^l^ Authority could not sufficiently pervade the Union for such a purpose, nor could it accommodate itself to the local genius of the people. It must be vain to ask the States to give the Militia out of their hands.

M^r^ Sherman 2^ds^ the motion.

M^r^ Dickenson. We are come now to a most important matter, that of the sword. His opinion was that the States never would nor ought to give up all authority over the Militia. He proposed to restrain the general power to one fourth part at a time, which by rotation would discipline the whole Militia.

M^r^ Butler urged the necessity of submitting the whole Militia to the general Authority, which had the care of the general defence.

M^r^ Mason. had suggested the idea of a select militia. He was led to think that would be in fact as much as the Gen^l^ Gov^t^ could advantageously be charged with. He was afraid of creating insuperable objections to the plan. He withdrew his original motion, and moved a power "to make laws for

regulating and disciplining the militia, not exceeding one tenth part in any one year, and reserving the appointment of officers to the States."

Gen^{l} Pinkney, renewed M^{r} Mason's original motion. For a part to be under the Gen^{l} and a part under the State Gov^{ts} w^{d} be an incurable evil. he saw no room for such distrust of the Gen^{l} Gov^{t}.

M^{r} Langdon 2^{ds} General Pinkney's renewal. He saw no more reason to be afraid of the Gen^{l} Gov^{t} than of the State Gov^{ts}. He was more apprehensive of the confusion of the different authorities on this subject, than of either.

M^{r} Madison thought the regulation of the Militia naturally appertaining to the authority charged with the public defence. It did not seem in its nature to be divisible between two distinct authorities. If the States would trust the Gen^{l} Gov^{t} with a power over the public treasure, they would from the same consideration of necessity grant it the direction of the public force. Those who had a full view of the public situation w^{d} from a sense of the danger, guard agst it: the States would not be separately impressed with the general situation, nor have the due confidence in the concurrent exertions of each other.

M^{r} Elseworth, considered the idea of a select militia as impracticable; & if it were not it would be followed by a ruinous declension of the great body of the Militia. The States would never submit to the same militia laws. Three or four shillings as a penalty will enforce better obedience in New England, than forty lashes in some other places.

M^{r} Pinkney thought the power such an one as could not be abused, and that the States would see the necessity of surrendering it. He had however but a scanty faith in Militia. There must be also a real military force. This alone can effectually answer the purpose. The United States had been making an experiment without it, and we see the consequence in their rapid approaches toward anarchy. [34]

[34] This had reference to the disorders particularly that had occurred in Massach^{ts} which had called for the interposition of the federal troops.– Madison's Note.

M^{r} Sherman, took notice that the States might want their militia for defence agst invasions and insurrections, and for enforcing obedience to their laws. They will not give up this point. In giving up that of taxation, they retain a concurrent power of raising money for their own use.

M^{r} Gerry thought this the last point remaining to be surrendered. If it be agreed to by the Convention, the plan will have as black a mark as was set on Cain. He had no such confidence in the Gen^{l} Gov^{t} as some gentlemen possessed, and believed it would be found that the States have not.

Col. Mason, thought there was great weight in the remarks of M^{r} Sherman, and moved an exception to his motion "of such part of the militia as might be required by the States for their own use."

M^{r} Read doubted the propriety of leaving the appointment of the Militia officers in the States. In some States they are elected by the Legislatures; in others by the people themselves. He thought at least an appointment by the State Executives ought to be insisted on.

On committing to the grand Committee last appointed, the latter motion of Col. Mason, & the original one revived by Ge^{l} Pinkney

N. H. ay. Mas. ay. C^{t} no. N. J. no. P^{a} ay. Del. ay. M^{d} div^{d}. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Adjourned.

Monday August 20. in Convention

Mr. Pinkney submitted to the House, in order to be referred to the Committee of detail, the following propositions–"Each House shall be the judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same, or who, in the place where the Legislature may be sitting and during the time of its Session, shall threaten any of its members for any thing said or done in the House; or who shall assault any of them therefor–or who shall assault or arrest any witness or other person ordered to attend either of the Houses in his way going or returning; or who shall rescue any person arrested by their order."

"Each branch of the Legislature, as well as the supreme Executive shall have authority to require the opinions of the supreme Judicial Court upon important questions of law, and upon solemn occasions."

"The privileges and benefit of the Writ of Habeas corpus shall be enjoyed in this Government in the most expeditious and ample manner; and shall not be suspended by the Legislature except upon the most urgent and pressing occasions, and for a limited time not exceeding —— months."

"The liberty of the Press, shall be inviolably preserved."

"No troops shall be kept up in time of peace, but by consent of the Legislature."

"The military shall always be subordinate to the Civil power, and no grants of money shall be made by the Legislature for supporting military Land forces, for more than one year at a time."

"No soldier shall be quartered in any house in time of peace without consent of the owner."

"No person holding the office of President of the U. S. a Judge of their supreme Court, Secretary for the department of Foreign Affairs, of Finance, of Marine, of War, or of ——, shall be capable of holding at the same time

any other office of Trust or emolument under the U. S. or an individual State."

"No religious test or qualification shall ever be annexed to any oath of office under the authority of the U. S."

"The U. S. shall be forever considered as one Body corporate and politic in law, and entitled to all the rights privileges and immunities, which to Bodies corporate ought to or do appertain."

"The Legislature of the U. S. shall have the power of making the Great Seal which shall be kept by the President of the U. S. or in his absence by the President of the Senate, to be used by them as the occasion may require.–It shall be called the Great Seal of the U. S. and shall be affixed to all laws."

"All commissions and writs shall run in the name of the U.S."

"The Jurisdiction of the Supreme Court shall be extended to all controversies between the U. S. and an individual State, or the U. S. and the Citizens of an individual State."

These propositions were referred to the Committee of detail without debate or consideration of them by the House.

M^{r} Gov^{r} Morris 2^{ded} by M^{r} Pinkney, submitted the following propositions which were in like manner referred to the Committee of Detail.

"To assist the President in conducting the Public affairs there shall be a Council of State composed of the following officers—1. The Chief Justice of the Supreme Court, who shall from time to time recommend such alterations of and additions to the laws of the U. S. as may in his opinion be necessary to the due administration of Justice, and such as may promote useful learning and inculcate sound morality throughout the Union: He shall be President of the Council in the absence of the President.

2. The Secretary of Domestic affairs who shall be appointed by the President and hold his office during pleasure. It shall be his duty to

attend to matters of general police, the State of Agriculture and manufactures, the opening of roads and navigations, and the facilitating communications thro' the U. States; and he shall from time to time recommend such measures and establishments as may tend to promote those objects.

3. The Secretary of Commerce and Finance who shall also be appointed by the President during pleasure. It shall be his duty to superintend all matters relating to the public finances, to prepare & report plans of revenue and for the regulation of expenditures, and also to recommend such things as may in his Judgment promote the commercial interests of the U. S.

4. The Secretary of foreign affairs who shall also be appointed by the President during pleasure. It shall be his duty to correspond with all foreign Ministers, prepare plans of Treaties, & consider such as may be transmitted from abroad, and generally to attend to the interests of the U. S. in their connections with foreign powers.

5. The Secretary of War who shall also be appointed by the President during pleasure. It shall be his duty to superintend every thing relating to the war Department, such as the raising and equipping of troops, the care of military stores, public fortifications, arsenals & the like–also in time of war to prepare & recommend plans of offence and Defence.

6. The Secretary of the Marine who shall also be appointed during pleasure–It shall be his duty to superintend every thing relating to the Marine Department, the public ships, Dock Yards, naval Stores & arsenals–also in the time of war to prepare and recommend plans of offence and defence.

The President shall also appoint a Secretary of State to hold his office during pleasure; who shall be Secretary to the Council of State, and also public Secretary to the President. It shall be his duty to prepare all Public dispatches from the President which he shall countersign.

The President may from time to time submit any matter to the discussion of the Council of State, and he may require the written opinions of any one or more of the members: But he shall in all cases exercise his own judgment, and either Conform to such opinions or not as he may think proper; and every officer above mentioned shall be responsible for his opinion on the affairs relating to his particular Department.

Each of the officers above mentioned shall be liable to impeachment & removal from office for neglect of duty malversation or corruption."

Mr. Gerry moved "that the Committee be instructed to report proper qualifications for the President, and a mode of trying the Supreme Judges in cases of impeachment."

The clause "to call forth the aid of the Militia &c. was postponed till report should be made as to the power over the Militia referred yesterday to the Grand Committee of eleven.

Mr. Mason moved to enable Congress "to enact sumptuary laws." No Government can be maintained unless the manners be made consonant to it. Such a discretionary power may do good and can do no harm. A proper regulation of excises & of trade may do a great deal but it is best to have an express provision. It was objected to sumptuary laws that they were contrary to nature. This was a vulgar error. The love of distinction it is true is natural; but the object of sumptuary laws is not to extinguish this principle but to give it a proper direction.

Mr. Elseworth. The best remedy is to enforce taxes & debts. As far as the regulation of eating & drinking can be reasonable, it is provided for in the power of taxation.

Mr. Govr. Morris argued that sumptuary laws tended to create a landed nobility, by fixing in the great-landholders and their posterity their present possessions.

Mr. Gerry, the law of necessity is the best sumptuary law.

On Motion of Mr. Mason "as to sumptuary laws"

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Del. ay. Md. ay. Va. no. N. C. no. S. C. no. Geo. ay.

"And to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the Government of the U. S. or any department or officer thereof."

Mr. Madison and Mr. Pinkney moved to insert between "laws" and "necessary" "and establish all offices," it appearing to them liable to cavil that the latter was not included in the former.

Mr. Govr. Morris, Mr. Wilson, Mr. Rutlidge and Mr. Elseworth urged that the amendment could not be necessary.

On the motion for inserting "and establish all offices"

N. H. no. Mass. ay. Ct. no. N. J. no. Pa. no. Del. no. Md. ay. Va. no. N. C. no. S. C. no. Geo. no.

The clause as reported was then agreed to nem. con.

Art: VII Sect. 2. concerning Treason which see.

Mr. Madison, thought the definition too narrow. It did not appear to go as far as the Stat. of Edwd. III. He did not see why more latitude might not be left to the Legislature. It wd. be as safe as in the hands of State legislatures. And it was inconvenient to bar a discretion which experience might enlighten, and which might be applied to good purposes as well as be abused.

Mr. Mason was for pursuing the Stat: of Edwd. III.

Mr. Govr. Morris was for giving to the Union an exclusive right to declare what shd. be treason. In case of a contest between the U. S. and a particular State, the people of the latter must under the disjunctive terms of the clause, be traitors to one or other authority.

M[r] Randolph thought the clause defective in adopting the words, "in adhering" only. The British Stat: adds, "giving them aid and comfort" which had a more extensive meaning.

M[r] Elseworth considered the definition as the same in fact with that of the Statute.

M[r] Gov[r] Morris "adhering" does not go so far as "giving aid and comfort" or the latter words may be restrictive of "adhering," in either case the Statute is not pursued.

M[r] Wilson held "giving aid and comfort" to be explanatory, not operative words; and that it was better to omit them.

M[r] Dickenson, thought the addition of "giving aid and comfort" unnecessary & improper; being too vague and extending too far. He wished to know what was meant by the "testimony of two witnesses" whether they were to be witnesses to the same overt act or to different overt acts. He thought also that proof of an overt act ought to be expressed as essential in the case.

Doc[r] Johnson considered "giving aid & comfort" as explanatory of "adhering" & that something should be inserted in the definition concerning overt acts. He contended that Treason could not be both ag[st] the U. States– and individual States; being an offence ag[st] the Sovereignty which can be but one in the same community.

M[r] Madison remarked that "and" before "in adhering" should be changed into "or" otherwise both offences viz. of "levying war," & of adhering to the Enemy might be necessary to constitute Treason. He added that, as the definition here was of treason against *the U. S.* it would seem that the individual States w[d] be left in possession of a concurrent power so far as to define & punish treason particularly ag[st] themselves; which might involve double punishm[t].

It was moved that the whole clause be recommitted which was lost, the votes being equally divided.

N. H. no. Mas. no. C^{t} no. N. J. ay. P^{a} ay. Del. no. M^{d} ay. V^{a} ay. N. C. div^{d}. S. C. no. Geo. ay.

M^{r} Wilson & Doc^{r} Johnson moved, that "or any of them," after "United States" be struck out in order to remove the embarrassment; which was agreed to nem. con.

M^{r} Madison. This has not removed the embarrassment. The same Act might be treason agst the United States as here defined–and agst a particular State according to its laws.

M^{r} Elseworth. There can be no danger to the gen^{l} authority from this; as the laws of the U. States are to be paramount.

Doc^{r} Johnson was still of opinion there could be no Treason agst a particular State. It could not even at present, as the Confederation now stands, the Sovereignty being in the Union; much less can it be under the proposed system.

Col. Mason. The United States will have a qualified sovereignty only. The individual States will retain a part of the Sovereignty. An Act may be treason agst a particular State which is not so agst the U. States. He cited the Rebellion of Bacon in Virginia as an illustration of the doctrine.

Doc^{r} Johnson: That case would amount to Treason agst the Sovereign, the Supreme Sovereign, the United States.

M^{r} King observed that the controversy relating to Treason might be of less magnitude than was supposed; as the Legislature might punish capitally under other names than Treason.

M^{r} Gov^{r} Morris and M^{r} Randolph wished to substitute the words of the British Statute and moved to postpone Sect 2. art VII in order to consider the following substitute–"Whereas it is essential to the preservation of liberty to define precisely and exclusively what shall constitute the crime of Treason, it is therefore ordained, declared & established, that if a man do levy war agst the U. S. within their territories, or be adherent to the enemies of the U. S. within the said territories, giving them aid and comfort within

their territories or elsewhere, and thereof be provably attainted of open deed by the people of his condition, he shall be adjudged guilty of Treason."

On this question

N. H.–Mas. no. C^{t} no. N. J. ay. P^{a} no. Del. no. M^{d} no. V^{a} ay. N. C. no. S. C. no. Geo. no.

It was then moved to strike out "agst United States" after "treason" so as to define treason generally, and on this question

Mass. ay. C^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} ay. V^{a} no. N. C. no. S. C. ay. Geo. ay.

It was then moved to insert after "two witnesses" the words "to the same overt act."

Doc^{r} Franklin wished this amendment to take place. prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.

M^{r} Wilson. much may be said on both sides. Treason may sometimes be practised in such a manner, as to render proof extremely difficult–as in a traitorous correspondence with an Enemy.

On the question–as to some overt act

N. H. ay. Mass. ay. C^{t} ay. N. J. no. P^{a} ay. Del. ay. M^{d} ay. V^{a} no. N. C. no. S. C. ay. Geo. ay.

M^{r} King moved to insert before the word "power" the word "sole," giving the U. States the exclusive right to declare the punishment of Treason.

M^{r} Broom 2^{ds} the motion.

M^{r} Wilson in cases of a general nature, treason can only be agst the U— States, and in such they sh^{d} have the sole right to declare the punishment–

yet in many cases it may be otherwise. The subject was however intricate and he distrusted his present judgment on it.

Mr. King this amendment results from the vote defining treason generally by striking out agst the U. States, which excludes any treason agst particular States. These may however punish offences as high misdemeanors.

On inserting the word "sole." It passed in the negative

N. H. ay. Mas. ay. Ct. no. N. J. no. Pa. ay. Del. ay. Md. no.
Va. no. N. C. no. S. C. ay. Geo. no.—

Mr. Wilson. the clause is ambiguous now. "Sole" ought either to have been inserted, or "against the U. S." to be re-instated.

Mr. King no line can be drawn between levying war and adhering to enemy agst the U. States and agst an individual State–Treason agst the latter must be so agst the former.

Mr. Sherman, resistance agst the laws of the U. States as distinguished from resistance agst the laws of a particular State, forms the line.

Mr. Elseworth, the U. S. are sovereign on one side of the line dividing the jurisdictions–the States on the other–each ought to have power to defend their respective Sovereignties.

Mr. Dickenson, war or insurrection agst a member of the Union must be so agst the whole body; but the constitution should be made clear on this point.

The clause was reconsidered nem. con–& then Mr. Wilson & Mr. Elseworth moved to reinstate "agst the U. S." after "Treason–" on which question

N. H. no. Mass. no. Ct. ay. N. J. ay. Pa. no. Del. no. Md. ay.
Va. ay. N. C. ay. S. C. no. Geo. ay.

Mr. Madison was not satisfied with the footing on which the clause now stood. As Treason agst the U. States involves treason agst particular States, and vice versa, the same act may be twice tried & punished by the different authorities. Mr. Govr Morris viewed the matter in the same light—

It was moved & 2ded to amend the sentence to read–"Treason agst the U. S. shall consist only in levying war against them, or in adhering to their enemies" which was agreed to.

Col. Mason moved to insert the words "giving them aid and comfort," as restrictive of "adhering to their Enemies &c." the latter he thought would be otherwise too indefinite–This motion was agreed to: Cont: Del: & Georgia only being in the Negative.

Mr. L. Martin moved to insert after conviction &c.–"or on confession in open court"–and on the question (the negative States thinking the words superfluous) it was agreed to

N. H. ay. Mass. no. Ct ay. N. J. ay. P. ay. Del. ay. Md ay.
Va ay. N. C. divd. S. C. no. Geo. no.

Art: VII. Sect. 2, as amended was then agreed to nem. con.

Sect. 3. taken up. "white & other" struck out nem. con. as superfluous.

Mr. Elseworth moved to require the first census to be taken within "three" instead of "six" years from the first meeting of the Legislature–and on question

N. H. ay. Mass. ay. Ct ay. N. J. ay. Pa ay. Del. ay. Md ay.
Va ay. N. C. ay. S. C. no. Geo. no.

Mr. King asked what was the precise meaning of *direct* taxation? No one answd.

Mr. Gerry moved to add to the 3d Sect. Art: VII. the following clause "That from the first meeting of the Legislature of the U. S. until a Census shall be taken all monies for supplying the public Treasury by direct

taxation shall be raised from the several States according to the number of their Representatives respectively in the first branch".

Mr. Langdon. This would bear unreasonably hard on N. H. and he must be agst it.

Mr. Carrol opposed it. The number of Reps did not admit of a proportion exact enough for a rule of taxation.

Before any question the House

Adjourned.

Tuesday August 21. in Convention

Governour Livingston [35] from the Committee of Eleven to whom was referred the propositions respecting the debts of the several States and also the Militia entered on the 18th inst: delivered the following report:

[35] "Governor Livingston is confessedly a Man of the first rate talents, but he appears to me rather to indulge a sportiveness of wit, than a strength of thinking. He is however equal to anything, from the extensiveness of his education and genius. His writings teem with satyr and a neatness of style. But he is no Orator, and seems little acquainted with the guiles of policy. He is about 60 years old, and remarkably healthy."–Pierce's Notes, *Am. Hist. Rev.*, iii., 327.

"The Legislature of the U. S. shall have power to fulfil the engagements which have been entered into by Congress, and to discharge as well the debts of the U. S. as the debts incurred by the several States during the late war, for the common defence and general welfare."

"To make laws for organizing arming and disciplining the militia, and for governing such part of them as may be employed in the service of the U. S. reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by the U. States."

Mr. Gerry considered giving the power only, without adopting the obligation, as destroying the security now enjoyed by the public creditors of the U— States. He enlarged on the merit of this class of citizens, and the solemn faith which had been pledged under the existing Confederation. If their situation should be changed as here proposed great opposition would be excited agst the plan. He urged also that as the States had made different degrees of exertion to sink their respective debts, those who had done most would be alarmed, if they were now to be saddled with a share of the debts of States which had done least.

Mr. Sherman. It means neither more nor less than the confederation as it relates to this subject.

Mr. Elseworth moved that the Report delivered in by Govr. Livingston should lie on the table.–Agreed to nem. con.

Art: VII. Sect. 3 resumed.–Mr. Dickinson moved to postpone this in order to reconsider Art: IV. Sect. 4. and to *limit* the number of representatives to be allowed to the large States. Unless this were done the small States would be reduced to entire insignificancy, and encouragement given to the importation of slaves.

Mr. Sherman would agree to such a reconsideration, but did not see the necessity of postponing the section before the House.–Mr. Dickenson withdrew his motion.

Art: VII. Sect 3. then agreed to 10 ays, Delaware alone being no.

Mr. Sherman moved to add to Sect 3. the following clause "And all accounts of supplies furnished, services performed, and monies advanced by the several States to the U. States, or by the U. S. to the several States shall be adjusted by the same rule."

Mr. Governr. Morris 2ds the motion.

Mr. Ghorum, thought it wrong to insert this in the Constitution. The Legislature will no doubt do what is right. The present Congress have such a power and are now exercising it.

Mr. Sherman unless some rule be expressly given none will exist under the new system.

Mr. Elseworth. Though The contracts of Congress will be binding, there will be no rule for executing them on the States; and one ought to be provided.

Mr. Sherman withdrew his motion to make way for one of Mr. Williamson to add to Sect. 3. "By this rule the several quotas of the States shall be

determined in settling the expences of the late war."

Mr. Carrol brought into view the difficulty that might arise on this subject from the establishment of the Constitution as intended without the *unanimous* consent of the States.

Mr. Williamson's motion was postponed nem. con.

Art: VI Sect. 12. which had been postponed of Aug: 15. was now called for by Col. Mason, who wished to know how the proposed amendment as to money bills would be decided, before he agreed to any further points.

Mr. Gerry's motion of yesterday that previous to a census, direct taxation be proportioned on the States according to the number of Representatives, was taken up. He observed that the principal acts of Government would probably take place within that period, and it was but reasonable that the States should pay in proportion to their share in them.

Mr. Elseworth thought such a rule unjust. There was a great difference between the number of Represents. and the number of inhabitants as a rule in this case. Even if the former were proportioned as nearly as possible to the latter, it would be a very inaccurate rule. A State might have one Representative only that had inhabitants enough for 1-1/2 or more, if fractions could be applied, &c.—. He proposed to amend the motion by adding the words, "subject to a final liquidation by the foregoing rule when a census shall have been taken."

Mr. Madison. The last appointment of Congs. on which the number of Representatives was founded, was conjectural and meant only as a temporary rule till a Census should be established.

Mr. Read. The requisitions of Congs. had been accommodated to the impoverishment produced by the war; and to other local and temporary circumstances.

Mr. Williamson opposed Mr. Gerry's motion.

Mr. Langdon was not here when N. H. was allowed three members. If it was more than her share; he did not wish for them.

Mr. Butler contended warmly for Mr. Gerry's motion as founded in reason and equity.

Mr. Elseworth's proviso to Mr. Gerry's motion was agreed to nem. con.

Mr. King thought the power of taxation given to the Legislature rendered the motion of Mr. Gerry altogether unnecessary.

On Mr. Gerry's motion as amended

> N. H. no. Mass. ay. Ct. no. N. J. no. Pa. no. Del. no.
> Md. no. Va. no. N. C. divd. S. C. ay. Geo. no.

On a question, Shall Art: VI Sect. 12. with the amendment to it proposed & entered on the 15 instant, as called for by Col. Mason be now taken up? It passed in the negative.

> N. H. ay. Mass. no. Ct. ay. N. J. no. Pa. no. Del. no. Md. ay.
> Va. ay. N. C. ay. S. C. no. Geo. no.

Mr. L. Martin. The power of taxation is most likely to be criticised by the public. Direct taxation should not be used but in cases of absolute necessity; and then the States will be the best Judges of the mode. He therefore moved the following addition to Sect: 3: Art VII "And whenever the Legislature of the U. S. shall find it necessary that revenue should be raised by direct taxation, having apportioned the same, according to the above rule on the several States, requisitions shall be made of the respective States to pay into the Continental Treasury their respective quotas within a time in the said requisitions specified; and in case of any of the States failing to comply with such requisitions, then and then only to devise and pass acts directing the mode, and authorizing the collection of the same."

Mr. McHenry 2ded the motion–there was no debate, and on the question

N. H. no. C^{t} no. N. J. ay. Pen^{a} no. Del. no. M^{d} div^{d}.
(Jenifer & Carol no) V^{a} no. N. C. no. S. C. no. Geo. no.

Art. VII. Sect. 4.–M^{r} Langdon, by this section the States are left at liberty to tax exports. N. H. therefore with other non-exporting States, will be subject to be taxed by the States exporting its produce. This could not be admitted. It seems to be feared that the Northern States will oppress the trade of the South^{n}. This may be guarded agst by requiring the concurrence of 2/3 or 3/4 of the legislature in such cases.

M^{r} Elseworth. It is best as it stands. The power of regulating trade between the States will protect them agst each other. Should this not be the case, the attempts of one to tax the produce of another passing through its hands, will force a direct exportation and defeat themselves. There are solid reasons agst Cong^{s} taxing exports. 1. it will discourage industry, as taxes on imports discourage luxury. 2. The produce of different States is such as to prevent uniformity in such taxes. There are indeed but a few articles that could be taxed at all; as Tob^{o} rice & indigo, and a tax on these alone would be partial & unjust. 3. The taxing of exports would engender incurable jealousies.

M^{r} Williamson. Tho' N. C. has been taxed by Virg^{a} by a duty on 12000 Hhs of her Tob^{o} exported thro' Virg^{a} yet he would never agree to this power. Should it take place, it would destroy the last hope of an adoption of the plan.

M^{r} Gov^{r} Morris. These local considerations ought not to impede the general interest. There is great weight in the argument, that the exporting States will tax the produce of their uncommercial neighbours. The power of regulating the trade between P^{a} & N. Jersey will never prevent the former from taxing the latter. Nor will such a tax force a direct exportation from N. Jersey. The advantages possessed by a large trading City, outweigh the disadvantage of a moderate duty; and will retain the trade in that channel. If no tax can be laid on exports, an embargo cannot be laid though in time of war such a measure may be of critical importance. Tobacco, lumber and live-stock are three objects belonging to different States, of which great advantage might be made by a power to tax exports. To these may be added

Genseng and Masts for Ships by which a tax might be thrown on other nations. The idea of supplying the West Indies with lumber from Nova Scotia is one of the many follies of lord Sheffield's pamphlets. The State of the Country also will change, and render duties on exports, as skins, beaver & other peculiar raw materials, politic in the view of encouraging American manufactures.

M^{r} Butler was strenuously opposed to a power over exports, as unjust and alarming to the staple States.

M^{r} Langdon suggested a prohibition on the States from taxing the produce of other States exported from their harbours.

M^{r} Dickenson. The power of taxing exports may be inconvenient at present; but it must be of dangerous consequence to prohibit it with respect to all articles and for ever. He thought it would be better to except particular articles from the power.

M^{r} Sherman. It is best to prohibit the National legislature in all cases. The States will never give up all power over trade. An enumeration of particular articles would be difficult invidious and improper.

M^{r} Madison. As we ought to be governed by national and permanent views, it is a sufficient argument for giving y^{e} power over exports that a tax, tho' it may not be expedient at present, may be so hereafter. A proper regulation of exports may & probably will be necessary hereafter, and for the same purposes as the regulation of imports; viz, for revenue–domestic manufactures–and procuring equitable regulations from other nations. An Embargo may be of absolute necessity, and can alone be effectuated by the Gen^{l} authority. The regulation of trade between State and State cannot effect more than indirectly to hinder a State from taxing its own exports; by authorizing its Citizens to carry their commodities freely into a neighbouring State which might decline taxing exports in order to draw into its channel the trade of its neighbours. As to the fear of disproportionate burthens on the more exporting States, it might be remarked that it was agreed on all hands that the revenue w^{d} principally be drawn from trade, and as only a given revenue would be needed, it was not material whether

all should be drawn wholly from imports–or half from those, and half from exports. The imports and exports must be pretty nearly equal in every State–and relatively the same among the different States.

Mr. Elseworth did not conceive an embargo by the Congress interdicted by this section.

Mr. McHenry conceived that power to be included in the power of war.

Mr. Wilson. Pennsylvania exports the produce of Maryd. N. Jersey, Delaware & will by & by when the River Delaware is opened, export for N. York. In favoring the general power over exports therefore, he opposed the particular interest of his State. He remarked that the power had been attacked by reasoning which could only have held good in case the Genl. Govt. had been *compelled*, instead of *authorized*, to lay duties on exports. To deny this power is to take from the Common Govt. half the regulation of trade. It was his opinion that a power over exports might be more effectual than that over imports in obtaining beneficial treaties of commerce.

Mr. Gerry was strenuously opposed to the power over exports. It might be made use of to compel the States to comply with the will of the Genl. Government, and to grant it any new powers which might be demanded. We have given it more power already than we know how will be exercised. It will enable the Genl. Govt. to oppress the States as much as Ireland is oppressed by Great Britain.

Mr. Fitzimmons [36] would be agst a tax on exports to be laid immediately; but was for giving a power of laying the tax when a proper time may call for it. This would certainly be the case when America should become a manufacturing Country. He illustrated his argument by the duties in G. Britain on wool &c.

[36] "Mr. Fitzsimons is a Merchant of considerable talents, and speaks very well I am told, in the Legislature of Pennsylvania. He is about 40 years old."–Pierce's Notes, *Am. Hist. Rev.*, iii., 328.

Col. Mason. If he were for reducing the States to mere corporations as seemed to be the tendency of some arguments, he should be for subjecting their exports as well as imports to a power of general taxation. He went on a principle often advanced & in which he concurred, that "a majority when interested will oppress the minority." This maxim had been verified by our own Legislature (of Virginia). If we compare the States in this point of view the 8 Northern States have an interest different from the five Southn States; and have in one branch of the legislature 36 votes agst 29. and in the other in the proportion of 8 agst 5. The Southern States had therefore ground for their suspicions. The case of Exports was not the same with that of imports. The latter were the same throughout the States; the former very different. As to Tobacco other nations do raise it, and are capable of raising it as well as Virga &c. The impolicy of taxing that article had been demonstrated by the experiment of Virginia.

Mr Clymer [37] remarked that every State might reason with regard to its particular productions, in the same manner as the Southern States. The middle States may apprehend an oppression of their wheat flour, provisions &c. and with more reason, as these articles were exposed to a competition in foreign markets not incident to Tobo rice &c. They may apprehend also combinations agst them between the Eastern & Southern States as much as the latter can apprehend them between the Eastern & middle. He moved as a qualification of the power of taxing Exports that it should be restrained to regulations of trade by inserting after the word "duty" sect 4 art VII the words, "for the purpose of revenue."

[37] "Mr. Clymer is a Lawyer of some abilities;–he is a respectable Man and much esteemed. Mr. Clymer is about 40 years old."–Pierce's Notes, *Am. Hist. Rev.*, iii., 328.

On question on Mr Clymer's motion

N. H. no. Mass. no. Ct no. N. J. ay. Pa ay. Del. ay. Md no. Va no. N. C. no. S. C. no. Geo. no.

M^{r} Madison. In order to require 2/3 of each House to tax exports, as a lesser evil than a total prohibition moved to insert the words "unless by consent of two thirds of the Legislature."

M^{r} Wilson 2^{ds} and on this question, it passed in the Negative.

> N. H. ay. Mass. ay. C^{t} no. N. J. ay. P^{a} ay. Del. ay. M^{d} no. V^{a} no (Col. Mason, M^{r} Randolph M^{r} Blair no. Gen^{l} Washington & J. M. ay.) N. C. no. S. C. no. Geo. no.

Question on Sect: 4. Art VII. as far as to "no tax sh^{l} be laid on exports"– it passed in the affirmative.

> N. H. no. Mass. ay. C^{t} ay. N. J. no. P^{a} no. Del. no. M^{d} ay. V^{a} ay. (Gen^{l} W. & J. M. no) N. C. ay. S. C. ay. Geo. ay.

M^{r} L. Martin, proposed to vary the Sect: 4. art VII so as to allow a prohibition or tax on the importation of slaves. 1. as five slaves are to be counted as 3 free men in the apportionment of Representatives; such a clause would leave an encouragement to this trafic. 2. slaves weakened one part of the Union which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. 3. it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.

M^{r} Rutlidge did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections and would readily exempt the other States from the obligation to protect the Southern against them. Religion & humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the South^{n} States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of slaves which will increase the commodities of which they will become the carriers.

M^{r} Elseworth was for leaving the clause as it stands, let every State import what it pleases. The morality or wisdom of slavery are

considerations belonging to the States themselves. What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one.

Mr. Pinkney. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that State has expressly & watchfully excepted that of meddling with the importation of negroes. If the States be all left at liberty on this subject, S. Carolina may perhaps by degrees do of herself what is wished, as Virginia & Maryland already have done.

Adjourned.

Wednesday August 22. in Convention.

Art VII sect 4. resumed. M^r^ Sherman was for leaving the clause as it stands. He disapproved of the slave trade; yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, & as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it. He observed that the abolition of Slavery seemed to be going on in the U. S. & that the good sense of the several States would probably by degrees compleat it. He urged on the Convention the necessity of despatching its business.

Col. Mason. This infernal traffic originated in the avarice of British Merchants. The British Gov^t^ constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the Enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves, as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants & slaves, in case other means of obtaining its submission should fail. Maryland & Virginia he said had already prohibited the importation of slaves expressly. N. Carolina had done the same in substance. All this would be in vain, if s. Carolina & Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands, and will fill that Country with slaves if they can be got thro' S. Carolina & Georgia. Slavery discourages arts & manufactures. The poor despise labor when performed by slaves. They prevent the immigration of Whites, who really enrich & strengthen a Country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations can not be rewarded or punished in the next world they must be in this. By an inevitable chain of causes & effects providence punishes national sins, by

national calamities. He lamented that some of our Eastern brethren had from a lust of gain embarked in this nefarious traffic. As to the States being in possession of the Right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view that the Gen^{l} Gov^{t} should have power to prevent the increase of slavery.

M^{r} Elseworth. As he had never owned a slave could not judge of the effects of slavery on character. He said however that if it was to be considered in a moral light we ought to go farther and free those already in the Country.–As slaves also multiply so fast in Virginia & Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no farther than is urged, we shall be unjust towards S. Carolina & Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our Country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

M^{r} Pinkney. If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece Rome & other antient States; the sanction given by France England, Holland & other modern States. In all ages one half of mankind have been slaves. If the S. States were let alone they will probably of themselves stop importations. He w^{d} himself as a citizen of S. Carolina vote for it. An attempt to take away the right as proposed will produce serious objections to the Constitution which he wished to see adopted.

General Pinkney declared it to be his firm opinion that if himself & all his colleagues were to sign the Constitution & use their personal influence, it would be of no avail towards obtaining the assent of their Constituents. S. Carolina & Georgia cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value, & she has more than she wants. It would be unequal to require S. C. & Georgia to confederate on such unequal terms. He said the Royal assent before the Revolution had never been refused to S. Carolina as to Virginia. He

contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; The more consumption also, and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports, but should consider a rejection of the clause as an exclusion of S. Carol[a] from the Union.

M[r] Baldwin had conceived national objects alone to be before the Convention, not such as like the present were of a local nature. Georgia was decided on this point. That State has always hitherto supposed a Gen[l] Governm[t] to be the pursuit of the central States who wished to have a vortex for every thing–that her distance would preclude her from equal advantage–& that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of —— which he said was a respectable class of people, who carried their ethics beyond the mere *equality of men*, extending their humanity to the claims of the whole animal creation.

M[r] Wilson observed that if S. C. & Georgia were themselves disposed to get rid of the importation of slaves in a short time as had been suggested, they would never refuse to Unite because the importation might be prohibited. As the section now stands all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

M[r] Gerry thought we had nothing to do with the conduct of the States as to Slaves, but ought to be careful not to give any sanction to it.

M[r] Dickenson considered it as inadmissible on every principle of honor & safety that the importation of slaves should be authorized to the States by the Constitution. The true question was whether the national happiness would be promoted or impeded by the importation, and this question ought to be left to the National Gov[t] not to the States particularly interested. If Eng[d] & France permit slavery, slaves are at the same time excluded from both those kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the South[n] States would refuse to

confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the Gen^{l} Government.

M^{r} Williamson stated the law of N. Carolina on the subject, to-wit that it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa, £10 on each from elsewhere, & £50 on each from a State licensing manumission. He thought the S. States could not be members of the Union if the clause sh^{d} be rejected, and that it was wrong to force any thing down not absolutely necessary, and which any State must disagree to.

M^{r} King thought the subject should be considered in a political light only. If two States will not agree to the Constitution as stated on one side, he could affirm with equal belief on the other, that great & equal opposition would be experienced from the other States. He remarked on the exemption of slaves from duty whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the North^{n} & Middle States.

M^{r} Langdon was strenuous for giving the power to the Gen^{l} Gov^{t}. He c^{d} not with a good conscience leave it with the States who could then go on with the traffic, without being restrained by the opinions here given that they will themselves cease to import slaves.

Gen^{l} Pinkney thought himself bound to declare candidly that he did not think S. Carolina would stop her importations of slaves in any short time, but only stop them occasionally as she now does. He moved to commit the clause that slaves might be made liable to an equal tax with other imports which he thought right & w^{ch} w^{d} remove one difficulty that had been started.

M^{r} Rutlidge. If the Convention thinks that N. C. S. C. & Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest. He was strenuous agst striking out the section, and seconded the motion of Gen^{l} Pinkney for a commitment.

M[r] Gov[r] Morris wished the whole subject to be committed including the clauses relating to taxes on exports & to a navigation act. These things may form a bargain among the Northern & Southern States.

M[r] Butler declared that he never would agree to the power of taxing exports.

M[r] Sherman said it was better to let the S. States import slaves than to part with them, if they made that a sine qua non. He was opposed to a tax on slaves imported as making the matter worse, because it implied they were *property*. He acknowledged that if the power of prohibiting the importation should be given to the Gen[l] Government that it would be exercised. He thought it would be its duty to exercise the power.

M[r] Read was for the commitment provided the clause concerning taxes on exports should also be committed.

M[r] Sherman observed that that clause had been agreed to & therefore could not be committed.

M[r] Randolph was for committing in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He w[d] sooner risk the constitution. He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in the States having no slaves. On the other hand, two States might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of Sect. 4 & 5. of Art: 7.

N. H. no. Mass. abt[t] Con[t] ay. N. J. ay. P[a] no. Del. no.
Mary[d] ay. V[a] ay. N. C. ay. S. C. ay. Geo. ay.

M[r] Pinkney & M[r] Langdon moved to commit Sect. 6. as to navigation act by two thirds of each House.

Mr. Gorham did not see the propriety of it. Is it meant to require a greater proportion of votes? He desired it to be remembered that the Eastern States had no motive to Union but a commercial one. They were able to protect themselves. They were not afraid of external danger, and did not need the aid of the Southn. States.

Mr. Wilson wished for a commitment in order to reduce the proportion of votes required.

Mr. Elseworth was for taking the plan as it is. This widening of opinions has a threatening aspect. If we do not agree on this middle & moderate ground he was afraid we should lose two States, with such others as may be disposed to stand aloof, should fly into a variety of shapes & directions, and most probably into several confederations and not without bloodshed.

On Question for committing 6 Sect. as to navigation act to a member from each State—

> N. H. ay. Mas. ay. Ct. no. N. J. no. Pa. ay. Del. ay. Md. ay.
> Va. ay. N. C. ay. S. C. ay. Geo. ay.

The Committee appointed were Mr. Langdon, King, Johnson, Livingston, Clymer, Dickenson, L. Martin, Madison, Williamson, C. C. Pinkney, & Baldwin.

To this committee were referred also the two clauses above mentioned, of the 4 & 5. Sect: of Art. 7.

Mr. Rutlidge from the Committee to whom were referred on the 18 & 20th instant the propositions of Mr. Madison & Mr. Pinkney made the Report following: [38]

[38] Madison's Note says: ("Here insert Report from Journal of the Convention of the date.") It is found on p. 227, 228, of the Journal and is as above.

"The committee report, that in their opinion the following additions should be made to the report now before the convention, namely,

"At the end of the first clause of the first section of the seventh article add, 'for payment of the debts and necessary expenses of the United States; provided that no law for raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than —— years.'

"At the end of the second clause, second section, seventh article, add, 'and with Indians, within the limits of any state, not subject to the laws thereof.'

"At the end of the sixteenth clause of the second section, seventh article, add, 'and to provide, as may become necessary, from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the governments of individual states, in matters which respect only their internal police, or for which their individual authority may be competent.'

"At the end of the first section, tenth article, add, 'he shall be of the age of thirty-five years, and a citizen of the United States, and shall have been an inhabitant thereof for twenty-one years.'

"After the second section of the tenth article, insert the following as a third section:

> "'The President of the United States shall have a privy council, which shall consist of the president of the senate, the speaker of the house of representatives, the chief justice of the supreme court, and the principal officer in the respective departments of foreign affairs, domestic affairs, war, marine, and finance, as such departments of office shall from time to time be established, whose duty it shall be to advise him in matters respecting the

execution of his office, which he shall think proper to lay before them: but their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt.'

"At the end of the second section of the eleventh article, add, 'the judges of the supreme court shall be triable by the senate, on impeachment by the house of representatives.'

"Between the fourth and fifth lines of the third section of the eleventh article, after the word 'controversies,' insert, 'between the United States and an individual state, or the United States and an individual person.'"

A motion to rescind the order of the House respecting the hours of meeting & adjourning, was negatived:

Mass: Pa Del. Mard ay. N. H. Con: N. J. Va N. C. S. C. Geo. no.

Mr Gerry and Mr McHenry moved to insert after the 2d Sect. Art: 7, the clause following, to wit, "The Legislature shall pass no bill of attainder nor any ex post facto law." [39]

[39] The proceedings on this motion involving the two questions on "attainders and ex post facto laws," are not so fully stated in the printed Journal.–Madison's Note.

Mr Gerry urged the necessity of this prohibition, which he said was greater in the National than the State Legislature, because the number of members in the former being fewer, they were on that account the more to be feared.

Mr Govr Morris thought the precaution as to ex post facto laws unnecessary; but essential as to bills of attainder.

Mr Elseworth contended that there was no lawyer, no civilian who would not say that ex post facto laws were void of themselves. It cannot then be necessary to prohibit them.

M^r^ Wilson was against inserting any thing in the Constitution as to ex post facto laws. It will bring reflections on the Constitution–and proclaim that we are ignorant of the first principles of Legislation, or are constituting a Government that will be so.

The question being divided, the first part of the motion relating to bills of attainder was agreed to nem contradicente.

On the second part relating to ex post facto laws—

M^r^ Carrol remarked that experience overruled all other calculations. It had proved that in whatever light they might be viewed by civilians or others, the State Legislatures had passed them, and they had taken effect.

M^r^ Wilson. If these prohibitions in the State Constitutions have no effect, it will be useless to insert them in this Constitution. Besides, both sides will agree to the principle, and will differ as to its application.

M^r^ Williamson. Such a prohibitory clause is in the Constitution of N. Carolina, and tho it has been violated, it has done good there & may do good here, because the Judges can take hold of it.

Doc^r^ Johnson thought the clause unnecessary, and implying an improper suspicion of the National Legislature.

M^r^ Rutlidge was in favor of the clause.

On the question for inserting the prohibition of ex post facto laws.

N. H. ay. Mas. ay. Con^t^ no. N. J. no. P^a^ no. Del. ay.
M^d^ ay. Virg^a^ ay. N. C. div^d^. S. C. ay. Geo. ay.

The report of the committee of 5. made by M^r^ Rutlidge, was taken up and then postponed that each member might furnish himself with a copy.

The Report of the Committee of Eleven delivered in & entered on the Journal of the 21^st^ inst. was then taken up, and the first clause containing the words "The Legislature of the U. S. *shall have power* to fulfil the

engagements which have been entered into by Congress" being under consideration,

Mr. Elseworth argued that they were unnecessary. The U. S. heretofore entered into Engagements by Congs. who were their Agents. They will hereafter be bound to fulfil them by their new agents.

Mr. Randolph thought such a provision necessary: for though the U. States will be bound, the new Govt. will have no authority in the case unless it be given to them.

Mr. Madison thought it necessary to give the authority in order to prevent misconstruction. He mentioned the attempts made by the Debtors to British subjects to shew that contracts under the old Government, were dissolved by the Revolution which destroyed the political identity of the Society.

Mr. Gerry thought it essential that some explicit provision should be made on this subject, so that no pretext might remain for getting rid of the public engagements.

Mr. Govr. Morris moved by way of amendment to substitute–"The Legislature *shall* discharge the debts & fulfil the engagements of the U. States."

It was moved to vary the amendment by striking out "discharge the debts" & to insert "liquidate the claims," which being negatived,

The amendment moved by Mr. Govr. Morris was agreed to all the States being in the affirmative.

It was moved & 2ded to strike the following words out of the 2d clause of the report "and the authority of training the militia according to the discipline prescribed by the U. S." Before a question was taken

The House adjourned.

Thursday In Convention Aug: 23, 1787

The Report of the Committee of Eleven made Aug: 21. being taken up, and the following clause being under consideration to wit "To make laws for organizing, arming & disciplining the Militia, and for governing such parts of them as may be employed in the service of the U. S. reserving to the States respectively, the appointment of the officers, and authority of training the militia according to the discipline prescribed."

M^{r} Sherman moved to strike out the last member "and authority of training" &c. He thought it unnecessary. The States will have this authority of course if not given up.

M^{r} Elseworth doubted the propriety of striking out the sentence. The reason assigned applies as well to the other reservation of the appointment to offices. He remarked at the same time that the term discipline was of vast extent and might be so expounded as to include all power on the subject.

M^{r} King, by way of explanation, said that by *organizing*, the Committee meant, proportioning the officers & men–by *arming*, specifying the kind size & caliber of arms–& by *disciplining*, prescribing the manual exercise evolutions &c.

M^{r} Sherman withdrew his motion.

M^{r} Gerry. This power in the U. S. as explained is making the States drill-sergeants. He had as lief let the Citizens of Massachusetts be disarmed, as to take the command from the States, and subject them to the Gen^{l} Legislature. It would be regarded as a system of Despotism.

M^{r} Madison observed that "*arming*" as explained did not extend to furnishing arms; nor the term "*disciplining*" to penalties & Courts Martial for enforcing them.

Mr. King added to his former explanation that *arming* meant not only to provide for uniformity of arms, but included the authority to regulate the modes of furnishing, either by the militia themselves, the State Governments, or the National Treasury; that *laws* for disciplining, must involve penalties and every thing necessary for enforcing penalties.

Mr. Dayton moved to postpone the paragraph, in order to take up the following proposition.

> "To establish an uniform & general system of discipline for the Militia of these States, and to make laws for organizing, arming, disciplining & governing *such part of them as may be employed in the service of the U. S.*, reserving to the States respectively the appointment of the officers, and all authority over the militia not herein given to the General Government."

On the question to postpone in favor of this proposition: it passed in the Negative.

> N. H. no. Mas. no. Ct no. N. J. ay. P. no. Del. no.
> Maryd ay. Va no. N. C. no. S. C. no. Geo. ay.

Mr. Elseworth & Mr. Sherman moved to postpone the 2d clause in favor of the following

> "To establish an uniformity of arms, exercise & organization for the militia, and to provide for the Government of them when called into the service of the U. States."

The object of this proposition was to refer the plan for the Militia to the General Govt but to leave the execution of it to the State Govts.

Mr. Langdon said he could not understand the jealousy expressed by some Gentlemen. The General & State Govts were not enemies to each other, but different institutions for the good of the people of America. As one of the people he could say, the National Govt is mine, the State Govt is mine. In transferring power from one to the other, I only take out of my left

hand what it cannot so well use, and put it into my right hand where it can be better used.

M[r] Gerry thought it was rather taking out of the right hand & putting it into the left. Will any man say that liberty will be as safe in the hands of eighty or a hundred men taken from the whole continent, as in the hands of two or three hundred taken from a single State.

M[r] Dayton was against so absolute a uniformity. In some States there ought to be a greater proportion of cavalry than in others. In some places rifles would be most proper, in others muskets &c.

Gen[l] Pinkney preferred the clause reported by the Committee, extending the meaning of it to the case of fines &c.

M[r] Madison. The primary object is to secure an effectual discipline of the Militia. This will no more be done if left to the States separately than the requisitions have been hitherto paid by them. The States neglect their Militia now, and the more they are consolidated into one nation, the less each will rely on its own interior provisions for its safety & the less prepare its Militia for that purpose; in like manner as the militia of a State would have been still more neglected than it has been if each county had been independently charged with the care of its Militia. The Discipline of the Militia is evidently a *National* concern, and ought to be provided for in the *National* Constitution.

M[r] L. Martin was confident that the States would never give up the power over the Militia; and that, if they were to do so, the militia would be less attended to by the Gen[l] than by the State Governments.

M[r] Randolph asked what danger there Could be that the Militia could be brought into the field and made to commit suicide on themselves. This is a power that cannot from its nature be abused, unless indeed the whole mass should be corrupted. He was for trammelling the Gen[l] Gov[t] whenever there was danger, but here there could be none. He urged this as an essential point; observing that the Militia were every where neglected by the State Legislatures, the members of which courted popularity too much to enforce

a proper discipline. Leaving the appointment of officers to the States protects the people agst every apprehension that could produce murmur.

On Question on Mr Elsworth's Motion

N. H. no. Mass. no. Ct ay. N. J. no. Pa no. Del. no. Md no. Va no. N. C. no. S. C. no. Geo. no.

A motion was then made to recommit the 2d clause which was negatived.

On the question to agree to the 1st part of the clause, namely

"To make laws for organizing arming & disciplining the Militia, and for governing such part of them as may be employed in the service of the U. S."

N. H. ay. Mas. ay. Ct no. N. J. ay. Pa ay. Del. ay. Md no. Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr Madison moved to amend the next part of the clause so as to read "reserving to the States respectively, the appointment of the officers, *under the rank of General officers*."

Mr Sherman considered this as absolutely inadmissible. He said that if the people should be so far asleep as to allow the most influential officers of the militia to be appointed by the Genl Government, every man of discernment would rouse them by sounding the alarm to them.

Mr Gerry. Let us at once destroy the State Govts have an Executive for life or hereditary, and a proper Senate, and then there would be some consistency in giving full powers to the Genl Govt but as the States are not to be abolished, he wondered at the attempts that were made to give powers inconsistent with their existence. He warned the Convention agst pushing the experiment too far. Some people will support a plan of vigorous Government at every risk. Others of a more democratic cast will oppose it with equal determination, and a Civil war may be produced by the conflict.

Mr. Madison. As the greatest danger is that of disunion of the States, it is necessary to guard agst it by sufficient powers to the Common govt and as the greatest danger to liberty is from large standing armies, it is best to prevent them by an effectual provision for a good Militia.

On the Question to agree to Mr. Madison's motion

N. H. ay. Mas. no. Ct no. N. J. no. Pa no. Del. no. Md no. Va no. N. C. no. S. C. ay. Geo. ay. [40]

[40] In the printed Journal, Geo: no.–Madison's Note.

On the question to agree to the "reserving to the States the appointment of the officers." It was agreed to nem: contrad:

On the question on the clause "and the authority of training the Militia according to the discipline prescribed by the U. S."—

N. H. ay. Mas. ay. Ct ay. N. J. ay. Pa ay. Del. no. Md ay. Va no. N. C. ay. S. C. no. Geo. no.

On the question to agree to Art. VII. Sect. 7. as reported it passed nem: contrad.

Mr. Pinkney urged the necessity of preserving foreign Ministers & other officers of the U. S. independent of external influence and moved to insert, after Art. VII Sect 7. the clause following–"No person holding any office of profit or trust under the U. S. shall without the consent of the Legislature, accept of any present, emolument, office or title of any kind whatever, from any King, Prince or foreign State", which passed nem: contrad:

Mr. Rutlidge moved to amend Art: VIII to read as follows,

"This Constitution & the laws of the U. S. made in pursuance thereof, and all the Treaties made under the authority of the U. S. shall be the supreme law of the several States and of their citizens and inhabitants; and the Judges in the several States shall be bound thereby

in their decisions, any thing in the Constitutions or laws of the several States, to the contrary notwithstanding."

which was agreed to, nem: contrad:

Art: IX being next for consideration,

Mr. Govr. Morris argued agst the appointment of officers by the Senate. He considered the body as too numerous for the purpose; as subject to cabal; and as devoid of responsibility. If Judges were to be tried by the Senate according to a late report of a Committee it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create.

Mr. Wilson was of the same opinion & for like reasons.

The art. IX. being waved, and Art. VII. Sect. 1. resumed,

Mr. Govr. Morris moved to strike the following words out of the 18 clause "enforce treaties" as being superfluous, since treaties were to be "laws"– which was agreed to nem: contrad:

Mr. Govr. Morris moved to alter 1st part. of 18. clause Sect. 1. art VII so as to read "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions"–which was agreed to nem: contrad:

On the question then to agree to the 18 clause of Sect. 1. Art: 7. as amended it passed in the affirmative nem: contrad.

Mr. C. Pinkney moved to add as an additional power to be vested in the Legislature of the U. S. "To negative all laws passed by the several States interfering in the opinion of the legislature with the general interests and harmony of the Union; provided that two thirds of the members of each House assent to the same." This principle he observed had formerly been agreed to. He considered the precaution as essentially necessary. The objection drawn from the predominance of the large States had been removed by the equality established in the Senate. [41]

[41]

"Richmond Aug.t 22. 87.

"Dear Sir,

"I have still some hope that I shall hear from you of y.e reinstatement of y.e *negative*–as it is certainly y.e only means by which the several Legislatures can be restrained from disturbing y.e order & harmony of y.e whole, & y.e governm.t render'd properly *national*, & *one*. I should suppose y.t some of its former opponents must by this time have seen y.e necessity of advocating it, if they wish to support their own principles."

(James McClurg to Madison–Mad. MSS.)

M.r Broome 2.ded the proposition.

M.r Sherman thought it unnecessary; the laws of the General Government being supreme & paramount to the State laws according to the plan, as it now stands.

M.r Madison proposed that it should be committed. He had been from the beginning a friend to the principle; but thought the modification might be made better.

M.r Mason wished to know how the power was to be exercised. Are all laws whatever to be brought up? Is no road nor bridge to be established without the Sanction of the General Legislature? Is this to sit constantly in order to receive & revise the State Laws?–He did not mean by these remarks to condemn the expedient, but he was apprehensive that great objections would lie ag.st it.

M.r Williamson thought it unnecessary, having been already decided, a revival of the question was a waste of time.

M^{r} Wilson considered this as the key-stone wanted to compleat the wide arch of Government we are raising. The power of self-defence had been urged as necessary for the State Governments. It was equally necessary for the General Government. The firmness of Judges is not of itself sufficient. Something further is requisite. It will be better to prevent the passage of an improper law, than to declare it void when passed.

M^{r} Rutlidge. If nothing else, this alone would damn and ought to damn the Constitution. Will any State ever agree to be bound hand & foot in this manner. It is worse than making mere corporations of them whose bye laws would not be subject to this shackle.

M^{r} Elseworth observed that the power contended for w^{d} require either that all laws of the State Legislatures should previously to their taking effect be transmitted to the Gen^{l} Legislature, or be repealable by the Latter; or that the State Executives should be appointed by the Gen^{l} Government, and have a controul over the State laws. If the last was meditated let it be declared.

M^{r} Pinkney declared that he thought the State Executives ought to be so appointed with such a controul, & that it would be so provided if another Convention should take place.

M^{r} Govern^{r} Morris did not see the utility or practicability of the proposition of M^{r} Pinkney, but wished it to be referred to the consideration of a Committee.

M^{r} Langdon was in favor of the proposition. He considered it as resolvable into the question whether the extent of the National Constitution was to be judged of by the Gen^{l} or the State Governments.

On the question for commitment, it passed in the negative.

> N. H. ay. Mass^{ts} no. Con^{t} no. N. J. no. P^{a} ay. Del. ay.
> M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

M^{r} Pinkney then withdrew his proposition.

The 1st sect. of Art: VII being so amended as to read "The Legislature *shall* fulfil the engagements and discharge the debts of the U. S. & shall have the power to lay & collect taxes duties imposts & excises," was agreed to.

Mr. Butler expressed his dissatisfaction lest it should compel payment as well to the Blood-suckers who had speculated on the distresses of others, as to those who had fought & bled for their country. He would be ready he said to-morrow to vote for a discrimination between those classes of people, and gave notice that he should move for a reconsideration.

Art IX Sect. 1. being resumed, to wit "The Senate of the U. S. shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court."

Mr. Madison observed that the Senate represented the States alone, and that for this as well as other obvious reasons it was proper that the President should be an agent in Treaties.

Mr. Govr. Morris did not know that he should agree to refer the making of Treaties to the Senate at all, but for the present wd move to add, as an amendment to the section after "Treaties"–"but no Treaty shall be binding on the U. S. which is not ratified by a law."

Mr. Madison suggested the inconvenience of requiring a legal *ratification* of treaties of alliance for the purposes of war &c &c."

Mr. Ghorum. Many other disadvantages must be experienced if treaties of peace & all negotiations are to be previously ratified–and if not previously, the Ministers would be at a loss how to proceed. What would be the case in G. Britain if the King were to proceed in this manner. American Ministers must go abroad not instructed by the same Authority (as will be the case with other Ministers) which is to ratify their proceedings.

Mr. Govr. Morris. As to treaties of alliance, they will oblige foreign powers to send their ministers here the very thing we should wish for. Such treaties could not be otherwise made, if his amendment shd succeed. In general he was not solicitious to multiply & facilitate Treaties. He wished

none to be made with G. Britain, till she should be at war. Then a good bargain might be made with her. So with other foreign powers. The more difficulty in making treaties, the more value will be set on them.

Mr. Wilson. In the most important Treaties, the King of G. Britain being obliged to resort to Parliament for the execution of them, is under the same fetters as the amendment of Mr. Morris' will impose on the Senate. It was refused yesterday to permit even the Legislature to lay duties on exports. Under the clause without the amendment, the Senate alone can make a Treaty, requiring all the Rice of S. Carolina to be sent to some one particular port.

Mr. Dickinson concurred in the amendment, as most safe and proper, tho' he was sensible it was unfavorable to the little States, wch would otherwise have an *equal* share in making Treaties.

Docr. Johnson thought there was something of solecism in saying that the acts of a minister with plenipotentiary powers from one Body, should depend for ratification on another Body. The Example of the King of G. B. was not parallel. Full & compleat power was vested in him. If the Parliament should fail to provide the necessary means of execution, the Treaty would be violated.

Mr. Ghorum in answer to Mr. Govr. Morris, said that negotiations on the spot were not to be desired by us, especially if the whole Legislature is to have any thing to do with Treaties. It will be generally influenced by two or three men, who will be corrupted by the Ambassadors here. In such a Government as ours, it is necessary to guard against the Government itself being seduced.

Mr. Randolph observing that almost every Speaker had made objections to the clause as it stood, moved in order to a further consideration of the subject, that the motion of Mr. Govr. Morris should be postponed, and on this question It was lost the States being equally divided.

Masstts. no. Contt. no. N. J. ay. Pena. ay. Del. ay. Md. ay.
Va. ay. N. C. no. S. C. no. Geo. no.

On M^r^ Gov^r^ Morris motion

> Mass^ts^ no. Con^t^ no. N. J. no. P^a^ ay. Del. no. M^d^ no. V^a^ no. N. C. div^d^. S. C. no. Geo. no.

The several clauses of Sect: 1. Art IX, were then separately postponed after inserting "and other public ministers" next after "ambassadors."

M^r^ Madison hinted for consideration, whether a distinction might not be made between different sorts of Treaties–allowing the President & Senate to make Treaties eventual and of alliance for limited terms–and requiring the concurrence of the whole Legislature in other Treaties.

The 1^st^ Sect Art IX. was finally referred nem: con: to the committee of Five, and the House then

Adjourned.

Friday August 24. 1787. In Convention

Governour Livingston, from the Committee of Eleven, to whom were referred the two remaining clauses of the 4th Sect & the 5 & 6 Sect: of the 7th. Art: delivered in the following Report:

> "Strike out so much of the 4th Sect: as was referred to the Committee and insert–'The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1800, but a tax or duty may be imposed on such migration or importation at a rate not exceeding the average of the duties laid on imports.'"
>
> "The 5 Sect: to remain as in the Report."
>
> "The 6 Sect, to be stricken out."

Mr. Butler, according to notice, moved that clause 1st sect. 1. of art VII, as to the discharge of debts, be reconsidered tomorrow. He dwelt on the division of opinion concerning the domestic debts, and the different pretensions of the different classes of holders. Genl. Pinkney 2ded him.

Mr. Randolph wished for a reconsideration in order to better the expression, and to provide for the case of the State debts as is done by Congress.

On the question for reconsidering

> N. H. no. Mass. ay. Cont. ay. N. J. ay. Pena. absent. Del. ay. Md. no. Va. ay. N. C. absent. S. C. ay. Geo. ay.– and tomorrow assigned for the reconsideration.

Sect: 2 & 3 of art: IX being taken up,

M^{r} Rutlidge said this provision for deciding controversies between the States was necessary under the Confederation, but will be rendered unnecessary by the National Judiciary now to be established, and moved to strike it out.

Doc^{r} Johnson 2^{ded} the motion.

M^{r} Sherman concurred: so did M^{r} Dayton.

M^{r} Williamson was for postponing instead of striking out, in order to consider whether this might not be a good provision, in cases where the Judiciary were interested or too closely connected with the parties.

M^{r} Ghorum had doubts as to striking out. The Judges might be connected with the States being parties–He was inclined to think the mode proposed in the clause would be more satisfactory than to refer such cases to the Judiciary.

On the Question for postponing the 2^{d} & 3^{d} Section it passed in the negative.

N. H. ay. Mass^{ts} no. Con^{t} no. N. J. no. Pen^{a} abs^{t}. Del. no.
M^{d} no. V^{a} no. N. C. ay. S. C. no. Geo. ay.

M^{r} Wilson urged the striking out, the Judiciary being a better provision.

On Question for striking out 2 & 3 Sections Art: IX

N. H. ay. Mass. ay. C^{t} ay. N. J. ay. P^{a} abs^{t}. Del. ay.
M^{d} ay. V^{a} ay. N. C. no. S. C. ay. Geo. no.

Art X. Sect. 1. "The Executive power of the U. S. shall be vested in a single person. His stile shall be "The President of the U. S. of America" and his title shall be "His Excellency." He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time."

On the question for vesting the power in a *single person*–It was agreed to nem: con: So also on the *stile* and *title*.

Mr. Rutlidge moved to insert "joint" before the word "ballot," as the most convenient mode of electing.

Mr. Sherman objected to it as depriving the *States* represented in the *Senate* of the negative intended them in that house.

Mr. Ghorum said it was wrong to be considering at every turn whom the Senate would represent. The public good was the true object to be kept in view. Great delay and confusion would ensue if the two Houses shd. vote separately, each having a negative on the choice of the other.

Mr. Dayton. It might be well for those not to consider how the Senate was constituted, whose interest it was to keep it out of sight.–If the amendment should be agreed to, a *joint* ballot would in fact give the appointment to one House. He could never agree to the clause with such an amendment. There could be no doubt of the two Houses separately concurring in the same person for President. The importance & necessity of the case would ensure a concurrence.

Mr. Carrol moved to strike out "by the Legislature" and insert "by the people." Mr. Wilson 2ded. him & on the question

N. H. no. Masstss. no. Contt. no. N. J. no. Pa. ay. Del. ay.
Md. no. Va. no. N. C. no. S. C. no. Geo. no.

Mr. Brearly was opposed to the motion for inserting the word "joint." The argument that the small States should not put their hands into the pockets of the large ones did not apply in this case.

Mr. Wilson urged the reasonableness of giving the larger States a larger share of the appointment, and the danger of delay from a disagreement of the two Houses. He remarked also that the Senate had peculiar powers balancing the advantage given by a joint ballot in this case to the other branch of the Legislature.

M^r^ Langdon. This general officer ought to be elected by the joint & general voice. In N. Hampshire the mode of separate votes by the two Houses was productive of great difficulties. The negative of the Senate would hurt the feelings of the man elected by the votes of the other branch. He was for inserting "joint" tho' unfavorable to N. Hampshire as a small State.

M^r^ Wilson remarked that as the President of the Senate was to be the President of the U. S. that Body in cases of vacancy might have an interest in throwing dilatory obstacles in the way, if its separate concurrence should be required.

M^r^ Madison. If the amendment be agreed to the rule of voting will give to the largest State, compared with the smallest, an influence as 4 to 1 only, altho the population is as 10 to 1. This surely cannot be unreasonable as the President is to act for the *people* not for the *States*. The President of the *Senate* also is to be occasionally President of the U. S. and by his negative alone can make 3/4 of the other branch necessary to the passage of a law. This is another advantage enjoyed by the Senate.

On the question for inserting "joint," it passed in the affirmative.

> N. H. ay. Mass^ts^ ay. C^t^ no. N. J. no. P^a^ ay. Del. ay. M^d^ no. V^a^ ay. N. C. ay. S. C. ay. Geo. no.

M^r^ Dayton then moved to insert, after the word "Legislatures" the words "each State having one vote." M^r^ Brearly 2^ded^ him, and on the question it passed in the negative.

> N. H. no. Mas. no. C^t^ ay. N. J. ay. P^a^ no. Del. ay. M^d^ ay. V^a^ no. N. C. no. S. C. no. Geo. ay.

M^r^ Pinkney moved to insert after the word "Legislature" the words "to which election a majority of the votes of the members present shall be required" & on this question, it passed in the affirmative.

N. H. ay. Mass. ay. C^{t} ay. N. J. no. P^{a} ay. Del. ay. M^{d} ay.
V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Read moved "that in case the numbers for the two highest in votes should be equal, then the President of the Senate shall have an additional casting vote," which was disagreed to by a general negative.

M^{r} Gov^{r} Morris opposed the election of the President by the Legislature. He dwelt on the danger of rendering the Executive uninterested in maintaining the rights of his Station, as leading to Legislative tyranny. If the Legislature have the Executive dependent on them, they can perpetuate & support their usurpations by the influence of tax-gatherers & other officers, by fleets armies &c. Cabal & corruption are attached to that mode of election: so also is ineligibility a second time. Hence the Executive is interested in Courting popularity in the Legislature by sacrificing his Executive Rights; & then he can go into that Body, after the expiration of his Executive office, and enjoy there the fruits of his policy. To these considerations he added that rivals would be continually intriguing to oust the President from his place. To guard against all these evils he moved that the President "shall be chosen by Electors to be chosen by the People of the several States." M^{r} Carrol 2^{ded} him & on the question it passed in the negative

N. H. no. Mass. no. C^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} no.
V^{a} ay. N. C. no. S. C. no. Geo. no.

M^{r} Dayton moved to postpone the consideration of the two last clauses of Sect. 1. art X. which was disagreed to without a count of the States.

M^{r} Broome moved to refer the two clauses to a Committee of a member from each State, & on the question, it failed the States being equally divided.

N. H. no. Mas. no. C^{t} div^{d}. N. J. ay. P^{a} ay. Del. ay.
M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

On the question taken on the first part of Mr. Govr. Morris's motion to wit "shall be chosen by electors" as an abstract question, it failed the States being equally divided,

N. H. no. Mas. abst. Ct. divd. N. Jersey ay. Pa. ay. Del. ay.
Md. divd. Va. ay. N. C. no. S. C. no. Geo. no.

The consideration of the remaining clauses of Sect. 1. art. X. was then postponed till tomorrow at the instance of the Deputies of New Jersey.

Sect. 2. Art: X being taken up, the word information was transposed & inserted after "Legislature."

On motion of Mr. Govr. Morris, "he may" was struck out, & "and" inserted before "recommend" in the clause 2d. sect 2d. art: X. in order to make it the *duty* of the President to recommend, & thence prevent umbrage or cavil at his doing it.

Mr. Sherman objected to the sentence "and shall appoint officers in all cases not otherwise provided for by this Constitution." He admitted it to be proper that many officers in the Executive Department should be so appointed–but contended that many ought not, as general officers in the army in time of peace &c. Herein lay the corruption in G. Britain. If the Executive can model the army, he may set up an absolute Government; taking advantage of the close of a war and an army commanded by his creatures. James 2d. was not obeyed by his officers because they had been appointed by his predecessors not by himself. He moved to insert "or by law" after the word "Constitution."

On motion of Mr. Madison "officers" was struck out and "to offices" inserted, in order to obviate doubts that he might appoint officers without a previous creation of the offices by the Legislature.

On the question for inserting "or by law" as moved by Mr. Sherman

N. H. no. Mas. no. Ct. ay. N. J. no. Pena. no. Del. no.
Md. no. Va. no. N. C. absent. S. C. no. Geo. no.

Mr. Dickinson moved to strike out the words "and shall appoint to offices in all cases not otherwise provided for by this Constitution" and insert–"and shall appoint to all offices established by this Constitution, except in cases herein otherwise provided for, and to all offices which may hereafter be created by law."

Mr. Randolph observed that the power of appointments was a formidable one both in the Executive & Legislative hands–and suggested whether the Legislature should not be left at liberty to refer appointments in some cases, to some State authority.

Mr. Dickenson's motion, it passed in the affirmative.

N. H. no. Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. no. Md. ay.
Va. ay. N. C. abst. S. C. no. Geo. ay.

Mr. Dickinson then moved to annex to his last amendment "except where by law the appointment shall be vested in the Legislatures or Executives of the several States." Mr. Randolph 2ded the motion.

Mr. Wilson. If this be agreed to it will soon be a standing instruction from the State Legislatures to pass no law creating offices, unless the appts be referred to them.

Mr. Sherman objected to "Legislatures" in the motion, which was struck out by consent of the movers.

Mr. Govr. Morris. This would be putting it in the power of the States to say, "You shall be viceroys but we will be viceroys over you"—

The motion was negatived without a Count of the States—

Ordered unanimously that the order respecting the adjournment at 4 OClock be repealed, & that in future the House assemble at 10 OC. & adjourn at 3 OC.

Adjourned.

Saturday August 25. 1787. In Convention

The 1st clause of 1 Sect. of art: VII being reconsidered

Col. Mason objected to the term "*shall*"–fullfil the engagements & discharge the debts &c. as too strong. It may be impossible to comply with it. The Creditors should be kept in the same plight. They will in one respect be necessarily and properly in a better. The Government will be more able to pay them. The use of the term *shall* will beget speculations and increase the pestilent practice of stock-jobbing. There was a great distinction between original creditors & those who purchased fraudulently of the ignorant and distressed. He did not mean to include those who have bought Stock in open market. He was sensible of the difficulty of drawing the line in this case, but he did not wish to preclude the attempt. Even fair purchasers at 4. 5. 6. 8 for 1 did not stand on the same footing with the first Holders, supposing them not to be blameable. The interest they receive even in paper, is equal to their purchase money. What he particularly wished was to leave the door open for buying up the securities, which he thought would be precluded by the term "shall" as requiring *nominal payment*, & which was not inconsistent with his ideas of public faith. He was afraid also the word "*shall*," might extend to all the old continental paper.

Mr. Langdon wished to do no more than leave the Creditors in statu quo.

Mr. Gerry said that for himself he had no interest in the question being not possessed of more of the securities than would, by the interest, pay his taxes. He would observe however that as the public had received the value of the literal amount, they ought to pay that value to some body. The frauds on *the soldiers* ought to have been foreseen. These poor & ignorant people could not but part with their securities. There are other creditors who will part with any thing rather than be cheated of the capital of their advances. The interest of the States he observed was different on this point, some having more, others less than their proportion of the paper. Hence the idea of a scale for reducing its value had arisen. If the public faith would admit,

of which he was not clear, he would not object to a revision of the debt so far as to compel restitution to the ignorant & distressed, who have been defrauded. As to stock-jobbers he saw no reason for the censures thrown on them. They keep up the value of the paper. Without them there would be no market.

Mr. Butler said he meant neither to increase nor diminish the security of the Creditors.

Mr. Randolph moved to postpone the clause in favor of the following "All debts contracted & engagements entered into, by or under the authority of Congs. shall be as valid agst. the U. States under this constitution as under the Confederation."

Docr. Johnson. The debts are debts of the U. S. of the great Body of America. Changing the Government cannot change the obligation of the U. S. which devolves of course on the new Government. Nothing was in his opinion necessary to be said. If any thing, it should be a mere declaration as moved by Mr. Randolph.

Mr. Govr. Morris, said he never had become a public Creditor that he might urge with more propriety the compliance with public faith. He had always done so and always would, and preferr'd the term "*shall*" as the most explicit. As to *buying up* the debt, the term "*shall*" was not inconsistent with it, if provision be first made for paying the interest: if not, such an expedient was a mere evasion. He was content to say nothing as the New Government would be bound of course, but would prefer the clause with the term "*shall*," because it would create many friends to the plan.

On Mr. Randolph's Motion

> N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. no. Del. ay.
> Maryd. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Sherman thought it necessary to connect with the clause for laying taxes duties &c. an express provision for the object of the old debts &c.– and moved to add to the 1st clause of 1st sect. art VII "for the payment of

said debts and for the defraying the expences that shall be incurred for the common defence and general welfare."

The proposition, as being unnecessary was disagreed to, Connecticut alone, being in the affirmative.

The Report of the Committee of eleven (see friday the 24th instant) being taken up,

Genl. Pinkney moved to strike out the words, "the year eighteen hundred" as the year limiting the importation of slaves, and to insert the words "the year eighteen hundred and eight."

Mr. Ghorum 2ded the motion.

Mr. Madison. Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonourable to the National character than to say nothing about it in the Constitution.

On the motion; which passed in the affirmative,

N. H. ay. Mas. ay. Ct. ay. N. J. no. Pa. no. Del. no. Md. ay.
Va. no. N. C. ay. S. C. ay. Geo. ay.

Mr. Govr. Morris was for making the clause read at once, "the importation of slaves into N. Carolina, S. Carolina & Georgia shall not be prohibited &c." This he said would be most fair and would avoid the ambiguity by which, under the power with regard to naturalization, the liberty reserved to the States might be defeated. He wished it to be known also that this part of the Constitution was a compliance with those States. If the change of language however should be objected to by the members from those States, he should not urge it.

Col. Mason was not against using the term "slaves" but agst naming N. C. S. C. & Georgia, lest it should give offence to the people of those States.

Mr. Sherman liked a description better than the terms proposed, which had been declined by the old Congs & were not pleasing to some people. Mr. Clymer concurred with Mr. Sherman.

Mr. Williamson said that both in opinion & practice he was against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in S. C. & Georgia on those terms, than to exclude them from the Union.

Mr. Govr. Morris withdrew his motion.

Mr. Dickenson wished the clause to be confined to the States which had not themselves prohibited the importation of slaves, and for that purpose moved to amend the clause so as to read "The importation of slaves into such of the States as shall permit the same shall not be prohibited by the Legislature of the U. S. until the year 1808"–which was disagreed to nem: con: [42]

[42] In the printed Journals, Con^{t} Virg^{a} & Georgia voted in the affirmative.– Madison's Note.

The first part of the report was then agreed to, amended as follows. "The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1808."

N. H. Mas. Con. M^{d} N. C. S. C. Geo: ay. N. J. P^{a} Del. Virg^{a} no.

M^{r} Baldwin in order to restrain & more explicitly define "the average duty" moved to strike out of the 2^{d} part the words "average of the duties laid on imports" and insert "common impost on articles not enumerated" which was agreed to nem: cont:

M^{r} Sherman was agst this 2^{d} part, as acknowledging men to be property, by taxing them as such under the character of slaves.

M^{r} King & M^{r} Langdon considered this as the price of the 1st part.

Gen^{l} Pinkney admitted that it was so.

Col. Mason. Not to tax, will be equivalent to a bounty on the importation of slaves.

M^{r} Ghorum thought that M^{r} Sherman should consider the duty, not as implying that slaves are property, but as a discouragement to the importation of them.

M^{r} Gov^{r} Morris remarked that as the clause now stands it implies that the Legislature may tax freemen imported.

M^{r} Sherman in answer to M^{r} Ghorum observed that the smallness of the duty shewed revenue to be the object, not the discouragement of the importation.

M[r] Madison thought it wrong to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not like merchandize, consumed, &c.

Col. Mason (in answ[r] to Gov[r] Morris) the provision as it stands was necessary for the case of convicts in order to prevent the introduction of them.

It was finally agreed nem. contrad: to make the clause read "but a tax or duty may be imposed on such importation not exceeding ten dollars for each person," and then the 2[d] part as amended was agreed to.

Sect 5. art. VII was agreed to nem: con: as reported.

Sect. 6. art. VII. in the Report, was postponed.

On motion of M[r] Madison 2[ded] by M[r] Gov[r] Morris Article VIII was reconsidered and after the words "all treaties made," were inserted nem: con: the words "or which shall be made." This insertion was meant to obviate all doubt concerning the force of treaties preexisting, by making the words "all treaties made" to refer to them, as the words inserted would refer to future treaties.

M[r] Carrol and M[r] L. Martin expressed their apprehensions, and the probable apprehensions of their constituents, that under the power of regulating trade the General Legislature, might favor the ports of particular States, by requiring vessels destined to or from other States to enter & clear thereat, as vessels belonging or bound to Baltimore, to enter & clear at Norfolk &c. They moved the following proposition

> "The Legislature of the U. S. shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other State than in that to which they may be bound, or to clear out in any other than the State in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessel on entering or clearing out, or paying duties or imposts in one State in preference to another."

Mr. Ghorum thought such a precaution unnecessary; & that the revenue might be defeated, if vessels could run up long rivers, through the jurisdiction of different States without being required to enter, with the opportunity of landing & selling their cargoes by the way.

Mr. McHenry & Genl. Pinkney made the following propositions

> "Should it be judged expedient by the Legislature of the U. S. that one or more port for collecting duties or imposts other than those ports of entrance & clearance already established by the respective States, should be established, the Legislature of the U. S. shall signify the same to the Executives of the respective States, ascertaining the number of such ports judged necessary; to be laid by the said Executives before the Legislatures of the States at their next session; and the Legislature of the U. S. shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any State, except the Legislature of such State shall neglect to fix and establish the same during their first session to be held after such notification by the Legislature of the U. S. to the Executive of such State."

> "All duties imposts & excises, prohibitions or restraints laid or made by the Legislature of the U. S. shall be uniform & equal throughout the U. S."

These several propositions were referred nem: con: to a committee composed of a member from each State. The committee appointed by ballot were Mr. Langdon, Mr. Ghorum, Mr. Sherman, Mr. Dayton, Mr. Fitzimmons, Mr. Read, Mr. Carrol, Mr. Mason, Mr. Williamson, Mr. Butler, Mr. Few.

On the question now taken on Mr. Dickinson's motion of yesterday, allowing appointments to offices, to be referred by the Genl. Legislature to the Executives of the several States as a further amendment to sect. 2. art. X, the votes were

N. H. no. Mas. no. Ct. ay. Pa. no. Del. no. Md. divided.
Va. ay. N. C. no. S. C. no. Geo. ay.

In amendment of the same section, "other public Ministers" were inserted after "ambassadors."

Mr. Govr. Morris moved to strike out of the section–"and may correspond with the supreme Executives of the several States" as unnecessary and implying that he could not correspond with others. Mr. Broome 2ded him.

On the question

N. H. ay. Mas. ay. Ct. ay. Pa. ay. Del. ay. Md. no. Va. ay.
N. C. ay. S. C. ay. Geo. ay.

"Shall receive ambassadors & other public Ministers," agreed to, nem. con.

Mr. Sherman moved to amend the "power to grant reprieves & pardon" so as to read "to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate."

On the question

N. H. no. Mas. no. Ct. ay. Pa. no. Md. no. Va. no. N. C. no.
S. C. no. Geo. no.

"except in cases of impeachment" inserted nem. con: after "pardon."

On the question to agree to–"but his pardon shall not be pleadable in bar"

N. H. ay. Mas. no. Ct. no. Pa. no. Del. no. Md. ay. Va. no.
N. C. ay. S. C. ay. Geo. no.

Adjourned.

Monday AugST 27TH. 1787. In Convention

Art X. Sect 2. being resumed,

M^{r} L. Martin moved to insert the words "after conviction" after the words "reprieves and pardons."

M^{r} Wilson objected that pardon before conviction might be necessary in order to obtain the testimony of accomplices. He stated the case of forgeries in which this might particularly happen.–M^{r} L. Martin withdrew his motion.

M^{r} Sherman moved to amend the clause giving the Executive the command of the Militia, so as to read "and of the Militia of the several States, *when called into the actual service of the U. S.*" and on the Question

N. H. ay. Mas. abs^{t}. C^{t} ay. N. J. abs^{t}. P^{a} ay. Del. no.
M^{d} ay. V^{a} ay. N. C. abs^{t}. S. C. no. Geo. ay.

The clause for removing the President on impeachment by the House of Rep^{s} and conviction in the supreme Court, of Treason, Bribery or corruption, was postponed nem: con: at the instance of M^{r} Gov^{r} Morris, who thought the Tribunal an improper one, particularly, if the first Judge was to be of the privy Council.

M^{r} Gov^{r} Morris objected also to the President of the Senate being provisional successor to the President, and suggested a designation of the Chief Justice.

M^{r} Madison added as a ground of objection that the Senate might retard the appointment of a President in order to carry points whilst the revisionary power was in the President of their own body, but suggested that the Executive powers during a vacancy, be administered by the persons composing the Council to the President.

M^r^ Williamson suggested that the Legislature ought to have power to provide for occasional successors, & moved that the last clause (of 2 sect. X art:) relating to a provisional successor to the President, be postponed.

M^r^ Dickinson 2^ded^ the postponement, remarking that it was too vague. What is the extent of the term "disability" and who is to be the judge of it?

The postponement was agreed to nem: con:

Col: Mason & M^r^ Madison moved to add to the oath to be taken by the supreme Executive "and will to the best of my judgment and power preserve protect and defend the Constitution of the U. S."

M^r^ Wilson thought the general provision for oaths of office, in a subsequent place, rendered the amendment unnecessary.—

On the question

> N. H. ay. Mas. abs^t^. C^t^ ay. P^a^ ay. Del. no. M^d^ ay. V^a^ ay.
> N. C. abs^t^. S. C. ay. Geo. ay.

Art: XI. being taken up.

Doc^r^ Johnson suggested that the judicial power ought to extend to equity as well as law–and moved to insert the words, "both in law and equity" after the words "U. S." in the 1^st^ line of sect 1.

M^r^ Read objected to vesting these powers in the same Court.

On the question

> N. H. ay. Mas. absent. C^t^ ay. N. J. abs^t^. P. ay. Del. no.
> M^d^ no. Virg^a^ ay. N. C. abs^t^. S. C. ay. Geo. ay.

On the question to agree to Sect. 1. art. XI. as amended

> N. H. ay. Mas. abs^t^. C^t^ ay. P^a^ ay. N. J. abs^t^. Del. no.
> M^d^ no. V^a^ ay. N. C. abs^t^. S. C. ay. Geo. ay.

M[r] Dickinson moved as an amendment to sect. 2. art XI after the words "good behavior" the words "provided that they may be removed by the Executive on the application by the Senate and House of Representatives."

M[r] Gerry 2[ded] the motion.

M[r] Gov[r] Morris thought it a contradiction in terms to say that the Judges should hold their offices during good behavior, and yet be removeable without a trial. Besides it was fundamentally wrong to subject Judges to so arbitrary an authority.

M[r] Sherman saw no contradiction or impropriety if this were made a part of the Constitutional regulation of the Judiciary establishment. He observed that a like provision was contained in the British Statutes.

M[r] Rutlidge. If the Supreme Court is to judge between the U. S. and particular States, this alone is an insuperable objection to the motion.

M[r] Wilson considered such a provision in the British Government as less dangerous than here, the House of Lords & House of Commons being less likely to concur on the same occasions. Chief Justice Holt, he remarked, had *successively* offended by his independent conduct, both houses of Parliament. Had this happened at the same time, he would have been ousted. The Judges would be in a bad situation if made to depend on any gust of faction which might prevail in the two branches of our Gov[t].

M[r] Randolph opposed the motion as weakening too much the independence of the Judges.

M[r] Dickinson was not apprehensive that the Legislature composed of different branches constructed on such different principles, would improperly unite for the purpose of displacing a Judge.

On the question for agreeing to M[r] Dickinson's Motion

N. H. no. Mas. abs[t]. C[t] ay. N. J. abs[t]. P[a] no. Del. no.
M[d] no. V[a] no. N. C. abs[t]. S. C. no. Geo. no.

M^{r} Madison and M^{r} M^{c}Henry moved to reinstate the words "increased or" before the word "diminished" in 2^{d} sect, art. XI.

M^{r} Gov^{r} Morris opposed it for reasons urged by him on a former occasion—

Col: Mason contended strenuously for the motion. There was no weight he said in the argument drawn from changes in the value of the metals, because this might be provided for by an increase of salaries so made as not to affect persons in office, and this was the only argument on which much stress seemed to have been laid.

Gen^{l} Pinkney. The importance of the Judiciary will require men of the first talents: large salaries will therefore be necessary, larger than the U. S. can allow in the first instance. He was not satisfied with the expedient mentioned by Col: Mason. He did not think it would have a good effect or a good appearance, for new Judges to come in with higher salaries than the old ones.

M^{r} Gov^{r} Morris said the expedient might be evaded & therefore amounted to nothing. Judges might resign, & then be re-appointed to increased salaries.

On the question

N. H. no. C^{t} no. P^{a} no. Del. no. M^{d} div^{d}. V^{a} ay. S. C. no.
Geo. abs^{t} also Mas^{ts}. & N. J. & N. C.

M^{r} Randolph & M^{r} Madison then moved to add the following words to art. XI sect. 2. "nor increased by any Act of the Legislature which shall operate before the expiration of three years after the passing thereof."

On the question

N. H. no. C^{t} no. P^{a} no. Del. no. M^{d} ay. V^{a} ay. S. C. no.
Geo. abs^{t} also Mas. N. J. & N. C.

Sect. 3. art. XI. being taken up, the following clause was postponed viz, "to the trial of impeachments of officers of the U. S." by which the jurisdiction of the supreme Court was extended to such cases.

Mr. Madison & Mr. Govr. Morris moved to insert after the word "controversies" the words "to which the U. S. shall be a party," which was agreed to nem: con:

Docr. Johnson moved to insert the words "this Constitution and the" before the word "laws."

Mr. Madison doubted whether it was not going too far to extend the jurisdiction of the Court generally to cases arising under the Constitution & whether it ought not to be limited to cases of a Judiciary Nature. The right of expounding the Constitution in cases not of this nature ought not to be given to that Department.

The motion of Docr. Johnson was agreed to nem: con: it being generally supposed that the jurisdiction given was constructively limited to cases of a Judiciary nature.

On motion of Mr. Rutlidge the words "passed by the Legislature" were struck out, and after the words "U. S." were inserted nem. con: the words "and treaties made or which shall be made under their authority" conformably to a preceding amendment in another place.

The clause "in cases of impeachment," was postponed.

Mr. Govr. Morris wished to know what was meant by the words "In all the cases before-mentioned it (jurisdiction) shall be appellate with such exceptions &c.," whether it extended to matters of fact as well as law–and to cases of common law as well as civil law.

Mr. Wilson. The Committee he believed meant facts as well as law & Common as well as Civil law. The jurisdiction of the federal Court of Appeals had he said been so construed.

Mr. Dickinson moved to add after the word "appellate" the words "both as to law & fact" which was agreed to nem: con:

Mr. Madison & Mr. Govr. Morris moved to strike out the beginning of the 3d sect. "The jurisdiction of the supreme Court" & to insert the words "the Judicial power" which was agreed to nem: con:

The following motion was disagreed to, to wit to insert "In all the other cases beforementioned the Judicial power shall be exercised in such manner as the Legislature shall direct" Del. Virga. ay. N. H. Con. P. M. S. C. G. no.

On a question for striking out the last sentence of the sect. 3. "The Legislature may assign &c."

N. H. ay. Ct. ay. Pa. ay. Del. ay. Md. ay. Va. ay. S. C. ay.
Geo. ay.

Mr. Sherman moved to insert after the words "between Citizens of different States" the words, "between Citizens of the same State claiming lands under grants of different States"–according to the provision in the 9th Art: of the Confederation–which was agreed to nem: con:

Adjourned.

Tuesday August 28 1787. In Convention

M[r] Sherman from the Committee to whom were referred several propositions on the 25[th] instant, made the following report:—

That there be inserted after the 4 clause of 7[th]. section

> "Nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another, or oblige vessels bound to or from any State to enter clear or pay duties in another and all tonnage, duties, imposts & excises laid by the Legislature shall be uniform throughout the U. S."

Art XI Sect. 3, It was moved to strike out the words "it shall be appellate" to insert the words "the supreme Court shall have appellate jurisdiction,"–in order to prevent uncertainty whether "it" referred to the *supreme Court*, or to the *Judicial power*.

On the question

> N. H. ay. Mas. ay. C[t] ay. N. J. abs[t]. P[a] ay. Del. ay. M[d] no.
> V[a] ay. N. C. ay. S. C. ay. Geo. ay.

Sect. 4. was so amended nem. con: as to read "The trial of all crimes (except in cases of impeachment) shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, then the trial shall be at such place or places as the Legislature may direct." The object of this amendment was to provide for trial by jury of offences committed out of any State.

M[r] Pinkney urged the propriety of securing the benefit of the Habeas corpus in the most ample manner, moved "that it should not be suspended but on the most urgent occasions, & then only for a limited time not exceeding twelve months."

M[r] Rutlidge was for declaring the Habeas Corpus inviolable. He did not conceive that a suspension could ever be necessary at the same time through all the States.

M[r] Gov[r] Morris moved that "The privilege of the writ of Habeas Corpus shall not be suspended; unless where in cases of Rebellion or invasion the public safety may require it."

M[r] Wilson doubted whether in any case a suspension could be necessary, as the discretion now exists with Judges, in most important cases to keep in Gaol or admit to Bail.

The first part of M[r] Gov[r] Morris' motion, to the word "unless" was agreed to nem: con:–on the remaining part;

N. H. ay. Mas. ay. C[t] ay. P[a] ay. Del. ay. M[d] ay. V[a] ay.
N. C. no. S. C. no. Geo. no.

Sec. 5. of art: XI. was agreed to *nem*: con. [43]

[43] The vote on this section as stated in the printed Journal is not unanimous: the statement here is probably the right one.–Madison's Note.

Art: XII being taken up.

M[r] Wilson & M[r] Sherman moved to insert after the words "coin money" the words "nor emit bills of credit, nor make any thing but gold & silver coin a tender in payment of debts" making these prohibitions absolute, instead of making the measures allowable (as in the XIII art:) *with the consent of the Legislature of the U. S.*

M[r] Ghorum thought the purpose would be as well secured by the provisions of art: XIII which makes the consent of the Gen[l] Legislature necessary, and that in that mode no opposition would be excited; whereas an absolute prohibition of paper money would rouse the most desperate opposition from its partizans.

Mr. Sherman thought this a favorable crisis for crushing paper money. If the consent of the Legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the Legislature in order to license it.

The question being divided; on the 1st part–"nor emit bills of credit" N. H. ay. Mas. ay. Ct. ay. Pa. ay. Del. ay. Md. divd. Va. no. N. C. ay. S. C. ay. Geo. ay.

The remaining part of Mr. Wilson's & Sherman's motion was agreed to nem: con:

Mr. King moved to add, in the words used in the Ordinance of Congr. establishing new States, a prohibition on the States to interfere in private contracts.

Mr. Govr. Morris. This would be going too far. There are a thousand laws, relating to bringing actions–limitations, of actions & which affect contracts. The Judicial power of the U. S. will be a protection in cases within their jurisdiction; and within the State itself a majority must rule, whatever may be the mischief done among themselves.

Mr. Sherman. Why then prohibit bills of credit?

Mr. Wilson was in favor of Mr. King's motion.

Mr. Madison admitted that inconveniences might arise from such a prohibition but thought on the whole it would be overbalanced by the utility of it. He conceived however that a negative on the State laws could alone secure the effect. Evasions might and would be devised by the ingenuity of the Legislatures.

Col: Mason. This is carrying the restraint too far. Cases will happen that cannot be foreseen, where some kind of interference will be proper & essential. He mentioned the case of limiting the period for bringing actions on open account–that of bonds after a certain lapse of time–asking whether it was proper to tie the hands of the States from making provision in such cases?

Mr. Wilson. The answer to these objections is that retrospective interferences only are to be prohibited.

Mr. Madison. Is not that already done by the prohibition of ex post facto laws, which will oblige the Judges to declare such interferences null & void.

Mr. Rutlidge moved instead of Mr. King's Motion to insert–"nor pass bills of attainder nor retrospective [44] laws" on which motion

N. H. ay. Ct. no. N J. ay. Pa. ay. Del. ay. Md. no. Virga. no.
N. C. ay. S. C. ay. Geo. ay.

[44] In the printed Journal–ex post facto.–Madison's Note.

Mr. Madison moved to insert after the word "reprisal" (art. XII) the words "nor lay embargoes." He urged that such acts by the States would be unnecessary–impolitic–and unjust.

Mr. Sherman thought the States ought to retain this power in order to prevent suffering & injury to their poor.

Col: Mason thought the amendment would be not only improper but dangerous, as the Genl. Legislature would not sit constantly and therefore could not interpose at the necessary moments. He enforced his objection by appealing to the necessity of sudden embargoes during the war, to prevent exports, particularly in the case of a blockade.

Mr. Govr. Morris considered the provision as unnecessary; the power of regulating trade between State & State already vested in the Genl. Legislature, being sufficient.

On the question

N. H. no. Mas. ay. Ct. no. N. J. no. Pa. no. Del. ay. Md. no.
Va. no. N. C. no. S. C. ay. Geo. no.

M[r] Madison moved that the words "nor lay imposts or duties on imports" be transferred from art: XIII where the consent of the Gen[l] Legislature may license the act–into art: XII which will make the prohibition of the States absolute. He observed that as the States interested in this power by which they could tax the imports of their neighbors passing thro' their markets, were a majority, they could give the consent of the Legislature, to the injury of N. Jersey, N. Carolina &c.

M[r] Williamson 2[ded] the motion.

M[r] Sherman thought the power might safely be left to the Legislature of the U. States.

Col: Mason observed that particular States might wish to encourage by impost duties certain manufactures for which they enjoyed natural advantages, as Virginia, the manufacture of Hemp &c.

M[r] Madison. The encouragement of Manufactures in that mode requires duties not only on imports directly from foreign Countries, but from the other States in the Union, which would revive all the mischiefs experienced from the want of a Gen[l] Government over commerce. [45]

[45] August 28, 1787, New York, Hamilton wrote to King: "I wrote to you some days since [August 20] to request you to inform me when there was a prospect of your finishing, as I intended to be with you, for certain reasons, before the conclusion.

"It is whispered here that some late changes in your scheme have taken place which give it a higher tone. Is this the case?"–King's *Life and Correspondence of Rufus King*, *I*, 258.

On the question

N. H. ay. Mas. no. C[t] no. N. J. ay. P[a] no. Del[a] ay. M[d] no. V[a] no. N. C. ay. S. C. no. Geo. no.

Art: XII as amended agreed to nem: con:

Art: XIII being taken up. Mr. King moved to insert after the word "imports" the words "or exports," so as to prohibit the States from taxing either, & on this question it passed in the affirmative.

N. H. ay. Mas. ay. Ct. no. N. J. ay. P. ay. Del. ay. Md. no.
Va. no. N. C. ay. S. C. no. Geo. no.

Mr. Sherman moved to add after the word "exports"–the words "nor with such consent but for the use of the U. S."–so as to carry the proceeds of all State duties on imports & exports, into the common Treasury.

Mr. Madison liked the motion as preventing all State imposts–but lamented the complexity we were giving to the commercial system.

Mr. Govr. Morris thought the regulation necessary to prevent the Atlantic States from endeavoring to tax the Western States–& promote their interest by opposing the navigation of the Mississippi which would drive the Western people into the arms of G. Britain.

Mr. Clymer thought the encouragement of the Western Country was suicide on the old States. If the States have such different interests that they cannot be left to regulate their own manufactures without encountering the interests of other States, it is a proof that they are not fit to compose one nation.

Mr. King was afraid that the regulation moved by Mr. Sherman would too much interfere with the policy of States respecting their manufactures, which may be necessary. Revenue he reminded the House was the object of the general Legislature.

On Mr. Sherman's motion

N. H. ay. Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. no.
Va. ay. N. C. ay. S. C. ay. Geo. ay.

Art XIII was then agreed to as amended.

Art. XIV was taken up.

Gen[l] Pinkney was not satisfied with it. He seemed to wish some provision should be included in favor of property in slaves.

On the question on Art: XIV.

N. H. ay. Mas. ay. C[t] ay. N. J. ay. P[a] ay. Del. ay. M[d] ay.
V[a] ay. N. C. ay. S. C. no. Geo. divided.

Art: XV. being taken up, the words "high misdemesnor," were struck out, and "other crime" inserted, in order to comprehend all proper cases; it being doubtful whether "high misdemeanor" had not a technical meaning too limited.

M[r] Butler and M[r] Pinkney moved "to require fugitive slaves and servants to be delivered up like criminals."

M[r] Wilson. This would oblige the Executive of the State to do it at the public expence.

M[r] Sherman saw no more propriety in the public seizing and surrendering a slave or servant, than a horse.

M[r] Butler withdrew his proposition in order that some particular provision might be made apart from this article.

Art XV as amended was then agreed to nem: con:

Adjourned.

Wednesday August 29TH. 1787. In Convention

Art: XVI. taken up.

Mr. Williamson moved to substitute in place of it, the words of the Articles of Confederation on the same subject. He did not understand precisely the meaning of the article.

Mr. Wilson and Docr. Johnson supposed the meaning to be that Judgments in one State should be the ground of actions in other States, & that acts of the Legislatures should be included, for the sake of Acts of insolvency &c.

Mr. Pinkney moved to commit Art XVI with the following proposition "To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange."

Mr. Ghorum was for agreeing to the article, and committing the proposition.

Mr. Madison was for committing both. He wished the Legislature might be authorized to provide for the *execution* of Judgments in other States, under such regulations as might be expedient. He thought that this might be safely done, and was justified by the nature of the Union.

Mr. Randolph said there was no instance of one nation executing judgments of the Courts of another nation. He moved the following proposition:

> Executive or Judiciary shall be attested & exemplified under the seal thereof, such attestation and exemplification, shall be deemed in other States as full proof of the existence of that act–and its operation shall be binding in every other State, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the State, wherein the said act was done."

On the question for committing Art: XVI with Mr. Pinkney's motion

N. H. no. Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. Pa. ay. N. C. ay. S. C. ay. Geo. ay.

The motion of Mr. Randolph was also committed nem: con:

Mr. Govr. Morris moved to commit also the following proposition on the same subject.

"Full faith ought to be given in each State to the public acts, records, and judicial proceedings of every other State; and the Legislature shall by general laws, determine the proof and effect of such acts, records, and proceedings" and it was committed nem. contrad:

The Committee appointed for these references, were Mr. Rutlidge, Mr. Randolph, Mr. Gorham, Mr. Wilson, & Mr. Johnson.

Mr. Dickenson mentioned to the House that on examining Blackstone's Commentaries, he found that the term "ex post facto" related to criminal cases only; that they would not consequently restrain the States from retrospective laws in civil cases, and that some further provision for this purpose would be requisite.

Art: VII Sect. 6 by ye. Coñittee of eleven reported to be struck out (see the 24 instant) being now taken up.

Mr. Pinkney moved to postpone the Report in favor of the following proposition–"That no act of the Legislature for the purpose of regulating the commerce of the U. S. with foreign powers among the several States, shall be passed without the assent of two thirds of the members of each House." He remarked that there were five distinct commercial interests. 1. the fisheries & W. India trade, which belonged to the N. England States. 2. the interest of N. York lay in a free trade. 3. Wheat & flour the Staples of the two middle States (N. J. & Penna). 4. Tobo the staple of Maryld & Virginia & partly of N. Carolina. 5. Rice & Indigo, the staples of S. Carolina &

Georgia. These different interests would be a source of oppressive regulations if no check to a bare majority should be provided. States pursue their interests with less scruple than individuals. The power of regulating commerce was a pure concession on the part of the S. States. They did not need the protection of the N. States at present.

Mr. Martin 2ded the motion.

Genl. Pinkney said it was the true interest of the S. States to have no regulation of commerce; but considering the loss brought on the commerce of the Eastern States by the revolution, their liberal conduct towards the views [46] of South Carolina, and the interest the weak Southn States had in being united with the strong Eastern States, he thought it proper that no fetters should be imposed on the power of making commercial regulations, and that his constituents though prejudiced against the Eastern States, would be reconciled to this liberality. He had himself, he said, prejudices agst the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

[46] He meant the permission to import slaves. An understanding on the two subjects of *navigation* and *slavery*, had taken place between those parts of the Union, which explains the vote on the motion depending, as well as the language of Genl. Pinkney & others.–Madison's Note.

Mr. Clymer. The diversity of commercial interests of necessity creates difficulties, which ought not to be increased by unnecessary restrictions. The Northern & middle States will be ruined, if not enabled to defend themselves against foreign regulations.

Mr. Sherman, alluding to Mr. Pinkney's enumeration of particular interests, as requiring a security agst abuse of the power; observed that the diversity was of itself a security, adding that to require more than a majority to decide a question was always embarrassing as had been experienced in cases requiring the votes of nine States in Congress.

Mr. Pinkney replied that his enumeration meant the five minute interests. It still left the two great divisions of Northern & Southern interests.

M^r^ Gov^r^ Morris, opposed the object of the motion as highly injurious. Preferences to american ships will multiply them, till they can carry the Southern produce cheaper than it is now carried.–A navy was essential to security, particularly of the S. States, and can only be had by a navigation act encouraging american bottoms & seamen. In those points of view then alone, it is the interest of the S. States that navigation acts should be facilitated. Shipping he said was the worst & most precarious kind of property, and stood in need of public patronage.

M^r^ Williamson was in favor of making two thirds instead of a majority requisite, as more satisfactory to the Southern people. No useful measure he believed had been lost in Congress for want of nine votes. As to the weakness of the Southern States, he was not alarmed on that account. The sickliness of their climate for invaders would prevent their being made an object. He acknowledged that he did not think the motion requiring 2/3 necessary in itself, because if a majority of the Northern States should push their regulations too far the S. States would build ships for themselves: but he knew the Southern people were apprehensive on this subject and would be pleased with the precaution.

M^r^ Spaight was against the motion. The Southern States could at any time save themselves from oppression, by building ships for their own use.

M^r^ Butler differed from those who considered the rejection of the motion as no concession on the part of the S. States. He considered the interest of these and of the Eastern States, to be as different as the interests of Russia and Turkey. Being notwithstanding desirous of conciliating the affections of the East: States, he should vote ag^st^ requiring 2/3 instead of a majority.

Col: Mason. If the Gov^t^ is to be lasting, it must be founded in the confidence & affections of the people, and must be so constructed as to obtain these. The *Majority* will be governed by their interests. The Southern States are the *minority* in both Houses. Is it to be expected that they will deliver themselves bound hand & foot to the Eastern States, and enable them to exclaim, in the words of Cromwell on a certain occasion–"the lord hath delivered them into our hands."

M[r] Wilson took notice of the several objections and remarked that if every peculiar interest was to be secured, *unanimity* ought to be required. The majority he said would be no more governed by interest than the minority. It was surely better to let the latter be bound hand and foot than the former. Great inconveniences had, he contended, been experienced in Congress from the article of confederation requiring nine votes in certain cases.

M[r] Madison went into a pretty full view of the subject. He observed that the disadvantage to the S. States from a navigation act, lay chiefly in a temporary rise of freight, attended however with an increase of South[n] as well as Northern Shipping–with the emigration of Northern Seamen & merchants to the Southern States–& with a removal of the existing & injurious retaliations among the States on each other. The power of foreign nations to obstruct our retaliating measures on them by a corrupt influence would also be less if a majority sh[d] be made competent than if 2/3 of each House sh[d] be required to legislative acts in this case. An abuse of the power would be qualified with all these good effects. But he thought an abuse was rendered improbable by the provision of 2 branches–by the independence of the Senate, by the negative of the Executive, by the interest of Connecticut & N. Jersey which were agricultural, not commercial States; by the interior interest which was also agricultural in the most commercial States, by the accession of Western States which w[d] be altogether agricultural. He added that the Southern States would derive an essential advantage in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the coasting trade, and of seamen, would also be favorable to the S. States, by increasing, the consumption of their produce. If the wealth of the Eastern should in a still greater proportion be augmented, that wealth w[d] contribute the more to the public wants, and be otherwise a national benefit.

M[r] Rutlidge was ag[st] the motion of his colleague. It did not follow from a grant of the power to regulate trade, that it would be abused. At the worst a navigation act could bear hard a little while only on the S. States. As we are laying the foundation for a great empire, we ought to take a permanent view of the subject and not look at the present moment only. He reminded the House of the necessity of securing the West India trade to this country.

That was the great object, and a navigation act was necessary for obtaining it.

Mr. Randolph said that there were features so odious in the constitution as it now stands, that he doubted whether he should be able to agree to it. A rejection of the motion would compleat the deformity of the system. He took notice of the argument in favor of giving the power over trade to a majority, drawn from the opportunity foreign powers would have of obstructing retaliatory measures if two thirds were made requisite. He did not think there was weight in that consideration. The difference between a majority & two thirds did not afford room for such an opportunity. Foreign influence would also be more likely to be exerted on the President who could require three fourths by his negative. He did not mean however to enter into the merits. What he had in view was merely to pave the way for a declaration which he might be hereafter obliged to make if an accumulation of obnoxious ingredients should take place, that he could not give his assent to the plan.

Mr. Gorham. If the Government is to be so fettered as to be unable to relieve the Eastern States what motive can they have to join in it, and thereby tie their own hands from measures which they could otherwise take for themselves. The Eastern States were not led to strengthen the Union by fear for their own safety. He deprecated the consequences of disunion, but if it should take place it was the Southern part of the Continent that had most reason to dread them. He urged the improbability of a combination against the interest of the Southern States, the different situations of the Northern & Middle States being a security against it. It was moreover certain that foreign ships would never be altogether excluded especially those of Nations in treaty with us.

On the question to postpone in order to take up Mr. Pinkney's motion

N. H. no. Mass. no. Ct. no. N. J. no. Pa. no. Del. no.
Md. ay. Va. ay. N. C. ay. S. C. no. Geo. ay.

The Report of the Committee for striking out Sect. 6. requiring two thirds of each House to pass a navigation act was then agreed to, nem: con:

Mr. Butler moved to insert after Art: XV. "If any person bound to service or labor in any of the U. States shall escape into another State, he or she shall not be discharged from such service or labor, in consequence of any regulations subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor," which was agreed to nem: con:

Art: XVII being taken up, Mr. Govr. Morris moved to strike out the two last sentences, to wit "If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the Legislature may make conditions with the new States, concerning the public debt which shall be then subsisting."–He did not wish to bind down the Legislature to admit Western States on the terms here stated.

Mr. Madison opposed the motion, insisting that the Western States neither would nor ought to submit to a union which degraded them from an equal rank with the other States.

Col: Mason. If it were possible by just means to prevent emigrations to the Western Country, it might be good policy. But go the people will as they find it for their interest, and the best policy is to treat them with that equality which will make them friends not enemies.

Mr. Govr. Morris did not mean to discourage the growth of the Western Country. He knew that to be impossible. He did not wish however to throw the power into their hands.

Mr. Sherman, was agst. the motion & for fixing an equality of privileges by the Constitution.

Mr. Langdon was in favor of the motion, he did not know but circumstances might arise which would render it inconvenient to admit new States on terms of equality.

Mr. Williamson was for leaving the Legislature free. The existing *small* States enjoy an equality now, and for *that* reason are admitted to it in the Senate. This reason is not applicable to new Western States.

On Mr. Govr. Morris's motion for striking out.

N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay.

Mr. L. Martin & Mr. Govr. Morris moved to strike out of art XVII, "but to such admission the consent of two thirds of the members present shall be necessary." Before any question was taken on this motion,

Mr. Govr. Morris moved the following proposition as a substitute for the XVII Art:

"New States may be admitted by the Legislature into this Union; but no new State shall be erected within the limits of any of the present States, without the consent of the Legislature of such State, as well as of the Genl. Legislature."

The first part to Union inclusive was agreed to nem: con:

Mr. L. Martin opposed the latter part. Nothing he said would so alarm the limited States as to make the consent of the large States claiming the Western lands, necessary to the establishment of new States within their limits. It is proposed to guarantee the States. Shall Vermont be reduced by force in favor of the States claiming it? Frankland & the Western county of Virginia were in a like situation.

On Mr. Govr. Morris's motion to substitute &c. it was agreed to.

N. H. no. Mass. ay. Ct. no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Art: XVII–before the House, as amended.

Mr. Sherman was against it. He thought it unnecessary. The Union cannot dismember a State without its consent.

Mr. Langdon thought there was great weight in the argument of Mr. Luther Martin, and that the proposition substituted by Mr. Govr. Morris

would excite a dangerous opposition to the plan.

M[r] Gov[r] Morris thought on the contrary that the small States would be pleased with the regulation, as it holds up the idea of dismembering the large States.

M[r] Butler. If new States were to be erected without the consent of the dismembered States, nothing but confusion would ensue. Whenever taxes should press on the people, demagogues would set up their schemes of new States.

Doc[r] Johnson agreed in general with the ideas of M[r] Sherman, but was afraid that as the clause stood, Vermont would be subjected to N. York, contrary to the faith pledged by Congress. He was of opinion that Vermont ought to be compelled to come into the Union.

M[r] Langdon said his objections were connected with the case of Vermont. If they are not taken in, & remain exempt from taxes, it would prove of great injury to N. Hampshire and the other neighbouring States.

M[r] Dickinson hoped the article would not be agreed to. He dwelt on the impropriety of requiring the small States to secure the large ones in their extensive claims of territory.

M[r] Wilson. When the *majority* of a State wish to divide they can do so. The aim of those in opposition to the article, he perceived was that the Gen[l] Government should abet the *minority*, & by that means divide a State against its own consent.

M[r] Gov[r] Morris. If the forced division of the States is the object of the new system, and is to be pointed ag[st] one or two States, he expected the Gentlemen from these would pretty quickly leave us.

Adjourned.

Thursday August 30th 1787. In Convention

Art XVII resumed for a question on it as amended by Mr. Govr. Morris's substitutes.

Mr. Carrol moved to strike out so much of the article as requires the consent of the State to its being divided. He was aware that the object of this prerequisite might be to prevent domestic disturbances; but such was our situation with regard to the Crown lands, and the sentiments of Maryland on that subject, that he perceived we should again be at sea, if no guard was provided for the right of the U. States to the back lands. He suggested that it might be proper to provide that nothing in the Constitution should affect the Right of the U. S. to lands ceded by G. Britain in the Treaty of peace, and proposed a committment to a member from each State. He assured the House that this was a point of a most serious nature. It was desirable above all things that the act of the Convention might be agreed to unanimously. But should this point be disregarded, he believed that all risks would be run by a considerable minority, sooner than give their concurrence.

Mr. L. Martin 2ded the motion for a commitment.

Mr. Rutlidge. Is it to be supposed that the States are to be cut up without their own consent. The case of Vermont will probably be particularly provided for. There could be no room to fear, that Virginia or N. Carolina would call on the U. States to maintain their Government over the Mountains.

Mr. Williamson said that N. Carolina was well disposed to give up her western lands, but attempts at compulsion was not the policy of the U. S. He was for doing nothing in the constitution in the present case, and for leaving the whole matter in Statu quo.

Mr. Wilson was against the commitment. Unanimity was of great importance, but not to be purchased by the majority's yielding to the

minority. He should have no objection to leaving the case of the new States as heretofore. He knew nothing that would give greater or juster alarm than the doctrine, that a political society is to be torn assunder without its own consent.

On M^{r} Carrol's motion for commitment

N. H. no. Mas. no. C^{t} no. N. J. ay. P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. no. S. C. no. Geo. no.

M^{r} Sherman moved to postpone the substitute for Art: XVII agreed to yesterday in order to take up the following amendment

"The Legislature shall have power to admit other States into the Union, and new States to be formed by the division or junction of States now in the Union, with the consent of the Legislature of such States." (The first part was meant for the case of Vermont to secure its admission.)

On the question, it passed in the negative.

N. H. ay. Mas. ay. C^{t} ay. N. J. no. P^{a} ay. Del. no. M^{d} no. V^{a} no. N. C. no. S. C. ay. Geo. no.

Doc^{r} Johnson moved to insert the words "hereafter formed or" after the words "shall be" in the substitute for Art: XVII (the more clearly to save Vermont as being already formed into a State, from a dependence on the consent of N. York for her admission.) The motion was agreed to Del. & M^{d} only dissenting.

M^{r} Gov^{r} Morris moved to strike out the word "limits" in the substitute, and insert the word "jurisdiction". (This also was meant to guard the case of Vermont, the jurisdiction of N. York not extending over Vermont which was in the exercise of sovereignty, tho' Vermont was within the asserted limits of New York.)

On this question

N. H. ay. Mas. ay. C^{t} ay. N. J. no. P^{a} ay. Del. ay. M^{d} ay. V^{a} ay. N. C. no. S. C. no. Geo. no.

M^{r} L. Martin urged the unreasonableness of forcing & guaranteeing the people of Virginia beyond the Mountains, the Western people of N. Carolina & of Georgia, & the people of Maine, to continue under the States now governing them, without the consent of those States to their separation. Even if they should become the *majority*, the majority of *Counties*, as in Virginia may still hold fast the dominion over them. Again the majority may place the seat of Government entirely among themselves & for their own conveniency, and still keep the injured parts of the States in subjection, under the guarantee of the Gen^{l} Government agst domestic violence. He wished M^{r} Wilson had thought a little sooner of the value of *political* bodies. In the beginning, when the rights of the small States were in question, they were phantoms, ideal beings. Now when the Great States were to be affected, political societies were of a sacred nature. He repeated and enlarged on the unreasonableness of requiring the small States to guarantee the Western claims of the large ones.–It was said yesterday by M^{r} Gov^{r} Morris, that if the large States were to be split to pieces without their consent, their representatives here would take their leave. If the Small States are to be required to guarantee them in this manner, it will be found that the Representatives of other States will with equal firmness take their leave of the Constitution on the table.

It was moved by M^{r} L. Martin to postpone the substituted article, in order to take up the following.

> "The Legislature of the U. S. shall have power to erect New States within as well as without the territory claimed by the several States or either of them, and admit the same into the Union: provided that nothing in this Constitution shall be construed to affect the claim of the U. S. to vacant lands ceded to them by the late treaty of peace, which passed in the negative: N. J. Del. & M^{d} only ay.

On the question to agree to M^{r} Gov^{r} Morris's substituted article as amended in the words following.

"New States may be admitted by the Legislature into the Union: but no new State shall be hereafter formed or erected within the jurisdiction of any of the present States without the consent of the Legislature of such State as well as of the General Legislature"

N. H. ay. Mas. ay. C^{t} ay. N. J. no. P^{a} ay. Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Dickinson moved to add the following clause to the last—

"Nor shall any State be formed by the junction of two or more States or parts thereof, without the consent of the Legislature of such States, as well as of the Legislature of the U. States," which was agreed to without a count of the votes.

M^{r} Carrol moved to add–"Provided nevertheless that nothing in this Constitution shall be construed to affect the claim of the U. S. to vacant lands ceded to them by the Treaty of peace." This he said might be understood as relating to lands not claimed by any particular States, but he had in view also some of the claims of particular States.

M^{r} Wilson was agst the motion. There was nothing in the Constitution affecting one way or the other the claims of the U. S. & it was best to insert nothing, leaving every thing on that litigated subject in statu quo.

M^{r} Madison considered the claim of the U. S. as in fact favored by the jurisdiction of the Judicial power of the U. S. over controversies to which they should be parties. He thought it best on the whole to be silent on the subject. He did not view the proviso of Mr. Carrol as dangerous; but to make it neutral & fair, it ought to go further & declare that the claims of particular States also should not be affected.

M^{r} Sherman thought the proviso harmless, especially with the addition suggested by M^{r} Madison in favor of the claims of particular States.

M^{r} Baldwin did not wish any undue advantage to be given to Georgia. He thought the proviso proper with the addition proposed. It should be

remembered that if Georgia has gained much by the cession in the Treaty of peace, she was in danger during the war of a Uti possidetis.

Mr. Rutlidge thought it wrong to insert a proviso where there was nothing which it could restrain, or on which it could operate.

Mr. Carrol withdrew his motion and moved the following.

> "Nothing in this Constitution shall be construed to alter the claims of the U. S. or of the individual States to the Western territory, but all such claims shall be examined into & decided upon, by the Supreme Court of the U. States."

Mr. Govr. Morris moved to postpone this in order to take up the following.

> "Nothing in this Constitution shall be construed to alter the claims of the U. S. or of the individual States to the Western territory, but all such claims shall be examined into & decided upon, by the Supreme Court of the U. States."

Mr. L. Martin moved to amend the proposition of Mr. Govr. Morris by adding–"But all such claims may be examined into & decided upon by the supreme Court of the U. States."

Mr. Govr. Morris. this is unnecessary, as all suits to which the U. S. are parties, are already to be decided by the Supreme Court.

Mr. L. Martin. it is proper in order to remove all doubts on this point.

Question on Mr. L. Martin's amendatory motion

> N. H. no. Mas. no. Ct. no. N. J. ay. Pa. no. Del. no. Md. ay. Va. no.–States not farther called the negatives being sufficient & the point given up.

The Motion of Mr. Govr. Morris was then agreed to, Md. alone dissenting.

Art: XVIII being taken up,–the word "foreign" was struck out nem: con: as superfluous, being implied in the term "invasion."

M^{r} Dickinson moved to strike out "on the application of its Legislature, against." He thought it of essential importance to the tranquility of the U. S. that they should in all cases suppress domestic violence, which may proceed from the State Legislature itself, or from disputes between the two branches where such exist.

M^{r} Dayton mentioned the Conduct of Rho: Island as shewing the necessity of giving latitude to the power of the U. S. on this subject.

On the question

N. H. no. Mas. no. C^{t} no. N. J. ay. P^{a} ay. Del. ay. M^{d} no.
V^{a} no. N. C. no. S. C. no. Geo. no.

On a question for striking out "domestic violence" and insert^{g} "insurrections–" It passed in the negative.

N. H. no. Mas. no. C^{t} no. N. J. ay. P^{a} no. Del. no. M^{d} no.
V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Dickinson moved to insert the words, "or Executive" after the words "application of its Legislature."–The occasion itself he remarked might hinder the Legislature from meeting.

On this question

N. H. ay. Mas. no. C^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} div^{d}.
V^{a} no. N. C. ay. S. C. ay. Geo. ay.

M^{r} L. Martin moved to subjoin to the last amendment the words "in the recess of the Legislature." On which question

N. H. no. Mas. no. C^{t} no. P^{a} no. Del. no. M^{d} ay. V^{a} no.
N. C. no. S. C. no. Geo. no.

On Question on the last clause as amended

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} ay. Del. no. M^{d} no.
V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Art: XIX taken up.

M^{r} Gov^{r} Morris suggested that the Legislature should be left at liberty to call a Convention, whenever they please.

The Art: was agreed to nem: con:

Art: XX. taken up.–"or affirmation" was added after "oath."

M^{r} Pinkney moved to add to the Art:–"but no religious test shall ever be required as a qualification to any office or public trust under the authority of the U. States."

M^{r} Sherman thought it unnecessary, the prevailing liberality being a sufficient security agst such tests.

M^{r} Gov^{r} Morris & Gen^{l} Pinkney approved the motion.

The motion was agreed to nem: con: and then the whole Article; N. C. only no–and M^{d} divided.

Art: XXI. taken up, viz: "The ratifications of the Conventions of —— States shall be sufficient for organizing this Constitution."

Mr. Wilson proposed to fill the blank with "seven" that being a majority of the whole number & sufficient for the commencement of the plan.

Mr. Carrol moved to postpone the article in order to take up the Report of the Committee of Eleven (see Tuesday Augst 28)–and on the question

> N. H. no. Mas. no. Ct no. N. J. ay. Pa no. Del. ay. Md ay.
> Va no. N. C. no. S. C. no. Geo. no.

Mr. Govr Morris thought the blank ought to be filled in a twofold way, so as to provide for the event of the ratifying States being contiguous which would render a smaller number sufficient, and the event of their being dispersed, which wd require a greater number for the introduction of the Government.

Mr. Sherman observed that the States being now confederated by articles which require unanimity in changes, he thought the ratification in this case of ten States at least ought to be made necessary.

Mr. Randolph was for filling the blank with "nine" that being a respectable majority of the whole, and being a number made familiar by the constitution of the existing Congress.

Mr. Wilson mentioned "eight" as preferable.

Mr. Dickinson asked whether the concurrence of Congress is to be essential to the establishment of the system, whether the refusing States in the Confederacy could be deserted–and whether Congress could concur in contravening the system under which they acted?

Mr. Madison, remarked that if the blank should be filled with "seven" "eight," or "nine," the Constitution as it stands might be put in force over the whole body of the people, tho' less than a majority of them should ratify it.

Mr. Wilson. As the Constitution stands, the States only which ratify can be bound. We must he said in this case go to the original powers of Society. The House on fire must be extinguished, without a scrupulous regard to ordinary rights.

Mr. Butler was in favor of "nine." He revolted at the idea, that one or two States should restrain the rest from consulting their safety.

Mr. Carrol moved to fill the blank with "the thirteen," unanimity being necessary to dissolve the existing confederacy which had been unanimously established.

Mr. King thought this amendt necessary, otherwise as the Constitution now stands it will operate on the whole though ratified by a part only. Adjourned.

Friday August 31ST 1787. In Convention.

Mr. King moved to add to the end of Art: XXI the words "between the said States" so as to confine the operation of the Govt to the States ratifying it.

On the question

N. H. ay. Mas. ay. Ct ay. N. J. ay. Pa ay. Md no. Virga ay.
N. C. ay. S. C. ay. Geo. ay.

Mr. Madison proposed to fill the blank in the article with "any seven or more States entitled to thirty three members at least in the House of Representatives according to the allotment made in the 3 Sect: of Art: 4." This he said would require the concurrence of a majority of both the States and the people.

Mr. Sherman doubted the propriety of authorizing less than all the States to execute the Constitution, considering the nature of the existing Confederation. Perhaps all the States may concur, and on that supposition it is needless to hold out a breach of faith.

Mr. Clymer and Mr. Carrol moved to postpone the consideration of Art: XXI in order to take up the Reports of Committees not yet acted on. On this question, the States were equally divided.

N. H. ay. Mas. no. Ct divd. N. J. no. Pa ay. Del. ay.
Md ay. Va no. N. C. no. S. C. no. G. ay.

Mr. Govr Morris moved to strike out "Conventions of the" after "ratifications" leaving the States to pursue their own modes of ratification.

Mr. Carrol mentioned the mode of altering the Constitution of Maryland pointed out therein, and that no other mode could be pursued in that State.

Mr. King thought that striking out "Conventions," as the requisite mode was equivalent to giving up the business altogether. Conventions alone, which will avoid all the obstacles from the complicated formation of the Legislatures, will succeed, and if not positively required by the plan its enemies will oppose that mode.

Mr. Govr. Morris said he meant to facilitate the adoption of the plan, by leaving the modes approved by the several State Constitutions to be followed.

Mr. Madison considered it best to require Conventions; Among other reasons, for this, that the powers given to the Genl. Govt. being taken from the State Govts. the Legislatures would be more disinclined than conventions composed in part at least of other men; and if disinclined, they could devise modes apparently promoting, but really thwarting the ratification. The difficulty in Maryland was no greater than in other States, where no mode of change was pointed out by the Constitution, and all officers were under oath to support it. The people were in fact, the fountain of all power, and by resorting to them, all difficulties were got over. They could alter constitutions as they pleased. It was a principle in the Bills of rights, that first principles might be resorted to.

Mr. McHenry said that the officers of Govt. in Maryland were under oath to support the mode of alteration prescribed by the Constitution.

Mr. Ghorum urged the expediency of "Conventions" also Mr. Pinkney, for reasons formerly urged on a discussion of this question.

Mr. L. Martin insisted on a reference to the State Legislatures. He urged the danger of commotions from a resort to the people & to first principles, in which the Governments might be on one side and the people on the other. He was apprehensive of no such consequences however in Maryland, whether the Legislature or the people should be appealed to. Both of them would be generally against the Constitution. He repeated also the peculiarity in the Maryland Constitution.

Mr. King observed that the Constitution of Massachusetts was made unalterable till the year 1790, yet this was no difficulty with him. The State

must have contemplated a recurrence to first principles before they sent deputies to this Convention.

Mr. Sherman moved to postpone art. XXI. & to take up art: XXII on which question,

N. H. no. Mas. no. Ct. ay. N. J. no. P. ay. Del. ay. Md. ay.
Va. ay. N. C. no. S. C. no. Geo. no.

On Mr. Govr. Morris's motion to strike out "Conventions of the," it was negatived.

N. H. no. Mas. no. Ct. ay. N. J. no. Pa. ay. Del. no. Md. ay.
Va. no. S. C. no. Geo. ay.

On filling the blank in Art: XXI with "thirteen" moved by Mr. Carrol & Martin, N. H. no. Mas. no. Ct. no, all except Maryland.

Mr. Sherman & Mr. Dayton moved to fill the blank with "ten."

Mr. Wilson supported the motion of Mr. Madison, requiring a majority both of the people and of States. Mr. Clymer was also in favor of it.

Col: Mason was for preserving ideas familiar to the people. Nine States had been required in all great cases under the Confederation & that number was on that account preferable.

On the question for "ten"

N. H. no. Mas. no. Ct. ay. N. J. ay. Pa. no. Del. no. Md. ay.
Va. no. N. C. no. S. C. no. Geo. ay.

On question for "nine"

N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay.
Va. no. N. C. no. S. C. no. Geo. ay.

Art: XXI. as amended was then agreed to by all the States, Maryland excepted, & Mr. Jenifer being ay.

Art. XXII taken up, to wit, "This Constitution shall be laid before the U. S. in Congs. assembled for their approbation; and it is the opinion of this Convention that it should be afterwards submitted to a Convention chosen, in each State under the recommendation of its Legislature, in order to receive the ratification of such Convention."

Mr. Govr. Morris & Mr. Pinkney moved to strike out the words "for their approbation." On this question

> N. H. ay. Mas. no. Ct. ay. N. J. ay. [47] Pa. ay. Del. ay. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. no.

[47] In the printed Journal N. Jersey–no.–Madison's Note.

Mr. Govr. Morris & Mr. Pinkney then moved to amend the art: so as to read

> "This Constitution shall be laid before the U. S. in Congress assembled; and it is the opinion of this Convention that it should afterwards be submitted to a Convention chosen in each State, in order to receive the ratification of such Convention; to which end the several Legislatures ought to provide for the calling Conventions within their respective States as speedily as circumstances will permit."

Mr. Govr. Morris said his object was to impress in stronger terms the necessity of calling Conventions in order to prevent enemies to the plan, from giving it the go by. When it first appears, with the sanction of this Convention, the people will be favorable to it. By degrees the State officers, & those interested in the State Govts. will intrigue & turn the popular current against it.

Mr. L. Martin believed Mr. Morris to be right, that after a while the people would be agst. it, but for a different reason from that alledged. He believed

they would not ratify it unless hurried into it by surprize.

M[r] Gerry enlarged on the idea of M[r] L. Martin in which he concurred, represented the system as full of vices, and dwelt on the impropriety of destroying the existing Confederation, without the unanimous consent of the parties to it.

Question on M[r] Gov[r] Morris's & M[r] Pinkney's motion

N. H. ay. Mas. ay. C[t] no. N. J. no. P[a] ay. Del. ay. M[d] no.
V[a] no. N. C. no. S. C. no. Geo. no.

M[r] Gerry moved to postpone art: XXII.

Col: Mason 2[ded] the motion, declaring that he would sooner chop off his right hand than put it to the Constitution as it now stands. He wished to see some points not yet decided brought to a decision, before being compelled to give a final opinion on this article. Should these points be improperly settled, his wish would then be to bring the whole subject before another general Convention.

M[r] Gov[r] Morris was ready for a postponement. He had long wished for another Convention, that will have the firmness to provide a vigorous Government, which we are afraid to do.

M[r] Randolph stated his idea to be, in case the final form of the Constitution should not permit him to accede to it, that the State Conventions should be at liberty to propose amendments to be submitted to another General Convention which may reject or incorporate them, as may be judged proper.

On the question for postponing

N. H. no. Mas. no. C[t] no. N. J. ay. P[a] no. Del. no. M[d] ay.
V[a] no. N. C. ay. S. C. no. Geo. no.

On the question on Art: XXII

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} no.
V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Art: XXIII being taken up, as far as the words "assigned by Congress" inclusive, was agreed to nem: con: the blank having been first filled with the word "nine" as of course.

On a motion for postponing the residue of the clause, concerning the choice of the President &c.

N. H. no. Mas. ay. C^{t} no. N. J. no. P^{a} no. Del. ay. M^{d} no.
V^{a} ay. N. C. ay. S. C. no. Geo. no.

M^{r} Gov^{r} Morris then moved to strike out the words "choose the President of the U. S. and"–this point, of choosing the President not being yet finally determined, & on this question

N. H. no. Mas. ay. C^{t} ay. N. J. ay. P^{a} ay. Del. ay. M^{d} div^{d}.
V^{a} ay. N. C. ay. S. C. ay. [48] Geo. ay.

[48] In printed Journal–S.–C.–no.–Madison's Note.

Art: XXIII as amended was then agreed to nem: con:

The Report of the Grand Committee of eleven made by M^{r} Sherman was then taken up (see Aug: 28).

On the question to agree to the following clause, to be inserted after sect. 4. art: VII. "nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another." Agreed to nem: con:

On the clause "or oblige vessels bound to or from any State to enter clear or pay duties in another"

M^{r} Madison thought the restriction w^{d} be inconvenient, as in the River Delaware, if a vessel cannot be required to make entry below the

jurisdiction of Pennsylvania.

Mr. Fitzimmons admitted that it might be inconvenient, but thought it would be a greater inconvenience to require vessels bound to Philada. to enter below the jurisdiction of the State.

Mr. Ghorum & Mr. Langdon, contended that the Govt. would be so fettered by this clause, as to defeat the good purpose of the plan. They mentioned the situation of the trade of Mas. & N. Hampshire, the case of Sandy Hook which is in the State of N. Jersey, but where precautions agst. smuggling into N. York, ought to be established by the Genl. Government.

Mr. McHenry said the clause would not screen a vessel from being obliged to take an officer on board as a security for due entry &c.

Mr. Carrol was anxious that the clause should be agreed to. He assured the House, that this was a tender point in Maryland.

Mr. Jennifer urged the necessity of the clause in the same point of view.

On the question for agreeing to it

N. H. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay.
N. C. ay. S. C. no. Geo. ay.

The word "tonnage" was struck out, nem: con: as comprehended in "duties."

On question On the clause of the Report "and all duties, imposts & excises, laid by the Legislature shall be uniform throughout the U. S." It was agreed to nem: con: [49]

[49] In printed Journal N. H. and S. C. entered as in the negative.–Madison's Note.

On motion of Mr. Sherman it was agreed to refer such parts of the Constitution as have been postponed, and such parts of Reports as have not

been acted on, to a Committee of a member from each State; the Committee appointed by ballot, being, Mr. Gilman, Mr. King, Mr. Sherman, Mr. Brearly, Mr. Govr. Morris, Mr. Dickinson, Mr. Carrol, Mr. Madison, Mr. Williamson, Mr. Butler, & Mr. Baldwin.

The House adjourned.

SATURDAY SEP^R 1. 1787 IN CONVENTION.

M^r. Brearley from the Comm^e of eleven to which were referred yesterday the postponed part of the Constitution, & parts of Reports not acted upon, made the following partial report.

That in lieu of the 9^th Sect: of Art: 6. the words following be inserted viz "The members of each House shall be ineligible to any Civil office under the authority of the U. S. during the time for which they shall respectively be elected, and no person holding an office under the U. S. shall be a member of either House during his continuance in office."

M^r. Rutlidge from the Committee to whom were referred sundry propositions (see Aug: 29), together with art: XVI reported that the following additions be made to the Report–viz.

After the word "States" in the last line on the Margin of the 3^d page (see the printed Report),–add "to establish uniform laws on the subject of Bankruptcies."

And insert the following as Art: XVI viz

> "Full faith and credit ought to be given in each State to the public acts, records, and Judicial proceedings of every other State, and the Legislature shall, by general laws prescribe the manner in which such acts, Records, & proceedings shall be proved, and the effect which Judgments obtained in one State, shall have in another."

After receiving these reports

The House adjourned to 10OC on Monday next.

Monday Sep^R 3 1787. In Convention

M^r. Gov^r. Morris moved to amend the Report concerning the respect to be paid to Acts Records &c. of one State, in other States (see Sep^r. 1.) by striking out "judgments obtained in one State shall have in another" and to insert the word "thereof" after the word "effect."

Col: Mason favored the motion, particularly if the "effect" was to be restrained to judgments & Judicial proceedings.

M^r. Wilson remarked, that if the Legislature were not allowed to *declare the effect* the provision would amount to nothing more than what now takes place among all Independent Nations.

Doc^r. Johnson thought the amendment as worded would authorize the Gen^l. Legislature to declare the effect of Legislative acts of one State in another State.

M^r. Randolph considered it as strengthening the general objection ag^st the plan, that its definition of the powers of the Government was so loose as to give it opportunities of usurping all the State powers. He was for not going farther than the Report, which enables the Legislature to provide for the effect of *Judgments*.

On the amendment, as moved by M^r. Gov^r. Morris

> Mas. ay. C^t. ay. N. J. ay. P^a. ay. M^d. no. V^a. no. N. C. ay.
> S. C. ay. Geo. no.

On motion of M^r. Madison, "ought to" were struck out, and "shall" inserted; and "shall" between "Legislature" & "by general laws" struck out, and "may" inserted, nem: con:

On the question to agree to the report as amended viz "Full faith & credit shall be given in each State to the public acts, records & judicial

proceedings of every other State, and the Legislature may by general laws prescribe the manner in which such acts records & proceedings shall be proved, and the effect thereof." Agreed to with[t] a count of Sts.

The clause in the Report "To establish uniform laws on the subject of Bankruptcies" being taken up.

M[r] Sherman observed that Bankruptcies were in some cases punishable with death by the laws of England, & He did not chuse to grant a power by which that might be done here.

M[r] Gov[r] Morris said this was an extensive & delicate subject. He would agree to it because he saw no danger of abuse of the power by the Legislature of the U. S.

On the question to agree to the clause

N. H. ay. Mas. ay. C[t] no. N. J. ay. P[a] ay. M[d] ay. V[a] ay.
N. C. ay. S. C. ay. Geo. ay.

M[r] Pinkney moved to postpone the Report of the Committee of Eleven (see Sep[r] 1.) in order to take up the following,

"The members of each House shall be incapable of holding any office under the U. S. for which they or any other for their benefit, receive any salary, fees or emoluments of any kind, and the acceptance of such office shall vacate their seats respectively." He was strenuously opposed to an ineligibility of members to office, and therefore wished to restrain the proposition to a mere incompatibility. He considered the eligibility of members of the Legislature to the honourable offices of Government, as resembling the policy of the Romans, in making the temple of virtue the road to the temple of fame.

On this question

N. H. no. Mas. no. C[t] no. N. J. no. P[a] ay. M[d] no. V[a] no.
N. C. ay. S. C. no. Geo. no.

M^r^ King moved to insert the word "created" before the word "during" in the Report of the Committee. This he said would exclude the members of the first Legislature under the Constitution, as most of the offices w^d^ then be created.

M^r^ Williamson 2^ded^ the motion. He did not see why members of the Legislature should be ineligible to *vacancies* happening during the term of their election.

M^r^ Sherman was for entirely incapacitating members of the Legislature. He thought their eligibility to offices would give too much influence to the Executive. He said the incapacity ought at least to be extended to cases where salaries should be *increased*, as well as *created*, during the term of the member. He mentioned also the expedient by which the restriction could be evaded to wit: an existing officer might be translated to an office created, and a member of the Legislature be then put into the office vacated.

M^r^ Gov^r^ Morris contended that the eligibility of members to office w^d^ lessen the influence of the Executive. If they cannot be appointed themselves, the Executive will appoint their relations & friends, retaining the service & votes of the members for his purposes in the Legislature. Whereas the appointment of the members deprives him of such an advantage.

M^r^ Gerry, thought the eligibility of members would have the effect of opening batteries ag^st^ good officers, in order to drive them out & make way for members of the Legislature.

M^r^ Gorham was in favor of the amendment. Without it we go further than has been done in any of the States, or indeed any other Country. The experience of the State Governments where there was no such ineligibility, proved that it was not necessary; on the contrary that the eligibility was among the inducements for fit men to enter into the Legislative service.

M^r^ Randolph was inflexibly fixed against inviting men into the Legislature by the prospect of being appointed to offices.

Mr. Baldwin remarked that the example of the States was not applicable. The Legislatures there are so numerous that an exclusion of their members would not leave proper men for offices. The case would be otherwise in the General Government.

Col: Mason. Instead of excluding merit, the ineligibility will keep out corruption, by excluding office-hunters.

Mr. Wilson considered the exclusion of members of the Legislature as increasing the influence of the Executive as observed by Mr. Govr. Morris at the same time that it would diminish, the general energy of the Government. He said that the legal disqualification for office would be odious to those who did not wish for office, but did not wish either to be marked by so degrading a distinction.

Mr. Pinkney. The first Legislature will be composed of the ablest men to be found. The States will select such to put the Government into operation. Should the Report of the Committee or even the amendment be agreed to, The great offices, even those of the Judiciary Department which are to continue for life, must be filled while those most capable of filling them will be under a disqualification.

On the question on Mr. King's motion

N. H. ay. Mas. ay. Ct. no. N. J. no. Pa. ay. Md. no. Va. ay.
N. C. ay. S. C. no. Geo. no.

The amendment being thus lost by the equal division of the States, Mr. Williamson moved to insert the words "created or the emoluments whereof shall have been increased" before the word "during" in the Report of the Committee.

Mr. King 2ded the motion, & on the question

N. H. ay. Mas. ay. Ct. no. N. J. no. Pa. ay. Md. no. Va. ay.
N. C. ay. S. C. no. Geo. divided.

The last clause rendering a Seat in the Legislature & an office incompatible was agreed to nem. con:

The Report as amended & agreed to is as follows.

"The members of each House shall be ineligible to any Civil office under the authority of the U. States, created, or the emoluments whereof shall have been increased during the time for which they shall respectively be elected–And no person holding any office under the U. S. shall be a member of either House during his continuance in office."

Adjourned.

TUESDAY SEP^R 4. 1787. IN CONVENTION

M^r. Brearly from the Committee of Eleven made a further partial Report as follows

"The Committee of Eleven to whom sundry resolutions &c. were referred on the 31^st of August, report that in their opinion the following additions and alterations should be made to the Report before the Convention, viz. [50]

[50] This is an exact copy. The variations in that in the printed Journal are occasioned by its incorporation of subsequent amendments. This remark is applicable to other cases.–Madison's Note. The report was copied by the Secretary of the Convention, William Jackson, into the Journal, after it had been read. Afterwards two sentences were altered by interlining with lead pencil. The alterations (indicated by italics) are as follows: Paragraph 4, "The person having the greatest number of votes ... if such number be a majority of *the whole number* of the electors *appointed*." Paragraph 7, "But no treaty, *except treaties of peace*, shall be made," etc. The changes in paragraph 4 are unimportant: the change in paragraph 7 was an amendment offered by Madison September 7th, and adopted.–Const. MSS.—*Journal of Federal Convention*, p. 323, *et seq.*

(1.) The first clause of sect: 1. art. 7. to read as follows–'The Legislature shall have power to lay and collect taxes duties imposts & excises, to pay the debts and provide for the common defence & general welfare of the U. S.'

(2.) At the end of the 2^d clause of sect. 1. art. 7. add 'and with the Indian tribes.'

(3.) In the place of the 9^th art. Sect. 1. to be inserted 'The Senate of the U. S. shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present.'

(4.) After the word 'Excellency' in sect. 1. art. 10. to be inserted. 'He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected in the following manner, viz. Each State shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify and transmit sealed to the Seat of the Gen[l] Government, directed to the President of the Senate–The President of the Senate shall in that House open all the certificates, and the votes shall be then & there counted. The Person having the greatest number of votes shall be the President, if such number be a majority of that of the electors; and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President: but if no person have a majority, then from the five highest on the list, the Senate shall choose by ballot the President, and in every case after the choice of the President, the person having the greatest number of votes shall be vice-president: but if there should remain two or more who have equal votes, the Senate shall choose from them the Vice-President. The Legislature may determine the time of choosing and assembling the Electors, and the manner of certifying and transmitting their votes.'

(5) 'Sect. 2. No person except a natural born citizen or a Citizen of the U. S. at the time of the adoption of this Constitution shall be eligible to the office of President; nor shall any person be elected to that office, who shall be under the age of thirty five years, and who has not been in the whole, at least fourteen years a resident within the U. S.'

(6) 'Sect. 3. The vice-president shall be ex officio President of the Senate, except when they sit to try the impeachment of the President, in which case the Chief Justice shall preside, and excepting also when

he shall exercise the powers and duties of President, in which case & in case of his absence, the Senate shall chuse a President pro tempore– The vice President when acting as President of the Senate shall not have a vote unless the House be equally divided.'

(7) 'Sect. 4. The President by and with the advice and Consent of the Senate, shall have power to make Treaties; and he shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors, and other public ministers, Judges of the Supreme Court, and all other Officers of the U. S. whose appointments are not otherwise herein provided for. But no Treaty shall be made without the consent of two thirds of the members present.'

(8) After the words–'into the service of the U. S.' in sect. 2. art: 10. add 'and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices.'

The latter part of Sect. 2. art: 10. to read as follows.

(9) 'He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for Treason, or bribery, and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office, the vice-president shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.'"

The (1st) clause of the Report was agreed to, nem. con.

The (2) clause was also agreed to nem: con:

The (3) clause was postponed in order to decide previously on the mode of electing the President.

The (4) clause was accordingly taken up.

Mr. Gorham disapproved of making the next highest after the President, the vice-President, without referring the decision to the Senate in case the

next highest should have less than a majority of votes. As the regulation stands a very obscure man with very few votes may arrive at that appointment.

Mr. Sherman said the object of this clause of the report of the Committee was to get rid of the ineligibility, which was attached to the mode of election by the Legislature, & to render the Executive independent of the Legislature. As the choice of the President was to be made out of the five highest, obscure characters were sufficiently guarded against in that case; and he had no objection to requiring the vice-President to be chosen in like manner, where the choice was not decided by a majority in the first instance.

Mr. Madison was apprehensive that by requiring both the President & vice President to be chosen out of the five highest candidates, the attention of the electors would be turned too much to making candidates instead of giving their votes in order to a definitive choice. Should this turn be given to the business, The election would, in fact be consigned to the Senate altogether. It would have the effect at the same time, he observed, of giving the nomination of the candidates to the largest States.

Mr. Govr. Morris concurred in, & enforced the remarks of Mr. Madison.

Mr. Randolph & Mr. Pinkney wished for a particular explanation & discussion of the reasons for changing the mode of electing the Executive.

Mr. Govr. Morris said he would give the reasons of the Committee and his own. The 1st was the danger of intrigue & faction if the appointmt. should be made by the Legislature. 2. The inconveniency of an ineligibility required by that mode in order to lessen its evils. 3. The difficulty of establishing a Court of Impeachments, other than the Senate which would not be so proper for the trial nor the other branch for the impeachment of the President, if appointed by the Legislature. 4. Nobody had appeared to be satisfied with an appointment by the Legislature. 5. Many were anxious even for an immediate choice by the people. 6. The indispensable necessity of making the Executive independent of the Legislature.–As the Electors would vote at the same time throughout the U. S. and at so great a distance from each other, the great evil of cabal was avoided. It would be impossible also to

corrupt them. A conclusive reason for making the Senate instead of the Supreme Court the Judge of impeachments, was that the latter was to try the President after the trial of the impeachment.

Col: Mason confessed that the plan of the Committee had removed some capital objections, particularly the danger of cabal and corruption. It was liable however to this strong objection, that nineteen times in twenty the President would be chosen by the Senate, an improper body for the purpose.

Mr. Butler thought the mode not free from objections, but much more so than an election by the Legislature, where as in elective monarchies, cabal faction & violence would be sure to prevail.

Mr. Pinkney stated as objections to the mode 1. that it threw the whole appointment in fact into the hands of the Senate. 2. The Electors will be strangers to the several candidates and of course unable to decide on their comparative merits. 3. It makes the Executive reeligible which will endanger the public liberty. 4. It makes the same body of men which will in fact elect the President his Judges in case of an impeachment.

Mr. Williamson had great doubts whether the advantage of reeligibility would balance the objection to such a dependence of the President on the Senate for his reappointment. He thought at least the Senate ought to be restrained to the *two* highest on the list.

Mr. Govr. Morris said the principal advantage aimed at was that of taking away the opportunity for cabal. The President may be made if thought necessary ineligible on this as well as on any other mode of election. Other inconveniences may be no less redressed on this plan than any other.

Mr. Baldwin thought the plan not so objectionable when well considered, as at first view: The increasing intercourse among the people of the States, would render important characters less & less unknown; and the Senate would consequently be less & less likely to have the eventual appointment thrown into their hands.

Mr. Wilson. This subject has greatly divided the House, and will also divide the people out of doors. It is in truth the most difficult of all on

which we have had to decide. He had never made up an opinion on it entirely to his own satisfaction. He thought the plan on the whole a valuable improvement on the former. It gets rid of one great evil, that of cabal & corruption; & Continental Characters will multiply as we more & more coalesce, so as to enable the electors in every part of the Union to know & judge of them. It clears the way also for a discussion of the question of re-eligibility on its own merits which the former mode of election seemed to forbid. He thought it might be better however to refer the eventual appointment to the Legislature than to the Senate, and to confine it to a smaller number than five of the Candidates. The eventual election by the Legislature w^{d} not open cabal anew, as it would be restrained to certain designated objects of choice, and as these must have had the previous sanction of a number of the States; and if the election be made as it ought as soon as the votes of the Electors are opened & it is known that no one has a majority of the whole there can be little danger of corruption. Another reason for preferring the Legislature to the Senate in this business was that the House of Rep^{s} will be so often changed as to be free from the influence & faction to which the permanence of the Senate may subject that branch.

M^{r} Randolph preferred the former mode of constituting the Executive, but if the change was to be made, he wished to know why the eventual election was referred to the *Senate* and not to the *Legislature*? He saw no necessity for this and many objections to it. He was apprehensive also that the advantage of the eventual appointment would fall into the hands of the States near the seat of Government.

M^{r} Gov^{r} Morris said the *Senate* was preferred because fewer could then say to the President, you owe your appointment to us. He thought the President would not depend so much on the Senate for his reappointment as on his general good conduct.

The further consideration of the Report was postponed that each member might take a copy of the remainder of it.

The following motion was referred to the Committee of Eleven–to wit,–"To prepare & report a plan for defraying the expences of the Convention."

[51]Mr. Pinkney moved a clause declaring "that each House should be judge of the privilege of its own members." Mr. Govr. Morris 2ded the motion.

[51] This motion not contained in the printed Journal–Madison's Note.

Mr. Randolph & Mr. Madison expressed doubts as to the propriety of giving such a power, & wished for a postponement.

Mr. Govr. Morris thought it so plain a case that no postponement could be necessary.

Mr. Wilson thought the power involved, and the express insertion of it needless. It might beget doubts as to the power of other public bodies, as Courts &c. Every Court is the judge of its own privileges.

Mr. Madison distinguished between the power of Judging of privileges previously & duly established, and the effect of the motion which would give a discretion to each House as to the extent of its own privileges. He suggested that it would be better to make provision for ascertaining by *law*, the privileges of each House, than to allow each House to decide for itself. He suggested also the necessity of considering what privileges ought to be allowed to the Executive.

Adjourned.

Wednesday Sep^R 5. 1787. In Convention.

M^r. Brearley from the Committee of Eleven made a farther report as follows,

(1) To add to the clause "to declare war" the words "and grant letters of marque and reprisal."

(2) To add to the clause "to raise and support armies" the words "but no appropriation of money to that use shall be for a longer term than two years."

(3) Instead of sect: 12. art 6. say–"All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate: no money shall be drawn from the Treasury, but in consequence of appropriations made by law."

(4) Immediately before the last clause of sect. 1. art. 7. insert "To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by Cession of particular States and the acceptance of the Legislature become the Seat of the Government of the U. S. and to exercise like authority over all places purchased for the erection of Forts, Magazines, Arsenals, Dock Yards, and other needful buildings."

(5) "To promote the progress of Science and useful arts by securing for limited times to authors & inventors, the exclusive right to their respective writings and discoveries."

This report being taken up,–The (1) clause was agreed to nem: con:

To the (2) clause M^r. Gerry objected that it admitted of appropriations to an army, for two years instead of one, for which he could not conceive a reason, that it implied that there was to be a standing army which he inveighed against as dangerous to liberty, as unnecessary even for so great

an extent of Country as this, and if necessary, some restriction on the number & duration ought to be provided: Nor was this a proper time for such an innovation. The people would not bear it.

Mr. Sherman remarked that the appropriations were permitted only, not required to be for two years. As the Legislature is to be biennially elected, it would be inconvenient to require appropriations to be for one year, as there might be no Session within the time necessary to renew them. He should himself he said like a reasonable restriction on the number and continuance of an army in time of peace.

The (2) clause was then agreed to nem: con:

The (3) clause, Mr. Govr. Morris moved to postpone. It had been agreed to in the Committee on the ground of compromise, and he should feel himself at liberty to dissent to it, if on the whole he should not be satisfied with certain other parts to be settled.— Mr. Pinkney 2ded the motion.

Mr. Sherman was for giving immediate ease to those who looked on this clause as of great moment, and for trusting to their concurrence in other proper measures.

On the question for postponing

N. H. ay. Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay.
Va. no. N. C. ay. S. C. ay. Geo. ay.

So much of the (4) clause as related to the seat of Government was agreed to nem: con:

On the residue to wit, "to exercise like authority over all places purchased for forts" &c.

Mr. Gerry contended that this power might be made use of to enslave any particular State by buying up its territory, and that the strongholds proposed would be a means of awing the State into an undue obedience to the Genl. Government.

Mr. King thought himself the provision unnecessary, the power being already involved: but would move to insert after the word "purchased" the words "by the consent of the Legislature of the State." This would certainly make the power safe.

Mr. Govr. Morris 2ded the motion, which was agreed to nem: con: as was then the residue of the clause as amended.

The (5) clause was agreed to nem: con:

The following Resolution & order being reported from the Committee of eleven, to wit,

> "Resolved that the U. S. in Congress be requested to allow and cause to be paid to the Secretary and other officers of this Convention such sums in proportion to their respective times of service, as are allowed to the Secretary & similar officers of Congress."
>
> "Ordered that the Secretary make out & transmit to the Treasury office of the U. S. an account for the said services & for the incidental expences of this Convention."

The resolution & order were separately agreed to nem: con:

Mr. Gerry gave notice that he should move to reconsider articles XIX. XX. XXI. XXII.

Mr. Williamson gave like notice as to the article fixing the number of Representatives, which he thought too small. He wished also to allow Rho: Island more than one, as due to her probable number of people, and as proper to stifle any pretext arising from her absence on the occasion.

The Report made yesterday as to the appointment of the Executive being then taken up. Mr. Pinkney renewed his opposition to the mode, arguing 1. that the electors will not have sufficient knowledge of the fittest men, & will be swayed by an attachment to the eminent men of their respective States. Hence 2dly the dispersion of the votes would leave the appointment with the Senate, and as the President's reappointment will thus depend on

the Senate he will be the mere creature of that body. 3. He will combine with the Senate agst the House of Representatives. 4. This change in the mode of election was meant to get rid of the ineligibility of the President a second time, whereby he will become fixed for life under the auspices of the Senate.

M^{r} Gerry did not object to this plan of constituting the Executive in itself, but should be governed in his final vote by the powers that may be given to the President.

M^{r} Rutlidge was much opposed to the plan reported by the Committee. It would throw the whole power into the Senate. He was also against a re-eligibility. He moved to postpone the Report under consideration & take up the original plan of appointment by the Legislature, to wit. "He shall be elected by joint ballot by the Legislature to which election a majority of the votes of the members present shall be required: He shall hold his office during the term of seven years; but shall not be elected a second time."

On this motion to postpone

> N. H. div^{d}. Mas. no. C^{t} no. N. J. no. P^{a} no. Del. no.
> M^{d} no. V^{a} no. N. C. ay. S. C. ay. Geo. no.

Col. Mason admitted that there were objections to an appointment by the Legislature as originally planned. He had not yet made up his mind, but would state his objections to the mode proposed by the Committee. 1. It puts the appointment in fact into the hands of the Senate; as it will rarely happen that a majority of the whole votes will fall on any one candidate: and as the existing President will always be one of the 5 highest, his reappointment will of course depend on the Senate. 2. Considering the powers of the President & those of the Senate, if a coalition should be established between these two branches, they will be able to subvert the Constitution–The great objection with him would be removed by depriving the Senate of the eventual election. He accordingly moved to strike out the words "if such number be a majority of that of the electors."

M^{r} Williamson 2^{ded} the motion. He could not agree to the clause without some such modification. He preferred making the highest tho' not having a

majority of the votes, President, to a reference of the matter to the Senate. Referring the appointment to the Senate lays a certain foundation for corruption & aristocracy.

Mr. Govr. Morris thought the point of less consequence than it was supposed on both sides. It is probable that a majority of the votes will fall on the same man. As each Elector is to give two votes, more than 1/4 will give a majority. Besides as one vote is to be given to a man out of the State, and as this vote will not be thrown away, 1/2 the votes will fall on characters eminent & generally known. Again if the President shall have given satisfaction, the votes will turn on him of course, and a majority of them will reappoint him, without resort to the Senate: If he should be disliked, all disliking him, would take care to unite their votes so as to ensure his being supplanted.

Col. Mason those who think there is no danger of there not being a majority for the same person in the first instance, ought to give up the point to those who think otherwise.

Mr. Sherman reminded the opponents of the new mode proposed that if the small States had the advantage in the Senate's deciding among the five highest candidates the large States would have in fact the nomination of these candidates.

On the motion of Col: Mason

> N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. ay.
> [52] Va. no. N. C. ay. S. C. no. Geo. no.

[52] In printed Journal Maryland–no–Madison's Note.

Mr. Wilson moved to strike out "Senate" and insert the word "Legislature."

Mr. Madison considered it as a primary object to render an eventual resort to any part of the Legislature improbable. He was apprehensive that the proposed alteration would turn the attention of the large States too much

to the appointment of candidates, instead of aiming at an effectual appointment of the officer, as the large States would predominate in the Legislature which would have the final choice out of the candidates. Whereas if the Senate in which the small States predominate should have the final choice, the concerted effort of the large States would be to make the appointment in the first instance conclusive.

Mr. Randolph. We have in some revolutions of this plan made a bold stroke for Monarchy. We are now doing the same for an aristocracy. He dwelt on the tendency of such an influence in the Senate over the election of the President in addition to its other powers, to convert that body into a real & dangerous Aristocracy.

Mr. Dickinson was in favor of giving the eventual election to the Legislature, instead of the Senate. It was too much influence to be superadded to that body.

On the question moved by Mr. Wilson

> N. H. divd. Mas. no. Ct no. N. J. no. Pa ay. Del. no. Md no. Va ay. N. C. no. S. C. ay. Geo. no.

Mr. Madison & Mr. Williamson moved to strike out the word "majority" and insert "one-third" so that the eventual power might not be exercised if less than a majority, but not less than 1/3 of the Electors should vote for the same person.

Mr. Gerry objected that this would put it in the power of three or four States to put in whom they pleased.

Mr. Williamson. There are seven States which do not contain one third of the people. If the Senate are to appoint, less than one sixth of the people will have the power.

On the question

> N. H. no. Mas. no. Ct no. N. J. no. Pa no. Del. no. Md no. Va ay. N. C. ay. S. C. no. Geo. no.

M[r] Gerry suggested that the eventual election should be made by six Senators and seven Representatives chosen by joint ballot of both Houses.

M[r] King observed that the influence of the Small States in the Senate was somewhat balanced by the influence of the large States in bringing forward the candidates, [53] and also by the Concurrence of the small States in the Committee in the clause vesting the exclusive origination of Money bills in the House of Representatives.

[53] This explains the compromise mentioned above by M[r] Gov[r] Morris. Col. Mason, M[r] Gerry & other members from large States set great value on this privilege of originating money bills. Of this the members from the small States, with some from the large States who wished a high mounted Gov[t] endeavored to avail themselves, by making that privilege, the price of arrangements in the constitution favorable to the small States, and to the elevation of the Government.–Madison's Note.

Col: Mason moved to strike out the word "five" and insert the word "three" as the highest candidates for the Senate to choose out of.

M[r] Gerry 2[ded] the motion.

M[r] Sherman would sooner give up the plan. He would prefer seven or thirteen.

On the question moved by Col: Mason & M[r] Gerry

N. H. no. Mas. no. C[t] no. N. J. no. P[a] no. Delaware [and] M[d] no. V[a] ay. N. C. ay. S. C. no. Geo. no.

M[r] Spaight and M[r] Rutlidge moved to strike out "five" and insert "thirteen"–to which all the States disagreed–except N. C. & S. C.

M[r] Madison & M[r] Williamson moved to insert after "Electors" the words "who shall have balloted" so that the non voting electors not being counted might not increase the number necessary as a majority of the whole to decide the choice without the agency of the Senate.

On this question

N. H. no. Mas. no. C^{t} no. N. J. no. P^{a} ay. Del. no. M^{d} ay. V^{a} ay. N. C. ay. S. C. no. Geo. no.

M^{r} Dickinson moved, in order to remove ambiguity from the intention of the clause as explained by the vote, to add, after the words "if such number be a majority of the whole number of the Electors" the word "appointed."

On this motion

N. H. ay. Mas. ay. Con. ay. N. J. ay. P^{a} ay. Delaware [and] M^{d} ay. V^{a} no. N. C. no. S. C. ay. Geo. ay.

Col: Mason. As the mode of appointment is now regulated, he could not forbear expressing his opinion that it is utterly inadmissible. He would prefer the Government of Prussia to one which will put all power into the hands of seven or eight men, and fix an Aristocracy worse than absolute monarchy.

The words "and of their giving their votes" being inserted on motion for that purpose, after the words "The Legislature may determine the time of chusing and assembling the Electors."

The House adjourned.

THURSDAY SEP^R 6. 1787. IN CONVENTION

M^r. King and M^r. Gerry moved to insert in the (5) [54] clause of the Report (see Sep^r. 4) after the words "may be entitled in the Legislature" the words following–"But no person shall be appointed an elector who is a member of the Legislature of the U. S. or who holds any office of profit or trust under the U. S." which passed nem: con:

[54] This is a mistake and should be fourth clause. See p. 298.

M^r. Gerry proposed as the President was to be elected by the Senate out of the five highest candidates, that if he should not at the end of his term be re-elected by a majority of the Electors, and no other candidate should have a majority, the eventual election should be made by the Legislature. This he said would relieve the President from his particular dependence on the Senate for his continuance in office.

M^r. King liked the idea, as calculated to satisfy particular members and promote unanimity & as likely to operate but seldom.

M^r. Read opposed it, remarking that if individual members were to be indulged, alterations would be necessary to satisfy most of them.

M^r. Williamson espoused it as a reasonable precaution against the undue influence of the Senate.

M^r. Sherman liked the arrangement as it stood, though he should not be averse to some amendments. He thought he said that if the Legislature were to have the eventual appointment instead of the Senate, it ought to vote in the case by States, in favor of the small States, as the large States would have so great an advantage in nominating the candidates.

M^r. Gov^r. Morris thought favorably of M^r. Gerry's proposition. It would free the President from being tempted in naming to offices, to Conform to

the will of the Senate, & thereby virtually give the appointments to office, to the Senate.

Mr. Wilson said that he had weighed carefully the report of the Committee for remodelling the constitution of the Executive; and on combining it with other parts of the plan, he was obliged to consider the whole as having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate. They will have in fact, the appointment of the President, and through his dependence on them, the virtual appointment to offices; among others the Officers of the Judiciary Department. They are to make Treaties; and they are to try all impeachments. In allowing them thus to make the Executive & Judiciary appointments, to be the Court of impeachments, and to make Treaties which are to be laws of the land, the Legislative, Executive & Judiciary powers are all blended in one branch of the Government. The power of making Treaties involves the case of subsidies, and here as an additional evil, foreign influence is to be dreaded. According to the plan as it now stands, the President will not be the man of the people as he ought to be, but the minion of the Senate. He cannot even appoint a tide-waiter without the Senate. He had always thought the Senate too numerous a body for making appointments to office. The Senate will moreover in all probability be in constant Session. They will have high salaries. And with all those powers, and the President in their interest, they will depress the other branch of the Legislature, and aggrandize themselves in proportion. Add to all this, that the Senate sitting in conclave, can by holding up to their respective States various and improbable candidates, contrive so to scatter their votes, as to bring the appointment of the President ultimately before themselves. Upon the whole, he thought the new mode of appointing the President, with some amendments, a valuable improvement; but he could never agree to purchase it at the price of the ensuing parts of the Report, nor befriend a system of which they make a part.

Mr. Govr. Morris expressed his wonder at the observations of Mr. Wilson so far as they preferred the plan in the printed Report to the new modification of it before the House, and entered into a comparative view of the two, with an eye to the nature of Mr. Wilsons objections to the last. By the first the Senate he observed had a voice in appointing the President out

of all the Citizens of the U. S: by this they were limited to five candidates previously nominated to them, with a probability of being barred altogether by the successful ballot of the Electors. Here surely was no increase of power. They are now to appoint Judges nominated to them by the President. Before they had the appointment without any agency whatever of the President. Here again was surely no additional power. If they are to make Treaties as the plan now stands, the power was the same in the printed plan. If they are to try impeachments, the Judges must have been triable by them before. Wherein then lay the dangerous tendency of the innovations to establish an aristocracy in the Senate? As to the appointment of officers, the weight of sentiment in the House, was opposed to the exercise of it by the President alone; though it was not the case with himself. If the Senate would act as was suspected, in misleading the States into a fallacious disposition of their votes for a President, they would, if the appointment were withdrawn wholly from them, make such representations in their several States where they have influence, as would favor the object of their partiality.

M^{r} Williamson, replying to M^{r} Morris, observed that the aristocratic complexion proceeds from the change in the mode of appointing the President which makes him dependent on the Senate.

M^{r} Clymer said that the aristocratic part to which he could never accede was that in the printed plan, which gave the Senate the power of appointing to offices.

M^{r} Hamilton said that he had been restrained from entering into the discussions by his dislike of the Scheme of Gov^{t} in General; but as he meant to support the plan to be recommended, as better than nothing, he wished in this place to offer a few remarks. He liked the new modification, on the whole, better than that in the printed Report. In this the President was a Monster elected for seven years, and ineligible afterwards; having great powers, in appointments to office, & continually tempted by this constitutional disqualification to abuse them in order to subvert the Government. Although he should be made re-eligible, still if appointed by the Legislature, he would be tempted to make use of corrupt influence to be continued in office. It seemed peculiarly desirable therefore that some other

mode of election should be devised. Considering the different views of different States, & the different districts Northern Middle & Southern, he concurred with those who thought that the votes would not be concentered, and that the appointment would consequently in the present mode devolve on the Senate. The nomination to offices will give great weight to the President. Here then is a mutual connexion & influence, that will perpetuate the President, and aggrandize both him & the Senate. What is to be the remedy? He saw none better than to let the highest number of ballots, whether a majority or not, appoint the President. What was the objection to this? Merely that too small a number might appoint. But as the plan stands, the Senate may take the candidate having the smallest number of votes, and make him President.

Mr. Spaight & Mr. Williamson moved to insert "seven" instead of "four" years for the term of the President [55]—

[55] An ineligibility wd. have followed (tho' it would seem from the vote not in the opinion of all) this prolongation of the term.–Madison's Note.

On this motion

N. H. ay. Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. no.
Va. ay. N. C. ay. S. C. no. Geo. no.

Mr. Spaight & Mr. Williamson, then moved to insert "six," instead of "four". On which motion

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. no.
Va. no. N. C. ay. S. C. ay. Geo. no.

On the term "four" all the States were ay, except N. Carolina, no.

On the question (Clause 4. in the Report) for appointing President by electors–down to the words,–"entitled in the Legislature" inclusive

N. H. ay. Mas: ay. Cont. ay. N. J. ay. Pa. ay. Del. ay.
Md. ay. Va. ay. N. C. no. S. C. no. Geo.–ay.

It was moved that the Electors meet at the seat of the Gen^{l} Gov^{t} which passed in the Negative N. C. only being ay.

It was moved to insert the words "under the seal of the State" after the word "transmit" in the 4th. clause of the Report which was disagreed to; as was another motion to insert the words "and who shall have given their votes" after the word "appointed" in the 4th Clause of the Report as added yesterday on motion of M^{r} Dickinson.

On several motions, the words "in presence of the Senate and House of Representatives" were inserted after the word "counted" and the word "immediately" before the word "choose;" and the words "of the Electors" after the word "votes."

M^{r} Spaight said if the election by Electors is to be crammed down, he would prefer their meeting altogether and deciding finally without any reference to the Senate and moved "that the Electors meet at the seat of the General Government."

M^{r} Williamson 2^{ded} the motion, on which all the States were in the negative except N: Carolina.

On motion the words "But the election shall be on the same day throughout the U. S." were added after the words "transmitting their votes"

N. H. ay. Mas. no. C^{t} ay. N. J. no. P^{a} ay. Del. no. M^{d} ay.
V^{a} ay. N. C. ay. S. C. ay. Geo.–ay.

On a question on the sentence in clause (4) "if such number be a majority of that of the Electors appointed"

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} no. Del. ay. M^{d} ay.
V^{a} no. N.C. no. S. C. ay. Geo. ay.

On a question on the clause referring the eventual appointment of the President to the Senate

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} ay. Del. ay. V^{a} ay.
N. C. no. Here the call ceased.

M^{r} Madison made a motion requiring 2/3 at least of the Senate to be present at the choice of a President. M^{r} Pinkney 2^{ded} the motion.

M^{r} Gorham thought it a wrong principle to require more than a majority in any case. In the present case it might prevent for a long time any choice of a President. On the question moved by M^{r} M. and M^{r} P.

N. H. ay. Mas. abs^{t}. C^{t} no. N. J. no. P^{a} no. Del. no.
M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Williamson suggested as better than an eventual choice by the Senate, that this choice should be made by the Legislature, voting by *States* and not *per capita*.

M^{r} Sherman suggested the "House of Rep^{s}" as preferable to the Legislature, and moved accordingly,

To strike out the words "The Senate shall immediately choose &c." and insert "The House of Representatives shall immediately choose by ballot one of them for President, the members from each State having one vote."

Col: Mason liked the latter mode best as lessening the aristocratic influence of the Senate.

On the motion of M^{r} Sherman

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} ay. Del. no. M^{d} ay.
V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Gov^{r} Morris suggested the idea of providing that in all cases, the President in office, should not be one of the five Candidates; but be only re-eligible in case a majority of the electors should vote for him. (This was

another expedient for rendering the President independent of the Legislative body for his continuance in office.)

Mr. Madison remarked that as a majority of members wd. make a quorum in the H. of Reps. it would follow from the amendment of Mr. Sherman giving the election to a majority of States, that the President might be elected by two States only, Virga. & Pena. which have 18 members, if these States alone should be present.

On a motion that the eventual election of Presidt. in case of *an equality* of the votes of the electors be referred to the House of Reps.

> N. H. ay. Mas. ay. N. J. no. Pa. ay. Del. no. Md. no. Va. ay.
> N. C. ay. S. C. ay. Geo. ay.

Mr. King moved to add to the amendment of Mr. Sherman "But a quorum for this purpose shall consist of a member or members from two thirds of the States, and also of a majority of the whole number of the House of Representatives."

Col: Mason liked it as obviating the remark of Mr. Madison–The motion as far as "States" inclusive was agd. to. On the residue to wit, "and also of a majority of the whole number of the House of Reps." it passed in the negative.

> N. H. no. Mas. ay. Ct. ay. N. J. no. Pa. ay. Del. no. Md. no.
> Va. ay. N. C. ay. S. C. no. Geo. no.

The Report relating to the appointment of the Executive stands as amended, as follows.

> "He shall hold his office during the term of four years, and together with the vice-President, chosen for the same term, be elected in the following manner.
>
> Each State shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and

members of the House of Representatives, to which the State may be entitled in the Legislature:

But no person shall be appointed an Elector who is a member of the Legislature of the U. S. or who holds any office of profit or trust under the U. S.

The Electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the Seat of the General Government, directed to the President of the Senate.

The President of the Senate shall in the presence of the Senate and House of Representatives open all the certificates & the votes shall then be counted.

The person having the greatest number of votes shall be the President (if such number be a majority of the whole number of electors appointed) and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President, the Representation from each State having one vote. But if no person have a majority, then from the five highest on the list, the House of Representatives shall in like manner choose by ballot the President. In the choice of a President by the House of Representatives, a Quorum shall consist of a member or members from two thirds of the States, ([56]and the concurrence of a majority of all the States shall be necessary to such choice.)–And in every case after the choice of the President, the person having the greatest number of votes of the Electors shall be the vice-president: But, if there should remain two or more who have equal votes, the Senate shall choose from them the vice-President. [57]

[56] NOTE.–This clause was not inserted on this day, but on the 7th. of Sepr.–See Friday the 7th.–Madison's Note.

[57] September 6 Madison wrote to Jefferson (cipher represented by italics): "... As the Convention will shortly rise I should feel little scruple in disclosing what will be public here, before it could reach you, were it practicable for me to guard by Cypher against an intermediate discovery. But I am deprived of this resource by the shortness of the interval between the receipt of your letter of June 20 and the date of this. This is the first day which has been free from Committee service, both before & after the hours of the House, and the last that is allowed me by the time advertised for the sailing of the packet.

"The Convention consists now as it has generally done of Eleven States. There has been no intermission of its Sessions since a house was formed, except an interval of about ten days allowed a Committee appointed to detail the general propositions agreed on in the House. The term of its dissolution cannot be more than one or two weeks distant. A Gover^{mt} will probably be submitted to the *people of* the *States*, consisting of a *President*, *cloathed* with *Executive power*; a *Senate chosen* by the *Legislatures*, and another *House chosen* by the *people of the States*, jointly *possessing* the *Legislative* power; and a regular *Judiciary* establishment. The mode of constituting the *Executive* is among the few points not yet finally settled. The *Senate* will consist of two *members* from each *State*, and *appointed sexennially*. The other, of *members*, *appointed biennially* by the *people of the States*, in proportion to their number. The Legislative power will *extend to taxation*, trade, and sundry other general matters. The powers of Congress will be *distributed*, according to their *nature*, *among the several departments*. The States will be *restricted from paper money* and in a *few other instances*. These are *the outlines*. The extent of them may perhaps surprize you. I hazard an opinion nevertheless that the *plan*, *should it be adopted*, will neither effectually *answer* its *national object*, nor prevent the local *mischiefs* which everywhere *excite disgusts* agst the *State Governments*. The grounds of this opinion will be the subject of a future letter.

"I have written to a friend in Cong^{s} intimating in a covert manner the necessity of deciding & notifying the intentions of Cong^{s} with regard to their foreign Ministers after May next, and have dropped a hint on the communications of Dumas.

"Congress have taken some measures for disposing of the public land, and have actually sold a considerable tract. Another bargain I learn is on foot for a further sale.

"Nothing can exceed the universal anxiety for the event of the meeting here. Reports and conjectures abound concerning the nature of the plan which is to be proposed. The public however is certainly in the dark with regard to it. The Convention is equally in the dark as to the reception w^{ch} may be given to it on its publication. All the prepossessions are on the right side, but it may well be expected that certain characters will wage war against any reform whatever. My own idea is that the public mind will now or in a very little time receive anything that promises stability to the public Councils & security to private rights, and that no regard ought to be had to local prejudices or temporary considerations. If the present moment be lost, it is hard to say what may be our fate.

"Our information from Virginia is far from being agreeable. In many parts of the Country the drought has been extremely injurious to the Corn. I fear, tho' I have no certain information, that Orange & Albemarle share in the distress. The people also are said to be generally discontented. A paper emission is again a topic among them, so is an instalment of all debts in some places and the making property a tender in others. The taxes are another source of discontent. The weight of them is complained of, and the abuses in collecting them still more so. In several Counties the prisons & Court Houses & Clerks' offices have been wilfully burnt. In Green Briar the course of Justice has been mutinously stopped, and associations entered into agst the payment of taxes. No other County has yet followed the example. The approaching meeting of the Assembly will probably allay the discontents on one side by measures which will excite them on another.

"Mr. Wythe has never returned to us. His lady whose illness carried him away, died some time after he got home. The other deaths, in Virg^{a} are Col. A. Cary and a few days ago, Mrs. Harrison, wife of Benj^{n} Harrison, Jun^{r}, & sister of J. F. Mercer. Wishing you all happiness.

"I remain, Dear sir, Y^{rs} affect^{ly}.

"Give my best wishes to Mazzei. I have rec^{d} his letter & book and will write by the next packet to him. Dorhman is still in V^{a} Cong^{s} have done nothing for him in his affair. I am not sure that 9 St^{s} have been assembled of late. At present, it is doubtful whether there are seven."–Mad. MSS.

The Legislature may determine the time of choosing the Electors, and of their giving their votes; and the manner of certifying and transmitting their votes–But the election shall be on the same day through-out the U. States."

Adjourned.

Friday Sep^R 7 [58] 1787. In Convention

[58] The following letter was received on this day from Jonas Phillips, a Jew in Philadelphia:

"Sires

"With leave and submission I address myself To those in whome there is wisdom understanding and knowledge. They are the honourable personages appointed and Made overseers of a part of the terrestrial globe of the Earth, Namely the 13 united states of america in Convention Assembled, the Lord preserve them amen—

"I the subscriber being one of the people called Jews of the City of Philadelphia, a people scattered and despersed among all nations do behold with Concern that among the laws in the Constitution of Pennsylvania their is a Clause Sect. 10 to viz–I do belive in one God the Creature and governour of the universe the Rewarder of the good and the punisher of the wicked–and I do acknowledge the scriptures of the old and New testement to be given by a devine inspiration–to swear and believe that the new testement was given by devine inspiration is absolutly against the Religious principle of a Jew and is against his Conscience to take any such oath–By the above law a Jew is deprived of holding any publick office or place of Government which is a Contridectory to the bill of Right Sect 2. viz

"That all men have a natural and unalienable Right To worship almighty God according to the dectates of their own Conscience and understanding, and that no man aught or of Right can be compelled to attend any Religious Worship or Erect or support any place of worship or Maintain any minister contrary to or against his own free will and Consent nor Can any man who acknowledges the being of a God be Justly deprived or abridged of any Civil Right as a Citizen on account of his Religious sentiments or peculiar mode of Religious Worship, and that no authority Can or aught to be vested in or assumed by any power what ever that shall in any Case interfere or in any manner Controul the Right of Conscience in the free Exercise of Religious Worship—

"It is well known among all the Citizens of the 13 united States that the Jews have been true and faithfull whigs, and during the late Contest with England they have been foremost in aiding and assisting the States with their lifes and fortunes, they have supported the Cause, have bravely faught and bleed for liberty which they Can not Enjoy—

Therefore if the honourable Convention shall in ther Wisdom think fit and alter the said oath and leave out the words to viz–and I do acknowledge the scripture of the new testeraent to be given by devine inspiration then the

Israeletes will think them self happy to live under a government where all Religious societys are on an Eaquel footing–I solecet this favour for my self my Children and posterity and for the benefit of all the Israeletes through the 13 united States of america.

"My prayers is unto the Lord. May the people of this States Rise up as a great and young lion, May they prevail against their Enemies, May the degrees of honour of his Excellencey the president of the Convention George Washington, be Extollet and Raise up. May Every one speak of his glorious Exploits. May God prolong his days among us in this land of Liberty–May he lead the armies against his Enemys as he has done hereuntofore–May God Extend peace unto the united States–May they get up to the highest Prosperetys–May God Extend peace to them and their Seed after them so long as the Sun and moon Endureth–and may the almighty God of our father Abraham Isaac and Jacob endue this Noble Assembly with wisdom Judgement and unamity in their Councells, and may they have the Satisfaction to see that their present toil and labour for the wellfair of the united States may be approved of, Through all the world and perticular by the united States of america is the ardent prayer of Sires.

"Your Most devoted obe^{d} Servant

"JONAS PHILLIPS

"Philadelphia 24th Ellul 5547 or Sep^{r} 7th. 1787"–Const. MSS.

The mode of constituting the Executive being resumed, M^{r} Randolph moved, to insert in the first section of the report made yesterday

> "The Legislature may declare by law what officer of the U. S. shall act as President in case of the death, resignation, or disability of the President and Vice-President; and such officer shall act accordingly until the time of electing a President shall arrive."

M^{r} Madison observed that this, as worded, would prevent a supply of the vacancy by an intermediate election of the President, and moved to substitute–"until such disability be removed, or a President shall be elected. [59] M^{r} Gov^{r} Morris 2^{ded} the motion, which was agreed to.

[59] In the printed Journal this amendment is put into the original motion.– Madison's Note.

It seemed to be an objection to the provision with some, that according to the process established for chusing the Executive, there would be difficulty in effecting it at other than the fixed periods; with others, that the Legislature was restrained in the temporary appointment to "*officers*" of the U. S.: They wished it to be at liberty to appoint others than such.

On the Motion of M^r^ Randolph as amended, it passed in the affirmative.

N. H. divided. Mas. no. C^t^ no. N. J. ay. P^a^ ay. Del. no. M^d^ ay. V^a^ ay. N. C. no. S. C. ay. Geo. ay.

M^r^ Gerry moved "that in the election of President by the House of Representatives, no State shall vote by less than three members, and where that number may not be allotted to a State, it shall be made up by its Senators; and a concurrence of a majority of all the States shall be necessary to make such choice." Without some such provision five individuals might possibly be competent to an election; these being a majority of two thirds of the existing number of States; and two thirds being a quorum for this business.

M^r^ Madison 2^ded^ the motion.

M^r^ Read observed that the States having but one member only in the House of Rep^s^ would be in danger of having no vote at all in the election: the sickness or absence either of the Representative or one of the Senators would have that effect.

M^r^ Madison replied that, if one member of the House of Representatives should be left capable of voting for the State, the states having one Representative only would still be subject to that danger. He thought it an evil that so small a number at any rate should be authorized to elect. Corruption would be greatly facilitated by it. The mode itself was liable to this further weighty objection that the representatives of a *Minority* of the

people, might reverse the choice of a *majority* of the *States* and of the *people*. He wished some cure for this inconveniency might yet be provided.

Mr. Gerry withdrew the first part of his motion; and on the, Question on the 2d part viz: "and a concurrence of a majority of all the States shall be necessary to make such choice" to follow the words "a member or members from two thirds of the States"–It was agreed to nem: con:

The section 2. (see Sepr. 4) requiring that the President should be a natural-born Citizen &c., & have been resident for fourteen years, & be thirty five years of age, was agreed to nem: con:

Section 3 (see Sepr. 4). "The vice President shall be ex-officio President of the Senate"

Mr. Gerry opposed this regulation. We might as well put the President himself at the head of the Legislature. The close intimacy that must subsist between the President & vice-president makes it absolutely improper. He was agst. having any vice President.

Mr. Govr. Morris. The vice President then will be the first heir apparent that ever loved his father. If there should be no vice president, the President of the Senate would be temporary successor, which would amount to the same thing.

Mr. Sherman saw no danger in the case. If the vice-President were not to be President of the Senate, he would be without employment, and some member by being made President must be deprived of his vote, unless when an equal division of votes might happen in the Senate, which would be but seldom.

Mr. Randolph concurred in the opposition to the clause.

Mr. Williamson, observed that such an officer as vice-President was not wanted. He was introduced only for the sake of a valuable mode of election which required two to be chosen at the same time.

Col: Mason, thought the office of vice-President an encroachment on the rights of the Senate; and that it mixed too much the Legislative & Executive, which as well as the Judiciary departments, ought to be kept as separate as possible. He took occasion to express his dislike of any reference whatever of the power to make appointments, to either branch of the Legislature. On the other hand he was averse to vest so dangerous a power in the President alone. As a method for avoiding both, he suggested that a privy Council of six members to the president should be established; to be chosen for six years by the Senate, two out of the Eastern two out of the middle, and two out of the Southern quarters of the Union, & to go out in rotation two every second year; the concurrence of the Senate to be required only in the appointment of Ambassadors, and in making treaties, which are more of a legislative nature. This would prevent the constant sitting of the Senate which he thought dangerous, as well as keep the departments separate & distinct. It would also save the expence of constant sessions of the Senate. He had he said always considered the Senate as too unwieldy & expensive for appointing officers, especially the smallest, such as tide waiters &c. He had not reduced his idea to writing, but it could be easily done if it should be found acceptable.

On the question shall the vice President be ex officio President of the Senate?

N. H. ay. Mas. ay. C^{t} ay. N. J. no. P^{a} ay. Del. ay. Mar. no.
V^{a} ay. N. C. abs^{t}. S. C. ay. Geo. ay.

The other parts of the same Section (3) were then agreed to.

The Section 4.–to wit. "The President by & with the advice and consent of the Senate shall have power to make Treaties &c."

M^{r} Wilson moved to add after the word "Senate" the words, "and House of Representatives." As treaties he said are to have the operation of laws, they ought to have the sanction of laws also. The circumstance of secrecy in the business of treaties formed the only objection; but this he thought, so far as it was inconsistent with obtaining the Legislative sanction, was outweighed by the necessity of the latter.

M[r] Sherman thought the only question that could be made was whether the power could be safely trusted to the Senate. He thought it could; and that the necessity of secrecy in the case of treaties forbade a reference of them to the whole Legislature.

M[r] Fitzimmons 2[ded] the motion of M[r] Wilson, & on the question

N. H. no. Mas. no. C[t] no. N. J. no. P[a] ay. Del. no. M[d] no.
V[a] ay. N. C. no. S. C. no. Geo. no.

The first sentence as to making treaties was then Agreed to; nem: con:

"He shall nominate &c. Appoint Ambassadors &c."

M[r] Wilson objected to the mode of appointing, as blending a branch of the Legislature with the Executive. Good laws are of no effect without a good Executive; and there can be no good Executive without a responsible appointment of officers to execute. Responsibility is in a manner destroyed by such an agency of the Senate. He would prefer the council proposed by Col: Mason, provided its advice should not be made obligatory on the President.

M[r] Pinkney was against joining the Senate in these appointments, except in the instances of Ambassadors who he thought ought not to be appointed by the President.

M[r] Gov[r] Morris said that as the President was to nominate, there would be responsibility, and as the Senate was to concur, there would be security. As Congress now make appointments there is no responsibility.

M[r] Gerry. The idea of responsibility in the nomination to offices is Chimerical. The President cannot know all characters, and can therefore always plead ignorance.

M[r] King. As the idea of a Council proposed by Col. Mason has been supported by M[r] Wilson, he would remark that most of the inconveniences charged on the Senate are incident to a Council of Advice. He differed from those who thought the Senate would sit constantly. He did not suppose it

was meant that all the minute officers were to be appointed by the Senate, or any other original source, but by the higher officers of the departments to which they belong. He was of opinion also that the people would be alarmed at an unnecessary creation of new Corps which must increase the expence as well as influence of the Government.

On the question on these words in the clause viz–"He shall nominate & by & with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers (and consuls) Judges of the Supreme Court". Agreed to nem: con: the insertion of "and consuls" having first taken place.

On the question on the following words "And all other officers of U.S."

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} no. Del. ay. M^{d} ay.
V^{a} ay. N. C. ay. S. C. no. Geo. ay.

On motion of M^{r} Spaight–"that the President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting Commissions which shall expire at the end of the next Session of the Senate." It was agreed to nem: con:

Section 4. "The President by and with the advice and consent of the Senate shall have power to make Treaties,—*But no treaty shall be made without the consent of two thirds of the members present*"–this last clause being before the House.

M^{r} Wilson thought it objectionable to require the concurrence of 2/3 which puts it into the power of a minority to controul the will of a majority.

M^{r} King concurred in the objection; remarking that as the Executive was here joined in the business, there was a check which did not exist in Congress where the concurrence of 2/3 was required.

M^{r} Madison moved to insert after the word "treaty" the words "except treaties of peace" allowing these to be made with less difficulty than other treaties–It was agreed to nem: con:

Mr. Madison then moved to authorize a concurrence of two thirds of the Senate to make treaties of peace, without the concurrence of the President.– The President he said would necessarily derive so much power and importance from a state of war that he might be tempted if authorized, to impede a treaty of peace. Mr. Butler 2ded the motion.

Mr. Gorham thought the precaution unnecessary as the means of carrying on the war would not be in the hands of the President, but of the Legislature.

Mr. Govr. Morris thought the power of the President in this case harmless; and that no peace ought to be made without the concurrence of the President, who was the general Guardian of the National interests.

Mr. Butler was strenuous for the motion, as a necessary security against ambitious & corrupt Presidents. He mentioned the late perfidious policy of the Statholder in Holland; and the artifices of the Duke of Marlbro' to prolong the war of which he had the management.

Mr. Gerry was of opinion that in treaties of peace a greater rather than less proportion of votes was necessary, than in other treaties. In Treaties of peace the dearest interests will be at stake, as the fisheries, territory &c. In treaties of peace also there is more danger to the extremities of the Continent of being sacrificed, than on any other occasions.

Mr. Williamson thought that Treaties of peace should be guarded at least by requiring the same concurrence as in other Treaties.

On the motion of Mr. Madison & Mr. Butler

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. ay.
Va. no. N. C. no. S. C. ay. Geo. ay.

On the part of the clause concerning treaties amended by the exception as to Treaties of peace,

N. H. ay. Mas. ay. Ct. ay. N. J. no. Pa. no. Del. ay. Md. ay.
Va. ay. N. C. ay. S. C. ay. Geo. no.

"and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices," being before the House

Col: Mason [60] said that in rejecting a Council to the President we were about to try an experiment on which the most despotic Government had never ventured. The Grand Signor himself had his Divan. He moved to postpone the consideration of the clause in order to take up the following.

[60] In the printed Journal, M^r^ Madison is erroneously substituted for Col: Mason.–Madison's Note.

> "That it be an instruction to the Committee of the States to prepare a clause or clauses for establishing an Executive Council, as a Council of State for the President of the U. States, to consist of six members, two of which from the Eastern, two from the middle, and two from the Southern States, with a Rotation and duration of office similar to those of the Senate; such Council to be appointed by the Legislature or by the Senate."

Doctor Franklin 2^ded^ the motion. We seemed he said too much to fear cabals in appointments by a number, and to have too much confidence in those of single persons. Experience shewed that caprice, the intrigues of favorites & mistresses, were nevertheless the means most prevalent in monarchies. Among instances of abuse in such modes of appointment, he mentioned the many bad Governors appointed in G. B. for the Colonies. He thought a Council would not only be a check on a bad President but be a relief to a good one.

M^r^ Gov^r^ Morris. The question of a Council was considered in the Committee, where it was judged that the Presid^t^ by persuading his Council to concur in his wrong measures, would acquire their protection for them.

M^r^ Wilson approved of a Council in preference to making the Senate a party to appointm^ts^.

Mr. Dickinson was for a Council. It wd be a singular thing if the measures of the Executive were not to undergo some previous discussion before the President.

Mr. Madison was in favor of the instruction to the Committee proposed by Col: Mason.

> The motion of Mr. Mason was negatived. Mayd ay. S. C. ay. Geo. ay.–N. H. no. Mas. no. Ct no. N. J. no. Pa no. Del. no. Va no. N. C. no.

On the question, "authorizing the President to call for the opinions of the Heads of Departments, in writing": it passed in the affirmative N. H. only being no. [61]

> [61] Not so stated in the printed Journal; but conformable to the result afterwards appearing.–Madison's Note.

The clause was then unanimously agreed to—

Mr. Williamson & Mr. Spaight moved "that no Treaty of peace affecting Territorial rights shd be made without the concurrence of two thirds of the members of the Senate present."

Mr. King. It will be necessary to look out for securities for some other rights, if this principle be established; he moved to extend the motion–"to all present rights of the U. States."

Adjourned.

Saturday September 8th In Convention

The last Report of the Committee of Eleven (see Sepr. 4) was resumed.

Mr. King moved to strike out the "exception of Treaties of peace" from the general clause requiring two thirds of the Senate for making Treaties.

Mr. Wilson wished the requisition of two thirds to be struck out altogether. If the majority cannot be trusted, it was a proof, as observed by Mr. Ghorum, that we were not fit for one Society.

A reconsideration of the whole clause was agreed to.

Mr. Govr. Morris was agst. striking out the "exception of Treaties of peace." If two thirds of the Senate should be required for peace, the Legislature will be unwilling to make war for that reason, on account of the Fisheries or the Mississippi, the two great objects of the Union. Besides, if a majority of the Senate be for peace, and are not allowed to make it, they will be apt to effect their purpose in the more disagreeable mode, of negativing the supplies for the war.

Mr. Williamson remarked that Treaties are to be made in the branch of the Govt. where there may be a majority of the States without a majority of the people. Eight men may be a majority of a quorum, & should not have the power to decide the conditions of peace. There would be no danger, that the exposed States, as S. Carolina or Georgia, would urge an improper war for the Western Territory.

Mr. Wilson. If two thirds are necessary to make peace, the minority may perpetuate war, against the sense of the majority.

Mr. Gerry enlarged on the danger of putting the essential rights of the Union in the hands of so small a number as a majority of the Senate, representing perhaps, not one fifth of the people. The Senate will be corrupted by foreign influence.

Mr. Sherman was agst leaving the rights established by the Treaty of peace, to the Senate, & moved to annex a proviso that no such rights shd be ceded without the sanction of the Legislature.

Mr. Govr Morris seconded the ideas of Mr. Sherman.

Mr. Madison observed that it had been too easy in the present Congress, to make Treaties altho' nine States were required for the purpose.

On the question for striking "except Treaties of peace"

N. H. ay. Mass. ay. Ct ay. N. J. no. Pa ay. Del. no. Md no.
Va ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Wilson & Mr. Dayton move to strike out the clause requiring two thirds of the Senate for making Treaties; on which,

N. H. no. Mas. no. Ct divd. N. J. no. Pa no. Del. ay.
Md no. Va no. N. C. no. S. C. no. Geo. no.

Mr. Rutlidge & Mr. Gerry moved that "no Treaty be made without the consent of 2/3 of all the members of the Senate"–according to the example in the present Congs.

Mr. Ghorum. There is a difference in the case, as the President's consent will also be necessary in the new Govt.

On the question

N. H. no. Mass. no. (Mr. Gerry ay.) Ct no. N. J. no. Pa no.
Del. no. Md no. Va no. N. C. ay. S. C. ay. Geo. ay.

Mr. Sherman movd that no Treaty be made without a Majority of the whole number of the Senate. Mr. Gerry seconded him.

Mr. Williamson. This will be less security than 2/3 as now required.

Mr. Sherman. It will be less embarrassing.

On the question, it passed in the negative.

N. H. no. Mass. ay. C^{t} ay. N. J. no. P^{a} no. Del. ay. M^{d} no.
V^{a} no. N. C. no. S. C. ay. Geo. ay.

M^{r} Madison moved that a Quorum of the Senate consist of 2/3 of all the members.

M^{r} Gov^{r} Morris–This will put it in the power of one man to break up a Quorum.

M^{r} Madison. This may happen to any Quorum.

On the Question it passed in the negative.

N. H. no. Mass. no. C^{t} no. N. J. no. P^{a} no. Del. no.
M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Williamson & M^{r} Gerry mov^{d} "that no Treaty sh^{d} be made with^{t} previous notice to the members, & a reasonable time for their attending."

On the Question

All the States no; except N. C. S. C. & Geo. ay.

On a question on clause of the Report of the Com^{e} of Eleven relating to Treaties by 2/3 of the Senate.

All the States were ay.–except P^{a} N. J. & Geo. no.

M^{r} Gerry mov^{d} that "no officer be app^{d} but to offices created by the Constitution or by law."–This was rejected as unnecessary by six no's & five ays:

The Ayes. Mass. C^{t} N. J. N. C. Geo.–Noes. N. H. P^{a} Del.
M^{d} V^{a} S. C.

The clause referring to the Senate, the trial of impeachments agst the President, for Treason & bribery, was taken up.

Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined. As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend the power of impeachments. He movd to add, after "bribery" "or maladministration." Mr Gerry seconded him.

Mr Madison. so vague a term will be equivalent to a tenure during pleasure of the Senate.

Mr Govr Morris, it will not be put in force & can do no harm. An election of every four years will prevent maladministration.

Col. Mason withdrew "maladministration" & substitutes "other high crimes & misdemesnors agst the State."

On the question thus altered

N. H. ay. Mass. ay. Ct ay. N. J. no. Pa no. Del. no. Md ay. Va ay. N. C. ay. S. C. ay. [62] Geo. ay.

[62] In the printed Journal, S. Carolina, no.–Madison's Note.

Mr Madison objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the Legislature, and for any act which might be called a misdemesnor. The President under these circumstances was made improperly dependent. He would prefer the Supreme Court for the trial of impeachments, or rather a tribunal of which that should form a part.

Mr Govr Morris thought no other tribunal than the Senate could be trusted. The supreme Court were too few in number and might be warped or corrupted. He was agst a dependence of the Executive on the Legislature,

considering the Legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes or facts, especially as in four years he can be turned out.

M^{r} Pinkney disapproved of making the Senate the Court of impeachments, as rendering the President too dependent on the Legislature. If he opposes a favorite law, the two Houses will combine agst him, and under the influence of heat and faction throw him out of office.

M^{r} Williamson thought there was more danger of too much lenity than of too much rigour towards the President, considering the number of cases in which the Senate was associated with the President.

M^{r} Sherman regarded the Supreme Court as improper to try the President, because the Judges would be appointed by him.

On motion of M^{r} Madison to strike out the words–"by the Senate" after the word "conviction"

N. H. no. Mas. no. C^{t} no. N. J. no. P^{a} ay. Del. no. M^{d} no.
V^{a} ay. N. C. no. S. C. no. Geo. no.

In the amendment of Col: Mason just agreed to, the word "State" after the words "misdemeanors against," was struck out, and the words "United States," inserted unanimously, in order to remove ambiguity.

On the question to agree to clause as amended,

N. H. ay. Mas. ay. Cont. ay. N. J. ay. P^{a} no. Del. ay.
M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

On motion "The vice-President and other Civil officers of the U. S. shall be removed from office on impeachment and conviction as aforesaid" was added to the clause on the subject of impeachments.

The clause of the report made on the 5th Sep^{r} & postponed was taken up to wit–"All bills for raising revenue shall originate in the House of

Representatives; and shall be subject to alterations and amendments by the Senate. No money shall be drawn from the Treasury but in consequence of appropriations made by law."

It was moved to strike out the words "and shall be subject to alterations and amendments by the Senate" and insert the words used in the Constitution of Massachusetts on the same subject–"but the Senate may propose or concur with amendments as in other bills" which was agreed too nem: con:

On the question On the first part of the clause–"All bills for raising revenue shall originate in the House of Representatives" [63]

[63] This was a conciliatory vote, the effect of the compromise formerly alluded to. See Note Wednesday Sep^{r} 5.–Madison's Note.

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} ay. Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Gov^{r} Morris moved to add to clause (3) of the report made on Sep^{r} 4. the words "and every member shall be on oath" which being agreed to, and a question taken on the clause so amended viz–"The Senate of the U. S. shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present; and every member shall be on oath"

N. H. ay. Mas. ay. C^{t} ay. N. J. ay. P^{a} no. Del.–ay. M^{d} ay. V^{a} no. N. C. ay. S. C. ay. Geo. ay.

M^{r} Gerry repeated his motion above made on this day, in the form following: "The Legislature shall have the sole right of establishing offices not heretofore provided for" which was again negatived: Mas. Con^{t} & Geo. only being ay.

M^{r} M^{c}Henry observed that the President had not yet been any where authorized to convene the Senate, and moved to amend Art X. sect. 2. by striking out the words "he may convene them (the Legislature) on

extraordinary occasions," & insert, "He may convene both or either of the Houses on extraordinary occasions." This he added would also provide for the case of the Senate being in Session, at the time of convening the Legislature.

M^{r} Wilson said he should vote agst the motion, because it implied that the senate might be in Session, when the Legislature was not, which he thought improper.

On the question

N. H. ay. Mas. no. C^{t} ay. N. J. ay. P^{a} no. Del. ay. M^{d} ay. V^{a} no. N. C. ay. S. C. no. Geo. ay.

A Committee was then appointed by Ballot to revise the stile of and arrange the articles which had been agreed to by the House. The committee consisted of M^{r} Johnson, M^{r} Hamilton, M^{r} Gov^{r} Morris, M^{r} Madison and M^{r} King.

M^{r} Williamson moved that, previous to this work of the Committee the clause relating to the number of the House of Representatives sh^{d} be reconsidered for the purpose of increasing the number.

M^{r} Madison 2^{ded} the Motion.

M^{r} Sherman opposed it he thought the provision on that subject amply sufficient.

Col: Hamilton expressed himself with great earnestness and anxiety in favor of the motion. He avowed himself a friend to a vigorous Government, but would declare at the same time, that he held it essential that the popular branch of it should be on a broad foundation. He was Seriously of opinion that the House of Representatives was on so narrow a scale as to be really dangerous, and to warrant a jealousy in the people for their liberties. He remarked that the connection between the President & Senate would tend to perpetuate him, by corrupt influence. It was the more necessary on this account that a numerous representation in the other branch of the Legislature should be established.

On the motion of Mr. Williamson to reconsider, it was negatived [64]

N. H. no. Mas. no. Ct. no. N. J. no. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. no.

[64] This motion & vote are entered on the Printed journal of the ensuing morning.–Madison's Note.

Adjd.

Monday Sep^R 10. 1787 In Convention [65]

[65] "There is said to be a disposition generally prevalent thro' this state to comply with y^e plan of y^e convention without much scrutiny, Hervey, who has been in Albemarle lately, says y^t Nicholas is determined to support it however contrary it may be to his own opinions. I am persuaded that those who sacrifice solid and permanent advantages in this plan, to their idea of the transitory disposition of the people, will condemn themselves hereafter."–James McClurg to Madison, September 10, 1787.–Mad. MSS.

M^r Gerry moved to reconsider Art XIX. viz. "On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the U. S. shall call a Convention for that purpose," (see Aug 6).

This constitution he said is to be paramount to the State Constitutions. It follows hence, from this article that two thirds of the States may obtain a Convention, a majority of which can bind the Union to innovations that may subvert the State Constitutions altogether. He asked whether this was a situation proper to be run into.

M^r Hamilton 2^ded the motion, but he said with a different view from M^r Gerry. He did not object to the consequences stated by M^r Gerry. There was no greater evil in subjecting the people of the U.S. to the major voice than the people of a particular State. It had been wished by many and was much to have been desired that an easier mode of introducing amendments had been provided by the articles of the Confederation. It was equally desirable now that an easy mode should be established for supplying defects which will probably appear in the new System. The mode proposed was not adequate. The State Legislatures will not apply for alterations but with a view to increase their own powers. The National Legislature will be the first to perceive and will be most sensible to the necessity of amendments, and ought also to be empowered, whenever two thirds of each branch should

concur to call a Convention. There could be no danger in giving this power, as the people would finally decide in the case.

Mr. Madison remarked on the vagueness of the terms, "call a Convention for the purpose," as sufficient reason for reconsidering the article. How was a Convention to be formed? by what rule decide? what the force of its acts?

On the motion of Mr. Gerry to reconsider

> N. H. divd. Mas. ay. Ct. ay. N. J. no. Pa. ay. Del. ay. Md. ay.
> Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. Sherman moved to add to the article "or the Legislature may propose amendments to the several States for their approbation, but no amendments shall be binding until consented to by the several States."

Mr. Gerry 2ded the motion.

Mr. Wilson moved to insert, "two thirds of" before the words "several States"–on which amendment to the motion of Mr. Sherman

> N. H. ay. Mas. no. Ct. no. N. J. no. Pa. ay. Del. ay. Md. ay.
> Va. ay. N. C. no. S. C. no. Geo. no.

Mr. Wilson then moved to insert "three fourths of" before "the several Sts." which was agreed to nem: con:

Mr. Madison moved to postpone the consideration of the amended proposition in order to take up the following,

> "The Legislature of the U. S. whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the U.S:"

M[r] Hamilton 2[ded] the motion.

M[r] Rutlidge said he never could agree to give a power by which the articles relating to slaves might be altered by the States not interested in that property and prejudiced against it. In order to obviate this objection, these words were added to the proposition: [66] "provided that no amendments which may be made prior to the year 1808 shall in any manner affect the 4 & 5 sections of the VII article."–The postponement being agreed to,

[66] The Printed Journal makes the succeeding proviso as to sections 4 & 5, of the art: VII moved by M[r] Rutlidge, part of the proposition of M[r] Madison.– Madison's Note.

On the question on the proposition of M[r] Madison & M[r] Hamilton as amended

N. H. div[d]. Mas. ay. C[t] ay. N. J. ay. P[a] ay. Del. no. M[d] ay. V[a] ay. N. C. ay. S. C. ay. Geo. ay.

M[r] Gerry moved to reconsider Art: XXI and XXII. from the latter of which "for the approbation of Cong[s]" had been struck out. He objected to proceeding to change the Government without the approbation of Congress, as being improper and giving just umbrage to that body: He repeated his objections also to an annulment of the confederation with so little scruple or formality.

M[r] Hamilton concurred with M[r] Gerry as to the indecorum of not requiring the approbation of Congress. He considered this as a necessary ingredient in the transaction. He thought it wrong also to allow nine States as provided by Art XXI. to institute a new Government on the ruins of the existing one. He w[d] propose as a better modification of the two articles (XXI & XXII) that the plan should be sent to Congress in order that the same if approved by them, may be communicated to the State Legislatures, to the end that they may refer it to State conventions; each Legislature declaring that if the Convention of the State should think the plan ought to

take effect among nine ratifying States, the same sh[d] take effect accordingly.

M[r] Gorham. Some States will say that nine States shall be sufficient to establish the plan, others will require unanimity for the purpose. And the different and conditional ratifications will defeat the plan altogether.

M[r] Hamilton. No Convention convinced of the necessity of the plan will refuse to give it effect on the adoption by nine States. He thought this mode less exceptionable than the one proposed in the article, while it would attain the same end.

M[r] Fitzimmons remarked that the words "for their approbation" had been struck out in order to save Congress from the necessity of an Act inconsistent with the Articles of Confederation under which they held their authority.

M[r] Randolph declared, if no change should be made in this part of the plan, he should be obliged to dissent from the whole of it. He had from the beginning he said been convinced that radical changes in the system of the Union were necessary. Under this conviction he had brought forward a set of republican propositions as the basis and outline of a reform. These Republican propositions had however, much to his regret, been widely, and, in his opinion, irreconcileably departed from. In this state of things it was his idea and he accordingly meant to propose, that the State Conventions sh[d] be at liberty to offer amendments to the plan; and that these should be submitted to a second General Convention, with full power to settle the Constitution finally. He did not expect to succeed in this proposition, but the discharge of his duty in making the attempt, would give quiet to his own mind.

M[r] Wilson was against a reconsideration for any of the purposes which had been mentioned.

M[r] King thought it would be more respectful to Congress to submit the plan generally to them; than in such a form as expressly and necessarily to require their approbation or disapprobation. The assent of nine States he considered as sufficient; and that it was more proper to make this a part of

the Constitution itself, than to provide for it by a supplemental or distinct recommendation.

Mr. Gerry urged the indecency and pernicious tendency of dissolving in so slight a manner, the solemn obligations of the articles of confederation. If nine out of thirteen can dissolve the compact. Six out of nine will be just as able to dissolve the new one hereafter.

Mr. Sherman was in favor of Mr. King's idea of submitting the plan generally to Congress. He thought nine States ought to be made sufficient: but that it would be best to make it a separate act and in some such form as that intimated by Col: Hamilton, than to make it a particular article of the Constitution.

On the question for reconsidering the two articles, XXI & XXII—

> N. H. divd. Mas. no. Ct ay. N. J. ay. Pa no. Del. ay. Md ay. Va ay. N. C. ay. S. C. no. Geo. ay.

Mr. Hamilton then moved to postpone art XXI in order to take up the following, containing the ideas he had above expressed, viz

> Resolved that the foregoing plan of a Constitution be transmitted to the U. S. in Congress assembled, in order that if the same shall be agreed to by them, it may be communicated to the Legislatures of the several States, to the end that they may provide for its final ratification by referring the same to the Consideration of a Convention of Deputies in each State to be chosen by the people thereof, and that it be recommended to the said Legislatures in their respective acts for organizing such convention to declare, that if the said Convention shall approve of the said Constitution, such approbation shall be binding and conclusive upon the State, and further that if the said Convention should be of opinion that the same upon the assent of any nine States thereto, ought to take effect between the States so assenting, such opinion shall thereupon be also binding upon such a State, and the said Constitution shall take effect between the States assenting thereto.

Mr. Gerry 2ded the motion.

M^{r} Wilson. This motion being seconded, it is necessary now to speak freely. He expressed in strong terms his disapprobation of the expedient proposed, particularly the suspending the plan of the Convention on the approbation of Congress. He declared it to be worse than folly to rely on the concurrence of the Rhode Island members of Cong^{s} in the plan. Maryland has voted on this floor; for requiring the unanimous assent of the 13 States to the proposed change in the federal System. N. York has not been represented for a long time past in the Convention. Many individual deputies from other States have spoken much against the plan. Under these circumstances can it be safe to make the assent of Congress necessary. After spending four or five months in the laborious & arduous task of forming a Government for our Country, we are ourselves at the close throwing insuperable obstacles in the way of its success.

M^{r} Clymer thought that the mode proposed by M^{r} Hamilton would fetter & embarrass Cong^{s} as much as the original one, since it equally involved a breach of the articles of Confederation.

M^{r} King concurred with M^{r} Clymer. If Congress can accede to one mode, they can to the other. If the approbation of Congress be made necessary, and they should not approve, the State Legislatures will not propose the plan to Conventions; or if the States themselves are to provide that nine States shall suffice to establish the System, that provision will be omitted, every thing will go into confusion, and all our labor be lost.

M^{r} Rutlidge viewed the matter in the same light with M^{r} King.

On the question to postpone in order to take up Col: Hamilton's motion

N. H. no. Mas. no. C^{t} ay. N. J. no. P^{a} no. Del. no. M^{d} no.
V^{a} no. N. C. no. S. C. no. Geo. no.

A Question being then taken on the article XXI. It was agreed to unanimously.

Col: Hamilton withdrew the remainder of the motion to postpone art. XXII, observing that his purpose was defeated by the vote just given.

M[r] Williamson & M[r] Gerry moved to re-instate the words "for the approbation of Congress" in Art: XXII. which was disagreed to nem: con:

M[r] Randolph took this opportunity to state his objections to the System. They turned on the Senate's being made the Court of Impeachment for trying the Executive–on the necessity of 3/4 instead of 2/3 of each house to overrule the negative of the President–on the smallness of the number of the Representative branch,–on the want of limitation to a standing army–on the general clause concerning necessary and proper laws–on the want of some particular restraint on navigation acts–on the power to lay duties on exports–on the authority of the General Legislature to interpose on the application of the *Executives* of the States–on the want of a more definite boundary between the General & State Legislatures–and between the General and State Judiciaries–on the unqualified power of the President to pardon treasons–on the want of some limit to the power of the Legislature in regulating their own compensations. With these difficulties in his mind, what course he asked was he to pursue? Was he to promote the establishment of a plan which he verily believed would end in Tyranny? He was unwilling he said to impede the wishes and Judgment of the Convention, but he must keep himself free, in case he should be honored with a seat in the Convention of his State, to act according to the dictates of his judgment. The only mode in which his embarrassments could be removed, was that of submitting the plan to Cong[s] to go from them to the State Legislatures, and from these to State Conventions having power to adopt reject or amend; the process to close with another General Convention with full power to adopt or reject the alterations proposed by the State Conventions, and to establish finally the Government. He accordingly proposed a Resolution to this effect.

Doc[r] Franklin 2[ded] the motion.

Col: Mason urged & obtained that the motion should lie on the table for a day or two to see what steps might be taken with regard to the parts of the system objected to by M[r] Randolph.

M[r] Pinkney moved "that it be an instruction to the Committee for revising the stile and arrangement of the articles agreed on, to prepare an

address to the people, to accompany the present Constitution, and to be laid with the same before the U. States in Congress."

[67]The motion itself was referred to the Committee nem: con:

[67]Mr. Randolph moved to refer to the Committee also a motion relating to pardons in cases of Treason–which was agreed to nem: con:

[67] These motions are not entered in the printed Journal.–Madison's Note.

Adjourned.

TUESDAY SEP^R 11. 1787. IN CONVENTION

The Report of the Committee of stile & arrangement not being made & being waited for,

The House Adjourned.

WEDNESDAY SEPR 12. 1787. IN CONVENTION

Docr Johnson from the Committee of stile &c. reported a digest of the plan, of which printed copies were ordered to be furnished to the members. He also reported a letter to accompany the plan, to Congress. [68]

[68] A note by Madison in the text says: "(here insert a transcript of the former from the annexed sheet as *printed* and of the latter from the draft as finally agreed to,)" and his footnote says: "This is a literal copy of the printed Report. The Copy in the printed Journal contains some of the alterations subsequently made in the House." No transcript of the report was, however, made by Madison, but the printed copy is among his papers. It is a large folio of four pages printed on one side of each page, and is accurately reproduced here. Madison's copy is marked by him: "as reported by Come of revision, or stile and arrangement Sepr 12." The report is, in fact, correctly printed in the *Journal of the Federal Convention*, 351, *et seq.*, Madison's statement to the contrary being an error. General Bloomfield furnished Brearley's copy to John Quincy Adams, and he printed it without the alterations and amendments which Brearley had made. The extent of Brearley's alterations and amendments may be seen in the copy printed in the *Documentary History of the Constitution*, i., 362, *et seq.*

WE, THE PEOPLE OF THE UNITED STATES, IN ORDER TO FORM a more perfect union, to establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Sect. 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sect. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states,

and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New-Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York, six, New-Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and they shall have the sole power of impeachment.

Sect. 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years: and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided [69] as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration

of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year: and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any state, the Executive thereof may make temporary appointments until the next meeting of the Legislature.

[69] The words, "by lot," were not in the Report as printed; but were inserted in manuscript, as a typographical error, departing from the text of the Report referred to the Committee of style & arrangement.–Marginal note by Madison.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice-President of the United States shall be, ex officio, [70] President of the senate, but shall have no vote, unless they be equally divided.

[70] Ex officio struck out in Madison's copy.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sect. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may at any time by law make or alter such regulations.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sect. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings; punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sect. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been encreased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Sect. 7. The enacting stile of the laws shall be, "Be it enacted by the senators and representatives in Congress assembled."

All bills for raising revenue shall originate in the house of representatives: but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States. If he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by [71] three-

fourths [72] of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

[71] In the entry of this Report in the printed Journal "two-thirds" are substituted for "three-fourths." This change was made after the Report was received.– Madison's Note. This is a mistake. The printed Journal has it "three fourths."

[72] A marginal note says "two thirds."

Sect. 8. The Congress may by joint ballot appoint a treasurer. They shall have power

To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defence and general welfare of the United States. [73]

[73] "but all duties imposts & excises shall be uniform throughout the U. States," interlined by Madison.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, among the several states, and with the Indian tribes.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and [74] offences against the law of nations.

[74] (punish) a typographical omission.–Madison's Note.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies: but no appropriations of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions.

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings–And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other

powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Sect. 9. The migration or importation of such persons as the several states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder shall be passed, nor any ex post facto law.

No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken. [75]

[75] "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another–nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another," interlined by Madison.

No tax or duty shall be laid on articles exported from any State.

No money shall be drawn from the treasury, but in consequence of appropriations made by law.

No title of nobility shall be granted by the United States. And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Sect. 10. No state shall coin money, nor emit bills of credit, nor make anything but gold or silver coin a tender in payment of debts, nor pass any bill of attainder, nor ex post facto laws, nor laws altering or impairing the obligation of contracts; nor grant letters of marque and reprisal, nor enter into any treaty, alliance, or confederation, nor grant any title of nobility.

No state shall, without the consent of Congress, lay imposts or duties on imports or exports, nor with such consent, but to the use of the treasury of the United States. [76] [77] Nor keep troops nor ships of war in time of peace, nor enter into any agreement or compact with another state, nor with any foreign power. Nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so iminent, as not to admit of delay until the Congress can be consulted.

[76] provided that no State shall be restrained from imposing the usual duties on produce exported from such State for the sole purpose of defraying the charges of inspecting packing storing & indemnifying the losses on such produce while in the custody of public officers. But all such regulations shall in case of abuse be subject to the revision & controul of Congress.–Marginal note by Madison.

[77] "No State shall without the consent of Congress," interlined by Madison.

II.

Sect. 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, altogether with the vice-president, chosen for the same term, be elected in the following manner:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in Congress: but no senator or representative shall be appointed an elector, nor any person holding an office of trust or profit under the United States.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the senate. The president of the senate shall in the presence of the senate and house of

representatives open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately chuse by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states and not per capita, [78] the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president by the representatives, [79] the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.

[78] "and not per capita" struck out by Madison.

[79] "by the representatives" struck out by Madison.

The Congress may determine the time of chusing the electors, and the time in [80] which they shall give their votes; but the election shall be on the same day [81] throughout the United States.

[80] The words "day on" substituted by Madison.

[81] "but the election shall be on the same day" struck out & "which day shall be the same" inserted by Madison.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or the period for chusing another president arrive. [82]

[82] "the period for chusing another president arrive" struck out and "a president be chosen" inserted by Madison.

The president shall, at stated times, receive a fixed compensation for his services, which shall neither be encreased nor diminished during the period for which he shall have been elected.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I ——, do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my judgment and power, preserve, protect and defend the constitution of the United States."

Sect. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several States: he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, when called into the actual service of the United States, [83] and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

[83] It so appears in the printed copy, but the clause "when called into the actual service of the United States" was intended to follow immediately after "militia of the several States."

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present

concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Sect. 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient: he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper: he shall receive ambassadors and other public ministers: he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sect. 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

III.

Sect. 1. The judicial power of the United States, both in law and equity, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Sect. 2. The judicial power shall extend to all cases, both in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. To all cases affecting ambassadors, other public ministers and consuls. To all

cases of admiralty and maritime jurisdiction. To controversies to which the United States shall be a party. To controversies between two or more States; between a state and citizens of another state; between citizens of different States; between citizens of the same state claiming lands under grants of different States, and between a state, or the citizens thereof, and foreign States, citizens or subjects.

In cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Sect. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood nor forfeiture, except during the life of the person attainted.

IV.

Sect. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sect. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled be delivered up, and removed to the state having jurisdiction of the crime.

No person legally held to service or labour in one state, escaping into another, shall in consequence of regulations subsisting therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labour may be due.

Sect. 3. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sect. 4. The United States shall guarantee to every state in this union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature or executive, against domestic violence.

V.

The Congress, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds [84] of the legislatures [85] of the several states, shall propose amendments to this constitution, which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of [86] the legislatures [87] of the several states, or by conventions in three-fourths

thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the —— [88] and [89] —— section [90] of [91] article.

[84] "of two thirds" struck out by Madison.

[85] "of two-thirds" inserted by Madison.

[86] "three-fourths at least of" struck out by Madison.

[87] "of three-fourths" inserted by Madison.

[88] "1 & 4 clauses in the 9" inserted by Madison.

[89] "and" struck out by Madison.

[90] Changed to "sections" by Madison.

[91] "the first" inserted by Madison.

VI.

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives beforementioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

VII.

The ratification of the conventions of nine States, shall be sufficient for the establishment of this constitution between the States so ratifying the same.

LETTER. [92]

[92] The draft of the letter accompanied the draft of the Constitution, but was not printed with it. The Journal says (Sept. 12): "The draft of a letter to Congress being at the same time reported, was read once throughout; and afterwards agreed to by paragraphs." (*Const. MSs. and Journal*, p. 367.) The draft is in the handwriting of Gouverneur Morris and was undoubtedly prepared by him. It was turned over to Washington by Jackson with the other papers of the convention. The draft of the Constitution must have been among those papers he destroyed. Probably it too was written by Morris. The letter having been accepted September 12, was printed with the final Constitution September 17. It does not appear to have caused debate.

We have now the Honor to submit to the Consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

The Friends of our Country have long seen and desired that the Power of making War Peace and Treaties, that of levying Money & regulating Commerce and the correspondent executive and judicial Authorities should be fully and effectually vested in the general Government of the Union. But the Impropriety of delegating such extensive Trust to one Body of Men is evident. Hence results the Necessity of a different organization.

It is obviously impracticable in the fœderal Government of these States to secure all Rights of independent Sovereignty to each and yet provide for the Interest and Safety of all. Individuals entering into Society must give up a Share of Liberty to preserve the Rest. The Magnitude of the Sacrifice must depend as well on Situation and Circumstances as on the Object to be obtained. It is at all times difficult to draw with Precision the Line between those Rights which must be surrendered and those which may be reserved. And on the

present Occasion this Difficulty was increased by a Difference among the several States as to their Situation Extent Habits and particular Interests.

In all our Deliberations on this Subject we kept steadily in our View that which appears to us the greatest Interest of every true American The Consolidation of our Union in which is involved our Prosperity Felicity Safety perhaps our national Existence. This important Consideration seriously and deeply impressed on our Minds led each State in the Convention to be less rigid in Points of inferior Magnitude than might have been otherwise expected. And thus the Constitution which we now present is the Result of a Spirit of Amity and of that mutual Deference & Concession which the Peculiarity of our political Situation rendered indispensable.

That it will meet the full and entire approbation of every State is not perhaps to be expected. But each will doubtless consider that had her Interests been alone consulted the Consequences might have been particularly disagreable or injurious to others. That it is liable to as few Exceptions as could reasonably have been expected we hope and believe. That it may promote the lasting Welfare of that Country so dear to us all and secure her Freedom and Happiness is our most ardent Wish—

M[r]. Williamson moved to reconsider the clause requiring three fourths of each House to overrule the negative of the President, in order to strike out 3/4 and insert 2/3. He had he remarked himself proposed 3/4 instead of 2/3, but he had since been convinced that the latter proportion was the best. The former puts too much in the power of the President.

M[r]. Sherman was of the same opinion; adding that the States would not like to see so small a minority and the President, prevailing over the general voice. In making laws regard should be had to the sense of the people, who are to be bound by them, and it was more probable that a single man should mistake or betray this sense than the Legislature.

M[r]. Gov[r]. Morris. Considering the difference between the two proportions numerically, it amounts in one House to two members only; and in the

others to not more than five; according to the numbers of which the Legislature is at first to be composed. It is the interest moreover of the distant States to prefer 3/4 as they will be oftenest absent and need the interposing check of the President. The excess rather than the deficiency, of laws was to be dreaded. The example of N. York shews that 2/3 is not sufficient to answer the purpose.

Mr. Hamilton added his testimony to the fact that 2/3 in N. York had been ineffectual either where a popular object, or a legislative faction operated; of which he mentioned some instances.

Mr. Gerry. It is necessary to consider the danger on the other side also. 2/3 will be a considerable, perhaps a proper security. 3/4 puts too much in the power of a few men. The primary object of the revisionary check in the President is not to protect the general interest, but to defend his own department. If 3/4 be required, a few Senators having hopes from the nomination of the President to offices, will combine with him and impede proper laws. Making the vice-President Speaker increases the danger.

Mr. Williamson was less afraid of too few than of too many laws. He was most of all afraid that the repeal of bad laws might be rendered too difficult by requiring 3/4 to overcome the dissent of the President.

Col: Mason had always considered this as one of the most exceptionable parts of the System. As to the numerical argument of Mr. Govr. Morris, little arithmetic was necessary to understand that 3/4 was more than 2/3, whatever the numbers of the Legislature might be. The example of New York depended on the real merits of the laws. The Gentlemen citing it, had no doubt given their own opinions. But perhaps there were others of opposite opinions who could equally paint the abuses on the other side. His leading view was to guard against too great an impediment to the repeal of laws.

Mr. Govr. Morris dwelt on the danger to the public interest from the instability of laws, as the most to be guarded against. On the other side there could be little danger. If one man in office will not consent where he ought, every fourth year another can be substituted. This term was not too long for fair experiments. Many good laws are not tried long enough to

prove their merit. This is often the case with new laws opposed to old habits. The Inspection laws of Virginia & Maryland to which all are now so much attached were unpopular at first.

Mr. Pinkney was warmly in opposition to 3/4 as putting a dangerous power in the hands of a few Senators headed by the President.

Mr. Madison. When 3/4 was agreed to, the President was to be elected by the legislature and for seven years. He is now to be elected by the people and for four years. The object of the revisionary power is two fold. 1. to defend the Executive rights 2. to prevent popular or factious injustice. It was an important principle in this & in the State Constitutions to check legislative injustice and encroachments. The Experience of the States had demonstrated that their checks are insufficient. We must compare the danger from the weakness of 2/3 with the danger from the strength of 3/4. He thought on the whole the former was the greater. As to the difficulty of repeals it was probable that in doubtful cases the policy would soon take place of limiting the duration of laws so as to require renewal instead of repeal.

The reconsideration being agreed to. On the question to insert 2/3 in place of 3/4.

> N. H. divd. Mas. no. Ct ay. N. J. ay. Pa no. Del. no. Md ay. Mr McHenry no. Va no. Genl Washington Mr Blair, Mr Madison no. Col. Mason, Mr Randolph ay. N. C. ay. S. C. ay. Geo. ay.

Mr Williamson, observed to the House that no provision was yet made for juries in Civil cases and suggested the necessity of it.

Mr Gorham. It is not possible to discriminate equity cases from those in which juries are proper. The Representatives of the people may be safely trusted in this matter.

Mr Gerry urged the necessity of Juries to guard agst corrupt Judges. He proposed that the Committee last appointed should be directed to provide a clause for securing the trial by Juries.

Col: Mason perceived the difficulty mentioned by M^{r} Gorham. The jury cases cannot be specified. A general principle laid down on this and some other points would be sufficient. He wished the plan had been prefaced with a Bill of Rights, & would second a Motion if made for the purpose. It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours.

M^{r} Gerry concurred in the idea & moved for a Committee to prepare a Bill of Rights. Col: Mason 2^{ded} the motion.

M^{r} Sherman, was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient. There are many cases where juries are proper which cannot be discriminated. The Legislature may be safely trusted.

Col: Mason. The laws of the U. S. are to be paramount to State Bills of Rights. On the question for a Com^{e} to prepare a Bill of Rights

> N. H. no. Mas. abs^{t}. C^{t} no. N. J. no. P^{a} no. Del. no.
> M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

The Clause relating to exports being reconsidered, at the instance of Col: Mason, who urged that the restriction on the States would prevent the incidental duties necessary for the inspection & safekeeping of their produce, and be ruinous to the Staple States, as he called the five Southern States, he moved as follows–"provided nothing herein contained shall be construed to restrain any State from laying duties upon exports for the sole purpose of defraying the charges of inspecting, packing, storing and indemnifying the losses in keeping the commodities in the care of public officers, before exportation." In answer to a remark which he anticipated, to wit, that the States could provide for these expences, by a tax in some other way, he stated the inconveniency of requiring the Planters to pay a tax before the actual delivery for exportation.

M^{r} Madison 2^{ded} the motion. It would at least be harmless; and might have the good effect of restraining the States to bona fide duties for the purpose, as well as of authorizing explicitly such duties; tho' perhaps the

best guard against an abuse of the power of the States on this subject, was the right in the Gen^{l} Government to regulate trade between State & State.

M^{r} Gov^{r} Morris saw no objection to the motion. He did not consider the dollar per Hhd laid on Tob^{o} in Virg^{a} as a duty on exportation, as no drawback would be allowed on Tob^{o} taken out of the Warehouse for internal consumption.

M^{r} Dayton was afraid the proviso w^{d} enable Pennsylv^{a} to tax N. Jersey under the idea of Inspection duties of which Pen^{a} would Judge.

M^{r} Gorham & M^{r} Langdon, thought there would be no security if the proviso sh^{d} be agreed to, for the States exporting thro' other States, agst these oppressions of the latter. How was redress to be obtained in case duties should be laid beyond the purpose expressed?

M^{r} Madison. There will be the same security as in other cases. The jurisdiction of the supreme Court must be the source of redress. So far only had provision been made by the plan agst injurious acts of the States. His own opinion was, that this was sufficient. A negative on the State laws alone could meet all the shapes which these could assume. But this had been overruled.

M^{r} Fitzimmons. Incidental duties on Tob^{o} & flour never have been & never can be considered as duties on exports.

M^{r} Dickinson. Nothing will save the States in the situation of N. Hampshire N. Jersey Delaware &c. from being oppressed by their neighbors, but requiring the assent of Cong^{s} to inspection duties. He moved that this assent sh^{d} accordingly be required.

M^{r} Butler 2^{ded} the motion.

Adjourned.

THURSDAY SEP^R 13. 1787. IN CONVENTION

Col. Mason. [93] He had moved without success for a power to make sumptuary regulations. He had not yet lost sight of his object. After descanting on the extravagance of our manners, the excessive consumption of foreign superfluities, and the necessity of restricting it, as well with œconomical as republican views, he moved that a Committee be appointed to report articles of association for encouraging by the advice the influence and the example of the members of the Convention, œconomy frugality and american manufactures.

[93] The dissensions among the Virginia delegates had leaked out, for Joseph Jones, Fredericksburg, September 13, 1787, wrote to Madison that a rumor of their disagreement was current in Virginia.–Chicago Historical Society MSS.

Doc^{r} Johnson 2^{ded} the motion which was without debate agreed to, nem: con: and a Committee appointed, consisting of Col: Mason, Doc^{r} Franklin, M^{r} Dickenson, Doc^{r} Johnson and M^{r} Livingston. [94]

[94] This motion, & appointment of the Com̃ittee, not in the printed Journal. No report was made by the Com^{e}–Madison's Note.

Col: Mason renewed his proposition of yesterday on the subject of inspection laws, with an additional clause giving to Congress a controul over them in case of abuse–as follows:

> "Provided that no State shall be restrained from imposing the usual duties on produce exported from such State, for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses on such produce, while in the custody of public officers: but all such regulations shall in case of abuse, be subject to the revision and controul of Congress."

There was no debate & on the question

> N. H. ay. Mas. ay. C^{t} ay. P^{a} no. Del. no. M^{d} ay. V^{a} ay.
> N. C. ay. S. C. no. Geo. ay.

The Report from the committee of stile & arrangement, was taken up, in order to be compared with the articles of the plan as agreed to by the House & referred to the Committee, and to receive the final corrections and sanction of the Convention.

Art: 1, sect. 2. On motion of M^{r} Randolph the word "servitude" was struck out, and "service" unanimously [95] inserted, the former being thought to express the condition of slaves, & the latter the obligations of free persons.

[95] See page 372 of the printed Journal.–Madison's Note.

M^r^ Dickenson & M^r^ Wilson moved to strike out, "and direct taxes," from sect. 2, art. 1, as improperly placed in a clause relating merely to the Constitution of the House of Representatives.

M^r^ Gov^r^ Morris. The insertion here was in consequence of what had passed on this point; in order to exclude the appearance of counting the negroes in *the Representation*. The including of them may now be referred to the object of direct taxes, and incidentally only to that of Representation.

On the motion to strike out "and direct taxes" from this place

N. H. no. Mas. no. C^t^ no. N. J.. ay. P^a^ no. Del. ay. M^d^ ay.
V^a^ no. N. C. no. S. C. no. Geo. no.

Art. 1, sect. 7.–"if any bill shall not be returned by the president within ten days (sundays excepted) after it shall have been presented to him &c."

M^r^ Madison moved to insert between "after" and "it" in sect. 7, Art. 1 the words "the day on which," in order to prevent a question whether the day on which the bill be presented ought to be counted or not as one of the ten days.

M^r^ Randolph 2^ded^ the motion.

M^r^ Governe^r^ Morris. The amendment is unnecessary. The law knows no fractions of days.

A number of members being very impatient & calling for the question

N. H. no. Mas. no. C^t^ no. N. J. no. P^a^ ay. Del. no. M^d^ ay.
V^a^ ay. N. C. no. S. C. no. Geo. no.—

Doc^r^ Johnson made a further report from the Committee of stile &c. of the following resolutions to be substituted for 22 & 23 articles.

"Resolved that the preceding Constitution be laid before the U. States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent & ratification; & that each Convention assenting & ratifying the same should give notice thereof to the U. S. in Congs assembled.

"Resolved that it is the opinion of this Convention that as soon as the Conventions of nine States, shall have ratified this Constitution, the U. S. in Congs assembled should fix a day on which electors should be appointed by the States which shall have ratified the same; and a day on which the Electors should assemble to vote for the President; and the time and place for commencing proceedings under this Constitution–That after such publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the day fixed for the election of the President, and should transmit their votes certified signed, sealed and directed, as the Constitution requires, to the Secretary of the U. States in Congs assembled: that the Senators and Representatives should convene at the time & place assigned: that the Senators should appoint a President for the sole purpose of receiving, opening, and counting the votes for President, and that after he shall be chosen, the Congress, together with the President should without delay proceed to execute this Constitution."

Adjourned.

Friday Sep^R 14^TH. 1787. In Convention

The Report of the Committee of stile & arrangement being resumed,

M^r. Williamson moved to reconsider in order to increase the number of Representatives fixed for the first Legislature. His purpose was to make an addition of one half generally to the number allotted to the respective States; and to allow two to the smallest States.

On this motion

N. H. no. Mas. no. C^t no. N. J. no. P^a ay. Del. ay. M^d ay.
V^a ay. N. C. ay. S. C. no. Geo. no.

Art. I. sect. 3. the words "by lot" [96] were struck out nem: con: on motion of M^r Madison, that some rule might prevail in the rotation that would prevent both the members from the same State from going out at the same time.

[96] "By lot" had been reinstated from the Report of five Aug. 6. as a correction of the printed report by the Com^e of stile & arrangement.–Madison's Note.

"Ex officio" struck out of the same section as superfluous; nem: con; and "or affirmation" after "oath" inserted also unanimously.

M^r Rutlidge and M^r Gov^r Morris moved "that persons impeached be suspended from their office until they be tried and acquitted."

M^r Madison. The President is made too dependent already on the Legislature by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension, will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate.

M^r^ King concurred in the opposition to the amendment.

On the question to agree to it

N. H. no. Mas. no. C^t^ ay. N. J. no. P^a^ no. Del.no. M^d^ no.
V^a^ no. N. C. no. S. C. ay. Geo. ay.

Art. I. sect. 4. "except as to the places of choosing Senators" was added nem: con: to the end of the first clause, in order to exempt the seats of Gov^t^ in the States from the power of Congress.

Art. I. Sect. 5. "Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy."

Col: Mason & M^r^ Gerry moved to insert after the word "parts," the words "of the proceedings of the Senate" so as to require publication of all the proceedings of the House of Representatives.

It was intimated on the other side that cases might arise where secrecy might be necessary in both Houses. Measures preparatory to a declaration of war in which the House of Rep^s^ was to concur, were instanced.

On the question, it passed in the negative.

N. H. no. (Rh. I. abs.) Mas. no. Con: no,(N. Y. abs.)
N. J. no. Pen. ay. Del. no. Mary. ay. Virg. no. N. C. ay.
S. C. div^d^. Geor. no.

M^r^ Baldwin observed that the clause, Art. I. Sect. 6. declaring that no member of Cong^s^ "during the time for which he was elected, shall be appointed to any Civil office under the authority of the U. S. which shall have been created, or the emoluments whereof shall have been increased during such time," would not extend to offices *created by the Constitution*; and the salaries of which would be created, *not increased* by Cong^s^ at their first session. The members of the first Cong^s^ consequently might evade the disqualification in this instance.–He was neither seconded nor opposed; nor did any thing further pass on the subject.

Art. I. Sect. 8. The Congress "may by joint ballot appoint a Treasurer"

M^r^ Rutlidge moved to strike out this power, and let the Treasurer be appointed in the same manner with other officers.

M^r^ Gorham & M^r^ King said that the motion, if agreed to, would have a mischievous tendency. The people are accustomed & attached to that mode of appointing Treasurers, and the innovation will multiply objections to the system.

M^r^ Gov^r^ Morris remarked that if the Treasurer be not appointed by the Legislature, he will be more narrowly watched, and more readily impeached.

M^r^ Sherman. As the two Houses appropriate money, it is best for them to appoint the officer who is to keep it; and to appoint him as they make the appropriation, not by joint but several votes.

Gen^l^ Pinkney. The Treasurer is appointed by joint ballot in South Carolina. The consequence is that bad appointments are made, and the Legislature will not listen to the faults of their own officer.

On the motion to strike out

> N. H. ay. Mas. no. C^t^ ay. N. J. ay. P^a^ no. Del. ay. M^d^ ay.
> V^a^ no. N. C. ay. S. C. ay. Geo. ay.

Art I sect. 8. "but all such duties imposts & excises, shall be uniform throughout the U. S." were unanimously annexed to the power of taxation.

To define & punish piracies and felonies on the high seas, and "punish" offences against the law of nations.

M^r^ Gov^r^ Morris moved to strike out "punish" before the words "offences ag^st^ the law of nations," so as to let these be *definable* as well as punishable, by virtue of the preceding member of the sentence.

M^r^ Wilson hoped the alteration would by no means be made. To pretend to *define* the law of nations which depended on the authority of all the civilized nations of the world, would have a look of arrogance, that would make us ridiculous.

M^r^ Gov^r^ Morris. The word *define* is proper when applied to *offences* in this case; the law of nations being often too vague and deficient to be a rule.

On the question to strike out the word "punish" it passed in the affirmative

N. H. ay. Mas. no. C^t^ ay. N. J. ay. P^a^ no. Del. ay. M^d^ no. V^a^ no. N. C. ay. S. C. ay. Geo. no.

Doc^r^ Franklin moved [97] to add after the words "post roads" Art. I. Sect. 8. "a power to provide for cutting canals where deemed necessary."

[97] This motion by D^r^ Franklin not stated in the printed Journal, as are some other motions.–Madison's Note.

Wilson 2^ded^ the motion.

M^r^ Sherman objected. The expence in such cases will fall on the U. States, and the benefit accrue to the places where the canals may be cut.

M^r^ Wilson. Instead of being an expence to the U. S. they may be made a source of revenue.

M^r^ Madison suggested an enlargement of the motion into a power "to grant charters of incorporation where the interest of the U. S. might require & the legislative provisions of individual States may be incompetent." His primary object was however to secure an easy communication between the States which the free intercourse now to be opened, seemed to call for. The political obstacles being removed, a removal of the natural ones as far as possible ought to follow. M^r^ Randolph 2^ded^ the proposition.

M^r^ King thought the power unnecessary.

M^r^ Wilson. It is necessary to prevent *a State* from obstructing the *general* welfare.

M^r^ King. The States will be prejudiced and divided into parties by it. In Philad^a^ & New York. It will be referred to the establishment of a Bank, which has been a subject of contention in those Cities. In other places it will be referred to mercantile monopolies.

M^r^ Wilson mentioned the importance of facilitating by canals, the communication with the Western settlements. As to Banks he did not think with M^r^ King that the power in that point of view would excite the prejudices & parties apprehended. As to mercantile monopolies they are already included in the power to regulate trade.

Col: Mason was for limiting the power to the single case of Canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution as supposed by M^r^ Wilson.

The motion being so modified as to admit a distinct question specifying & limited to the case of canals,

N. H. no. Mas. no. C^t^ no. N. J. no. P^a^ ay. Del. no. M^d^ no.
V^a^ ay. N. C. no. S. C. no. Geo. ay.

The other part fell of course, as including the power rejected.

M^r^ Madison & M^r^ Pinkney then moved to insert in the list of powers vested in Congress a power–"to establish an University, in which no preferences or distinctions should be allowed on account of Religion."

M^r^ Wilson supported the motion.

M^r^ Gov^r^ Morris. It is not necessary. The exclusive power at the Seat of Government, will reach the object.

On the question

N. H. no. Mas. no. Con^{t} div^{d}. D^{r} Johnson ay. M^{r} Sherman no. N. J. no. P^{a} ay. Del. no. M^{d} no. V^{a} ay. N. C. ay. S. C. ay. Geo. no.

Col: Mason, being sensible that an absolute prohibition of standing armies in time of peace might be unsafe, and wishing at the same time to insert something pointing out and guarding against the danger of them, moved to preface the clause (Art. 1 sect. 8) "To provide for organizing, arming and disciplining the militia &c." with the words "And that the liberties of the people may be better secured against the danger of standing armies in time of peace." M^{r} Randolph 2^{ded} the motion.

M^{r} Madison was in favor of it. It did not restrain Congress from establishing a military force in time of peace if found necessary; and as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution, as far as will consist with the essential power of the Gov^{t} on that head.

M^{r} Gov^{r} Morris opposed the motion as setting a dishonorable mark of distinction on the military class of Citizens.

M^{r} Pinkney & M^{r} Bedford concurred in the opposition.

On the question

N. H. no. Mas. no. C^{t} no. N. J. no. P^{a} no. Mar^{d} no. V^{a} ay. N. C. no. S. C. no. Geo. ay.

Col: Mason moved to strike out from the clause (art. 1 sect 9.) "no bill of attainder nor any ex post facto law shall be passed" the words "nor any ex post facto law." He thought it not sufficiently clear that the prohibition meant by this phrase was limited to cases of a criminal nature, and no Legislature ever did or can altogether avoid them in Civil cases.

M^{r} Gerry 2^{ded} the motion but with a view to extend the prohibition to "civil cases," which he thought ought to be done.

On the question; all the States were–no.

Mr. Pinkney & Mr. Gerry, moved to insert a declaration "that the liberty of the Press should be inviolably observed."

Mr. Sherman. It is unnecessary. The power of Congress does not extend to the Press. On the question, it passed in the negative

N. H. [98] no. Mas. ay. Ct. no. N. J. no. Pa. no. Del. no. Md. ay. Va. ay. N. C. no. S. C. ay. Geo. no.

[98] In the printed Journal N. Hampshire ay.–Madison's Note.

Art 1. Sect. 9. "no capitation tax shall be laid, unless &c."

Mr. Read moved to insert after "capitation" the words, "or other direct tax." He was afraid that some liberty might otherwise be taken to saddle the States, with a readjustment by this rule, of past requisitions of Congs.–and that his amendment by giving another cast to the meaning would take away the pretext. Mr. Williamson 2ded the motion which was agreed to. On motion of Col: Mason "or enumeration" inserted after, as explanatory of "Census" Con. & S. C. only, no. [99]

[99] The words "Con. & S. C. only no" are in the handwriting of John C. Payne, Madison's brother-in-law.

At the end of the clause "no tax or duty shall be laid on articles exported from any State" was added the following amendment conformably to a vote on the [31] of [August] viz–no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to or from one State, be obliged to enter, clear or pay duties in another.

Col. Mason moved a clause requiring "that an Account of the public expenditures should be annually published" Mr. Gerry 2ded the motion,

Mr. Govr. Morris urged that this wd. be impossible in many cases.

Mr. King remarked, that the term expenditures went to every minute shilling. This would be impracticable. Congs. might indeed make a monthly publication, but it would be in such general statements as would afford no satisfactory information.

Mr. Madison proposed to strike out "annually" from the motion & insert "from time to time," which would enjoin the duty of frequent publications and leave enough to the discretion of the Legislature. Require too much and the difficulty will beget a habit of doing nothing. The articles of Confederation require halfyearly publications on this subject. A punctual compliance being often impossible, the practice has ceased altogether.

Mr. Wilson 2ded. & supported the motion. Many operations of finance cannot be properly published at certain times.

Mr. Pinkney was in favor of the motion.

Mr. Fitzimmons. It is absolutely impossible to publish expenditures in the full extent of the term.

Mr. Sherman thought "from time to time" the best rule to be given.

"Annual" was struck out–& those words–inserted nem: con:

The motion of Col: Mason so amended was then agreed to nem: con: and added after–"appropriations by law" as follows–"And a regular statement and account of the receipts & expenditures of all public money shall be published from time to time."

The first clause of Art. 1 Sect. 10–was altered so as to read–"no State shall enter into any Treaty alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold & silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

Mr. Gerry entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the States from impairing the

obligation of contracts, alledging that Congress ought to be laid under the like prohibitions, he made a motion to that effect. He was not 2ded.

Adjourned.

Saturday Sep^R 15^TH. 1787. In Convention

M^r. Carrol reminded the House that no address to the people had yet been prepared. He considered it of great importance that such an one should accompany the Constitution. The people had been accustomed to such on great occasions, and would expect it on this. He moved that a Committee be appointed for the special purpose of preparing an address.

M^r. Rutlidge objected on account of the delay it would produce and the impropriety of addressing the people before it was known whether Congress would approve and support the plan. Congress if an address be thought proper can prepare as good a one. The members of the Convention can also explain the reasons of what has been done to their respective Constituents.

M^r. Sherman concurred in the opinion that an address was both unnecessary and improper.

On the motion of M^r. Carrol

N. H. no. Mas. no. C^t. no. N. J. no. P^a. ay. Del. ay. M^d. ay. V^a. ay. N. C. [100] abs^t. S. C.[100] no. Geo. no.

[100] In the printed Journal N. Carolina no–S. Carol: omitted.–Madison's Note.

M^r. Langdon. Some gentlemen have been very uneasy that no increase of the number of Representatives has been admitted. It has in particular been thought that one more ought to be allowed to N. Carolina. He was of opinion that an additional one was due both to that State and to Rho: Island, & moved to reconsider for that purpose.

M^r. Sherman. When the Committee of eleven reported the apportionment–five Representatives were thought the proper share of

N. Carolina. Subsequent information however seemed to entitle that State to another.

On the motion to reconsider

> N. H. ay. Mas. no. C^{t} ay. N. J. no. Pen. div^{d}. Del. ay. M^{d} ay. V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

M^{r} Langdon moved to add 1 member to each of the Representations of N. Carolina & Rho: Island. [101]

[101] The Ms. official Journal says: "It was moved and seconded to"——and here finally ends, and the minutes for September 15 are crossed out (Const. MSS.). They are given in the printed Journal, and a note says the journal for that day and Monday was completed from minutes furnished by Madison (p. 379). October 22, 1818, Adams wrote to Madison asking him to complete the Journal. He replied from Montpelier, November 2:

> "I have received your letter of 22 ult: and enclose such extracts from my notes relating to the two last days of the Constitution, as may fill in the chasm in the Journals, according to the mode in which the proceedings are recorded."–State Dept. MSS., Miscl. Letters.

Later (June 18, 1819) Adams sent him lists of yeas and nays, and he replied (Montpelier, June 27, 1819): "I return the list of yeas & nays in the Convention, with the blanks filled in according to your request, as far as I could do it by tracing the order of the yeas & nays & their coincidency with those belonging to successive questions in my papers."–Mad. MSS.

M^{r} King was agst any change whatever as opening the door for delays. There had been no official proof that the numbers of N. C. are greater than before estimated, and he never could sign the Constitution if Rho: Island is to be allowed two members that is one fourth of the number allowed to Massts., which will be known to be unjust.

M^{r} Pinkney urged the propriety of increasing the number of Rep^{s} allotted to N. Carolina.

M^{r} Bedford contended for an increase in favor of Rho: Island, and of Delaware also it passed in the negative.

On the question for allowing two Rep^{s} to Rho: Island, it passed in the negative.

N. H. ay. Mas. no. C^{t} no. N. J. no. P^{a} no. Del. ay. M^{d} ay.
V^{a} no. N. C. ay. S. C. no. Geo. ay.

On the question for allowing six to N. Carolina, it passed in the negative

N. H. no. Mas. no. C^{t} no. N. J. no. P^{a} no. Del. no. M^{d} ay.
V^{a} ay. N. C. ay. S. C. ay. Geo. ay.

Art 1. Sect. 10. (paragraph 2) "No State shall, without the consent of Congress lay imposts or duties on imports or exports; nor with such consent, but to the use of the Treasury of the U. States."

In consequence of the proviso moved by Col: Mason; and agreed to on the 13 Sep^{r}, this part of the section was laid aside in favor of the following substitute viz: "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its Inspection laws; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the U. S.; and all such laws shall be subject to the revision and controul of the Congress"

On a motion to strike out the last part "and all such laws shall be subject to the revision and controul of the Congress" it passed in the negative.

N. H. no. Mas. no. C^{t} no. N. J. no. P^{a} div^{d}. Del. no.
M^{d} no. V^{a} ay. N. C. ay. S. C. no. Geo. ay.

The substitute was then agreed to; Virg^{a} alone being in the negative.

The remainder of the paragraph being under consideration–viz–"nor keep troops nor ships of war in time of peace, nor enter into any agreement or compact with another State, nor with any foreign power. Nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay, until Congress can be consulted."

Mr. McHenry & Mr. Carrol moved that "no State shall be restrained from laying duties of tonnage for the purpose of clearing harbours and erecting lighthouses."

Col. Mason in support of this explained and urged the situation of the Chesapeak which peculiarly required expences of this sort.

Mr. Govr. Morris. The States are not restrained from laying tonnage as the Constitution now stands. The exception proposed will imply the contrary, and will put the States in a worse condition than the gentleman (Col. Mason) wishes.

Mr. Madison. Whether the States are now restrained from laying tonnage duties, depends on the extent of the power "to regulate commerce." These terms are vague, but seem to exclude this power of the States. They may certainly be restrained by Treaty. He observed that there were other objects for tonnage Duties as the support of seamen &c. He was more & more convinced that the regulation of Commerce was in its nature indivisible and ought to be wholly under one authority.

Mr. Sherman. The power of the U. States to regulate trade being supreme can controul interferences of the State regulations when such interferences happen; so that there is no danger to be apprehended from a concurrent jurisdiction.

Mr. Langdon insisted that the regulation of tonnage was an essential part of the regulation of trade, and that the States ought to have nothing to do with it. On motion "that no State shall lay any duty on tonnage without the consent of Congress."

N. H. ay. Mas. ay. Ct. divd. N. J. ay. Pa. no. Del. ay. Md. ay.
Va. no. N. C. no. S. C. ay. Geo. no.

The remainder of the paragraph was then remoulded and passed as follows viz–"No State shall without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or

engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

Art II. sect. 1. (paragraph 6) "or the period for chusing another president arrive" were changed into "or a President shall be elected" conformably to a vote of the —— of ——.

M^{r} Rutlidge and Doc^{r} Franklin moved to annex to the end of paragraph 7. Sect. 1. Art II–"and he (the President) shall not receive, within that period, any other emolument from the U. S. or any of them." on which question

N. H. ay. Mas. ay. C^{t} no. N. J. no. P^{a} ay. Del. no. M^{d} ay.
V^{a} ay. N. C. no. S. C. ay. Geo.–ay.

Art: II. Sect. 2. "he shall have power to grant reprieves and pardons for offences against the U. s. &c."

M^{r} Randolph moved to except "cases of treason." The prerogative of pardon in these cases was too great a trust. The President may himself be guilty. The Traitors may be his own instruments.

Col: Mason supported the motion.

M^{r} Gov^{r} Morris had rather there should be no pardon for treason, than let the power devolve on the Legislature.

M^{r} Wilson. Pardon is necessary for cases of treason, and is best placed in the hands of the Executive. If he be himself a party to the guilt he can be impeached and prosecuted.

M^{r} King thought it would be inconsistent with the Constitutional separation of the Executive & Legislative powers to let the prerogative be exercised by the latter. A Legislative body is utterly unfit for the purpose. They are governed too much by the passions of the moment. In Massachusetts, one assembly would have hung all the insurgents in that State: the next was equally disposed to pardon them all. He suggested the expedient of requiring the concurrence of the Senate in acts of Pardon.

Mr. Madison admitted the force of objections to the Legislature, but the pardon of treasons was so peculiarly improper for the President that he should acquiesce in the transfer of it to the former, rather than leave it altogether in the hands of the latter. He would prefer to either an association of the Senate as a Council of advice, with the President.

Mr. Randolph could not admit the Senate into a share of the power. The great danger to liberty lay in a combination between the President & that body.

Col: Mason. The Senate has already too much power. There can be no danger of too much lenity in legislative pardons, as the Senate must concur, & the President moreover can require 2/3 of both Houses.

On the motion of Mr. Randolph

> N. H. no.–Mas. no. Ct. div^d. N. J. no. Pa. no. Del. no.
> Md. no. Va. ay. N. C. no. S. C. no. Geo. ay.

Art II. Sect. 2. (paragraph 2) To the end of this, Mr. Govern^r Morris moved to annex "but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the Courts of law, or in the heads of Departments." Mr. Sherman 2^ded the motion.

Mr. Madison. It does not go far enough if it be necessary at all. Superior officers below Heads of Departments ought in some cases to have the appointment of the lesser offices.

Mr. Govr. Morris. There is no necessity. Blank commissions can be sent—

On the motion

> N. H. ay. Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. no.
> Md. div^d. Va. no. N. C. ay. S. C. no. Geo. no.

The motion being lost by an equal division of votes. It was urged that it be put a second time some such provision being too necessary to be omitted, and on a second question it was agreed to nem: con.

Art. II. Sect. 1. The words "and not per capita" were struck out as superfluous and the words "by the Representatives" also–as improper, the choice of President being in another mode as well as eventually by the House of Rep^{s}.

Art II. Sect. 2. After "officers of the U. S. whose appointments are not otherwise provided for," were added the words "and which shall be established by law."

Art III. Sect. 2. parag: 3. M^{r} Pinkney & M^{r} Gerry moved to annex to the end, "And a trial by jury shall be preserved as usual in civil cases."

M^{r} Gorham. The constitution of Juries is different in different States and the trial itself is *usual* in different cases in different States.

M^{r} King urged the same objections.

Gen^{l} Pinkney also. He thought such a clause in the Constitution would be pregnant with embarrassments.

The motion was disagreed to nem: con:

Art. IV. Sect. 2. parag: 3. the term "legally" was struck out, and "under the laws thereof" inserted after the word "State" in compliance with the wish of some who thought the term legal equivocal, and favoring the idea that slavery was legal in a moral view.

Art. IV. Sect 3. "New States may be admitted by the Congress into this Union: but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Cong^{s}."

M^{r} Gerry moved to insert after "or parts of States" the words "or a State and part of a State" which was disagreed to by a large majority; it appearing to be supposed that the case was comprehended in the words of the clause as reported by the Committee.

Art. IV. Sect. 4. After the word "Executive" were inserted the words "when the Legislature cannot be convened."

Art. V. "The Congress, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year 1808 shall in any manner affect the 1 & 4 clauses in the 9. Section of article 1."

Mr. Sherman expressed his fears that three fourths of the States might be brought to do things fatal to particular States, as abolishing them altogether or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the States importing slaves should be extended so as to provide that no State should be affected in its internal police, or deprived of its equality in the Senate.

Col: Mason thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case.

Mr. Govr. Morris & Mr. Gerry moved to amend the article so as to require a Convention on application of 2/3 of the Sts.

Mr. Madison did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the States as to call a Convention on the like application. He saw no objection however against providing for a Convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum &c. which in constitutional regulations ought to be as much as possible avoided.

The motion of M^{r} Gov^{r} Morris & M^{r} Gerry was agreed to nem: con: (see the first part of the article as finally past).

M^{r} Sherman moved to strike out of art. V. after "legislatures" the words "of three fourths" and so after the word "Conventions" leaving future Conventions to act in this matter, like the present Conventions according to circumstances.

On this motion

> N. H. div^{d}. Mas. ay. C^{t} ay. N. J. ay. P^{a} no. Del. no.
> M^{d} no. V^{a} no. N. C. no. S. C. no. Geo–no.

M^{r} Gerry moved to strike out the words "or by Conventions in three fourths thereof." On this motion

> N. H. no. Mas. no. C^{t} ay. N. J. no. P^{a} no. Del. no. M^{d} no.
> V^{a} no. N. C. no. S. C. no. Geo. no.

M^{r} Sherman moved according to his idea above expressed to annex to the end of the article a further proviso "that no State shall without its consent be affected in its internal police, or deprived of its equal suffrage in the Senate."

M^{r} Madison. Begin with these special provisos, and every State will insist on them, for their boundaries, exports &c.

On the motion of M^{r} Sherman

> N. H. no. Mas. no. C^{t} ay. N. J. ay. P^{a} no. Del. ay. M^{d} no.
> V^{a} no. N. C. no. S. C. no. Geo. no.

M^{r} Sherman then moved to strike out art. V altogether.

M^{r} Brearley 2^{ded} the motion, on which

> N. H. no. Mas. no. C^{t} ay. N. J. ay. P^{a} no. Del div^{d}.
> M^{d} no. V^{a} no. N. C. no. S. C. no. Geo. no.

M^r^ Gov^r^ Morris moved to annex a further proviso–"that no State, without its consent shall be deprived of its equal suffrage in the Senate."

This motion being dictated by the circulating murmurs of the small States was agreed to without debate, no one opposing it, or on the question, saying no.

Col: Mason expressing his discontent at the power given to Congress by a bare majority to pass navigation acts, which he said would not only enhance the freight, a consequence he did not so much regard–but would enable a few rich merchants in Philad^a^ N. York & Boston, to monopolize the Staples of the Southern States & reduce their value perhaps 50 Per C^t^ moved a further proviso that no law in the nature of a navigation act be passed before the year 1808, without the consent of 2/3 of each branch of the Legislature.

On this motion

> N. H. no. Mas. no. C^t^ no. N. J. no. P^a^ no. Del. no. M^d^ ay.
> V^a^ ay. N. C. abs^t^. S. C. no. Geo. ay.

M^r^ Randolph animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention, on the close of the great & awful subject of their labours, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing "that amendments to the plan might be offered by the State Conventions, which should be submitted to and finally decided on by another general Convention." Should this proposition be disregarded, it would he said be impossible for him to put his name to the instrument. Whether he should oppose it afterwards he would not then decide but he would not deprive himself of the freedom to do so in his own State, if that course should be prescribed by his final judgment.

Col: Mason 2^ded^ & followed M^r^ Randolph in animadversions on the dangerous power and structure of the Government, concluding that it would end either in monarchy, or a tyrannical aristocracy; which, he was in doubt, but one or other, he was sure. This Constitution had been formed without

the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention as proposed, he could sign.

Mr. Pinkney. These declarations from members so respectable at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations & amendments of the different States on the subject of Government at large. Nothing but confusion & contrariety could spring from the experiment. The States will never agree in their plans, and the Deputies to a second Convention coming together under the discordant impressions of their Constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections as well as others to the plan. He objected to the contemptible weakness & dependence of the Executive. He objected to the power of a majority only of Congs. over Commerce. But apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support.

Mr. Gerry stated the objections which determined him to withhold his name from the Constitution. 1. the duration and re-eligibility of the Senate. 2. the power of the House of Representatives to conceal their journals. 3. the power of Congress over the places of election. 4. the unlimited power of Congress over their own compensation. 5. Massachusetts has not a due share of Representatives allotted to her. 6. 3/5 of the Blacks are to be represented as if they were freemen. 7. Under the power over commerce, monopolies may be established. 8. The vice president being made head of the Senate. He could however he said get over all these, if the rights of the Citizens were not rendered insecure 1. by the general power of the Legislature to make what laws they may please to call necessary and proper. 2. raise armies and money without limit. 3. to establish a tribunal without juries, which will be a Star-chamber as to Civil cases. Under such a view of the Constitution, the best that could be done he conceived was to provide for a second general Convention.

On the question on the proposition of M[r]. Randolph. All the States answered no.

On the question to agree to the Constitution as amended. All the States ay.

The Constitution was then ordered to be engrossed. and the House adjourned.

Monday Sep^R 17. 1787. In Convention

The engrossed Constitution being read.

Doc^r Franklin rose with a speech in his hand, which he had reduced to writing for his own conveniency, and which M^r Wilson read in the words following.

M^r President

I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men indeed as well as most sects in Religion think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele a Protestant in a Dedication tells the Pope, that the only difference between our Churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong. But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain french lady, who in a dispute with her sister, said "I don't know how it happens, Sister but I meet with nobody but myself, that is always in the right—*Il n'y a que moi qui a toujours raison*."

In these sentiments, Sir, I agree to this Constitution with all its faults, if they are such; because I think a general Government necessary for us, and there is no form of Government but what may be a blessing to the people if well administered, and believe farther that this is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when the people

shall become so corrupted as to need despotic Government, being incapable of any other. I doubt too whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us in returning to our Constituents were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects & great advantages resulting naturally in our favor among foreign nations as well as among ourselves, from our real or apparent unanimity. Much of the strength & efficiency of any Government in procuring and securing happiness to the people, depends, on opinion, on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors. I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress & confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts & endeavors to the means of having it well administered.

On the whole, Sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.–He then moved that the Constitution be signed by the members and offered the

following as a convenient form viz: "Done in Convention by the unanimous consent of *the States* present the 17th of Sepr &c.–In witness whereof we have hereunto subscribed our names."

This ambiguous form had been drawn up by Mr G. M. in order to gain the dissenting members, and put into the hands of Docr Franklin that it might have the better chance of success.

Mr Gorham said if it was not too late he could wish, for the purpose of lessening objections to the Constitution, that the clause declaring "the number of Representatives shall not exceed one for every forty thousand" which had produced so much discussion, might be yet reconsidered, in order to strike out 40,000 & insert "thirty thousand." This would not he remarked establish that as an absolute rule, but only give Congress a greater latitude which could not be thought unreasonable.

Mr King & Mr Carrol seconded & supported the ideas of Mr Gorham.

When the President rose, for the purpose of putting the question, he said that although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of Representatives had been considered by many members of the Convention an insufficient security for the rights & interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan, and late as the present moment was for admitting amendments, he thought this of so much consequence that it would give much satisfaction to see it adopted. [102]

[102] This was the only occasion on which the President entered at all into the discussions of the Convention.–Madison's Note.

No opposition was made to the proposition of Mr. Gorham and it was agreed to unanimously.

On the question to agree to the Constitution enrolled in order to be signed. It was agreed to all the States answering ay.

Mr. Randolph then rose and with an allusion to the observations of Docr. Franklin apologized for his refusing to sign the Constitution notwithstanding the vast majority & venerable names that would give sanction to its wisdom and its worth. He said however that he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be governed by his duty as it should be prescribed by his future judgment. He refused to sign, because he thought the object of the convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan and confusion must ensue. With such a view of the subject he ought not, he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.

Mr. Govr. Morris said that he too had objections, but considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor, and by that determination he should abide. The moment this plan goes forth all other considerations will be laid aside, and the great question will be, shall there be a national Government or not? and this must take place or a general anarchy will be the alternative. He remarked that the signing in the form proposed related only to the fact that the *States* present were unanimous.

Mr. Williamson suggested that the signing should be confined to the letter accompanying the Constitution to Congress, which might perhaps do nearly as well, and would be found satisfactory to some members [103] who disliked the Constitution. For himself he did not think a better plan was to be expected and had no scruples against putting his name to it.

[103] He alluded to Mr. Blount for one.–Madison's Note.

Mr. Hamilton expressed his anxiety that every member should sign. A few characters of consequence, by opposing or even refusing to sign the Constitution, might do infinite mischief by kindling the latent sparks which lurk under an enthusiasm in favor of the Convention which may soon subside. No man's ideas were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and Convulsion on one side, and the chance of good to be expected from the plan on the other.

Mr. Blount [104] said he had declared that he would not sign, so as to pledge himself in support of the plan, but he was relieved by the form proposed and would without committing himself attest the fact that the plan was the unanimous act of the States in Convention.

[104] "Mr. Blount is a character strongly marked for integrity and honor. He has been twice a Member of Congress, and in that office discharged his duty with ability and faithfulness. He is no Speaker, nor does he possess any of those talents that make Men shine;–he is plain, honest, and sincere. Mr. Blount is about 36 years of age."–Pierce's Notes, *Amer. Hist. Rev.*, iii., 329.

Docr. Franklin expressed his fears from what Mr. Randolph had said, that he thought himself alluded to in the remarks offered this morning to the House. He declared that when drawing up that paper he did not know that any particular member would refuse to sign his name to the instrument, and hoped to be so understood. He possessed a high sense of obligation to Mr. Randolph for having brought forward the plan in the first instance, and for the assistance he had given in its progress, and hoped that he would yet lay aside his objections, and by concurring with his brethren, prevent the great mischief which the refusal of his name might produce.

Mr. Randolph could not but regard the signing in the proposed form, as the same with signing the Constitution. The change of form therefore could make no difference with him. He repeated that in refusing to sign the Constitution he took a step which might be the most awful of his life, but it

was dictated by his conscience, and it was not possible for him to hesitate, much less, to change. He repeated also his persuasion, that the holding out this plan with a final alternative to the people, of accepting or rejecting it in toto, would really produce the anarchy & civil convulsions which were apprehended from the refusal of individuals to sign it.

Mr. Gerry described the painful feelings of his situation, and the embarrassments under which he rose to offer any further observations on the subject wch. had been finally decided. Whilst the plan was depending, he had treated it with all the freedom he thought it deserved. He now felt himself bound as he was disposed to treat it with the respect due to the Act of the Convention. He hoped he should not violate that respect in declaring on this occasion his fears that a Civil war may result from the present crisis of the U. S. In Massachusetts, particularly he saw the danger of this calamitous event–In that State there are two parties, one devoted to Democracy, the worst he thought of all political evils, the other as violent in the opposite extreme. From the collision of these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this & other reasons that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it had been passed by the Convention, he was persuaded it would have a contrary effect. He could not therefore by signing the Constitution pledge himself to abide by it at all events. The proposed form made no difference with him. But if it were not otherwise apparent, the refusals to sign should never be known from him. Alluding to the remarks of Docr. Franklin, he could not he said but view them as levelled at himself and the other gentlemen who meant not to sign.

Genl. Pinkney. We are not likely to gain many converts by the ambiguity of the proposed form of signing. He thought it best to be candid and let the form speak the substance. If the meaning of the signers be left in doubt, his purpose would not be answered. He should sign the Constitution with a view to support it with all his influence, and wished to pledge himself accordingly.

Docr. Franklin. It is too soon to pledge ourselves before Congress and our Constituents shall have approved the plan.

Mr. Ingersol [105] did not consider the signing, either as a mere attestation of the fact, or as pledging the signers to support the Constitution at all events; but as a recommendation, of what, all things considered, was the most eligible.

[105] "Mr. Ingersol is a very able Attorney and possesses a clear legal understanding. He is well educated in the Classic's, and is a Man of very extensive reading. Mr. Ingersol speaks well, and comprehends his subject fully. There is modesty in his character that keeps him back. He is about 36 years old."–Pierce's Notes, *Amer. Hist. Rev.*, iii., 329.

On the motion of Docr. Franklin

N. H. ay. Mas. ay. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. divd. [106] Geo. ay.

[106] Genl. Pinkney & Mr. Butler disliked the equivocal form of the signing, and on that account voted in the negative.–Madison's Note.

Mr. King suggested that the Journals of the Convention should be either destroyed, or deposited in the custody of the President. He thought if suffered to be made public, a bad use would be made of them by those who would wish to prevent the adoption of the Constitution.

Mr. Wilson preferd the second expedient, he had at one time liked the first best; but as false suggestions may be propagated it should not be made impossible to contradict them.

A question was then put on depositing the Journals and other papers of the Convention in the hands of the President, on which,

N. H. ay. Mtts. ay. Ct. ay. N. J. ay. Pena. ay. Del. ay. Md. no. [107] Va. ay. N. C. ay. S. C. ay. Geo. ay. [108]

[107] This negative of Maryland was occasioned by the language of the instructions to the Deputies of that State, which required them to report to the State, the *proceedings* of the Convention.–Madison's Note.

[108] "Major Jackson presents his most respectful compliments to General Washington–

"He begs leave to request his signature to forty Diplomas intended for the Rhode Island Society of the Cincinnati.

"Major Jackson, after burning all the loose scraps of paper which belong to the Convention, will this evening wait upon the General with the Journals and other papers which their vote directs to be delivered to His Excellency.

"Monday evening"

Endorsed in Washington's hand: "Majr Wm Jackson 17th Sep. 1787."–Wash. MSS.

The President having asked what the Convention meant should be done with the Journals &c. whether copies were to be allowed to the members if applied for. It was Resolved nem. con: "that he retain the Journal and other papers, subject to the order of Congress, if ever formed under the Constitution."

The members then proceeded to sign the instrument.

Whilst the last members were signing it Doctr Franklin looking towards the President's Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.

The Constitution being signed by all the members except Mr Randolph, Mr Mason and Mr Gerry, who declined giving it the sanction of their names, the Convention dissolved itself by an Adjournment sine die [109]—

[109] The few alterations and corrections made in these debates which are not in my handwriting, were dictated by me and made in my presence by John C. Payne. James Madison.–Madison's Note.

[Following is a literal copy of the engrossed Constitution as signed. It is in four sheets, with an additional sheet containing the resolutions of transmissal. The note indented at the end is in the original precisely as reproduced here.]

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of

Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meetings shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on

any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President

within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for Limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;–And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a

Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the

Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like manner chuse the President. But in chusing the President, the Votes shall be taken by States, the

Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:–"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article. III.

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;–to all Cases affecting Ambassadors, other public Ministers and Consuls;–to all Cases of admiralty and maritime Jurisdiction;–to Controversies to which the United States shall be a Party;–to Controversies between two or more States;–between a State and Citizens of another State;–between Citizens of different States,–between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

The Word, "the," being interlined between the seventh and eighth Lines of the first Page, The Word "Thirty" being partly written on an Erazure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

Attest WILLIAM JACKSON Secretary

G^{o} WASHINGTON–Presid^{t} and deputy from Virginia

New Hampshire {JOHN LANGDON }
{NICHOLAS GILMAN}

Massachusetts { NATHANIEL GORHAM
{ RUFUS KING

Connecticut { W^{M}: SAM^{L} JOHNSON
{ ROGER SHERMAN

New York ALEXANDER HAMILTON

New Jersey { WIL: LIVINGSTON
{ DAVID BREARLEY
{ W^{M} PATERSON
{ JONA: DAYTON

Pennsylvania { B FRANKLIN
{ THOMAS MIFFLIN
{ ROB^{T} MORRIS
{ GEO. CLYMER
{ THO^{S} FITZSIMONS
{ JARED INGERSOLL
{ JAMES WILSON
{ GOUV MORRIS

Delaware { Geo: Read
{ Gunning Bedford jun
{ John Dickinson
{ Richard Bassett
{ Jaco: Broom

Maryland { James M^{c}Henry
{ Dan of S^{t} Tho^{s} Jenifer
{ Dan^{l} Carroll

Virginia { John Blair—
{ James Madison Jr.

North Carolina { W^{m} Blount
{ Rich^{d} Dobbs Spaight
{ Hu Williamson

South Carolina { J. Rutledge
{ Charles Cotesworth Pinckney
{ Charles Pinckney
{ Pierce Butler

Georgia { William Few
{ Abr Baldwin

In Convention Monday September 17th. 1787.

Present

The States of

New Hampshire, Massachusetts, Connecticut, M^{r} Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled.

Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the Unanimous Order of the Convention

G^{o}: WASHINGTON Presid^{t}.

W. JACKSON Secretary.

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suggests varying participation of legislature in different treaties, 240;
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opposes slave-trade extension, 250;
opposes admitting property in men in constitution, 252;
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favors national charters where states are incompetent, 372;
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moves public accounts be published from time to time, 376;
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moves that national laws be binding on state judiciary, 374;
favors election of executive by electors chosen by state legislatures, 378;
moves to consider question of re-eligibility of executive, 383;
favors appointment of judges by Senate, 384;
opposes creation of inferior judicial tribunals, 384;
opposes power in national government to suppress rebellion in states, 391;
moves ineligibility of executive to re-election, 8, 42;
opposes inclusion of judiciary in revisionary power, 21;
opposes voting in Senate per capita, 38;
favors disqualification from legislature of debtors to government, 64;
moves eleven years' term for executive, 43;
favors state compensation of Senate, 169;
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opposes power to subdue rebellion in a state without its consent, 186;
favors provision against large army in time of peace, 195;

moves treason be punishable on confession, 208;
proposes direct taxation by quotas from states, 212;
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favors state control of militia, 232;
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opposes requiring large states to consent to forming new states, 275;
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favors committing motion to require consent of states to dismemberment, 277;
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favors seven years' term for executive, 54;
favors election of executive by the people, 55;
opposes subordinating executive to legislature, 63;
opposes single executive, 72;
favors election of Representatives by the people, 86, 205;
favors separation of purse from sword, 93;
favors election of Senators by state legislatures, 100;

favors provision for amendments to constitution, 122;
favors national compensation of Representatives, 126;
favors two branches of legislature, 192;
favors biennial elections of Representatives, 208;
moves that Representatives be at least twenty-five years of age, 213;
favors ineligibility of Representatives to other offices, 215, 222;
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favors representation in Senate by states, 235;
favors property qualification for Senate, 246;
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thinks taxation should be according to representation, 344;
opposed to direct taxation proportioned to number of Representatives, 349;
opposes election of executive by the people, 377;
opposes election of executive to serve during good behavior, 381;
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favors impeachability of executive, ii., 11;
favors inclusion of judiciary in revisionary power, 19, 23;
thinks constitution should be ratified by the people, 31;
opposes three Senators from each State, 38;
favors election by legislature of executive for not more than six years in twelve, 52;
moves seven years' term and ineligibility for executive, 59;
proposes property qualification for legislature, 59;
moves to exclude from legislature debtors to United States, 59;
moves that national capital be not at a state capital, 66;
withdraws the motion, 67;
doubts propriety of mutual negative of each branch of legislature on the other, 91, 92;
thinks time of meeting of legislature should not be fixed by constitution, 94;
thinks suffrage question should be left to the states, 97;
favors free general suffrage, 98;
thinks seven years' citizenship should be required of Representatives, 107;
moves that Representatives be required to be inhabitants of their states for one year, 109;
favors postponing question of voting in Senate, 118;
favors postponing question of originating money bills, 120;
thinks aliens should not be in legislature, 121;
thinks quorum in legislature should be a majority, 133;
approves expulsion from legislature by two-thirds vote, 135;
thinks yeas and nays should be required, 136;

thinks publication of journal of legislature necessary, 138;
thinks government not bound by state laws on naturalization, 149;
thinks first money bills should originate in House, 149;
moves to allow members of legislature to hold any office, 159;
thinks Representatives should be independent of state legislatures, 168;
thinks revenue bills should originate in House, 170;
thinks Senate may alienate territory, 171;
moves that no tax be laid on exports, 179;
favors power to emit bills of credit, 181, 183;
favors appointment of treasurer by legislature, 184;
thinks punishment may be fixed in cases of piracy, etc., 184;
opposes giving power of war to executive, 188;
thinks general government should regulate militia, 190;
thinks funds may be diverted in time of war, 191;
appointed on grand committee, 193;
favors partial national control of militia, 195, 196;
favors power to make sumptuary laws, 202;
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thinks treason should be defined, 208;
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opposes naming slave-importing states, 250;
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thinks states may wish to encourage industries by imposts, 265;
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thinks western people should be treated with equality, 274;
thinks nine states may ratify constitution, 288;
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approves amendment relative to interstate validity of state acts, 293;
thinks members of legislature should not hold other offices, 296;
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thinks election of President by electors objectionable, 308;
thinks President may be elected by minority, 309;
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thinks system of electors autocratic, 312;
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approves increasing number for quorum to elect President, 319;
thinks Vice-President will encroach on Senate's rights, 326;
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thinks bill of rights necessary, 364;
moves states may levy export duties, 364;
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favors state tax on exports, 367;
moves publication of all proceedings of House, 370;
favors power to cut canals, 373;
opposed to standing armies, 374;
moves to strike out prohibition of *ex post facto* laws, 375;
moves verbal amendment to capitation tax clause, 375;
moves annual publication of expenditures, 376;
thinks states may lay tonnage dues, 380;
thinks President should not have power to pardon for treason, 382;
thinks legislature should have pardoning power for treason, 382;
disapproves provision for amendments, 385;
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thinks embargo power embraced in war power, 215;
moves prohibition of *ex post facto* laws or bills of attainder, 227;
proposes plan for choosing ports of entry, 253;
moves judges receive fixed salaries, 258;
thinks Maryland must ratify according to her law, 287;
thinks vessels will take officers as security of entry dues, 291;
moves President have power to convene either house of legislature, 338;
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thinks the people ought to be guided in their voting, 107;
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opposes requirement of seven years' residence of Representatives in their states, 108, 109;

thinks Senate should have power to originate money bills, 115;
thinks less than a majority should be quorum of legislature, 132;
seconds motion to fix quorum at few, 134;
thinks Senate should have only legislative power, 137;
thinks two houses will not agree on place of meeting, 140;
thinks provisions as to citizenship should not apply to those now citizens, 145;
thinks government bound by state laws on naturalization, 148;
thinks aristocracies will arise, 160;
fears good men will not serve in legislature, 165;
thinks Senate ought not to make treaties, 171;
thinks judiciary should not be included in revisionary power, 172;
opposes taxing exports, 182;
declares himself friendly to paper money, 182;
favors appointment of treasurer by executive, 184;
favors defining of piracies, felonies, etc., 185;
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Morris, Gouverneur, Pa., attends convention, i., 1;
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moves question of federal or national government, 32;
explains difference between federal and national government, 34;
favors compromise committee on question of representation, 287;
favors election of Senators for life, 287;
opposes report of compromise committee on representation, 298;
thinks representation should be according to wealth, 303, 319;
thinks representation should not be definitely fixed, 304, 334;
on committee on representation question, 307;
favors originating money bills in both houses, 309, 310;
opposes equal representation of small states, 316;
submits report on representation in House, 318;
favors referring question of representation to committee, 320;
moves consideration of question of fixing representation, 320;
favors property and population as basis of representation, 324;
thinks southern states sufficiently represented, 324;
objects to requiring legislature to take census, 328;
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opposes inclusion of slaves in basis of representation, 332, 340, 350;
moves that taxation be according to representation, 341, 342, 348;

thinks legislature should adjust basis of representation, 343;
moves reconsideration of question of representation in Senate, 370;
opposes taxation by quotas, 371;
opposes forbidding national government to interfere with state police, 371;
favors power in legislature where harmony would be disturbed by state legislation, 372;
opposes negative of state laws by legislature, 372, 374;
thinks judiciary will have power to set aside laws, 374;
favors election of executive by the people, 375, 376;
opposes ineligibility of executive, 379;
favors election of executive during good behavior, 379;
disclaims friendliness to monarchy, 382;
favors appointment of judges by executive, 384;
thinks impeachment trials should not be before the judges, 385;
favors appointment of judges by executive with consent of Senate, 387;
favors power to increase judges' salaries, 387, 389;
favors institution of inferior judicial tribunals, 389;
opposes continuance of old Congress, 390;
opposes guaranteeing existing laws to the states, 390;
favors a vigorous executive, ii., 1;
favors re-eligibility of executive, 3, 58;
favors short term for executive, 9;
thinks executive ought not to be impeachable, 11;
admits executive ought to be impeachable in some cases, 12, 15;
moves that electors for executive be not officials, 15;
thinks revisionary power requires more than the executive, 20;

thinks judiciary and executive may exercise revisionary power jointly, 24;
favors appointment of judges by executive, 27;
favors ratification of constitution by the people, 35;
moves that voting in Senate be per capita, 37;
moves ratification of constitution by a general convention, 37;
moves that there be three Senators from each state, 37;
opposes election of executive by members of national legislature chosen by lot, 44;
opposes election of executive by national legislature, 45;
opposes apportionment of direct taxation by representation, 47;
favors election of executive by the people, 53;
thinks each voter for executive may vote for two persons, 54;
opposes property qualification for members of legislature, 60;
thinks debtors of government need not be excluded from legislature, 60, 65;
seconds motion to strike out "landed" property as requirement in executive, 63;
opposes prohibiting national capital at state capital, 66;
moves to restrict mutual negative of each branch of legislature on the other to legislative acts, 91;
thinks treaties are not laws, 92;
moves to strike out provision for time of meeting of legislature, 93;
moves to change time of meeting of legislature from December to May, 94;
favors absolute negative in executive on legislature, 95;
moves restriction of suffrage to freeholders, 96;
thinks suffrage should be fixed by legislature, 96;
thinks general suffrage will produce aristocracy, 98;

favors seven years' citizenship for representatives, 127;
opposes requirement that Representatives be residents of their states, 108;
moves that representation be by free population, 112;
opposes slavery and the slave trade, 112;
thinks Senate should have right to originate money bills, 115, 152;
agrees that vacancies in Senate must be by refusals, resignations, etc., 117;
favors equal vote in Senate, 119;
moves fourteen years' citizenship for Senators, 120;
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moves to fix quorum at few, 133;
thinks any member may call for yeas and nays, 135;
thinks majority may expel from legislature, 135;
thinks citizenship requirements ought not to apply to those already citizens, 145, 147;
thinks members of legislature may hold some other offices, 162, 166;
thinks members of legislature may serve in army and navy, 166;
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thinks legislature should punish counterfeiting, 184;

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thinks legislature should have power to subdue rebellions, 186;
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thinks power to subdue rebellions necessary, 187;
submits propositions for committee of the whole, 200;
opposes power to make sumptuary laws, 202;
thinks treason should be defined, 203, 204;
moves British statute for treason, 205;
thinks treason should not be twice punishable, 207;
thinks debts should be adjusted with taxation, 210;
favors power to tax exports, 214;
moves slave-trade question be committed, 224;
thinks prohibition of *ex post facto* laws unnecessary, 227;
favors prohibiting bills of attainder, 227;
moves new government discharge engagements of old government, 229;
moves that Senate shall not have power of appointment, 235;
moves that power to enforce treaties be not specified, 285;
moves clause giving power over militia, 235;
thinks national appointment of state executives should be committed, 237;
doubts if treaties should be referred to Senate, 238;
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opposes appointment of treasurer by joint ballot, 184;
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thinks proof of treason may be difficult, 207;
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thinks Senate should not make appointments, 235;
thinks negative of state laws unnecessary, 237;
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thinks judiciary may decide controversies between states, 242;
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thinks Senate should not have separate voice in election of executive, 246;
thinks state legislatures will order federal offices filled by state appointment if permitted, 247;
thinks pardon before conviction may be necessary, 255;
opposes removability of judges on application of legislature, 257;
explains appellate power of judiciary, 260;
doubts if suspension of right of habeas corpus is ever necessary, 262;
moves legislature be prohibited from paying debts in anything but coin, 262;
thinks states should not interfere with contracts, 263;
objects to treating fugitive slaves as criminals, 267;
favors interstate validity of state acts, 267;
on committee to consider subject, 268;
favors commercial regulations by majority vote, 271;
thinks majority may regulate formation of new states, 277;
thinks new states may be formed without consent of old, 278;
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thinks eventual election of President by Senate dangerous, 313;
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thinks legislature should not define offences against law of nations, 372;
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favors national university, 374;
thinks accounts should be published from time to time, 376;
thinks executive may pardon for treason, 382;
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Transcriber Notes:

This document was filled with errors and inconsistencies in spelling, punctuations, and hyphenation. For example, usually the word re-eligible is hyphenated, but sometimes it is not; sometimes; reinstated is hyphenated but sometimes it is not; and usually the comma is used as a thousand mark, but sometimes a period is used for that purpose. Sometimes vice President was used and sometimes vice-President was used. Also, the abbreviations were not uniform (e.g., MaS. v. Mass.), which were only corrected when it is was clear which abbreviation was considered correct at the time printed. Another example is the abbreviation for Resolution, which was sometimes Resol:n, sometimes Resoln, and sometimes Resol.n. Sometimes "nem: con." was used, and sometimes "nem. con." was used. The only time errors were corrected was when it was very clear that an error was made, and it was clear how the error should be corrected, and those corrections are listed below.

Throughout the document there are instances where a comma is used where one expects a period, a period is used where one expects a comma, a colon is used where one expects a comma or period, neither is used when one is expected. This instances are left as-is, except for two exceptions: where a period is missing at the end of a sentence or missing at the end of an abbreviation, both of which happened so often that those corrections were made but were not listed below.

Throughout the document, there was no consistence in the formatting of the titles for each date, (e.g., FRIDAY AUGST 10. IN CONVENTION). No attempt was made to correct such inconsistencies.

Capitalization was corrected throughout the document without comment.

Throughout the document, a singe superscripted letter is represented by that single letter preceded by a carot, and more than one superscripted letters are represented by the letters enclosed by curly brackets. Thus, the word "ye" represents a word where the "y" is normal and the "e" is superscripted; and the word "2dnd" represents a word where the "2" is normal and the "dnd" is superscripted. In both conventions, it is assumed that a dot appeared below the superscripted letters, since in the original text a dot was often (but not always) present under the superscripted letters. Thus, "2dnd" in the present text would represent a normal digit "2" followed directly by the superscripted letters "dnd" with a single dot below the set of three letters.

The Contents of Volume II. page incorrectly lists the Chronology as starting on page vii, where it starts on page v.

On page 7, "difficulty an seemed" was replaced with "difficulty and seemed".

On page 7, "Hamshire" was replaced with "Hampshire".

On page 8, a period was added after "div^{d}.".

On page 9, removed period between "6" and "years".

On page 16, "forign" was replaced with "foreign".

On page 17, in footnote 4, "McLurg" was replaced with "McClurg".

On page 26, a period was added after "2".

On page 38, "[blank]" was inserted to mark a large blank space that appeared in the footnote.

On page 46, there is a missing opening quotation mark in the last paragraph, but it is unclear where that mark should go.

On page 47, the word "this" was capitalized in the sentence starting "This is committing too much".

On page 50, "forign" was replaced with "foreign".

On page 53, a period was added after "change of measures".

On page 76, a comma was added after the word "Virginia".

On page 81, the comma after "weights and measures" was replaced with a semicolon.

On page 112, a quotation mark was added after "40.000.".

On page 135, "M^{r} Kings" was replaced with "M^{r} King's".

On page 137, "M^{r} Carrols" was replaced with "M^{r} Carrol's".

On page 140, "in the shape it which" was replaced with "in the shape in which".

On page 143, "It" was capitalized at the beginning of a sentence.

On page 145, "Hamiltons" was replaced with "Hamilton's"

On page 146, "Will" was capitalized at the beginning of a sentence.

On page 147, the period after "the violaters" was changed to a question mark.

On page 166, "Pinkneys" was replaced with "Pinkney's".

On page 167, "[blank]" was inserted to mark a large blank space within parenthesizes.

On page 184, "Reads" was replaced with "Read's".

On page 189, a colon was added after "the General Legislature".

On page 189, a quotation mark was added after "limits of the U. States."

On page 207, "misdemesnors" was replaced with "misdemeanors".

On page 211, "there" was replaced with "There".

On page 212, "it" was replaced with "It".

On page 217, a quotation mark was added after "exports".

On page 218, a period was added after "2".

On page 228, "reflextions" was replaced with "reflections".

On page 228, "The" was replaced with "the".

On page 230, a quotation mark was added after "training".

On page 235, a quotation mark and a comma was added after "foreign State".

On page 236, a period was added after "nem: contrad".

On page 237, the quotation mark was deleted after "&c &c."

On page 242, a quotation mark was added after "a second time."

On page 248, "these" was replaced with "These".

On page 301, "2 the" was replaced with "2. The", and "6. the" was replaced with "6. The".

On page 305, "U. S" was replaced with "U. S.".

On page 305, "biennally" was replaced with "biennially".

On page 306, a quotation mark was added after "purchased for forts".

On page 314, a comma was removed after "The Senate".

On page 319, a quotation mark was removed after "the States,".

On page 324, in Footnote 58, a period was added after "united States of america".

On page 332, a quotation mark was added after "the States present". On page 399, the word "the" was shown by the printer to be inserted in the

sentence. This insertion was made.

On page 414, added period were removed after some names in the signatures.

On page 440, in the index entry for Mason, which begins "doubts propriety of mutual negative", "legiture" was replaced with "legislature".

On page 457, in the index entry "Knox's letter to, 158 ;" for "Washington, George, Va.", "N. was entered in the missing blank.

Throughout the document, "Sharman" was replaced with "Sherman".

Throughout the document, one delegate is sometimes named "Dickinson" and is sometimes named "Dickenson".

In the index, entries divided by page markers were joined into single entries where possible, and the formatting of the index was regularized (e.g., periods replaced with commas for uniformity of formatting).

There was at least one mistake found in the index, but the index was not corrected to be accurate. Some of the links are to Volume 1, which will work only if there is an internet connection.

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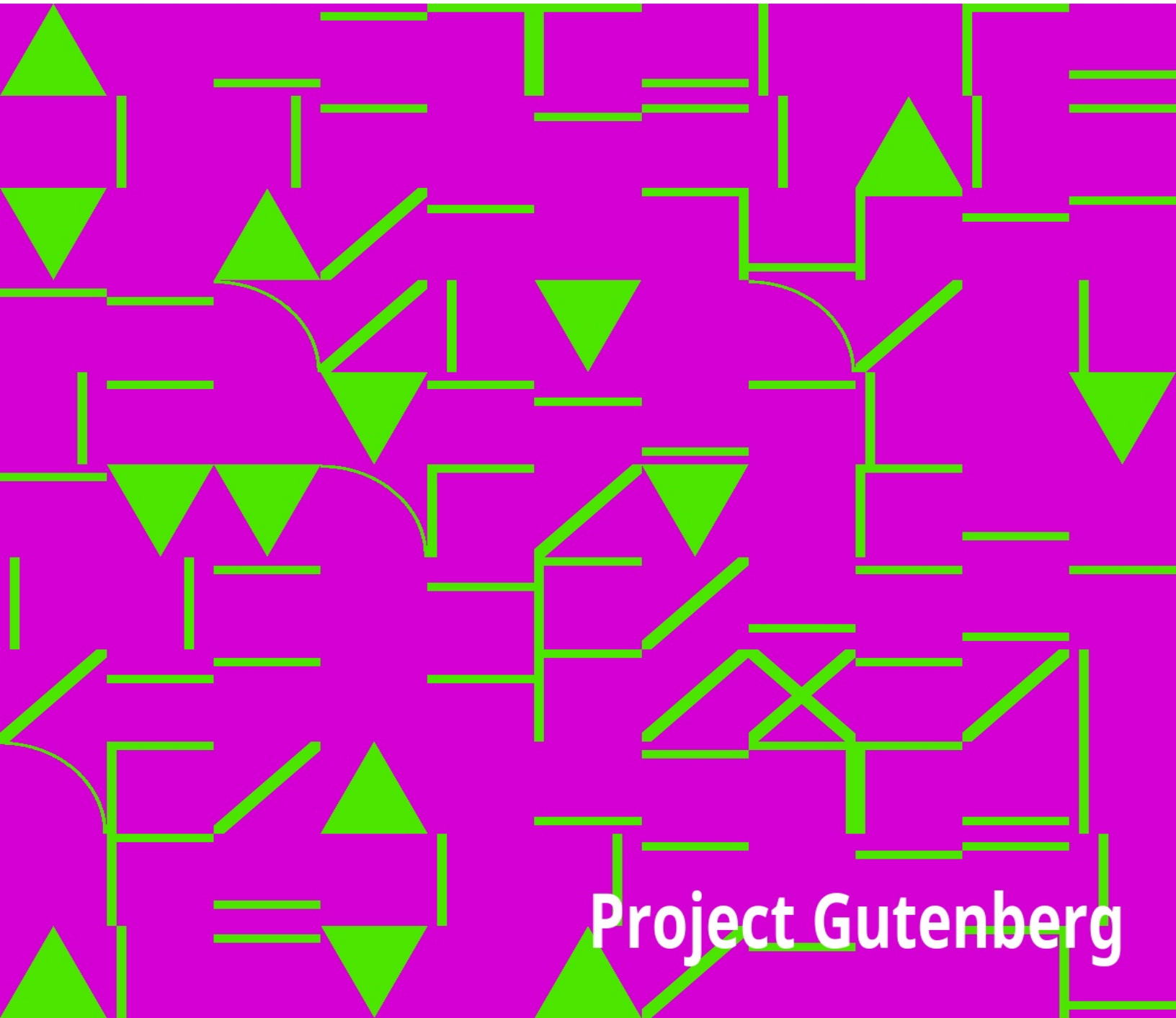
A Report of the Debates and Proceedings in the Secret Sessions of the Conference Convention

For Proposing Amendments to the Constitution of the United States, Held

L. E. Chittenden



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A REPORT

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IN THE

S E C R E T S E S S I O N S

OF THE

CONFERENCE CONVENTION,

FOR PROPOSING
AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES,
HELD AT
WASHINGTON, D.C., IN FEBRUARY, A.D. 1861.

BY

L.E. CHITTENDEN,

ONE OF THE DELEGATES.

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1864.

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INTRODUCTION.

If I had been guided by my judgment alone it is not probable that these notes of the debates in the Conference, held upon the invitation of Virginia, at Washington, in the month of February, 1861, would have been made public. From the commencement of its sessions, a portion of the members were in favor of the daily publication of the proceedings. I was disposed to go farther and have the sessions open to the public; but this proposition was opposed by a large majority. Strong reasons were urged for excluding the multitude which in the excitement of the time would have thronged the hall wherein the Conference held its sessions. But these reasons did not apply to the publication of the debates, and a considerable minority were strongly of opinion that the people should be informed daily, of the votes and remarks of their representatives in that body.

I commenced taking notes on the first day of the session. For the first few days, and until the reports were presented from the general committee, there was but little discussion, and that related to questions incidental to the general subject. On the 15th of February, and before the committee reported, Mr. Orth offered a resolution authorizing the admission of reporters, which, after some discussion, by a close vote was laid upon the table. On the 18th, finding the labor of taking notes greater than I had anticipated, and desiring that a complete record should be preserved; I introduced a resolution providing for the appointment of an official stenographer, who should report the proceedings and hold them subject to the order of the Conference. I urged the adoption of this resolution as strenuously as was proper, but the feeling of the majority appeared to be still adverse to its passage, and it shared the fate of its predecessor. I then revised the notes already taken, and finding them more complete than I had anticipated, determined to make as accurate a report as I was able of the general discussion. I could not then anticipate whether such a report would be useful to the country or not; but I thought if the Conference should

propose amendments to the Constitution, and these should be ultimately submitted to the States for adoption, a knowledge of the motives and reasons which influenced the action of the Conference as well as the construction which the members gave to the propositions themselves, might become of as great importance as the same subjects were in the convention which framed the present Constitution. I attended every session of the Conference, and, so far as my strength would permit, made as full and accurate notes as I could, both of the action of the Conference and the observations of its members.

These notes were carefully examined and revised immediately after the close of each daily session. After the passage of the resolution introduced by Mr. BARRINGER, removing the injunction of secrecy and authorizing their publication, I determined to write them out for the press. I was engaged in this work when the rebellion commenced, and was shortly after called to the performance of the duties of an official position, which for many months left me no leisure for other employments.

My notes were then laid aside. As it was known by every member of the Conference that I had taken them, I was often pressed to permit selections from them to be made. These requests I invariably declined, as I desired the publication, if made at all, to be entire, as well as accurate. As time passed, these appeals became more frequent and pressing, and claims were made in relation to the course of several of the members which could only be sustained or refuted by a publication of their remarks. At length I was earnestly requested to write out one of these speeches, and after some weeks of delay consented to do so.

After the publication of this speech, which took place about the time of the fall elections of 1863, previous to which the action of the Conference had been much discussed, the desire to see a full report of the proceedings of that body appeared to be excited anew. Letters and personal interviews upon this subject became very numerous. I finally determined to take the advice of a number of gentlemen who were prominent in the convention and the country, as to the propriety of yielding to this desire, and to be guided by it. I did so, and found among them a remarkable unanimity of expression in favor of making the history of the Conference public.

When this question was settled, I desired to avail myself of every opportunity to secure the highest degree of accuracy and fidelity. I addressed notes to such of the members as were accessible, asking them to transmit to me such memoranda of the proceedings of the Conference as they had preserved. The response to these letters was very gratifying; not because the materials furnished were very full, but because so general a purpose was shown by all the members thus addressed, to furnish me every facility and aid in their power.

I have found much difficulty in determining what control each member ought to be permitted to exercise over his own remarks. The most agreeable course to me would have been, to have written out each speech and submitted it to its author for correction or revision; but to this there was a decisive objection. It would have depreciated, if not destroyed, the accuracy of the report. Although I do not believe that any gentleman would have been tempted to change the tenor of his remarks by subsequent events, the view of the public might not have been so charitable.

I have therefore made my own notes the standard of authority, and have admitted nothing into the report which has not been justified by them aided by my own recollection. The manuscript has not been changed or added to, except by my own hands. The few instances in which I have availed myself of the materials furnished by others, are distinctly stated either in the notes or the appendix.

During the sessions of the Conference I was able to secure but little practical assistance from the members. Although many of them desired that my purpose should be accomplished, and some were taking brief and general notes, I soon discovered that an accurate report of a speech required an amount of labor and a degree of attention to the subject, which few gentlemen were inclined to give. The work, therefore, was thrown almost exclusively upon myself. Some idea of its amount and severity may be formed when it is stated, that the sessions usually commenced at about ten o'clock in the morning, and with a brief intermission were continued late in the evening, in one instance as late as the hour of two o'clock, A.M. The necessity of these long daily sessions, arose from the fact, that the Congress then in existence terminated on the fourth of March, and but few days

remained in which to discuss and perfect the report, and to submit it to that body for its action.

I do not claim to have furnished a *verbatim* report of the speeches delivered in the Conference of 1861, but I insist that I have given an accurate account of all its official proceedings, and the substance of the remarks made in the course of those proceedings. I think, also, that I have preserved nearly all the propositions made in the course of the debate, and generally have presented the ideas in the very language used. The gentlemen who have critically examined the report, all concur upon the question of its general accuracy, and I am content in this respect to rely upon their testimony.

I have suggested these considerations simply by way of explanation, and not for the purpose of avoiding criticism. I have endeavored to follow, so far as was in my power, the example of the illustrious Reporter of the Constitutional Convention of 1787; and while my notes lack the beauty and felicity which characterize his, I trust they are not less full and accurate. I submit them to the country as the best contribution which I can make to its history, at a most important and interesting period of our national existence.

The three short years which have passed since the Conference of 1861, have witnessed singular vicissitudes among its members. Many of them have entered into the military or civil service of the country, or of the rebellion which it was the avowed purpose of some members of that Conference to nourish into vigorous life. Death, also, has been busy with the roll. BALDWIN, BRONSON, SMITH, WOLCOTT, TYLER, and CLAY, are no more. ZOLLICOFFER fell at the head of a rebel army. HACKLEMAN sealed with his blood his devotion to the principles he advocated upon the field of Corinth, and now, while I am writing these pages in a morning of beautiful spring, when tree, and shrub, and grass, and flower, are bursting into life and beauty; from the roar of cannon, the rattle of musketry, and the deadly storm of lead and iron, which bearing destruction upon its wings is waking the echoes of the "Wilderness," comes the mournful tidings that WADSWORTH has fallen. In that Conference or in the world, there was never a purer or a more ardent patriot. Those of us who were associated with him politically, had learned to love and respect him. His opponents admired his unflinching devotion to his country, and his manly frankness and candor. He was the type of a true American, able, unselfish, prudent,

unambitious, and good. Other pens will do justice to his memory, but I thought as I heard the last account of him alive, as he lay within the rebel lines, his face wearing that calm serenity which grew more beautiful the nearer death approached, after having given so abundantly of his goods, now yielding his life to his country in the hour of her trial, that hereafter the good and true men of the nation would emulate the illustrious example of his patriotism, and would prize the blessings of a free government the more highly, as they remembered that it could only be maintained and perpetuated by such expensive sacrifices.

L.E.C.

May, 1864.

PROCEEDINGS OF THE CONFERENCE,

Washington, D.C.

MONDAY, *February 4th, 1861.*

COMMISSIONERS representing a number of the States, assembled at Willard's Hall, in the City of Washington, D.C., on the fourth day of February, A.D. 1861, at 12 o'clock M., in pursuance of the following preamble and resolutions, adopted by the General Assembly of the State of Virginia, on the nineteenth day of January, A.D. 1861:

Whereas, It is the deliberate opinion of the General Assembly of Virginia, that unless the unhappy controversy which now divides the States of this confederacy, shall be satisfactorily adjusted, a permanent dissolution of Union is inevitable; and the General Assembly, representing the wishes of the people of the commonwealth, is desirous of employing every reasonable means to avert so dire a calamity, and determined to make a final effort to restore the Union and the Constitution, in the spirit in which they were established by the fathers of the Republic: Therefore,

Resolved, That on behalf of the commonwealth of Virginia, an invitation is hereby extended to all such States, whether slaveholding or non-slaveholding, as are willing to unite with Virginia in an earnest effort to adjust the present unhappy controversies, in the spirit in which the Constitution was originally formed, and consistently with its principles, so as to afford to the people of the slaveholding States adequate guarantees for the security of their rights, to appoint commissioners to meet on the fourth day of February next, in the City of Washington, similar commissioners appointed by Virginia, to consider, and if practicable, agree upon some suitable adjustment.

Resolved, That ex-President JOHN TYLER, WILLIAM C. RIVES, Judge JOHN W. BROCKENBROUGH, GEORGE W. SUMMERS, and JAMES A. SEDDON are hereby appointed commissioners, whose duty it shall be to repair to the City of Washington, on the day designated in the foregoing resolution, to meet such commissioners as may be appointed by any of said States, in accordance with the foregoing resolution.

Resolved, That if said commissioners, after full and free conference, shall agree upon any plan of adjustment requiring amendments to the Federal Constitution, for the further security of the rights of the people of the slaveholding States, they be requested to communicate the proposed amendments to Congress, for the purpose of having the same submitted by that body, according to the forms of the Constitution, to the several States for ratification.

Resolved, That if said commissioners cannot agree on such adjustment, or if agreeing, Congress shall refuse to submit for ratification, such amendments as may be proposed, then the commissioners of this State shall immediately communicate the result to the executive of this commonwealth, to be by him laid before the convention of the people of Virginia and the General Assembly: *Provided*, That the said commissioners be subject at all times to the control of the General Assembly, or if in session, to that of the State convention.

Resolved, That in the opinion of the General Assembly of Virginia, the propositions embraced in the resolutions presented to the Senate of the United States by the Hon. JOHN J. CRITTENDEN, so modified as that the first article proposed as an amendment to the Constitution of the United States, shall apply to all the territory of the United States now held or hereafter acquired south of latitude thirty-six degrees and thirty minutes, and provide that slavery of the African race shall be effectually protected as property therein during the continuance of the territorial government, and the fourth article shall secure to the owners of slaves the right of transit with their slaves between and through the non-slaveholding States and territories, constitute the basis of such an adjustment of the unhappy controversy which now divides the States of this confederacy, as would be accepted by the people of this commonwealth.

Resolved, That ex-President JOHN TYLER is hereby appointed, by the concurrent vote of each branch of the General Assembly, a commissioner to the President of the United States, and Judge JOHN ROBERTSON is hereby appointed, by a like vote, a commissioner to the State of South Carolina, and the other States that have seceded or shall secede, with instructions respectfully to request the President of the United States and authorities of such States to agree to abstain, pending the proceedings contemplated by the action of this General Assembly, from any and all acts calculated to produce a collision of arms between the States and the Government of the United States.

Resolved, That copies of the foregoing resolutions be forthwith telegraphed to the executives of the several States, and also to the President of the United States, and the Governor be requested to inform, without delay, the commissioners of their appointment by the foregoing resolutions.

[A copy from the rolls.]

WM. F. GORDON, JR.,
C.H.D. and K.R. of Va.

The Conference was called to order by Mr. MOREHEAD, of Kentucky, who proposed the name of the honorable JOHN C. WRIGHT, of Ohio, as temporary Chairman.

The motion of Mr. MOREHEAD was unanimously adopted.

Mr. WRIGHT was conducted to the Chair by Mr. MEREDITH, of Pennsylvania, and Mr. CHASE, of Ohio, and proceeded to address the Conference as follows:

My warmest thanks are due to you, Gentlemen, for the undeserved honor which you have conferred upon me, in selecting me for the purpose of temporarily presiding over your deliberations. We have come together to secure a common and at the same time a most important object—to agree if we can upon some plan for adjusting the unhappy differences which distract the country, which will be satisfactory to ourselves and those we represent. We have assembled as friends, as brothers, each, I doubt not, animated by the most friendly sentiments.

If we enter upon, and with these sentiments carry through, a patient examination of the difficulties which now surround the Government, the result will be, it must be, a success, earnestly hoped for by every lover of his country; a result which will establish the Union according to the spirit of the Constitution.

For myself, I may say that I have come here with the earnest purpose of doing justice to all sections of the Union. I will hear with a patient and impartial mind all that may be said in favor of, or against such amendments of the Constitution as may be proposed. Such of them as will give to the Government permanence, strength, and stability, as will tend to secure to any State, or any number of States, the quiet and unmolested enjoyment of their rights under it, shall receive my cordial support. My confidence in republican institutions, in the capacity of the people for self-government, has been increased with every year of a life which has been protracted beyond the term usually allotted to man. That life is now drawing to a close, and I hope, when it ends, I may leave the Government more firmly established in the affections of my countrymen than it ever was before. To this end I have always labored, and shall continue to labor while I live. I pray GOD that He will be with us during our deliberations, and that He may guide them to a happy and wise conclusion.

Mr. BENJAMIN C. HOWARD, a commissioner from the State of Maryland, was unanimously appointed temporary Secretary.

The Roll of the States was then called over, and commissioners representing the following were found to be present:

New Hampshire,	Delaware,	Kentucky,
Rhode Island,	Maryland,	Ohio,
New Jersey,	Virginia,	Indiana.
Pennsylvania,	North Carolina,	

Mr. PRICE, of New Jersey:—I am informed that a number of Reporters for the press are at the door of the hall, desiring admittance to this Conference, for the purpose of reporting our proceedings. Whatever may be the ultimate action of the Conference in this respect, I can see no objection to the

admission of reporters to-day, for our business will relate wholly to organization. I hope we shall admit them, and I make that motion.

Mr. SEDDON, of Virginia:—I hope this motion will not prevail. I do not see that any good can possibly come of giving publicity now, to our proceedings. On the contrary, in the present excited condition of the country, I can see how much harm might result from that publicity. It is not unlikely that wide differences of opinion will be found to exist among us at the outset. These we shall attempt to harmonize, and if we succeed, it will only be by mutual concessions and compromises. Every one should be left free to make these concessions, and not subject himself to unfavorable public criticism by doing so. If our deliberations are to attain the successful conclusion we so much desire, it certainly is the course of wisdom that we should follow the illustrious example of the framers of the present Constitution, and sit with closed doors.

The motion was thereupon, by *viva voce* vote, decided in the negative.

Mr. MEREDITH:—I move the appointment of a committee to consist of one member from each delegation present, to be named by the delegation and appointed by the President, who shall recommend permanent officers of this, body, and also report rules for its government.

Which motion was agreed to.

The following gentlemen were then appointed such Committee on Rules and Organization:

Kentucky, Charles A. Wickliffe, *Chairman*; New Hampshire, Amos Tuck; Rhode Island, William W. Hoppin; New Jersey, Joseph F. Randolph; Pennsylvania, Thomas E. Franklin; Delaware, George B. Rodney; Maryland, John W. Crisfield; Virginia, William C. Rives; North Carolina, Thomas Ruffin; Ohio, Reuben Hitchcock; Indiana, Godlove S. Orth.

The Conference then adjourned to meet at 12 o'clock M. to-morrow.

SECOND DAY.

WASHINGTON, TUESDAY, *February 5th, 1861.*

THE Conference was called to order by the Chairman *pro tem.*, pursuant to adjournment, and the journal of the proceedings of the first day was read and approved.

Mr. FRANKLIN, of Pennsylvania:—It is usual in bodies of this description to take measures to ascertain who are and who are not duly accredited members. We should have the names of all the Commissioners present brought on to our records. I therefore move that a Committee of five be appointed by the Chairman, to whom all credentials of members shall be referred for examination and report.

The motion of Mr. FRANKLIN was adopted unanimously, and the Chairman announced as such Committee Mr. Summers, of Virginia; Mr. Franklin, of Pennsylvania; Mr. Guthrie, of Kentucky; Mr. Morehead, of North Carolina, and Mr. Smith, of Indiana.

Mr. WICKLIFFE, of Kentucky:—I rise at this time for the purpose of making the report of the Committee on Organization. I am instructed to report that we recommend that the permanent officers of the Convention be a President and Secretary, and that the Secretary have leave to appoint assistants, not exceeding two in number, to assist him in the discharge of his duties; and that the President of this Convention be JOHN TYLER, of Virginia, and that CRAFTS J. WRIGHT, of Ohio, be its Secretary. The committee also report a series of rules for the government of the Convention.

Mr. CLAY, of Kentucky:—I move that the question upon accepting the report be divided, and that it be first taken on that part of the report which relates to the officers of the Convention.

Which was agreed to without objection.

It was then moved, and unanimously voted, that the part of the report relating to officers, be accepted, and the officers designated be appointed.

The President *pro tem*. then appointed Mr. EWING, of Ohio, and Mr. MEREDITH, of Pennsylvania, to conduct the President elect to the chair.

President TYLER upon taking his seat proceeded to address the Convention as follows:

Gentlemen, I fear you have committed a great error in appointing me to the honorable position you have assigned me. A long separation from all deliberative bodies has rendered the rules of their proceedings unfamiliar to me, while I should find, in my own state of health, variable and fickle as it is, sufficient reason to decline the honor of being your presiding officer. But, in times like these, one has but little option left him. Personal considerations should weigh but lightly in the balance. The country is in danger; it is enough; one must take the place assigned him in the great work of reconciliation and adjustment. The voice of Virginia has invited her co-States to meet her in council. In the initiation of this Government, that same voice was heard and complied with, and the results of seventy-odd years have fully attested the wisdom of the decisions then adopted. Is the urgency of her call now less great than it was then? Our godlike fathers created, we have to preserve. They built up, through their wisdom and patriotism, monuments which have eternized their names. You have before you, gentlemen, a task equally grand, equally sublime, quite as full of glory and immortality. You have to snatch from ruin a great and glorious Confederation, to preserve the Government, and to renew and invigorate the Constitution. If you reach the height of this great occasion, your children's children will rise up and call you blessed. I confess myself to be ambitious of sharing in the glory of accomplishing this grand and magnificent result. To have our names enrolled in the Capitol, to be repeated by future generations with grateful applause—this is an honor higher than the mountains, more enduring than the monumental alabaster. Yes, Virginia's voice, as in the olden time, has been heard. Her sister States meet her this day at the council board. Vermont is here, bringing with her the memories of the past, and reviving in the memories of all, her Ethan Allen and his demand for the surrender of Ticonderoga, in the name of the Great Jehovah and the American Congress. New Hampshire is here, her fame illustrated by

memorable annals, and still more lately as the birthplace of him who won for himself the name of defender of the Constitution, and who wrote that letter to John Taylor which has been enshrined in the hearts of his countrymen. Massachusetts is not here. (Some member said "She is coming.") I hope so, said Mr. TYLER, and that she will bring with her her daughter Maine. I did not believe it could well be that the voice which in other times was so familiar to her ears had been addressed to her in vain. Connecticut is here, and she comes, I doubt not, in the spirit of ROGER SHERMAN, whose name with our very children has become a household word, and who was in life the embodiment of that sound practical sense which befits the great lawgiver and constructer of governments. Rhode Island, the land of ROGER WILLIAMS, is here, one of the two last States, in her jealousy of the public liberty, to give in her adhesion to the Constitution, and among the earliest to hasten to its rescue. The great Empire State of New York, represented thus far but by one delegate, is expected daily in fuller force to join in the great work of healing the discontents of the times and restoring the reign of fraternal feeling. New Jersey is also here, with the memories of the past covering her all over. Trenton and Princeton live immortal in story, the plains of the last incrimsoned with the hearts blood of Virginia's sons. Among her delegation I rejoice to recognize a gallant son of a signer of the immortal Declaration which announced to the world that thirteen Provinces had become thirteen independent and sovereign States. And here, too, is Delaware, the land of the BAYARDS and the RODNEYS, whose soil at Brandywine was moistened by the blood of Virginia's youthful MONROE. Here is Maryland, whose massive columns wheeled into line with those of Virginia in the contest for glory, and whose state house at Annapolis was the theatre of the spectacle of a successful Commander, who, after liberating his country, gladly ungirthed his sword, and laid it down upon the altar of that country. Then comes Pennsylvania, rich in revolutionary lore, bringing with her the deathless names of FRANKLIN and MORRIS, and, I trust, ready to renew from the belfry of Independence Hall the chimes of the old bell, which announced *Freedom* and *Independence* in former days. All hail to North Carolina! with her Mecklenberg Declaration in her hand, standing erect on the ground of her own probity and firmness in the cause of public liberty, and represented in her attributes by her MACON, and in this assembly by her distinguished son at no great distance from me. Four daughters of Virginia also cluster around the council board on the

invitation of their ancient mother—the eldest, Kentucky, whose sons, under the intrepid warrior ANTHONY WAYNE, gave freedom of settlement to the territory of her sister, Ohio. She extends her hand daily and hourly across *la belle riviere*, to grasp the hand of some one of kindred blood of the noble states of Indiana, and Illinois, and Ohio, who have grown up into powerful States, already grand, potent, and almost imperial. Tennessee is not here, but is coming—prevented only from being here by the floods which have swollen her rivers. When she arrives, she will wear the badges on her warrior crest of victories won in company with the Great West on many an ensanguined plain, and standards torn from the hands of the conquerors at Waterloo. Missouri, and Iowa, and Michigan, Wisconsin, and Minnesota, still linger behind, but it may be hoped that their hearts are with us in the great work we have to do.

Gentlemen, the eyes of the whole country are turned to this assembly, in expectation and hope. I trust that you may prove yourselves worthy of the great occasion. Our ancestors, probably, committed a blunder in not having fixed upon every fifth decade for a call of a general convention to amend and reform the Constitution. On the contrary, they have made the difficulties next to insurmountable to accomplish amendments to an instrument which was perfect for five millions of people, but not wholly so as to thirty millions. Your patriotism will surmount the difficulties, however great, if you will but accomplish one triumph in advance, and that is, a triumph over *party*. And what is party, when compared to the work of rescuing one's country from danger? Do that, and one long, loud shout of joy and gladness will resound throughout the land.

Mr. EWING:—I move that the remaining portion of the report of the Committee on Organization be postponed until to-morrow.

The motion of Mr. EWING was agreed to.

Mr. WICKLIFFE. I offer the following resolution:

Resolved, That the Conference shall be opened with prayer, and that the clergymen of the city of Washington be requested to perform that service.

The resolution offered by Mr. WICKLIFFE was adopted, and prayer was then offered by the Rev. Dr. P.D. GURLEY, of Washington.

The PRESIDENT:—I have received a communication from the Messrs. Willard, placing the Hall in which the Conference is now sitting at the service of the Conference, while its sessions may continue; also, a communication from the Mayor and Common Council of the City of Washington, offering police officers to attend our sittings.

It was moved, and agreed to, that these offers be severally accepted.

Mr. JOHNSON, of Maryland:—I move that the President of the Conference be requested to furnish a copy of his address to the Conference upon taking the Chair, that it be entered upon the journal as a part of this day's proceedings, and that the same be published.

Which motion was unanimously agreed to.

Mr. GRIMES, of Iowa:—I have received from the Governor of the State of Iowa a communication, requesting myself and my colleague in the Senate of the United States, and also the members representing that State in the House of Representatives, to represent the State of Iowa here. I desire to present his communication, that it may be referred to the Committee on Credentials.

The communication was so referred, and on motion of Mr. WRIGHT, of Ohio, the Conference adjourned.

THIRD DAY.

WASHINGTON, WEDNESDAY, *February 6th, 1861.*

THE Conference met at twelve o'clock, at noon, and was called to order by the PRESIDENT.

The Journal of yesterday was read, and after amendment, was approved.

Mr. SUMMERS:—I am instructed by the Committee on Credentials to make a report. That committee has examined the credentials which have been submitted to it, and finds the following-named gentlemen duly accredited as members of this Conference:

New Hampshire.—Amos Tuck, Levi Chamberlain, Asa Fowler.

Vermont.—Hiland Hall, Lucius E. Chittenden, Levi Underwood, H. Henry Baxter, B.D. Harris.

Rhode Island and Providence Plantations.—Samuel Ames, Alexander Duncan, William W. Hoppin, George H. Browne, Samuel G. Arnold.

Connecticut.—Roger S. Baldwin, Chauncey F. Cleveland, Charles J. McCurdy, James T. Pratt, Robbins Battell, Amos S. Treat.

New Jersey.—Charles S. Olden, Peter D. Vroom, Robert F. Stockton, Benjamin Williamson, Joseph F. Randolph, Frederick T. Frelinghuysen, Rodman M. Price, William C. Alexander, Thomas J. Stryker.

Pennsylvania.—Thomas White, James Pollock, William M. Meredith, David Wilmot, A.W. Loomis, Thomas E. Franklin, William McKennan.

Delaware.—George B. Rodney, Daniel M. Bates, Henry Ridgely, John W. Houston, William Cannon.

Maryland.—John F. Dent, Reverdy Johnson, John W. Crisfield, Augustus W. Bradford, William T. Goldsborough, J. Dixon Roman, Benjamin C.

Howard.

Virginia.—John Tyler, William C. Rives, John W. Brockenbrough, George W. Summers, James A. Seddon.

North Carolina.—George Davis, Thomas Ruffin, David S. Reid, Daniel M. Barringer, J.M. Morehead.

Kentucky.—William O. Butler, James B. Clay, Joshua F. Bell, Charles S. Morehead, James Guthrie, Charles A. Wickliffe.

Ohio.—John C. Wright, Salmon P. Chase, William S. Groesbeck, Franklin C. Backus, Reuben Hitchcock, Thomas Ewing, Valentine B. Horton.

Indiana.—Caleb B. Smith, Pleasant A. Hackleman, Godlove S. Orth, E.W.H. Ellis, Thomas C. Slaughter.

Iowa.—James W. Grimes, Samuel H. Curtis, William Vandever.

Mr. WICKLIFFE:—I move that the Secretary be authorized to employ one or more assistants. I am advised that the Secretary cannot perform his duties without assistance, and I see no objection to giving him this authority.

The motion of Mr. WICKLIFFE was agreed to.

Mr. WICKLIFFE:—I now desire to call up the remaining portion of the report of the Committee on Rules and Organization, and to move its adoption at the present time. These Rules are substantially the same as those which were adopted by the convention which proposed our present Constitution. The rule which we have reported securing secrecy, so far as our proceedings are concerned, has been made the subject of much discussion in the committee; and it was at first thought best to recommend a modification of it. But upon reflection and consideration, and in view of the fact that, while the rule reported requires that secrecy should be preserved in regard to all that is said or done in this Conference, it does not prevent any member from expressing his own hopes or predictions upon the final result of our deliberations, we have thought best to let it remain as it is.

Mr. SEDDON:—I desire to offer an amendment to this portion of the report of the committee, which I will read for the information of the Conference. It is as follows:

"*Resolved*, That no part of the Journal be published without the order or leave of the Conference, and that no copies of the whole or any part be furnished or allowed, except to members, who shall be privileged to communicate the same to the authorities or deliberative assemblies of their respective States, when deemed judicious or appropriate, under their instructions, and that nothing spoken in the House be printed or otherwise published; but private communications respecting the proceedings and debates, while recommended to be with caution and reserve, are allowed at the discretion of each member."

It may be thought, that in offering this resolution, I am seeking a different end from the one I proposed yesterday, when I advocated the proposition of excluding reporters from our sessions, and insisted that our proceedings should be at all times under the seal of secrecy. Such, however, is not my purpose. But some discretion must be allowed us, in order that we may conform to and carry out the spirit of the resolutions under which we respectively act. This is especially true in relation to myself and my colleagues. The resolutions under which we are acting, require that we should from time to time communicate to the legislature of Virginia the proceedings of this body, and to express our own opinions of the prospect which may exist of the settlement of existing difficulties. The Commissioners from Virginia would be placed in a delicate, not to say an awkward position, by the adoption of a rule here which would absolutely prohibit such communications. I hope my amendment may be adopted.

Mr. TUCK:—Would not the purpose of the gentleman from Virginia be answered by giving any delegation leave to communicate any action actually taken by the Conference, with their own opinions as to the probable result of our deliberations?

Mr. SEDDON:—Those opinions would possess no value, unless the facts and circumstances are communicated upon which they are founded. It is very clear to me, that the best course will be to entrust to the discretion of each member the privilege of making these communications, trusting that he will not abuse the confidence thus given.

Mr. WICKLIFFE:—I hope we have all come here with an earnest desire to harmonize our conflicting opinions, and to unite upon some plan which will

settle our troubles and save the union of the States. The South has spoken of the North in very severe terms, and the North has not been slow in returning the compliment. If we come finally, to any definite result satisfactory to either side, it must be by mutual concessions, by confessing our sins to each other, and endeavoring to live harmoniously together in future. In my judgment, secrecy is absolutely indispensable to successful action here. I do not wish to be precluded from abandoning a position to-morrow, if I see cause for it, which I have taken to-day. If the proceedings, and especially the debates of this Conference, are made public from day to day, they will go into the newspapers and be made the subject of comment, favorable or otherwise. The necessary result will be, that when a member is understood to have committed himself to a particular proposition, or any special course of policy, that pride of opinion, which we all possess, will render any change of policy on his part difficult, if not impossible. I should sincerely regret the adoption of the resolution of the gentleman from Virginia.

Mr. RANDOLPH:—I move that the portion of the committee's report under consideration, together with the resolution of Mr. SEDDON, be recommitted to the Committee on Rules and Organization.

The motion of Mr. RANDOLPH was agreed to.

Mr. GUTHRIE:—I have an idea relating to the plan which should be adopted to carry into effect the purpose of this Conference. I wish to propose it. We have come together upon the invitation of the glorious old commonwealth of Virginia, the mother of States and Statesmen. We have come from the North and the South, from the East and the West, to see whether our wisdom can devise some means to avert the dangers which threaten to destroy this noble Republic, founded by the wisdom and patriotism of our ancestors. I hope we are animated by a common purpose. The storm is threatening. The horizon is covered with dark and portentous clouds. Section is arrayed against section, and already *seven* of our sister States have separated from us and are proceeding to establish an independent Confederation. War! Civil War! is impending over us. It must be averted! Who does not know that such a war, among such a people, must be, if it comes, a war of extermination.

Mr. PRESIDENT, I move the adoption of the resolution which I now send to the chair.

The resolution of Mr. GUTHRIE was read as follows:

Resolved, That a committee of one from each State be appointed by the Commissioners thereof, to be nominated to the President, and to be appointed by him, to whom shall be referred the resolutions of the State of Virginia, and the other States represented, and all propositions for the adjustment of existing difficulties between States, with authority to report what they may deem right, necessary, and proper to restore harmony and preserve the Union, and that they report on or before Friday next.

Mr. SEDDON:—It appears to me that the mode pointed out by the resolution introduced by the gentleman from Kentucky, is neither the one most appropriate nor expeditious for accomplishing the result desired. We are convened under the invitation of the State of Virginia; and the same invitation that brings us here, proposes the basis for our deliberation and action. Virginia has stated what will be satisfactory to her; not as an *ultimatum*, but as a basis of adjustment. It appears to me that the proper course would be, to take up the propositions of Virginia—propose amendments to them—discuss them, and in the end determine how far they shall be adopted. The adoption of the resolution proposed, transfers the labors of this Conference, not in itself too large for convenient deliberation, to a committee. That committee is to discuss the various propositions offered and report the result. What, in the mean time, is this Conference to do? Nothing whatever! We are to meet here from day to day and adjourn, no one knows how long, until this committee reports, and then the discussion will commence which ought to commence now. Mr. PRESIDENT, if any thing is accomplished, it must be accomplished speedily. Events are on the wing. Already in my State the delegates are elected to a Convention, which is to meet next week, to consider the subject which now engrosses the minds of the American people. I hope my suggestion may meet with favor in the Conference.

Mr. EWING:—I cannot agree with the gentleman from Virginia, for reasons which must be obvious to all. I do not think Virginia intended to dictate the terms upon which we were to act. I am in favor of the resolution, but would make one suggestion in relation to it. By its terms the committee is to report on Friday, if it can properly do so. I suggest that the committee should have leave to sit during the sessions of the Conference. In this way our business may be greatly expedited.

Mr. GUTHRIE:—It gives me pleasure to accept the modification proposed by the gentleman from Ohio. I should have incorporated it into my resolution.

The resolution as modified was then adopted by the Conference without a division.

The PRESIDENT:—I will take this occasion to announce a committee to carry into effect the determination of the Conference relating to the obtaining of the services of clergymen to open the proceedings of the Conference daily with prayer. The Chair appoints as such committee, Mr. RANDOLPH, of New Jersey, Mr. WICKLIFFE, of Kentucky, and Mr. JOHNSON, of Maryland.

Mr. JOHNSON:—It appears to me very appropriate, in view of the occasion which has brought us together, that the members of this Conference should pay their respects in a body to the President of the United States. I therefore move that we call upon him in a body at such a time as will be most agreeable to him; such time to be ascertained by the President of this Conference.

Which motion was unanimously agreed to.

Mr. CLAY:—I move the reconsideration of the vote by which the portion of the report of the Committee on Rules and Organization not yet adopted was recommitted to that committee. I do this in order that the Conference may now proceed to the consideration of those rules which may be adopted without much difference of opinion.

The vote was thereupon reconsidered, and the following rules were severally read and adopted. The remaining rules recommended were recommitted to the committee:

RULES.

I. A Convention to do business, shall consist of the Commissioners of not less than seven States; and all questions shall be decided by the greater number of those which be fully represented. But a less number than seven may adjourn from day to day.

II. Immediately after the President shall have taken the chair, and the members their seats, the minutes of the preceding day shall be read by the Secretary.

III. Every member, rising to speak, shall address the President; and while he shall be speaking none shall pass between them, or hold discourse with another, or read a book, pamphlet, or paper, printed or manuscript; and of two members rising to speak at the same time, the President shall name him who shall first be heard.

IV. A member shall not speak oftener than twice, without special leave upon the same question; and not a second time before every other who had been silent shall have been heard, if he choose to speak upon the subject.

V. A motion made and seconded, shall be repeated; and if written, as it shall be when any member shall so require, read aloud by the Secretary before it shall be debated; and may be withdrawn at any time before the vote upon it shall have been declared.

VI. Orders of the day shall be read next after the minutes, and either discussed or postponed, before any other business shall be introduced.

VII. When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate, shall be received.

VIII. A question which is complicated, shall, at the request of any member, be divided and put separately upon the propositions of which it is compounded.

IX. A writing which contains any matter brought on to be considered, shall be read once, throughout, for information; then by paragraphs, to be debated, and again with the amendments, if any, made on the second reading, and afterwards the question shall be put upon the whole, as amended or approved in the original form, as the case may be.

X. Committees shall be appointed by the President, unless otherwise ordered by the Convention.

XI. A member may be called to order by another member, as well as by the President, and may be allowed to explain his conduct or expressions supposed to be reprehensible. And all questions of order shall be decided by the President, without appeal or debate.

XII. Upon a question to adjourn for the day, which may be made at any time, if it be seconded, the question shall be put without debate.

XIII. When the Convention shall adjourn, every member shall stand in his place until the President pass him.

XIV. That no member be absent from the Convention, so as to interrupt the representation of the State, without leave.

XV. That Committees do not sit while the Convention shall be, or ought to be sitting, without leave of the Convention.

XVI. That no copy be taken of any entry on the Journal, during the sitting of the Convention, without leave of the Convention.

XVII. That members only be permitted to inspect the Journal.

XVIII. *Mode of Voting.* All votes shall be taken by States, and each State to give one vote. The yeas and nays of the members shall not be given or published—only the decision by States.

After the adoption of the foregoing Rules, the Conference adjourned until 10 o'clock to-morrow morning.

FOURTH DAY.

WASHINGTON, THURSDAY, *February 7th, 1861.*

THE Conference convened, pursuant to the adjournment yesterday, at 10 o'clock A.M.

It was called to order by President TYLER, and prayer was offered by Rev. Dr. PYNE, of Washington.

The Journal of yesterday was read, and after sundry amendments, was approved.

Messrs. J.H. PULESTON, JOHN STRYKER, W.W. HOPPIN, Jr., and —— Olcott, took their places as Assistant Secretaries.

President TYLER:—Gentlemen of the Conference, as directed by the resolution which you adopted yesterday, I addressed a note to the President of the United States, asking at what hour it would be agreeable to him that this Conference should call on him in a body. To this note I have received a reply which will be read by the Secretary.

The Secretary then read the following note from the President:

EXECUTIVE MANSION, *February 6th, 1861.*

MY DEAR SIR:—I shall feel greatly honored to receive the gentlemen composing the Convention of Commissioners from the several States, on any day and at any hour most convenient to themselves. I shall name to-morrow (Thursday) at 11 or 3 o'clock, though any other time would be equally agreeable to me. I shall at all times be prepared to give them a cordial welcome.

Yours, very respectfully,

JAMES BUCHANAN.

His Excellency, JOHN TYLER.

The PRESIDENT:—What order will the Conference take upon the subject?

Mr. GUTHRIE:—I move that the members of this Conference call in a body upon the President of the United States this morning, at 11 o'clock.

Mr. GUTHRIE's motion was adopted unanimously.

Mr. SUMMERS:—I am instructed by the Committee on Credentials further to report, that the committee have examined the credentials of the following gentlemen, and find them duly accredited as members of this body:

New York.—William E. Dodge.

Tennessee.—Samuel Milligan, Josiah M. Anderson, Robert L. Carruthers, Thomas Martin, Isaac R. Hawkins, R.J. McKinney, Alvin Cullom, William P. Hickerson, George W. Jones, F.K. Zollicoffer, William H. Stephens, A.W.O. Totten.

Illinois.—John Wood, Stephen T. Logan, John M. Palmer, Burton C. Cook, Thomas J. Turner.

Which report was accepted, and the names of the Commissioners were entered upon the record.

Mr. WICKLIFFE:—Certain printing has been ordered, but no provision has been made for paying for it. The Committee on Rules have therefore requested me to report the following resolution:

Resolved, That the Secretary procure for the use of the Convention the necessary stationery, and also provide for such printing as may be ordered. That the Journal, up to and including this day's proceeding, as well as the Rules, be printed for the use of the members.

The resolution of Mr. WICKLIFFE was agreed to.

The PRESIDENT:—The respective delegations have recommended, and the Chair announces the names of the following gentlemen to compose the committee ordered to be raised under the resolution of Mr. GUTHRIE, which was adopted yesterday:—New Hampshire, Asa Fowler; Vermont, Hiland

Hall; Rhode Island and Providence Plantations, Samuel Ames; Connecticut, Roger S. Baldwin; New Jersey, Joseph F. Randolph; Pennsylvania, Thomas White; Delaware, Daniel M. Bates; North Carolina, Thomas Ruffin; Kentucky, James Guthrie; Ohio, Thomas Ewing; Indiana, Caleb B. Smith; Illinois, Stephen T. Logan; Iowa, James Harlan; Maryland, Reverdy Johnson; Virginia, James A. Seddon.

Mr. WICKLIFFE:—The Committee on Rules have further considered the rule relating to the secrecy of the debates and proceedings of this body, and their convictions as to the necessity and propriety of its adoption remain unchanged. The prospect of an ultimate agreement among the Commissioners composing this body, in the opinion of the committee, would be materially lessened if all or any of its debates should be made public, for reasons which have already been stated. If any gentleman should desire to communicate with the Executive or Legislative authorities of his State any facts, during the progress of our business, I apprehend little difficulty would be experienced in obtaining the leave of the Convention. We therefore recommend the following Rule:

XIX. That nothing spoken in the Convention be printed, or otherwise published or communicated, without leave.

Mr. SEDDON:—I do not desire to discuss the adoption of the rule under consideration any further than I have already. The Commissioners from the State of Virginia are appointed under resolutions which make it their duty to communicate from time to time with her deliberative assemblies. We do not wish to have our right to do so subject to the action of this or any other body. It is no answer to this to say, that there is no doubt that the leave to make the necessary communications will be accorded to us when we ask it. We do not wish to ask it. We insist upon our rights in this respect, as it is our duty to the State that sent us here to do.

The rule was adopted upon a count of the members voting.

On motion, the Convention adjourned.

After the adjournment, the Convention in a body called upon the PRESIDENT of the UNITED STATES, when the several delegations were introduced by

President TYLER, and the several Commissioners were presented by the chairmen of the several delegations.

FIFTH DAY.

WASHINGTON, FRIDAY, *February 8th, 1861.*

THE Convention was called to order at 12 o'clock by President TYLER. Prayer was offered by Rev. Dr. BUTLER. After sundry amendments, the Journal was approved.

Mr. SUMMERS:—I am directed by the Committee on Credentials to report that they find the following gentlemen duly accredited as members of the Convention:

New York.—David Dudley Field, William Curtis Noyes, James S. Wadsworth, Erastus Corning, Amaziah B. James, James C. Smith, Addison Gardner, Greene C. Bronson, John A. King, John E. Wool.

Massachusetts.—John Z. Goodrich, John M. Forbes, Richard P. Waters, Theophilus P. Chandler, Francis B. Crowninshield, George S. Boutwell, Charles Allen.

Missouri.—John D. Coalter, Alexander W. Doniphan, Waldo P. Johnson, Aylett H. Buckner, Harrison Hough.

On motion of the respective delegations the following gentlemen were added to the committee raised on the resolution of Mr. GUTHRIE:

New York.—Mr. Field.
Missouri.—Mr. Doniphan.
Tennessee.—Mr. Zollicoffer.

Mr. GUTHRIE:—I am instructed by the committee raised upon the resolution introduced by myself, to inform the Convention that that body is not able to report to-day, agreeable to the suggestion made at the time they were appointed. Several States are yet unrepresented on the committee, and delegations from some of them have only arrived this morning. I am therefore directed to ask for further time to make a report, assuring the

Convention, at the same time, that a report will be made at soon as a proper regard to the interests of all sections will permit it to be done.

Mr. CLAY:—I move that the time for the report of the committee be extended until Monday next. As in the mean time there will be little business for the Convention to do, and that of a formal character, it might be as well to adjourn from this time until Monday; and I move further, that if delegates arrive from States now unrepresented, they may present their credentials to the committee, and if no question arises on them, they may then select a member of the committee on Mr. GUTHRIE's resolution, and report his name to the Secretary of that committee.

Mr. SEDDON:—I object to an adjournment until Monday. We can meet here to-morrow and do any business which may come before us.

The several motions of Mr. CLAY, with the alteration suggested by Mr. SEDDON, were then agreed to without a division.

Mr. ELLIS:—I move that the President be requested to issue cards of admission to the members and officers of this Convention.

Which motion was adopted.

Mr. HITCHCOCK:—I would like to understand whether we all construe the rule referring to the secrecy of our transactions alike. I am told that different constructions are placed upon it by different members, and would suggest the propriety of the PRESIDENT's giving his views of the meaning of the rule.

The PRESIDENT:—I understand, by the correct interpretation of the rule, that nothing which is said or done in the Convention having reference to any subject of business in it, can be spoken of or disclosed to any but members.

The Convention then adjourned.

SIXTH DAY.

WASHINGTON, SATURDAY, *February 9th, 1861.*

THE Convention was called to order by the PRESIDENT. Prayer was offered by Rev. Dr. BULLOCK. The Journal was read, corrected, and approved.

Mr. SUMMERS:—I am directed by the Committee on Credentials to report as members of this Convention the names of the following gentlemen from the State of Maine:—William P. Fessenden, Lot M. Morrill, Daniel E. Somes, John J. Perry, Ezra B. French, Freeman H. Morse, Stephen Coburn, Stephen C. Foster.

Mr. MORRILL, of Maine, and Mr. CROWNINSHIELD, of Massachusetts, were announced as members of the committee under the resolution of Mr. GUTHRIE.

Mr. TUCK:—I offer certain resolutions, which I desire to have printed and referred to the Committee on Resolutions.

The resolutions of Mr. TUCK were read, ordered to be printed, and referred. (These resolutions will be found on a subsequent page.)

Mr. CLAY:—I hold in my hand the proceedings of a very large Democratic meeting recently held at New Haven, in the State of Connecticut. Among them are certain resolutions, breathing a spirit of fervent devotion to the Union, and expressing an anxious desire for the settlement of the difficult questions now before the country. They have been sent to me with a request that I should lay them before this Convention. Why I was selected by them for the performance of this duty, I do not know, unless it was because, from my name and associations, they thought an assurance might be found that I participated in the sentiments expressed in the resolutions. I present them with great pleasure, and ask that they may be referred to the Committee on Resolutions.

The motion of Mr. CLAY was agreed to.

Mr. RANDOLPH:—I move that the Secretary be requested to furnish for the use of the members a printed list of the delegates to and officers of this Convention.

Which motion was adopted, and the Convention adjourned.

SEVENTH DAY.

WASHINGTON, MONDAY, *February 11th, 1861.*

THE Convention was called to order by the PRESIDENT. Prayer was offered by Rev. Dr. GURLEY.

After the reading and amendment of the Journal, Mr. GUTHRIE, from the Committee on Resolutions, asked for further time to make a general report of the matters submitted to them, which was given; and thereupon Mr. GUTHRIE, from the same Committee, made the following report upon the resolutions of a meeting in the State of Connecticut, which were referred to that committee on motion of Mr. CLAY:

The committee to whom were referred certain resolutions of the Democratic party of the State of Connecticut, report that in the opinion of the committee it is inexpedient for this Convention to act upon any resolution purporting to emanate from any political party whatever; and that the member of the Convention by whom they were presented have leave to withdraw the same.

The PRESIDENT:—I take this opportunity to announce to the Convention that the Door-keeper of the House of Representatives has transmitted to the Chair cards admitting members of this body on to the floor of the House. These cards will be delivered by the Secretary to such members as call for them.

Mr. CHASE:—I move that any propositions or resolutions which members of this Convention desire to have considered by the Committee on Resolutions and Propositions, may be presented to the committee through the Secretary, without being presented in Convention.

The motion was agreed to, and on motion the Convention adjourned until Wednesday the 13th instant, at 12 o'clock M.

EIGHTH DAY.

WASHINGTON, WEDNESDAY, *February 13th, 1861.*

THE Convention was called to order by the PRESIDENT, and prayer was offered by Rev. Dr. EDWARDS. The Journal, after sundry amendments, was approved.

Mr. GUTHRIE:—The Committee on Resolutions, &c., have labored diligently, and held protracted sessions, in the hope of being able to make their report to-day. This they find themselves unable to do. They are fully impressed with the necessity of immediate action, in view of the short time that will remain for Congress to consider the action of this Convention, if it shall become necessary to submit any proposition of this body to be acted upon by that. I have no doubt we shall be able to report on Friday, and I ask that we may have until that time to make a report.

The request of Mr. GUTHRIE was acceded to.

Mr. SEDDON:—The time has now arrived when, as one of the Commissioners from the State of Virginia, I find it necessary to ask the leave of the Convention to communicate to the Legislative authorities of Virginia, and to her Convention now in session, the state of the proceedings before this body, and the committee. I ask for liberty to do so, and believe that a proper regard to the instructions of the Legislature of the State under which my appointment is made, requires that my request should be granted.

Mr. BARRINGER offered the following resolution:

Resolved, That the Commissioners of any State represented in this Convention, upon their joint application, have leave to communicate to the Legislature, Governor, or Convention of said State, the proceedings of this body, or so much thereof as they may deem expedient.

Mr. SEDDON:—The passage of this resolution is all I ask.

Mr. FRELINGHUYSEN:—I move to amend the resolution by adding thereto: "But not to communicate what has transpired in the committee, before said committee has reported to the Convention."

Mr. SEDDON:—I do not deem the passage of the resolution at this moment as very important. At the suggestion of several gentlemen, I will move to lay it on the table, subject to be called up after Friday.

The Convention then adjourned to Friday at 12 o'clock.

On the evening of February 13th, the members of the Conference were informed of the death of Hon. JOHN C. WRIGHT, of Ohio, who officiated as temporary chairman previous to the permanent organization. In view of the anxious desire of all the members to recognize their appreciation of this act of Divine Providence, in removing from the sphere of his earthly labors one of the most valued Commissioners in attendance, President TYLER was requested to summon a special meeting of the Conference. In pursuance of his invitation, all the members attended on the morning of February 14th, when the following proceedings were had:

THURSDAY, WASHINGTON CITY, *February 14th, 1861.*

The Convention met in special session, pursuant to the call of the President.

The proceedings were opened with prayer by the Rev. Dr. HALL.

The following letter from the Secretary, CRAFTS J. WRIGHT, was read, and ordered to be entered upon the minutes:

WILLARD'S HOTEL,
WASHINGTON CITY, *February 13th, 1861.*

Hon. JOHN TYLER, *President of Conference Convention.*

DEAR SIR:—I grieve to communicate to you the fact, that the delegate from Ohio to this Conference Convention, the Hon. JOHN C. WRIGHT, departed

this life this day, the 13th February, at half-past one o'clock.

Judge WRIGHT came to this Convention with a heart filled with fear for the safety of the Union. Though at an advanced age and nearly blind, he was filled with an earnest desire to add his efforts to that of others of the Convention called by the State of Virginia, and seek to agree on some measures honorable to each and all, to effect the object. Since the arrival of my father in Washington, he has been constant in his efforts to effect the end in view, and he has had his heart cheered with the belief that the object would be accomplished. Almost the last words that he uttered were, that he believed the Union would be preserved. He desired me to say, if the Union were preserved, he would die content. He called me to read to him, at 12 o'clock, the sections in the Constitution in regard to counting the votes, and this request, and this reading, terminated his knowledge on earth. In this desire of my father to do what he could, he pressed me to accompany him on account of his blindness. Since the Convention honored me with the appointment of Secretary, he required of me a promise that I would not leave the position. When I read the section of the Constitution to him, he required me then to leave him for the Convention. Whatever my personal feelings may be, I deem the pledge made sacred. I therefore ask that I may have leave of absence, until I carry the remains home to Ohio, and return to my duty.

Respectfully,

CRAFTS J. WRIGHT.

P.S.—J. HENRY PULESTON will act for me in my absence.

The PRESIDENT informed the Convention that the request of the Secretary had been complied with. The PRESIDENT asked what action the Convention proposed to take on the subject for which they had been specially assembled.

The Hon. SALMON P. CHASE, of Ohio, then said:—Mr. PRESIDENT, since we assembled yesterday in this Hall, it has pleased God to remove one of our number from all participation in the concerns of earth. It is my painful duty to announce to the Convention that JOHN C. WRIGHT, one of the Commissioners from Ohio, is no more. Full of years, honored by the

confidence of the people, rich in large experience and ripened wisdom, and devoted in all his affections and all his powers to his country, and his whole country, he has been called from our midst at the very moment when the prudence and patriotism of his counsels seemed most needed. Such are the mysterious ways of Divine Providence. Judge WRIGHT was born in Wethersfield, Connecticut, on the 10th of August, 1784. The death of his parents made him an orphan in infancy; and he had little to depend upon in youth and early manhood, save his own energies and God's blessing. He was married, while young, to a daughter of Thomas Collier, of Litchfield, and for several years after resided at Troy, New York. When about twenty-six years old he removed to Steubenville, in Ohio, where he commenced the practice of the law, and rapidly rose to distinction in the profession. In 1822 he was elected a representative in Congress, where he became the associate and friend of Clay and Webster, and proved himself, on many occasions, worthy of their association and friendship.

After serving several terms in Congress, he was elected a Judge of the Supreme Court of Ohio, and, in 1834, removed from Steubenville to the city of Cincinnati. Resigning his seat soon afterwards, he resumed the labors of the bar, and, ever zealous for the improvement and elevation of the profession, established, in association with others, the Cincinnati law school.

In 1840, upon the dying request of CHARLES HAMMOND, the veteran editor of the "Cincinnati Gazette," Judge WRIGHT assumed the editorial control of that Journal, and retained that position until impaired vision, in 1853, admonished him of the necessity of withdrawing from labors too severe.

Thenceforward engaged in moderate labors, surrounded by affectionate relatives, enjoying the respect and confidence of his fellow-citizens, and manifesting always the liveliest concern in whatever related to the welfare and honor of his State and his country, he lived in tranquil retirement, until called by the Governor of Ohio, with the approbation of the Senate, to take part in the deliberations of this Conference Convention.

It was but a just tribute, sir, to his honored age, illustrated by abilities, by virtues, and by services, that he was unanimously selected as its temporary President. His interest in the great purpose of our assembling was profound

and earnest. His labors to promote an auspicious result of its deliberations were active and constant. And when fatal disease assailed his life, and his enfeebled powers yielded to its virulence, his last utterances were of the Constitution and the Union.

Mr. PRESIDENT, Judge WRIGHT was my friend. His approval cheered and encouraged my own humble labors in the service of the State. Pardon me if I mingle private with public grief. He has gone from his last great labor. He was not permitted to witness upon earth the result of the mission upon which he and his associates, who here mourn his loss, were sent. God grant that the clouds which now darken over us may speedily disperse, and that through generous counsels and patriotic labors, guided by that good Providence which directed our fathers in its original formation, the Union of our States may be more than ever firmly cemented and established.

Mr. PRESIDENT, I offer the following resolutions:

Resolved, That in the death of our late venerable colleague, the Hon. JOHN C. WRIGHT, we mourn the loss to the State of Ohio, and to the nation at large, of one of our most sagacious statesmen and distinguished patriots; and to the cause of Union and conciliation, one of its most illustrious supporters.

Resolved, That while we deplore with saddened hearts the affliction with which an All-wise Providence has visited us, we know that no transition from life to immortality could have been more grateful to him who has fallen than this, in which his life has been offered a willing sacrifice in an effort to restore harmony to his distracted country.

Resolved, That the members of this Convention tender their heartfelt sympathies to the family of the deceased in this their great affliction.

Resolved, That these resolutions be spread upon the records of this body, and a copy of the same be transmitted to the family of the deceased.

Mr. CHARLES A. WICKLIFFE, of Kentucky, moved the adoption of the resolutions, and said:

Mr. PRESIDENT, I rise to tender my most cordial sanction and second to the resolutions which have just been read.

Mr. WRIGHT and myself entered the councils of this nation thirty-seven years ago. We served together during a period when party excitement ran high upon questions more of a personal than a constitutional character. I can bear witness not only to his ability, but to his personal integrity, and his purity of political action through our term of service in the House of Representatives. I have seldom met him since we separated at the termination of his service and mine in that body, which occurred at pretty near the same period; but whenever I have met him, I have found him the same stern advocate of the Union and of constitutional liberty. I rejoiced, therefore, when I found him in this hall on the day we first assembled here. I knew his conservative disposition and principles, and I promised myself that with his aid I could be more useful to my country and to my State than without him. In conversing with him upon the difficulties which now divide and distract our common country, I found him ready and willing, conscientiously and patriotically, to do that which I thought that portion of the country which I represent has a right to demand and expect of those who represent a different portion of our Union. And if my friend from Ohio (Mr. CHASE) and his colleagues will permit me to mingle my sorrow at the public loss, I will say nothing of the private bereavement of the family of our deceased colleague. I leave him to his country, and to you, with this testimony which I leave to his memory, his honesty of purpose and his patriotic love of country.

The Hon. A.W. LOOMIS, of Pennsylvania, said:

Mr. PRESIDENT, I desire to mingle my sincere regrets with those of the members of this assemblage at the sad and unexpected occurrence which deprived us of an able, experienced, and patriotic associate. My relations with the deceased were, for many years, probably more intimate than those which existed between him and any other member of this Convention. Forty years have elapsed since I first made his acquaintance. He was then in full, active, and extensive practice; a learned lawyer, an accomplished, skilful, and successful advocate. During the succeeding year I came to the bar, and resided and practiced in the same judicial circuit with our departed friend. For many years the most kind and intimate relations existed between us—sometimes colleagues, but usually opponents. So kind and genial was his nature, so fair and liberal his practice, that during our entire intercourse not

an unkind word was uttered, and, so far as I know or believe, not an unpleasant feeling existed in the bosom of either.

Though not gifted with the highest order of eloquence, he was clear, distinct, and persuasive. His style of speaking resembled not the babbling brook or the dashing cataract, but usually the limpid stream, gliding gracefully amid fields and fruits and flowers, though sometimes assuming the power and proportions of the majestic river, cutting its sure and certain way to the mighty ocean.

His professional position, his kindness of heart, and genial humor, made him an object of high respect and warm regard among his professional brethren. And now, sir, as memory passes in review the pleasant incidents which marked our social and professional intercourse, the smitten heart shrinks in sadness and sorrow from the contemplation of our bereavement. He adorned, sir, the bar, the bench, and the halls of Legislation. He discharged, in all the relations of life, his obligations with fidelity. Of him it might be truly said:

> His life hath flowed a sacred stream, in whose calm depths
> The beautiful and pure alone are mirrored;
> Which, though shapes of ill may hover o'er the surface,
> Glides in light, and takes no shadows from them.

But, sir, the great crowning virtue and glory of his life was his acceptance of the mission which brought him here. Though whitened by the frosts of nearly eighty winters, neither lofty mountains nor intervening space could restrain his patriotic heart from a prompt response to the call of his country to mingle his influence in a sincere and sacred effort to save the Constitution and perpetuate the Union. He accepted the great trust; he mingled in our deliberations, and has fallen in the discharge of his duty. He has justly earned a title to the gratitude and respect of his country. May we not, sir, fondly hope that he, who was called from the discharge of such duties to the presence of his God, has passed from the sorrows of earth to

the happiness of Heaven, and to the full fruition of joys pure, perfect, and eternal?

The Hon. THOMAS EWING, of Ohio, said:—I rise to bear my tribute of respect to the memory of the deceased. I have known him long. On my first entrance into active life, at the bar, I found him an able and distinguished member. Since that time down to the present day, he has been largely associated, in mind and person, with all the acts and progress, professional and political, of my life. I feel his loss intensely; and I feel it with more regret, because I know that on this occasion his voice would have been potential in our counsels, and would have been united with all of us who labor most earnestly for the preservation of the Union.

I tender my sympathies to the family of the deceased. I unite with them in their regrets and in their hopes of the happy future to which he may have attained.

The Hon. WILLIAM C. RIVES, of Virginia, said:—Though wholly unprepared to say any thing worthy of the solemnity of this occasion, I feel that I should be wanting, sir, in that sentiment of respect which is due to the character of a distinguished citizen, if I were not to add to what has been so eloquently spoken by others, a few words of personal recollection in regard to our deceased friend Judge WRIGHT. It so happened that we entered the public councils of the country at the same moment, and continued in them for the same period of time. It is now just thirty-seven years since I had the pleasure of meeting Judge WRIGHT, for the first time, in the House of Representatives of the United States. I may be permitted to say, that there were giants in those days. My honorable friend from Kentucky (Governor WICKLIFFE), who has already so feelingly addressed the Convention, will recollect that on the roll of the House of Representatives at that time stood the names of WEBSTER and EVERETT, of OAKLEY and STORRS, of SARGEANT and of HEMPHILL, of LEWIS MCLANE, of the immortal CLAY, and BARBOUR and RANDALL, and other gentlemen known to fame from the State which I have the honor to represent in this body, and LIVINGSTON of Louisiana, MCDUFFIE and HAMILTON of South Carolina, and other gentlemen who, on the spur of the occasion, I am not now able to recall, but whose names will forever shine upon the rolls of their country's glory. And yet in that body Judge WRIGHT, then in the maturity of his powers, though not previously

known to the nation, vindicated an equal rank in debate with those gentlemen whose names I have mentioned. Sir, I shall never forget with what earnestness, with what manliness, with what integrity, with what ability, he ever uttered his convictions of public duty, whatever they were, in that consecrated hall.

After remaining here, I think, for six years, he retired to his own State for the purpose of assuming the duties of a highly-important and dignified office, which was soon followed by his retirement into the bosom of private life, where he met a rich and ample solace for the storms of his public career. He was followed there by the respect of his fellow-citizens throughout the country, and the confidence of his own State, as we have recently seen, by his being called from that honorable retirement to take part in the grave and solemn duties of this assembly. Sir, he came among us in obedience to the solemn call of patriotic duty, at a most exigent and distressing period in our national annals. He came here on an errand of peace, in the spirit of peace and conciliation. Such was the feeling entertained toward him by the whole of this assembly, that without the slightest preconcert, so far as I know, he was invited by general consent to preside during the preliminary stages of the organization of this Convention. I had an opportunity, from time to time, of private conversation with the aged statesman. I found no member of the assembly I met here, and, indeed, I have found nowhere any citizen of this wide Republic of ours, whose heart was more deeply imbued with the spirit of conciliation and of peace—of that spirit which was so solemnly and impressively uttered in his last prayer, "May the Union be preserved." Sir, it is not given to mortal man to choose the manner of his death; but if such were the privilege accorded to any human being, what more glorious end could he, appreciating a true fame, covet, than that which has been the lot of our departed friend? Sir, I speak what I feel, and I dare say I express a sentiment which has impressed itself upon many other bosoms in this assembly, when I say that his sudden death in the midst of our deliberations, seems to me to exalt—in some degree to canonize—our labors. This manifestation of the visible hand of God among us, brings us in the immediate presence of those solemn responsibilities which attach themselves to the discharge of our duties here. I doubt not that every member of this assembly is already deeply impressed with the solemnity of those duties, and I feel convinced

that there are few, if any, in this assembly, who would not lay down their fleeting and feverish existence, and follow our deceased brother to his final account, if by doing so they could restore peace and harmony to this glorious Republic of ours.

It does not become me to make any professions of devotion to my country —to my whole country—but this I will say, in the spirit of the last prayer of my friend, that I should regard my poor life, such as it is, a cheap purchase —the cheapest imaginable purchase—for that great boon to our country, the restoration of its peace, of its harmony, of its unity, of its ancient confederated strength and glory.

The question was taken, and the resolutions were unanimously adopted.

The body of Judge WRIGHT was then brought into the hall, preceded by Rev. Dr. HALL, who read the impressive service of the Episcopal Church. A number of the members of the family, and of the friends of the deceased, were present during the services.

The funeral cortege proceeded from the hall to the depot of the Baltimore and Ohio Railroad.

The following gentlemen were designated to act as pall-bearers on the occasion:

Mr. Ewing,	Mr. Chase,
Mr. Hitchcock,	Mr. Loomis,
Mr. Backus,	Mr. Groesbeck,
Mr. Wolcott,	Mr. Stanton,
Mr. Sherman,	Mr. Harlan,
Mr. Vinton,	Mr. Gurley.

The proceedings upon the death of Judge WRIGHT were, by the Conference, ordered to be published, and the special session closed.

NINTH DAY.

WASHINGTON, FRIDAY, *February 15th, 1861.*

THE Convention was called to order by President TYLER, and prayer was offered by Rev. Mr. RENNER. The Journals of the 13th and 14th were read and approved.

The PRESIDENT:—I have this morning received several communications from different persons, which will be laid before the Convention. One is an invitation from HORATIO STONE, inviting the members of the Convention to visit his studio; also, a resolution of the House of Representatives, authorizing the admission of members of this Convention to the floor of the House. Also, a letter from J.E. SANDS, offering to the Convention certain flags which possess historical interest, from the fact that they were used in the convention which adopted the present Constitution of the United States. Also, a communication from HORATIO G. WARNER.

The communications were severally read and laid upon the table.

Mr. SUMMERS:—I am instructed by the Committee on Credentials to inform the Convention that the committee has received satisfactory evidence of the appointment by the Executive of Ohio of C.P. WOLCOTT, as a delegate to this Convention, in the place of JOHN C. WRIGHT, deceased.

Mr. ORTH:—I desire to offer the following resolutions, which I ask to have read for the information of the Convention. I have no purpose to admit spectators to seats on this floor, but in my judgment it is the right of the country to know what we are doing here. My constituents will not be satisfied with my course, unless I take means to give the public knowledge of all our transactions. I am aware that this is an invasion of the rule already adopted, requiring secrecy, but in my opinion no possible harm can come from the daily publication of our debates. It is far better that true reports of these debates should be made, than that the distorted and perverted accounts which we see daily in the New York papers should be continued.

The resolutions were read, and are as follows:

Resolved, That Rules Sixteen (16) and Eighteen (18) of this Convention be, and the same hereby are, rescinded.

Resolved, That the President is hereby authorized to grant cards of admission to reporters of the press, not exceeding —— in number, which shall entitle them to seats on the floor of the Convention, for the purpose of reporting its proceedings.

Resolved, That no person be admitted to the floor of the Convention, except the members, officers, or reporters.

Mr. WICKLIFFE:—I do not wish to prolong this discussion myself, nor to cause it to be prolonged by others. I am sure that if we permit our debates to be reported, we shall never reach a conclusion which will in the slightest degree benefit the country. Every member will in that event wish to make a set speech, some of them three or four. I wish to have our time used in consultation and in action, not consumed in political speech-making. I do not care what the newspapers say of us. I know their accounts are distorted; but they would be distorted if we admitted reporters. Some of them assail us as a convention of compromisers—as belonging to the sandstone stratum of politics.

Mr. CHASE:—That is the formation which supports all others.

Mr. WICKLIFFE:—I know it, and I hope this Convention will prove to be the stratum which supports and preserves the Union and the country. Let us go on as we have begun, preserving secrecy; keeping our own counsels; making no speeches for outside consumption or personal reputation. Let us all keep steadily in mind the accomplishment of the great and good purpose which brought us here, and nothing else.

Mr. RANDOLPH:—New Jersey does not wish to have time consumed in making speeches. I think we should proceed at once to hear the report of the committee. I move that the resolutions offered be laid upon the table.

Mr. ORTH:—I suppose this motion cuts off debate. I should much have preferred to discuss the resolutions. I hope the motion will not prevail.

The motion to lay on the table passed in the affirmative by a *viva voce* vote.

The PRESIDENT:—Is the General Committee upon Propositions prepared to report? If it is, their report is now in order.

Mr. GUTHRIE:—That committee has given earnest and careful consideration to the subjects and propositions which have from time to time been presented to it. It has held numerous and protracted sessions, and the differences of opinion naturally existing between the members have been discussed in a spirit of candor and conciliation. The committee have not been so fortunate as to arrive at an unanimous conclusion. A majority of its members, however, have agreed upon a report which we think ought to be satisfactory to all sections of the Union, one which if adopted will, we believe, accomplish the purpose so much desired by every patriotic citizen. We think it will give peace to the country. In their behalf I have now the honor to submit, for the consideration of the Conference, the following:

PROPOSALS OF AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

ARTICLE 1. In all the territory of the United States not embraced within the limits of the Cherokee treaty grant, north of a line from east to west on the parallel of 36 degrees 30 minutes north latitude, involuntary servitude, except in punishment of crime, is prohibited whilst it shall be under a Territorial government; and in all the territory south of said line, the status of persons owing service or labor, as it now exists, shall not be changed by law while such territory shall be under a Territorial government; and neither Congress nor the Territorial government shall have power to hinder or prevent the taking to said territory of persons held to labor or involuntary service, within the United States, according to the laws or usages of the State from which such persons may be taken, nor to impair the rights arising out of said relations, which shall be subject to judicial cognizance in the federal courts, according to the common law; and when any territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population required for a member of Congress, according to the then federal ratio of representation, it shall, if its form of government be republican, be admitted into the Union on an equal footing

with the original States, with or without involuntary service or labor, as the Constitution of such new State may provide.

ARTICLE 2. Territory shall not be acquired by the United States, unless by treaty; nor, except for naval and commercial stations and depots, unless such treaty shall be ratified by four-fifths of all members of the Senate.

ARTICLE 3. Neither the Constitution, nor any amendment thereof, shall be construed to give Congress power to regulate, abolish, or control within any State or Territory of the United States, the relation established or recognized by the laws thereof touching persons bound to labor or involuntary service therein, nor to interfere with or abolish involuntary service in the District of Columbia without the consent of Maryland and without the consent of the owners, or making the owners who do not consent just compensation; nor the power to interfere with or prohibit representatives and others from bringing with them to the City of Washington, retaining, and taking away, persons so bound to labor; nor the power to interfere with or abolish involuntary service in places under the exclusive jurisdiction of the United States within those States and Territories where the same is established or recognized; nor the power to prohibit the removal or transportation, by land, sea, or river, of persons held to labor or involuntary service in any State or Territory of the United States to any other State or Territory thereof where it is established or recognized by law or usage; and the right during transportation of touching at ports, shores, and landings, and of landing in case of distress, shall exist. Nor shall Congress have power to authorize any higher rate of taxation on persons bound to labor than on land.

ARTICLE 4. The third paragraph of the second section of the fourth article of the Constitution shall not be construed to prevent any of the States, by appropriate legislation, and through the action of their judicial and ministerial officers, from enforcing the delivery of fugitives from labor to the person to whom such service or labor is due.

ARTICLE 5. The foreign slave-trade and the importation of slaves into the United States and their Territories, from places beyond the present limits thereof, are forever prohibited.

ARTICLE 6. The first, second, third, and fifth articles, together with this article of these amendments, and the third paragraph of the second section

of the first article of the Constitution, and the third paragraph of the second section of the fourth article thereof, shall not be amended or abolished without the consent of all the States.

ARTICLE 7. Congress shall provide by law that the United States shall pay to the owner the full value of his fugitive from labor, in all cases where the marshal or other officer, whose duty it was to arrest such fugitive, was prevented from so doing by violence or intimidation, or when, after arrest, such fugitive was rescued by force, and the owner thereby prevented and obstructed in the pursuit of his remedy for the recovery of such fugitive.

Mr. BALDWIN:—I have not been able to concur in opinion with those members of the committee who have presented the propositions just submitted. I do not deem them fair or equitable to the Free States, nor do I think they are likely to secure approval in those States. As one member of the minority, I have drawn up a report embodying my own views and perhaps those of some of my colleagues, which I now present for the consideration of the Conference:

MR. BALDWIN'S MINORITY REPORT.

The undersigned, one of the minority of the committee of one from each State, to whom was referred the consideration of the resolutions of the State of Virginia, and the other States represented, and all propositions for the adjustment of existing differences between the States, with authority to report what they deem right, necessary, and proper to restore harmony and preserve the Union, and report thereon, entered upon the duties of the committee with an anxious desire that they might be able to unite in the recommendation of some plan which, on due deliberation, should seem best adapted to maintain the dignity and authority of the Government of the United States, and at the same time secure to the people of every section that perfect equality of right to which they are entitled.

Convened, as we are, on the invitation of the Governor of Virginia, in pursuance of the resolutions of the General Assembly of that State, with an accompanying expression of the deliberate opinion of that body that, unless the unhappy controversy which now divides the States shall be satisfactorily adjusted, a permanent dissolution of the Union is inevitable;

and, being earnestly desirous of an adjustment thereof, in concurrence with Virginia, in the spirit in which the Constitution was originally formed, and consistently with its principles, so as to afford to the people of all the States adequate security for all their rights, the attention of the undersigned was necessarily led to the consideration of the extent and equality of our powers, and to the propriety and expediency, under existing circumstances, of a recommendation by this Conference Convention of any specific action by Congress, whether of ordinary legislation, or in reference to constitutional amendments to be proposed by Congress on its own responsibility to the States.

A portion of the members of this Convention are delegated by the Legislatures of their respective States, and are required to act under their supervision and control, while others are the representatives only of the Executives of their States, and, having no opportunity of consulting the immediate representatives of the people, can only act on their individual responsibility.

Among the resolutions and propositions suggesting modes of adjustment appropriate to this occasion which were brought to the notice of the committee, were the resolutions of the State of Kentucky recommending to her sister States to unite with her in an application to Congress for the calling of a Convention in the mode prescribed by the Constitution for proposing amendments thereto.

The undersigned, for the reasons set forth in the accompanying resolution, and others which have been herein indicated, is of opinion that the mode of adjustment by a General Convention, as proposed by Kentucky, is the one which affords the best assurance of an adjustment acceptable to the people of every section, as it will afford to all the States which may desire amendments, an opportunity of preparing them with care and deliberation, and in such form as they may deem it expedient to prescribe, to be submitted to the consideration and deliberate action of delegates duly chosen and invested with equal powers from all the States.

The undersigned did not, therefore, deem it expedient that any of the measures of adjustment proposed by the majority of the committee, should be reported to this body to be discussed or acted upon by them, and he

respectfully submits as a substitute for the articles of amendment to the Constitution, reported by the majority of the committee, the following preamble and resolution, and respectfully recommends the adoption thereof.

ROGER S. BALDWIN.

Whereas, unhappy differences exist which have alienated from each other portions of the people of the United States to such an extent as seriously to disturb the peace of the nation, and impair the regular and efficient action of the Government within the sphere of its constitutional powers and duties;

And whereas, the Legislature of the State of Kentucky has made application to Congress to call a Convention for proposing amendments to the Constitution of the United States;

And whereas, it is believed to be the opinion of the people of other States that amendments to the Constitution are or may become necessary to secure to the people of the United States, of every section, the full and equal enjoyment of their rights and liberties, so far as the same may depend for their security and protection on the powers granted to or withheld from the General Government, in pursuance of the national purposes for which it was ordained and established;

And whereas, it may be expedient that such amendments as any of the States may desire to have proposed, should be presented to the Convention in such form as the respective States desiring the same may deem proper;

This Convention does, therefore, recommend to the several States to unite with Kentucky in her application to Congress to call a convention for proposing amendments to the Constitution of the United States, to be submitted to the Legislatures of the several States, or to conventions therein, for ratification, as the one or the other mode of ratification may be proposed by Congress, in accordance with the provision in the fifth article of the Constitution.

Mr. FIELD:—I do not concur in the conclusions to which the majority of the committee have arrived. I may say that I wholly dissent from them. I have not deemed it necessary to make a separate report. At a suitable time I shall endeavor to make known to the Conference my views upon the topics which have occupied the attention of the committee.

Mr. CROWNINSHIELD:—I occupy substantially the same position as Mr. FIELD, and shall make my views known at a proper time.

Mr. SEDDON:—The report presented by the majority, I think, is a wide departure from the course we should have adopted. Virginia has prepared and presented a plan, and has invited this Conference to consider it. I think we ought to take up her propositions, amend and perfect them, if need be, and then adopt or reject them. To avoid all misconstruction as to my individual opinions or position, I have reduced my views to writing, which, with the leave of the Conference, I will now read.

No objection being made, Mr. SEDDON proceeded to read the following:

REPORT OF MR. SEDDON.

The undersigned, acting on the recommendation of the Commissioners from the State of Virginia, as a member of the committee appointed by this Convention to consider and recommend propositions of adjustment, has not been so happy as to accord with the report submitted by the majority; and as he more widely dissents from the opinions entertained by the other dissenting members, he feels constrained, in vindication of his position and opinions, to present on his part this brief report, recommending, as a substitute for the report of the majority, a proposition subjoined. To this course he feels the more impelled, by deference to the resolutions of the General Assembly of his State, inviting the assemblage of this Convention, and suggesting a basis of adjustment.

These resolutions declare, that "in the opinion of the General Assembly of Virginia the propositions embraced in the resolutions presented to the Senate of the United States by the Hon. JOHN J. CRITTENDEN, so modified as that the first article proposed as an amendment to the Constitution of the United States shall apply to all the territory of the United States now held or hereafter acquired south of latitude 36° 30′, and provided that slavery of the African race shall be effectually protected as property therein during the continuance of the territorial government, and the fourth article shall secure to the owners of slaves the right of transit with their slaves between and through the non-slaveholding States or Territories, constitute the basis of such an adjustment of the unhappy controversy which now divides the

States of this Confederacy, as would be accepted by the people of this Commonwealth."

From this resolution, it is clear that the General Assembly, in its declared opinion of what would be acceptable to the people of Virginia, not only required the Crittenden propositions as a basis, but also held the modifications suggested in addition essential. In this the undersigned fully concurs. But, in his opinion, the propositions reported by the majority do not give, but materially weaken the Crittenden propositions themselves, and fail to accord the modifications suggested. The undersigned therefore, feels it his duty to submit and recommend, as a substitute, the resolutions referred to, as proposed by the Hon. JOHN J. CRITTENDEN, with the incorporation of the modifications suggested by Virginia explicitly expressed, and with some alterations on points which, he is assured, would make them more acceptable to that State, and, as he hopes, to the whole Union. The propositions submitted are appended, marked No. 1.

The undersigned, while contenting himself, in the spirit of the action taken by the General Assembly of his State, with the proposal of that substitute for the majority report, would be untrue to his own convictions, shared, as he believes, by the majority of the commissioners from Virginia, and to his sense of duty, if he did not emphatically declare, as his settled and deliberate judgment, that for permanent safety in this Union, to the slaveholding States, and the restoration of integrity to the Union and harmony and peace to the country, a guarantee of actual power in the Constitution and in the working of the Government to the slaveholding and minority section is *indispensable*. How such guarantee might be most wisely contrived and judiciously adjusted to the frame of the Government, the undersigned forbears now to inquire. He is not exclusively addicted to any special plan, but believing that such guarantee might be adequately afforded by a partition of power in the Senate between the two sections, and by a recognition that *ours* is a Union of freedom and consent, not constraint and force, he respectfully submits, for consideration by members of the Convention, the plan hereto appended, marked No. 2.

Whether he shall feel bound to invoke the action of the Convention upon it, may depend on the future manifestations of sentiment in this body.

All which is respectfully submitted,

JAMES A. SEDDON.
Commissioner from Virginia.

February 15th, 1861.

No. 1.

Joint Resolutions proposing certain amendments to the Constitution of the United States.

Whereas, serious and alarming dissensions have arisen between the Northern and Southern States, concerning the rights and security of the rights of the slaveholding States, and especially their rights in the common territory of the United States; and *whereas*, it is eminently desirable and proper that those dissensions, which now threaten the very existence of this Union, should be permanently quieted and settled by constitutional provisions, which shall do equal justice to all sections, and thereby restore to the people that peace and good will which ought to prevail between all the citizens of the United States: Therefore,

Resolved, by this Convention, that the following articles are hereby approved and submitted to the Congress of the United States, with the request that they may, by the requisite constitutional majority of two-thirds, be recommended to the respective States of the Union, to be, when ratified by Conventions of three-fourths of the States, valid and operative as amendments of the Constitution of the Union.

ARTICLE 1. In all the territory of the United States, now held or hereafter acquired, situate north of latitude thirty-six degrees and thirty minutes, slavery or involuntary servitude, except as a punishment for crime, is prohibited, while such territory shall remain under territorial government. In all the territory south of said line of latitude, slavery of the African race is hereby recognized as existing, and shall not be interfered with by Congress, but shall be protected as property by all the departments of the territorial government during its continuance; and, when any territory, north or south of said line, within such boundaries as Congress may prescribe, shall

contain the population requisite for a member of Congress, according to the then federal ratio of representation of the people of the United States, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without slavery, as the Constitution of such new State may provide.

ARTICLE 2. Congress shall have no power to abolish slavery in places under its exclusive jurisdiction, and situate within the limits of States that permit the holding of slaves.

ARTICLE 3. Congress shall have no power to abolish slavery within the District of Columbia, so long as it exists in the adjoining States of Virginia and Maryland, or either, nor without the consent of the free white inhabitants, nor without just compensation first made to such owners of slaves as do not consent to such abolishment. Nor shall Congress at any time prohibit officers of the Federal Government, or members of Congress, whose duties require them to be in said District, from bringing with them their slaves, and holding them as such during the time their duties may require them to remain there, and afterwards taking them from the District.

ARTICLE 4. Congress shall have no power to prohibit or hinder the transportation of slaves from one State to another, or to a Territory in which slaves are by law permitted to be held, whether that transportation be by land, navigable rivers, or by the sea. And if such transportation be by sea, the slaves shall be protected as property by the Federal Government. And the right of transit by the owners with their slaves, in passing to or from one slaveholding State or Territory to another, between and through the non-slaveholding States and Territories, shall be protected. And in imposing direct taxes pursuant to the Constitution, Congress shall have no power to impose on slaves a higher rate of tax than on land, according to their just value.

ARTICLE 5. That, in addition to the provisions of the third paragraph of the second section of the fourth article of the Constitution of the United States, Congress shall provide by law, that the United States shall pay to the owner who shall apply for it, the full value of his fugitive slave, in all cases, when the marshal, or other officer, whose duty it was to arrest said fugitive, was prevented from so doing by violence or intimidation, or when, after arrest,

said fugitive was rescued by force, and the owner thereby prevented and obstructed in the pursuit of his remedy for the recovery of his fugitive slave, under the said clause of the Constitution and the laws made in pursuance thereof. And in all such cases, when the United States shall pay for such fugitive, they shall reimburse themselves by imposing and collecting a tax on the county or city in which said violence, intimidation, or rescue was committed, equal in amount to the sum paid by them, with the addition of interest and the costs of collection; and the said county or city, after it has paid said amount to the United States, may, for its indemnity, sue and recover from the wrong-doers, or rescuers, by whom the owner was prevented from the recovery of his fugitive slave, in like manner as the owner himself might have sued and recovered.

ARTICLE 6. No future amendment of the Constitution shall affect the five preceding articles, nor the third paragraph of the second section of the first article of the Constitution, nor the third paragraph of the second section of the fourth article of said Constitution, and no amendment shall be made to the Constitution which will authorize or give to Congress any power to abolish or interfere with slavery in any of the States, by whose laws it is or may be allowed or permitted.

ARTICLE 7, Sec. 1. The elective franchise and the right to hold office, whether federal, State, territorial, or municipal, shall not be exercised by persons who are, in whole or in part, of the African race.

And *whereas*, also, besides those causes of dissension embraced in the foregoing amendments proposed to the Constitution of the United States, there are others which come within the jurisdiction of Congress, and may be remedied by its legislative power: and *whereas* it is the desire of this Convention, as far its influence may extend, to remove all just cause for the popular discontent and agitation which now disturb the peace of the country, and threaten the stability of its institutions: Therefore,

1. *Resolved*, That the laws now in force for the recovery of fugitive slaves are in strict pursuance of the plain and mandatory provisions of the Constitution, and have been sanctioned as valid and constitutional by the judgment of the Supreme Court of the United States; that the slaveholding States are entitled to the faithful observance and execution of those laws,

and that they ought not to be repealed, or so modified or changed as to impair their efficiency; and that laws ought to be made for the punishment of those who attempt, by rescue of the slave or other illegal means, to hinder or defeat the due execution of said laws.

2. That all State laws which conflict with the fugitive slave acts, or any other constitutional acts of Congress, or which in their operation impede, hinder, or delay the free course and due execution of any of said acts, are null and void by the plain provisions of the Constitution of the United States. Yet those State laws, void as they are, have given color to practices, and led to consequences which have obstructed the due administration and execution of acts of Congress, and especially the acts for the delivery of fugitive slaves, and have thereby contributed much to the discord and commotion now prevailing. This Convention, therefore, in the present perilous juncture, does not deem it improper, respectfully and earnestly to recommend the repeal of those laws to the several States which have enacted them, or such legislative corrections or explanations of them as may prevent their being used or perverted to such mischievous purposes.

3. That the act of the 18th of September, 1850, commonly called the Fugitive Slave Law, ought to be so amended as to make the fee of the Commissioner, mentioned in the eighth section of the act, equal in amount, in the cases decided by him, whether his decision be in favor of or against the claimant. And to avoid misconstructions, the last clause of the fifth section, of said act, which authorizes the person holding a warrant for the arrest or detention of a fugitive slave, to summon to his aid the *posse comitatus*, and which declares it to be the duty of all good citizens to assist him in its execution, ought to be so amended as to expressly limit the authority and duty to cases in which there shall be resistance, or danger of resistance or rescue.

4. That the laws for the suppression of the African slave-trade, and especially those prohibiting the importation of slaves into the United States, ought to be made effectual, and ought to be thoroughly executed, and all further enactments necessary to those ends ought to be promptly made.

No. 2.

Proposed Amendments by Mr. Seddon.

To secure concert and promote harmony between the slaveholding and non-slaveholding sections of the Union, the assent of the majority of the Senators from the slaveholding States, and of the majority of the Senators from the non-slaveholding States, shall be requisite to the validity of all action of the Senate, on which the ayes and noes may be called by five Senators.

And on a written declaration, signed and presented for record on the Journal of the Senate by a majority of Senators from either the non-slaveholding or slaveholding States, of their want of confidence in any officer or appointee of the Executive, exercising functions exclusively or continuously within the class of States, or any of them, which the signers represent, then such officer shall be removed by the Executive; and if not removed at the expiration of ten days from the presentation of such declaration, the office shall be deemed vacant and open to new appointment.

The connection of every State with the Union is recognized as depending on the continuing assent of its people, and compulsion shall in no case, nor under any form, be attempted by the Government of the Union against a State acting in its collective or organic capacity. Any State, by the action of a convention of its people, assembled pursuant to a law of its Legislature, is held entitled to dissolve its relation to the Federal Government, and withdraw from the Union; and, on due notice given of such withdrawal to the Executive of the Union, he shall appoint two Commissioners, to meet two Commissioners to be appointed by the Governor of the State, who, with the aid, if needed from the disagreement of the Commissioners, of an umpire, to be selected by a majority of them, shall equitably adjudicate and determine finally a partition of the rights and obligations of the withdrawing State; and such adjudication and partition being accomplished, the withdrawal of such State shall be recognized by the Executive, and announced by public proclamation to the world.

But such withdrawing State shall not afterwards be readmitted into the Union without the assent of two-thirds of the States constituting the Union at the time of the proposed readmission.

Mr. COALTER:—It is proper that I should say a word in relation to the position of Missouri in this Conference. It is expressly referred to in the resolution under which we hold our appointment, passed by the Senate and House of Representatives. It is believed by the people of Missouri that the rights and privileges of the slaveholding States are in danger, and that the time has arrived when they should be secured by additional guarantees. Those guarantees must be such as will secure the honor and equal rights of the slaveholding States.

I wish to say, further, that we, as Commissioners, must act at all times under the control of the General Assembly or the State Convention of our State. Before we can act definitely upon either of the propositions submitted, I think it will be our duty to transmit them to the General Assembly for instructions.

Mr. WICKLIFFE:—The several reports are now before the Conference. I presume it will be the desire of every member to give them a careful examination. In order to prevent all unnecessary delay, I move that the several reports be laid upon the table, that they be printed at once and distributed to the members, and made the special order of the Conference for 12 o'clock to-morrow.

The motion of Mr. WICKLIFFE was agreed to.

Mr. WICKLIFFE:—I have drawn up a preamble and a resolution which I wish to offer for the consideration of the Conference. I shall not press action upon them to-day, but desire to have them laid on the table and printed. I shall call them up after the report of the General Committee is disposed of. It would gratify me much, and I think greatly tend to the peace and harmony of the country, if they could be adopted at once, and published. It is well known to most of you that there is nothing in all the legislation or action of the Free States, which has created so much excitement and alarm among the people of the slaveholding States, as the passage of the so called "personal liberty" acts. They are regarded as deliberate infractions and breaches of the Constitution, and as attempts to nullify the operation of a constitutional enactment of Congress. But I do not wish to invite discussion upon the subject now; I hope my motion will not meet with objection.

The motion of Mr. WICKLIFFE was adopted, and the preamble and resolution were presented as follows:

MR. WICKLIFFE'S PREAMBLE AND RESOLUTION.

Whereas, the second section of the fourth article of the Constitution of the United States declares, "that no person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

This clause is one of the compromises without which no Constitution would have been adopted. It was a guarantee to the States in which such labor and service existed by law, that their rights should be respected and regarded by all the States; and it is not within the competency of any State to disregard the obligation it imposes, or to render it valueless by legislative enactments. And *whereas*, the House of Representatives of the United States did, on the —— day of February, by unanimous vote, declare that neither the Congress of the United States nor the people or government of any non-slaveholding State, has the constitutional right to legislate upon, or to interfere with slavery in any slaveholding State in the Union.

This declaration is regarded by this Convention as an admission that the statutes of those States, passed for the purpose of defeating the provision of the Constitution aforesaid, and the laws of Congress made to enforce the just and proper execution of this constitutional guarantee, are in violation of the supreme law of the land.

The provisions of the statutes in many of the non-slaveholding States, commonly known and called "personal liberty bills," amount in their consequences to a practical nullification of the acts of Congress of February 12th, 1793, and September 18th, 1850, and are in violation of the second section of the fourth article of the Constitution, as before stated. That the spirit of those statutes appears to be repugnant to the principles of compromise and mutual and liberal concessions which dictated the section of the Constitution in question, and which pervades every part of that

instrument. It is, therefore, respectfully requested by this Convention that the several States abrogate all such obnoxious enactments.

That the spirit of comity between the States, and the spirit of unity and fraternity which should actuate all the people of these United States, require that complete right and security of transit with all persons who owe them service or labor should be allowed to the citizens of each State by the laws of every other State.

Resolved, That a copy of the foregoing be sent by the President of this Convention to the Governors of each of the free States, as the deliberate judgment and opinion of this Convention, and that he request the same be laid before their respective Legislatures.

Mr. CHASE:—I move that all the resolutions, of the States, under which Commissioners have been appointed, or relating to subjects to come before this Conference, be printed. I think this course convenient and necessary, and one reason that I may assign is this: The opinion of the Legislature of the State of Ohio, as expressed in one of the resolutions adopted by that body, is, that it would have been wiser and better if the time for holding this Conference had been deferred until a later period. Ohio has expressly said in her resolutions that she is not prepared to assent to the terms of settlement proposed by Virginia, and has expressed the opinion that the Constitution as it now stands, if fairly interpreted and obeyed, contains ample provision for the correction of all the evils which are claimed to exist. Nevertheless she is willing to meet in a friendly spirit and consult with her sister States. But the opinion extensively prevails that this Conference ought not to have been called upon so short a notice and before the inauguration of the incoming administration. We, the Commissioners from that State, are instructed in the resolutions, to which I have referred, to use our influence to procure an adjournment of this Conference, before final action is taken, to the 4th of April next. I shall feel it my duty, at some future time, to make a motion to that effect. The extent to which I shall urge its adoption will depend in some measure upon the course of events and the opinions of my colleagues. In the mean time I wish to see all the resolutions printed.

The motion of Mr. CHASE was agreed to. The resolutions as printed will be found in the appendix.

Mr. ALLEN, of Massachusetts:—Before the adjournment to-day I desire to know what will be the order of business when these various reports come up for discussion. By the general rules governing parliamentary proceedings, to which I suppose we are subject, I understand the first question will be upon the substitution of the minority report presented by the gentleman from Connecticut (Mr. BALDWIN) for the report of the majority; and that, upon that question, amendments may be offered, and either accepted or rejected, both to the reports of the majority and the minority. I think it would be well to have this matter understood. Am I right in this?

The PRESIDENT:—The Chair understands that the gentleman from Massachusetts has correctly pointed out the manner of proceeding.

On motion of Mr. HACKLEMAN, the Conference then adjourned until 12 o'clock to-morrow.

TENTH DAY.

WASHINGTON, SATURDAY, *February 16th, 1861.*

THE Conference was called to order by the PRESIDENT at 12 o'clock M.

Prayer was offered by Rev. Dr. SUNDERLAND.

The Journal was read by the Assistant Secretary, Mr. PULESTON, and, being corrected, was approved.

The PRESIDENT:—I have received a communication from Mr. W.C. JEWETT, which I am requested to lay before the Conference. Should any member desire to have it read, it will be presented upon motion. I am not inclined to occupy the time of the Conference by reading it, unless some member specially requests that it be read.

Mr. SEDDON:—Let it be laid on the table without reading.

The PRESIDENT:—That disposition will be made of it.

Mr. WICKLIFFE:—I am instructed, by the Committee on Rules and Organization, to propose an amendment to the Eleventh Rule which has been adopted. As the Rule now stands, no appeal is allowed from the decision of the Chair upon questions of order. It is not probable that either the Chair or the Conference would wish to be bound in that way. The purpose of the resolution is to assimilate the Rule in this respect to the practice in parliamentary bodies, and to allow an appeal from the decision of the Chair to the Conference itself. I offer the following resolution:

"*Resolved*, That the Eleventh Rule of this Convention be so amended as to allow an appeal from the decision of the PRESIDENT, which appeal shall be decided without debate."

On the passage of this resolution a division was called for, and upon a count by the Secretaries, the PRESIDENT declared it adopted.

Mr. WICKLIFFE:—I now offer another resolution—the following:

"*Resolved*, That in the discussions which may take place in this Convention, no member shall be allowed to speak longer than thirty minutes."

We must all by this time be impressed with the necessity of prompt, immediate, and efficient action. I do not charge any member of the body with any purpose unnecessarily to consume the time of the Convention in making speeches. I have no reason to believe that any such purpose exists. But the present Congress is rapidly drawing to a close. If any plan is adopted it will be nugatory, unless recommended by Congress. If we are to sit here until each member of the Conference has spoken upon each question presented, as many times and as long as he pleases, I fear the Congress will close its labors before we do ours.

Mr. DAVIS:—I think thirty minutes quite too long. Our opinions are formed. Before this time probably every member has determined his course of action, and it will not be changed by debate. I move to strike out the word "thirty," and insert the word "ten."

Mr. HITCHCOCK:—I am altogether opposed to this attempt in advance to cut off or limit debate. I am sure it cannot meet with favor from the Conference, for reasons so obvious that I will not occupy time in stating them. I move to lay the resolution on the table.

Several gentlemen here interposed and appealed to Mr. HITCHCOCK to withdraw his motion, as it would cut off all debate upon the merits of the resolution. Mr. HITCHCOCK accordingly withdrew it.

Mr. SEDDON:—We have one rule already which prohibits any member from speaking more than twice upon any question without special leave, and a member cannot speak a second time until every other, who desires to speak, has spoken. This was the rule, I believe, in the Convention that formed our present Constitution, and no one complained of its operation there. I am as much impressed with the necessity of expediting our action as any one can be, and should be among the last to protract our sessions. But this resolution looks too much like suppressing discussion—like cutting off debate. I desire at the proper time to be heard upon the report which I have

submitted. It will be impossible to discuss the grave questions involved in it in the space of a brief half hour.

Mr. CHASE:—I hope Governor WICKLIFFE will consent to a postponement of his resolution for the present. It is anticipating a necessity that may not arise. As yet no one has abused the privileges of debate. It is not well to assume in advance that any one will do so.

Mr. WICKLIFFE:—I have no wish to press this resolution upon the Convention, and it may be as well to postpone it for the present. I will move its postponement until Tuesday morning next.

The motion to postpone was unanimously agreed to.

Mr. CRISFIELD:—I move that the hour of meeting hereafter be ten o'clock in the morning.

Mr. JOHNSON, of Maryland:—I am sure that we shall all agree that this hour is quite too early. I wish to make all reasonable progress, but I think we shall find it difficult to secure a quorum at that hour. I move to amend by inserting *eleven* o'clock.

Mr. EWING:—I think we had better let the hour of meeting remain where our rules leave it. We shall find our labors severe enough if we commence at twelve o'clock.

Mr. CRISFIELD:—I will accept the amendment of my colleague. Let the time of meeting be eleven o'clock.

The motion of Mr. CRISFIELD as amended was agreed to without a division.

Mr. CHASE:—I have a motion which I desire to make, and as I do not wish to press it to a vote at the present time, I will move to lay it on the table. But I wish to have it before the Conference. It is apparent to me that we ought to pass it at some time, in order to give members who may belong to delegations in which differences of opinion exist, an opportunity of appearing on the record as they personally wish to vote. I move to amend the first rule by inserting after the word "representing," the words, "The yeas and nays of the delegates from each State, on any question, shall be entered on the Journal when it is desired by any delegate."

On motion of Mr. CHASE, the amendment was laid upon the table.

The PRESIDENT:—The Conference will now proceed to the order of the day, the question being upon the several reports presented by the General Committee of one from each State.

The chair was taken, at the request of the PRESIDENT, by Mr. ALEXANDER, of New Jersey.

Mr. BALDWIN:—I move to substitute the report presented by myself for the report of the majority of the Committee. I will consent to strike out that part of it which relates to—

Mr. TURNER:—Before the gentleman from Connecticut proceeds with his argument I trust he will give way for the introduction of a resolution. I am sure the time has come when we ought to pass such a resolution as I now offer. I am unwilling to sit here longer unless some means are taken to secure a report of our proceedings.

The PRESIDENT:—A resolution is not now in order.

Mr. TURNER:—I ask that the resolution may be read for the information of the Conference, and also ask the leave of the Conference for its introduction.

The resolution was read. It provided for the appointment of a stenographer.

The question was taken, and upon a division the leave to introduce it was refused.

Mr. BALDWIN:—I rise for the purpose of supporting my motion to substitute the report presented by myself for that presented by the majority of the committee. As I was about to remark, when the resolution just disposed of was introduced, I will consent to strike out all that portion of my report which precedes the words "whereas unhappy differences," &c., in order that the substitute offered may conform more nearly in substance to the proposition of the majority. It seems desirable on all hands that whatever we adopt here should be presented to Congress; and if it receives the sanction of that body, should be by it presented to the States for their

approval. My report when thus amended will be in a proper form for such a disposition.

My report, it will be noticed, is based mainly upon the action of the Legislature of Kentucky. I have adopted those resolutions of Kentucky as the basis of my recommendation, on account of the short time which remains for any action at all, and because it appears to me that the kind of proceeding indicated in them is best calculated to meet with favor in the States which must approve any action taken here before it can be made effectual.

The resolutions of Virginia, under which this Convention is called, were adopted on the 19th of January last. The resolutions of Kentucky to which I have referred were adopted on the 25th of the same month. It is not only the necessary presumption that the latter were passed with a full knowledge of the action of Virginia, but I understand from their reading that they were adopted in consequence of the proposition of the latter State. I am disposed to favor the line of policy initiated in the resolutions of the State of Kentucky.

There are two ways of presenting amendments to the Constitution provided in that instrument. By the first, by Congress whenever two-thirds of both Houses shall deem such amendments necessary: or by the second, the same body, upon the application of the Legislatures of two-thirds of the States, may call a convention for the purpose of proposing amendments. These two are the *only* modes in which, under that instrument, amendments can be proposed to the Constitution. Either of these is adequate, and it was the manifest intention of its framers to secure due consideration of any changes which might be proposed to the fundamental law of our Government.

It is conceded on all hands that our action here will amount to nothing, unless it meets the approval of Congress, and such proposals of amendment as we shall agree upon are recommended by that body to the States for adoption. The session of the present Congress is drawing to a close. There remain only fifteen or sixteen days during which it can transact business. Can any one suppose that in the present state of the country, with the large number of important measures before Congress and awaiting its action, any proposition of real importance emanating from this Conference could be

properly considered by either House in this short time? I am assuming just now that this is a Convention which has the right, under the Constitution or by precedent, to make such propositions. But if we do not remember, most certainly Congress will, that however respectable this body may be, however large may be the constituency which it represents, it is, after all, one which has no existence under, and is not recognized by the Constitution. In a recent speech in the Senate, Judge COLLAMER, of Vermont, one of the ablest lawyers in that body, has more than intimated a doubt whether Congress could, under the Constitution, entertain proposals of amendment presented to it by such a body as this. But, waiving all technicalities, the substantial objection which influences my mind is, that the course of action proposed by the majority of the committee is contrary to the spirit of the Constitution. When the people adopted that instrument and subjected themselves to its operation, they intended and had a right to understand that it should be amended only in the manner provided by the Constitution itself. They did not intend that amendments should be proposed under, or the existence of the Constitution endangered by any extraneous pressure whatever. They wisely provided a way in which amendments might be proposed, or rather two ways. Under either of them, due examination and consideration was secured. They would not have consented to any other way of proposing amendments. The General Government, on the adoption of the Constitution, for all national purposes, took the place of the State Governments. The people of the United States from that time, in the language of a distinguished Senator from Kentucky, owed a paramount allegiance to the General Government, and a subordinate allegiance only to the State Governments. Changes in the Constitution, then, can only be *properly* made in the manner provided by the Constitution. Propositions for changes in it must come from the people, or their representatives in Congress. Any attempt to coerce Congress, or to influence its action in a manner not provided by the Constitution, is a disregard of the rights of the people.

Why are we assembled here to urge these amendments upon Congress? to induce Congress to recommend them to the people for adoption? Are we the representatives of the people of the United States? Are we acting for them, and as their authorized agents, in this endeavor to press amendments upon the attention of Congress? Because, if our action is to have any effect

at all, it must be to induce Congress to conform to our wishes—to propose the very amendments which we prepare.

The members of the House of Representatives were elected by the people. They were selected to perform, and they do perform, their duties and functions under the obligations of their official oaths. There is no question about their agency, or their right to act in the premises. The Constitution makes them the agents of the people. The Legislature of the State of Kentucky, well understanding and appreciating the only true method in which constitutional amendments should be proposed, with all the formality of a legislative act approved by the Executive of that State, has applied to Congress for the call of a convention for proposing amendments to the Constitution of the United States, and has requested the President to lay those resolutions immediately before Congress. She wishes other States to unite with her in the preparing and proposing of amendments to the Constitution. This is the correct, the legal, the patriotic course. This was what Kentucky had the right to ask, and this is all she has asked.

Mr. BALDWIN here read the Kentucky resolutions, as follows:

Resolutions recommending a call for a Convention of the United States.

Whereas, The people of some of the States feel themselves deeply aggrieved by the policy and measures which have been adopted by some of the people of the other States; and *whereas* an amendment of the Constitution of the United States is deemed indispensably necessary to secure them against similar grievances in the future: Therefore,

Resolved, by the General Assembly of the Commonwealth of Kentucky, that application to Congress to call a Convention for proposing amendments to the Constitution of the United States, pursuant to the fifth article thereof, be, and the same is hereby, now made by this General Assembly of Kentucky; and we hereby invite our sister States to unite with us, without delay, in a similar application to Congress.

Resolved, That the Governor of this State forthwith communicate the foregoing resolution to the President of the United States, with the request that he immediately place the same before Congress and the Executives of the several States, with a request that they lay them before their respective Legislatures.

Resolved, If the Convention be called in accordance with the provisions of the foregoing resolutions, the Legislature of the Commonwealth of Kentucky suggest for the consideration of that Convention, as a basis for settling existing difficulties, the adoption, by way of amendments to the Constitution, of the resolutions offered in the Senate of the United States by the Hon. JOHN J. CRITTENDEN.

DAVID MERIWETHER,
Speaker of the House of Representatives.

THOMAS P. PORTER,
Speaker of the Senate.

Approved January 25, 1861.
B. MAGOFFIN.

By the Governor:
THOMAS B. MONROE, Jr.,
Secretary of State.

Mr. BALDWIN continued:—Now, what are we asked to do by the majority of the committee? It is not to unite with Kentucky or to accede to her wishes for a convention of the States, under the Constitution, but to thwart the wishes of Kentucky, and to induce Congress itself to originate and propose amendments, or to propose those which we may originate. Kentucky asks that the people of the States themselves might elect delegates to a convention, who should carefully consider the whole subject. The Kentucky resolutions were transmitted to the President, who sent them to Congress, as he said, with great pleasure. Kentucky stated that she was in favor of the so-called Crittenden resolutions, but she did not request Congress to propose them as amendments to the Constitution.

How is this body constituted? Do we, its members, represent the people of the several States? Have they had an opportunity to elect delegates, to select those in whom they had confidence and whom they could trust? Not at all. Why should we assemble here and express our wishes to Congress in reference to the Constitution without permitting California, Oregon, or many other States not here represented, to unite in our deliberations? I cannot assent to such an unfair proceeding toward other States.

Suppose one-half the States should request Congress to propose amendments, will Congress agree to it? No, sir. The Constitution provides that Congress shall not propose amendments without the consent of two-thirds of the States. Congress has not deemed any amendments necessary, so far as we know, and yet a majority of the committee of this body ask Congress to propose the amendments on our responsibility alone. It appears to me, then, that this proceeding must be regarded not as one known to the Constitution, but as a revolutionary proceeding. All the States are not represented here, nor have all had an opportunity to be so represented. Some of us are acting under the appointment of the Legislatures of our States; other delegates are simply appointed by the Executives of their States and are acting without any legal authority. We are not standing upon equal ground; some are only acting upon their own judgment; others are acting under instructions from their several Legislatures. If the Virginia

Legislature itself were here, its action would differ materially from the present views of the delegates from that State.

But how is this? The Resolutions of the Legislature of Virginia make the statement that unless these questions are settled, and settled soon, there is danger of the disruption of the Union. Admit this to be so, and it furnishes no reason for changing the mode of proposing constitutional amendments. The Constitution knows no such danger. It is a self-sustaining Constitution, and was supposed to contain within itself the power to secure its own preservation. The Constitution ought not to be amended without the deliberate action of the people themselves. I cannot and I will not disregard their rights. I cannot recognize the claim that the secession of a State, by an ordinance of its Convention, can carry either the State or its people out of the Union. There is no such thing as *legal* secession, for there is no power anywhere to take the people out of the protecting care of the Government, or to relieve them from their obligations to it.

And where is the clause in the Constitution that authorizes the call upon Congress to do what Congress is asked to do here? The Constitution was adopted "to form a more perfect Union." The people were not to be allowed to alter it, except in the two modes prescribed in it. The Convention which adopted it did not propose that changes should be made in it without ample time for deliberation and discussion. We are here, then, simply as conferees from States expressing our individual opinions. We are now asked to recommend to Congress amendments to our fundamental law; we have no more right to do so than members of the so-called Southern Confederacy. We, a mere fraction of the people, propose to unite in bringing a pressure upon Congress, which shall induce it to propose these amendments. This was not one of the modes contemplated or provided by the framers of that sacred instrument.

General WASHINGTON presided over the Convention which prepared our Constitution. None knew better than he the reasons which made its adoption necessary to the preservation of the Government—none knew better the dangers which would probably surround it in after years. In that last counsel of his to the American people—his Farewell Address—a paper drawn up with the greatest deliberation, embodying opinions which he entertained as the result of a long life of active study and reflection, he warns us against

all such proceedings as those contemplated by the majority of the committee. I am sure the delegates from Virginia will not now refuse to listen to the words of that illustrious man, uttered upon the most solemn and momentous occasion of his life. Hear his words:

"Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger natural to that solicitude, urge me on an occasion like the present to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments which are the result of much reflection, of no inconsiderable observation, and which appear to me all-important to the permanency of your felicity as a people. These will be offered to you with more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel."

Again:

"But as it is easy to foresee, that from different causes and from different quarters much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress, against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as the Palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts."

Are not these admonitions at the present moment peculiarly worthy of our attention? And with them before us, can we invoke the action of Congress for the alteration of the fundamental law of the Government in any other ways than those provided in the Constitution? I earnestly hope not. If we act at all, let us act in that regular method which gives time for consultation, for

consideration, and for action among the people of all the States. It appears to me, that in adopting the line of policy proposed by the majority of the committee, we are doing the very thing which WASHINGTON warned us not to do.

He said further:

"To the efficacy and permanency of your Union, a government for the whole is indispensable. No alliances, however strict, between the parts, can be an adequate substitute; they must inevitably experience the infractions and interruptions which all alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a Constitution of Government better calculated than your former for an intimate union, and for the efficacious management of your common concerns. This Government, the offspring of our own choice, uninfluenced and unmoved, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and *containing within itself a provision for its own amendment*, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their Constitutions of Government. But the Constitution which at any time exists, *till changed by an explicit and authentic act of the whole* people, is sacredly obligatory upon all."

And again:

"Toward the preservation of your Government, and the permanency of your present happy state, it is requisite, not only that you should steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to affect in the forms of the Constitution alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments, as of other human institutions."

And still further:

"If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."

If we adopt the majority report here, we attempt to correct the Constitution by an amendment in a way which, the Constitution does *not* designate. WASHINGTON says if there is any thing wrong, let it be corrected in a constitutional way; and that, sir, is just what Kentucky has said, and that is what every loyal State will say. Kentucky has inaugurated this proceeding, and it is one eminently worthy of her—true as she has always been to the Union. I cannot disregard this action of her Legislature. I do not think any exigency exists which requires us to disregard it. I am ready, and my State is ready, to confer with other States in reference to the Constitution, when asked to do so in any of the modes pointed out by that instrument.

Entertaining these opinions, and with these convictions, I should be untrue to my sense of duty to the Government and the State I represent, and to the people of the United States, if I should consent to disregard the Constitution and my obligations to it.

I have stated these considerations because they are powerful enough to influence and control my course. Others must act upon their own convictions. I have come to the conclusion that I ought to submit this minority report with distrust, and with distrust only, because so many of the able statesmen composing the majority of the committee have seen fit to adopt different views. My report leaves every thing to the people, where I think every such question should be left. When they consult together and decide in the constitutional way I shall bow to their decision, whatever it may be.

Mr. GUTHRIE:—I do not propose to follow the gentleman (Mr. BALDWIN) through all the ramifications of his speech. I have made the Constitution my study for many years, and I have looked at the causes which give it strength

and the causes which give it weakness. I believe that our fathers organized this Government in great wisdom. Its strength was in the affections of the people. It never had any other strength, and it was never intended it should have. It was not intended to be sustained by standing armies. Its strength was intended to be placed in the affections of the people, and I had hoped it would endure forever. Without the affections of the people it is the weakest Government ever established. The people! What a spectacle do we witness now! One portion of the people has lost confidence in the Government, and now seven States have left it. The Government cannot realize that they are gone. We have established the right of revolution, and that right gave to the world this splendid Government. This was the first precedent; it will stand for all time. It will always be acted upon when the people have lost confidence in the Government. I *hate* that word secession, because it is a cheat! Call things by their right names! The Southern States have framed another Government; they have originated a *revolution*. There is no warrant for it in the Constitution, but it is like the right of self-defence, which every man may exercise. The gentleman from Connecticut has forgotten that the Government made Congress the recipient of petitions. Why was this? It was that Congress might be influenced by the wishes of the people and act upon them.

We are twenty States assembled here. Congress has been in session more than two months. The Government is falling to pieces. Congress has not had the sagacity to give the necessary guarantees, the proper assurances to the slaveholding States. This session will make a shameful chapter in the history of this Government, to be hereafter written. Why should this Congress refuse to give the people guarantees? The proudest Governments in the world have been compelled to give their people guarantees.

We are assembled here to consult, and see what can be done; to consult as representatives of the States. Is there any impropriety in our stating what would restore confidence, to our putting this in writing, and to our proposing the plan of restoration we think should be adopted to Congress, and asking Congress to submit that plan to the people? Are we not the representatives of the people, sent here to do what we think ought to be done, and to ask Congress by way of petition to repair the foundations of the Government? It is all legitimate, and legitimate in the most technical sense.

Suppose we ask Congress to act on this proposition. We come directly from the people. We ask Congress to submit a plan which we think will save the Government, to the people. Is this taking any advantage of the States? *They* can take all the time they wish for deliberation, and we can bring no pressure to bear on them. In these times of great peril and trouble, we ask Congress, backed by the moral force of the States we represent, to act and save the country.

Two or three years hence will not answer. The foundations of the Government are undermined and growing weaker every day, and if the people who may give to it the necessary repair and strength do not do so, they will be called to a fearful account. When the building is on fire, it is no time to inquire who set it on fire. The North say the South did it, and the South say the North did it.

We are all interested in this Government; we love the Constitution; we love the Union; we want to repair it—we want to lay the foundation for bringing back the States who have left us, by reason and not by the sword. The delay which the gentleman proposes is too long; the Constitution has provided a shorter way. In adopting that we are only recognizing the right of petition.

I, sir, will answer to Kentucky; I don't want the gentleman to come between me and the people of Kentucky. He has no right to speak for the people of that State—her representatives here have that right and will exercise it. Why were these resolutions passed? Because Congress had failed to provide the means needful to our safety. The resolutions under which the Kentucky delegation came here were passed on the 29th, not the 25th of January. They were passed after the resolutions to which the gentleman refers. They ought to be regarded, as they are in fact, as the deliberate expression of the Legislature of Kentucky in favor of this Conference. In them it is stated that Kentucky heartily accepts the invitation of her old mother Virginia. She acts in no unwilling spirit, she hastens to avail herself of any opportunity to save the Government. She believes a favorable opportunity is offered by this Conference. I repeat again: Adopt the report of the majority of the committee and I will answer to Kentucky. I will go farther. I will answer that Kentucky herself will adopt the very proposals of amendment to the Constitution contained in the committee's report.

But the gentleman insists that the action proposed is not only improper but that it is *revolutionary*. I deny that it is revolutionary. It is no more revolutionary than any other form of petition. It is a petition sustained by the moral force of twenty States—a petition which Congress will not disregard.

But if the report of the majority is revolutionary, what of the gentleman's report? Is that provided for by the Constitution? Is that according to the forms of the Constitution? No, sir. Every argument he has brought against the report of the majority, applies with equal force to his own. His views will answer for those who are willing to stand by and see this Government drift toward destruction—to see this country involved in civil war. It will answer for those who will oppose all action, and who wish to do nothing at all. His report is a new excuse for inaction. It will not answer for us.

Sir, we are acting under a fearful responsibility. The eyes of every true patriot in the nation are turned toward this body. The people are awaiting our action, with anxious and painful solicitude. They know and we know that, unless the wisdom of this Conference shall devise some plan to satisfy the people of the slaveholding States—to quiet their apprehensions, a disruption of the Government is inevitable. If we adopt the gentleman's views, go home and do nothing, we take the responsibility of breaking up the Government.

I do not propose to discuss the merits of the majority report at the present time. I have only sought to answer the arguments of the gentleman against our acting at all. But I claim that this way of proceeding is entirely irregular. The report of the gentleman is not in order. The report of the majority was first presented, and should be first acted upon. I move to lay the report of the gentleman from Connecticut upon the table.

Mr. LOGAN:—I would ask Mr. GUTHRIE to withdraw his motion. If the motion were adopted it would prevent discussion. It was expected that we were to discuss the subject to-day. It is not of much consequence which report is first acted upon. They are all before the Conference, and the merits of all of them are under discussion.

Mr. GUTHRIE withdrew the motion to lay on the table.

Mr. MOREHEAD, of Kentucky, took the chair.

Mr. CURTIS:—I am a member of the present Congress; I have faithfully attended its deliberations, and have anxiously watched its course. Mr. GUTHRIE will find that there are other and different objections to the line of policy he proposes, to which he has not alluded, and which he does not understand. But they are objections which have determined, and will determine, the action of Congress. I would ask Mr. GUTHRIE if the adoption of his propositions, previous to their action, would have prevented the States which have already seceded from going out.

Mr. GUTHRIE:—I think it would have prevented them; all but South Carolina. I did not intend to assail Congress, or any member of it, personally.

Mr. CURTIS:—I do not agree with the gentleman. We know, and the gentleman knows, that there has been for a long time a purpose, a great conspiracy in this country, to begin and carry out a revolution. That has been avowed over and over again in the halls of Congress. Can you expect a member of Congress to do more than reflect the will of his constituents, the will of his people? Would you have him do any thing different? There were forty or fifty different propositions before the Congressional Committee of Thirty-three. There are many here. There are many difficulties attending the solution of this question in every respect. But we may as well speak plainly. I cannot go for the majority report of the committee, and among other reasons, for this reason: Their proposition makes all territory we may hereafter acquire slave territory.

Mr. JOHNSON:—No; such is not the fact.

Mr. CURTIS:—I have read it, and such is my construction.

Mr. JOHNSON:—Such is not the intention.

Mr. CURTIS:—Any future territory which we acquire must be from the south; we have extended as far as we can to the north and the northwest.

Mr. WICKLIFFE:—Will you agree to divide all future territory?

Mr. CURTIS:—I will do almost any thing to save the Union. I will reflect the will of my constituents. I think it ought not to be divided equally, but the South ought to have its share. There is another trouble. Look at the difficulty of getting any proposition through Congress. Congress has only fifteen days of life. I ask you, even with general unanimity, if you can hope to pass at this session any new proposals of amendments? If you do, you will get along faster than is generally the case. There is one proposition before Congress that I believe can pass. It is the Adams proposition, to admit all the territories south at once. It is already slave territory. It is now applying for admission. If this is acceptable to the South, I will go for it. We are bound to admit it under the ordinance of 1789.

Mr. GOODRICH:—Do I understand my friend to claim that the ordinance of 1789 involves a proposition to divide the territory?

Mr. CURTIS:—I understand that in connection with the subsequent legislation it does.

Mr. GOODRICH:—The concession of territory from North Carolina contains a prohibition from acting on the subject of slavery in the territory ceded.

Mr. CURTIS:—I agree entirely with the gentleman. I am opposed to slavery, but we must divide the territory. Let us leave slavery where it is, and admit the territory for the purpose of settling the question. I do not agree with Mr. GUTHRIE that this Government depends on the will of the people. It is a self-supporting government; it will support itself. There is no justification for the action of the seceded States, and I cannot agree that Congress is responsible for their action. The secession plot was formed before Congress assembled. There *was* a power to check it. If our President had acted as Jackson did, there would have been an end of it. The day for hanging for treason has gone by. We must look at things as they are. Even in battle the white flag must be respected. Let this subject be frankly discussed in a conciliatory manner. If any State has the right to go out of the Union at its own volition, then this Government, in my opinion, is not worth the trouble of preserving. The President is sworn to protect and uphold the Government. So long as there is a navy, an army, and a militia, it is his sworn duty to uphold it—to uphold it as well against an attack from

States as from individuals. The Government is one of love and affection, it is true, but it is also one of strength, and power. Where was there ever a more indulgent people than ours? Our forts have been taken, our flag has been fired upon, our property seized, and as yet nothing has been done. But they will not be indulgent forever. Beware, gentlemen, how you force them further. Gentlemen talk about the inefficiency of Congress; I wish there was some efficiency in the Executive. If there was, or had been, our present troubles would have been avoided.

Mr. TURNER:—I do not understand that the report of the majority is applicable to future territory. I move the recommitment of the report, to have that question settled.

Mr. JOHNSON:—It is true there are different constructions which may be placed on the report. I think if it had been understood to apply to future territory, it could not have received the support of a majority of the committee. Mr. CRITTENDEN's proposition applies to future territory. I submitted a proposition to the committee also intended to apply to future territory. A majority of the committee was opposed to it. Mr. EWING drew this part of the amendment, and there is some difference of opinion about it. In my opinion the amendment would not apply to future territory, and I intended at the proper time to offer an amendment which should make it plain, and not leave it open to construction. Personally, I should be glad to apply it to future territory, but I shall yield. I think if we can settle the question now, there will be no further trouble. I do not believe any territory will be acquired hereafter without great unanimity. It is not quite true, although it may be probable, that the future territory will be south of the line proposed.

Mr. TURNER:—I am still more confirmed that it was the intention of the committee to have the amendment only apply to existing territory. If this is settled now, it will shorten the debate. If the gentleman will move to amend now, I will withdraw my motion.

Mr. JOHNSON:—I move to amend by inserting the word *present* before the word *territory* in the first line of Section I., with such other verbal amendments as may make the sense conform, and to adopt that amendment now. This covers the whole ground. I wish to discuss these amendments,

but am physically unable to speak to-day, and would prefer to have the discussion deferred.

Mr. JOHNSON then moved an adjournment, which was carried on a division, and the Convention adjourned at two o'clock and fifty minutes.

ELEVENTH DAY.

WASHINGTON, MONDAY, *February 18th, 1861.*

THE Convention was opened with prayer by Rev. P.D. GURLEY.

The Journal of yesterday was read and approved.

Mr. CHITTENDEN offered the following resolution:

Resolved, That the rules of this Convention be so far modified as to require the Secretary to employ a competent stenographer, who shall write down and preserve accurate notes of the debates and other proceedings of this body, which notes shall not be communicated to any person, nor shall copies thereof be taken, nor shall the same be made public until after the final adjournment of this Convention, except in pursuance of a vote authorizing their publication.

Mr. CHITTENDEN:—I have no desire to occupy time in debating this resolution, much less to waste it in a fruitless attempt to oppose what seems to be the settled purpose of a majority of this Convention. But if this body will consider the purpose which the resolution seeks to attain, it may, perhaps, be found less objectionable than other similar ones which have been defeated. The objection heretofore made is, that a publication of what transpires here would lead to an excited criticism in the country, which would be unfavorable to the calmness and ultimate success which should attend our deliberations. While I entertain no such apprehensions, permit me to observe that this resolution contemplates no present publication of our debates, but a publication at such a time, and in such a manner, as will be unobjectionable. That time may not come till after our adjournment. I am free to say, that when we are dealing with the important issues now before us, I prefer to have our action, our words, our whole conduct, all that we do and say, open and public. We should fear no criticism when we are right; we ought to be held to account when we are wrong. But if gentlemen will not consent to this, at least let the daily record of each of us be made up now:

let it be full and perfect. When a question comes up hereafter which concerns the sentiments or the action of a member, let its decision depend upon no uncertain recollection, a recollection which must fade and grow dim with each one of us, as the time of this Convention recedes into the past. Such a record can injure no one; it may be of infinite service hereafter. I could not justify myself to my conscience, or to those who have a right to hold me responsible for my acts here, if I failed to do all that lays in my power to have the true history of this Convention laid before the country. A naked journal amounts to nothing. It is a skeleton. Our discussions alone will give it form and comeliness. I have prepared this resolution upon consultation with many members, whose ideas of what should be done here agree with mine. They concur with me in the propriety of offering it. If it fails, the responsibility of keeping our discussions from the people will not rest with us.

Mr. POLLOCK:—I move to lay the resolution on the table.

Mr. CHITTENDEN:—Let the vote be taken by States.

The vote was so taken, and the following States voted in the affirmative: Connecticut, Rhode Island, New Jersey, Delaware, Maryland, Kentucky, Tennessee, North Carolina, Missouri, Virginia, and Pennsylvania—11.

The following States voted in the negative: Maine, Vermont, New Hampshire, Massachusetts, Indiana, Illinois, Iowa, and New York—8.

So the motion to lay on the table prevailed.

When the State of Ohio was called, a member of her delegation stated that it was equally divided.

Mr. TUCK:—I ask the unanimous consent of the Conference to introduce a proposition in the form of an address to the people of the United States. I do so after having consulted a considerable number of members; and having found that it meets their approval, I desire to read it, and will then move that it be laid on the table and printed.

Mr. RANDOLPH:—Is the gentleman's motion in order?

Mr. EWING:—I object to the reading.

Mr. CLAY:—Certainly; I object also.

Mr. TUCK:—I will acquiesce with a single word. I certainly hoped no curt objection would be made to the reading of *any* proposition which any member might deem it his duty to offer. As gentlemen differ from me in this respect, I will hand the paper to the Chair. I hope at least it may be permitted to lay on the table.

The PRESIDENT:—I hold it the gentleman's undoubted right to read the paper if he chooses.

Mr. TUCK:—Very well.

He commenced reading when he was interrupted by

Mr. WICKLIFFE:—I hope Mr. TUCK will withdraw this paper. If the Convention agrees to any result, I shall favor its submission to the people with an address. I will pledge myself to suggest the gentleman's name as one of a committee to prepare the address at the proper time.

The PRESIDENT:—The gentleman from New Hampshire has the floor.

Mr. TUCK then completed the reading of the paper, as follows:

TO THE PEOPLE OF THE UNITED STATES:

This Convention of Conference, composed in part of Commissioners appointed in accordance with the legislative action of sundry States, and in part of Commissioners appointed by the Governors of sundry other States, in compliance with an invitation by the General Assembly of Virginia, met in Washington on the 4th of February, 1861. Although constituting a body unknown to the Constitution and laws, yet being delegated for the purpose, and having carefully considered the existing dangers and dissensions, and having brought their proceedings to a close, publish this address, and the accompanying resolutions, as the result of their deliberations.

We recognize and deplore the divisions and distractions which now afflict our country, interrupt its prosperity, disturb its peace, and endanger the Union of the States; but we repel the conclusion, that any alienations or dissensions exist which are irreconcilable, which justify attempts at

revolution, or which the patriotism and fraternal sentiments of the people, and the interests and honor of the whole nation, will not overcome.

In a country embracing the central and most important portion of a continent, among a people now numbering over thirty millions, diversities of opinion inevitably exist; and rivalries, intensified at times by local interests and sectional attachments, must often occur; yet we do not doubt that the theory of our Government is the best which is possible for this nation, that the Union of the States is of vital importance, and that the Constitution, which expresses the combined wisdom of the illustrious founders of the Government, is still the palladium of our liberties, adequate to every emergency, and justly entitled to the support of every good citizen.

It embraces, in its provisions and spirit, all the defence and protection which any section of the country can rightfully demand, or honorably concede.

Adopted with primary reference to the wants of five millions of people, but with the wisest reference to future expansion and development, it has carried us onward with a rapid increase of numbers, an accumulation of wealth, and a degree of happiness and general prosperity never attained by any nation.

Whatever branch of industry, or whatever staple production, shall become, in the possible changes of the future, the leading interest of the country, thereby creating unforeseen complications or new conflicts of opinion and interest, the Constitution of the United States, properly understood and fairly enforced, is equal to every exigency, a shield and defence to all, in every time of need. If, however, by reason of a change in circumstances, or for any cause, a portion of the people believe they ought to have their rights more exactly defined or more fully explained in the Constitution, it is their duty, in accordance with its provisions, to seek a remedy by way of amendment to that instrument; and it is the duty of all the States to concur in such amendments as may be found necessary to insure equal and exact justice to all.

In order, therefore, to announce to the country the sentiments of this Convention, respecting not only the remedy which should be sought for existing discontents, but also to communicate to the public what we believe

to be the patriotic sentiment of the country, we adopt the following resolutions:

1st. *Resolved*, That this Convention recognize the well-understood proposition that the Constitution of the United States gives no power to Congress, or any branch of the Federal Government, to interfere in any manner with slavery in any of the States; and we are assured by abundant testimony, that neither of the great political organizations existing in the country contemplates a violation of the spirit of the Constitution in this regard, or the procuring of any amendment thereof, by which Congress, or any department of the General Government, shall ever have jurisdiction over slavery in any of the States.

2d. *Resolved*, That the Constitution was ordained and established, as set forth in the preamble, by the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity; and when the people of any State are not in full enjoyment of all the benefits intended to be secured to them by the Constitution, or their rights under it are disregarded, their tranquillity disturbed, their prosperity retarded, or their liberty imperilled by the people of any State, full and adequate redress can and ought to be provided for such grievances.

3d. *Resolved*, That this Convention recommend to the Legislatures of the States of the Union to follow the example of the Legislatures of the States of Kentucky and of Illinois, in applying to Congress to call a Convention for the proposing of amendments to the Constitution of the United States, pursuant to the fifth article thereof.

Mr. GUTHRIE:—I object to printing this paper. If that course is taken, every member may offer his disquisitions on the Constitution, and they will be printed at our expense.

Mr. TUCK:—Unanimous consent was given that it be read, laid on the table, and printed.

The PRESIDENT:—There were three motions involved in one. Now the question is upon laying the paper on the table and printing it.

Mr. ALEXANDER:—I call for a division of the question.

The PRESIDENT:—The question will be on the motion to lay it on the table.

Mr. TUCK:—Are we not entitled to have the question taken on the motion to print? I supposed all these questions would be taken in a spirit of conciliation. But if not, I will withdraw the motion to lay on the table, and move that the paper be printed.

Mr. MOREHEAD, of Kentucky:—I came here in a spirit of conciliation, and I shall act in that spirit. Let us all do so. I disagree entirely with Mr. TUCK and his proposition, but I am in favor of receiving every proposition that is offered, of printing them all, and at the proper time of considering them all. I trust that unanimous consent will be given to printing this paper.

The PRESIDENT then put the motion upon printing the address, and it was carried upon a division.

Mr. GUTHRIE offered the following resolution, which was adopted unanimously:

Resolved, That if the President shall choose to speak on any question, he may, for the occasion, call any member to preside.

Mr. MEREDITH:—I wish to offer a proposition, and hope for the present it may lie on the table, and be considered hereafter. I do not desire to move it as an amendment to the report of the committee, but think it better to present it as a direct and independent proposition. I present it now only for the purpose of having it before the Convention. It is as follows:

ARTICLE.—That Congress shall divide all the territory of the United States into convenient portions, each containing not less than sixty thousand square miles, and shall establish in each a territorial government; the several territorial legislatures, whether heretofore constituted, or hereafter to be constituted, shall have all the legislative powers now vested in the respective States of this Union; and whenever any territory having a population sufficient, according to the ratio existing at the time, to entitle it to one member of Congress, shall form a republican constitution, and apply

to Congress for admission as a State, Congress shall admit the same as a State accordingly.

The proposition of Mr. MEREDITH was laid on the table without objection.

Mr. WICKLIFFE:—There appears to be a misunderstanding between the Secretary and myself upon the question of printing the Journal. To avoid question, I move that the Journal be printed up to and including to-day.

Mr. GOODRICH:—I move to amend by adding "and from day to day during the session."

The amendment and the motion were adopted without objection.

Mr. ALEXANDER, of New Jersey, took the chair.

The PRESIDENT:—The Convention will now proceed to the order of the day—the consideration of the report of the committee.

Mr. REID, of North Carolina:—I wish to move an amendment to the amendment offered by Mr. JOHNSON. It is to add to his the words "and future." If adopted, the language will be "present and future territory."

Mr. EWING:—This will render a division of the question necessary. The gentleman had better withdraw his amendment for the time.

Mr. REID:—I am instructed by the Legislature of North Carolina to offer it, and I think best to do so in this regular manner.

Mr. CLEVELAND:—I think the motion of Mr. REID is out of order. I suggest that if adopted, with Mr. JOHNSON's amendment, the sense of the proposition as it now stands will not be changed.

Mr. RUFFIN:—I rise merely to make a suggestion to my colleague. This motion must be made at some time, by some one, so that we may have a regular vote upon it. Now, as it is not certain how the report of the majority of the committee is to be construed, I propose at a suitable time to move an amendment which will make the proposition applicable to territory hereafter acquired. If this will suit my colleague, I hope he will withdraw his motion.

Mr. REID:—I came here not to deceive the North or the South. I intend to be plain and unambiguous. Why should we send forth a proposition that is uncertain, vague, and, as gentlemen admit, open to different constructions? If we are to pour oil upon the troubled waters, let us do so to some purpose; above all, let us be definite, plain, and certain. I cannot consent to withdraw my motion. I must insist upon its consideration.

Mr. LOGAN:—I had hoped the question on Mr. JOHNSON's amendments would have been taken on Saturday. It is an important one, and one which must be met. I would suggest that it would be best to let the question be taken on Mr. JOHNSON's amendments now. The subject presents itself to my mind in this way: The proposition of the majority, as it now stands, is uncertain. The friends of the proposition ought to be allowed to perfect it, to make it satisfactory to themselves. If there is a doubt about it, let us make it clear that it applies only to the present territory. Then we can have a clear and decisive vote upon it. The substance of the proposition is what I wish to arrive at, and it will be more in order if the vote is not taken till we know what that substance is. I shall not object to its application to future territory. I hope the gentleman from North Carolina will withdraw his amendment, and let the question be taken on that of Mr. JOHNSON.

Mr. SEDDON:—One word only. I fear we are being placed in an awkward position. I am desirous to have the language of the proposition clear and not delusive. The amendment of Mr. JOHNSON embarrasses me; I hardly know how to vote upon it. If I vote for Mr. JOHNSON's motion, I shall have the semblance of favoring the limitation of the proposition to present territory. Mr. RUFFIN and myself both want the same thing, but on Mr. JOHNSON's motion he will vote one way and I the other.

Mr. RUFFIN:—Will the gentleman allow me to explain? I voted against the proposition in committee because, as it now stands, it applies only to existing territory. I wish to carry this proposition, but not by the vote of the South alone. I want Northern votes, and assurances that the people of the North will vote for the proposition and adopt it.

Mr. SEDDON:—I shall feel disposed to vote against Mr. JOHNSON's motion.

The question was here stated by the President as follows:

The vote will be taken upon the motion of Mr. REID to amend the amendment offered by Mr. JOHNSON.

Mr. REID:—It strikes me that the question is this: My proposition is to add the words "and future," but Mr. JOHNSON's amendment is to add the word "present." Can this be treated as an amendment to his motion? I must say that my duty to my country and State will prevent my voting for the proposition as he proposes to limit it.

Mr. COALTER:—I think the committee ought to be permitted to amend and complete their report. Let us, by general consent, agree to have the word "present" inserted.

Mr. REID:—I object to that all the time.

Mr. TURNER:—I move that the report be recommitted for amendment.

Mr. COALTER:—Shall we adjourn over simply for this? That will use up another day.

Mr. GUTHRIE:—I hope it will not be recommitted. We can settle the question here in a moment.

The PRESIDENT:—The vote will now be taken.

Mr. McCURDY:—I call for the individual names of members voting.

The PRESIDENT:—The call is not in order.

The question was then taken on the amendment of Mr. REID, and resulted as follows:

AYES—New Jersey, Delaware, Maryland, Kentucky, Tennessee, North Carolina, Missouri, and Virginia—8.

NAYS—Vermont, Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, Ohio, Indiana, Illinois, Pennsylvania, New York, and Iowa—12.

So the amendment failed.

The PRESIDENT:—The question now recurs on the motion of the gentleman from Maryland.

Mr. JOHNSON:—I trust that I shall not trespass upon the time of the Conference, but the subject now before it is one of great importance, and it involves the consideration of many important questions. The amendment which I offer is for the purpose of making the proposition of the committee clear and plain. I was aware that a construction might be placed upon it different from that which the committee intended; and it is due to the frankness which is manifested here, that the purposes of the committee should be made plain. There ought to be no ambiguity in a constitutional provision. Some of the most important constitutional questions decided by the Supreme Court have been questions of construction. Lawyers would differ about the construction to be given the committee's proposition. I think the Supreme Court has placed a construction upon the terms used here, which would be conclusive. A similar question arose in the Dred Scott case. There the question was upon that article in the Constitution which confers on Congress the power "to dispose of and to make all needful rules and regulations respecting the *territories* or other property belonging to the United States." The Court in that case decided that the provision had no bearing on the controversy in that case, because the power given by that provision, whatever it might be, was confined, and was intended to be confined, to the territory which, upon the adoption of the Constitution, belonged to or was claimed by the United States, and was within their boundaries, as settled by the treaty with Great Britain. With this clause in the Constitution, therefore, it could have no influence upon the territory afterward acquired from a foreign government. I think this decision conclusive, and that the proposition, if incorporated into the Constitution, would refer only to the territory now owned by the United States.

It was the wish of the representatives of some States in the committee that the word "future" should be inserted in the report. I was opposed to it: it was so odious to me to put words into the Constitution, or to propose to do so, which should go forth to the world as an indication that this Government proposes to acquire new territory in any way. I have said that the Supreme Court in the Dred Scott case decided that the words "the territories" in the Constitution only applied to the then existing territory. I think they decided wrong in this respect, though I agree to the correctness of the decision in that case in the main; but such as it is, the decision is binding upon this Conference and the people.

Mr. JOHNSON here read a portion of the opinion of Judge TANEY delivered in the Dred Scott case, and continued:

You perceive that Judge TANEY turns the question upon the construction of the word "the." Had the word "any" been used in its place, he must have held that the provision applied to future, as well as the then existing territory.

Knowing that it was the purpose of the majority of the committee to exclude future territory from the operation of this proposition, and that it was due to the committee and the Convention that their purposes should be carried out, I offer my amendment as applicable to the sixth line of the proposition as well as the first.

In discussing the merits of this report, in its application to the existing condition of the country, I have to say a word to my Southern friends. You have sought to extend this provision to territory which shall be hereafter acquired. You have had a decisive vote and have been beaten in this Conference. The fight has been a fair one; the question has been thoroughly understood. We ought to acquiesce in the decision of the majority. We cannot change this decision if we would; and if we could change it, the proposition amended as you would prefer to have it, would never pass Congress. The repeated action of that body, during its present session, shows this conclusively. Accepting this decision then, as definitive, can we not settle the question with reference to existing territory? Shall we settle it? Settle it fairly—recognizing and acknowledging the rights of all, and remain brethren forever with the Free States! From my very heart, I say yes.

(Applause.) The proposition as it now stands covers all the territory we have. The whole ground, the whole trouble, which has brought this country into its present lamentable condition—has arisen over this question. I believe if it had been disposed of or settled in some way before, many States would have been kept in the Union that have now gone out. And why should we not settle it?

We have now a territory extensive enough to sustain two hundred millions of people—embracing almost every climate, fruitful in almost every species of production—rich in all the elements of national wealth, and governed by a Constitution that has raised us to an elevation of grandeur that the world has never before witnessed. That we should separate to the destruction of such a Government, on account of territory we have not got, and territory that we do not want, is not, I believe, the patriotic sense of the South.

But this proposition does not stand by itself alone. It is connected, and must be construed, with the provision relating to the acquisition of future territory. The second section of the committee's proposition provides that territory shall not be acquired by the United States, unless by treaty, nor, with unimportant exceptions, unless such treaty shall be ratified by four-fifths of all the members of the Senate. Is not that guaranty enough for us? Should we not act unreasonably if we required further guaranty in this respect? For myself, I should have preferred that the consent of two-thirds of the Senate only should be required, and that that two-thirds should comprise a majority both from the free and slave States.

Mr. RUFFIN:—At the proper time I shall move such an amendment.

Mr. JOHNSON:—If such an amendment is proposed I shall vote for it. I know there will be objections raised to it, but they will be far outweighed by the advantages it will give to the South.

But the objection of Mr. BALDWIN is opposed here, and it is one which must be answered. He says this is the wrong way to propose amendments to the Constitution—that our action is inconsistent with that instrument. He does not claim that it is prohibited by the letter, but by the spirit of the Constitution. Where does he get the spirit but from the letter? There are two methods of proposing amendments to the Constitution provided by that instrument. Let us see what they are.

Mr. JOHNSON here read the article of the Constitution providing for amendments, and continued:

One is where two-thirds of Congress deem it advisable to propose amendments; the other is where the States themselves propose them. My learned brother would have us believe that the members of Congress, acting under their official oaths, must each be satisfied that each amendment proposed is proper to be incorporated in the instrument, before they should propose them; and he maintains that there is a difference, in fact, in the two methods prescribed. What right has this body, if there is any force in this objection, to submit *his* proposition to the States? If what we propose is revolutionary, then what he proposes is revolutionary. I reply to him, with all respect for his legal ability, and with all the humility which becomes me, and insist that he is wrong. He refers to the opinion of Judge COLLAMER. I hold Judge COLLAMER in much respect, and his opinion in great honor here, but his statements are at war with the objections made by the gentleman from Connecticut. Judge COLLAMER maintains that it is the duty of Congress *to propose* amendments, not to *recommend* them. It would be entirely proper, according to his opinion, for Congress to propose amendments which they would not adopt themselves. I go somewhat farther, and insist that it is the duty of Congress to propose amendments whenever desired by any State or any considerable section of the Union. If we have no right to suggest a line of action to Congress, no right to petition Congress, no right to ask Congress to propose amendments, as the gentleman insists, we had better go home, or rather, I should say, we should never have come here.

There are twenty States represented in this Conference. I have no doubt other States would have been here, but for the shortness of the time. But how and why are we here? We have come here on the invitation of Virginia; her resolutions are our constitution. We have come here at her instance. For what purpose did she ask us to come here? under what circumstances did she pass these resolutions? Virginia saw that the country was going to ruin —that one State had already seceded, and several others were about to follow. She saw there were circumstances affecting the condition of the South which aroused her to frenzy—not madness, but the frenzy which falls on every patriotic mind when it witnesses a country going to destruction. She saw the country was going to ruin with rapid steps, and that its ruin

must be accomplished unless her friends in the free States would come forward, and consent to put into the Constitution additional guarantees which would satisfy the people of the slave States that their rights were secure. See what she did—what she said. She expresses it as her deliberate opinion, "that unless the unhappy controversy which now divides the States of this Confederacy shall be satisfactorily adjusted, a permanent dissolution of the Union is inevitable; and the General Assembly, representing the wishes of the people of the Commonwealth, is desirous of employing every reasonable means to avert so dire a calamity, and determined to make a final effort to restore the Union and the Constitution, in the spirit in which they were established by the fathers of the Republic."

Therefore she invites all States, whether slaveholding or non-slaveholding, who were willing to unite with her in an earnest effort to adjust the unhappy controversies in the spirit of the Constitution, to come together to secure that adjustment. She asks us to agree to some suitable adjustment. She does not leave us to suggest what that adjustment shall be. She tells us herself. She requests us to adopt it, and to submit it to Congress. She does not ask that Congress should call a convention, for Congress could not. Try, if we can, says Virginia, to come to some settlement of these unhappy controversies, and send that settlement to Congress, that Congress may submit it to the country.

Virginia invited you here. She told you just what she wanted. She says if you cannot consent to that, then let her commissioners come home and report the result. If this cannot be done, if the mode of adjustment indicated by her cannot be substantially carried out, then our whole authority is at an end.

This matter of amending the Constitution is not as intricate and difficult a work as gentlemen imagine. Are there not twelve amendments to the Constitution already? Were they submitted to the people by each member of Congress acting under his official oath? Or were they submitted in the very way the gentleman would avoid? Were they not brought into the Constitution by outside pressure?

The Constitution has been amended. I wish to mark how it was done, and then note why it was done.

There was a time when fears were entertained that wrongs might be done to different sections of the Union under the Constitution as it then stood. Congress listened to those fears, and did not hesitate to propose amendments suggested from outside its own body—to submit them to the people for adoption. It was necessary, in the judgment of Congress, to do this, in order to restore confidence. It was done, and confidence was restored. Is not that precisely our case now? Is not confidence lost in the North and in the South?—not exactly lost, perhaps, but shaken. The credit of the Government is gone. Even our naval commanders are unable to negotiate Government bills abroad—are reduced to the degrading alternative of asking the endorsement of foreign States, in order to such negotiation. Some brilliant individuals have suggested that we have already become so poor that our widows and wives must bring out their stockings.

Our last loan was negotiated at twelve per cent. discount. The present loan is not to be taken at any rate, unless the Government descends to the humiliating alternative of securing State endorsements. Our credit is going lower and lower every day, and it will soon come to the point where our bonds will be worth no more than Continental money was.

Suppose we do nothing here. Are gentlemen blind to the consequences? Gentlemen, honest and patriotic as I know you are, have you no love for this Union?—have you no care for the preservation of this Government? God forbid that I should say you have none! I know you too well. My relations have been too intimate with you, and have existed too long, for me to suppose it. You do love the Union. I speak for the South and to the South. I know that we can still labor to keep this Government together. If we follow the plain dictates of our judgment, any other course would be impossible.

The Virginia Convention is even now in session, and what a convention it is! Disguise as we may, deceive ourselves as we will, it is a convention which proposes to consider the question of withdrawing the State from the Union. Kentucky and Missouri, if we do nothing, will soon follow. If there ever was a time in the history of the Government for conciliation, for patriotic concession, that time is now. The time has come when parties must be forgotten. Let not the word party be mentioned here. It is not worthy of us. Representatives of the States, you are above party—high above. The

cords that bind you together are a hundred times as strong as those which ever bound any party. Unless we do something, and something very quickly, before the incoming President is inaugurated, in all human probability he will have only the States north of Mason and Dixon to govern—that is, if he is to govern them in peace.

I think there is no right of secession; such is my individual opinion. But there is a right higher than all these—the right of self-defence, the right of revolution. It is recognized by the Constitution itself. The Constitution was adopted by nine of the States only. What right had those nine States to separate from the other four?

Mr. SEDDON:—The right of secession.

Mr. JOHNSON:—I won't dispute about terms. In all such discussions, Heaven save me from a Virginia politician!

The opinions of Mr. MADISON upon the Constitution are certainly entitled to value. He had more to do with making it than any other statesman of the time. I desire to read an opinion of his, which will be found in number forty-two of the Federalist:

"Two questions of a very delicate nature present themselves on this occasion:—1. On what principle the Confederation, which stands in the solemn form of a compact among the States, can be superseded without the unanimous consent of the parties to it? 2. What relation is to subsist between the nine or more States ratifying the Constitution, and the remaining few who do not become parties to it?

"The first question is answered at once by recurring to the absolute necessity of the case, to the great principle of self-preservation, to the transcendent law of nature and of nature's God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed."

Now, apply these principles to the present condition of the country. The cases are exactly parallel. Mr. MADISON says in substance, that if one section of the Union refuses to recognize and protect the rights of another—in other words, if the free States now refuse to guarantee the rights of the South, that there is a right of self-preservation, a law of nature and nature's

God, which is above all Constitutions. I am not here to inquire whether the South has a right to go out if these guarantees are not given. That is a question which I will not argue. Some of the States have already gone. I hold that to be a fact established.

Now, I put it to my friends of the North: Do you want us to go out? You are a great people, a great country—a powerful people, a rich country. No threat or intimidation shall ever come from me to such a people. I ask you in all sadness whether, in the light of all our glory, of all our happiness and prosperity, whether you will, by withholding a thing that it will not harm you to grant, suffer us, compel us to depart? Let me read what was said by the same great man of Virginia, in anticipation of the existence of the present state of things:

"I submit to you, my fellow-citizens, these considerations, in full confidence that the good sense which has so often marked your decisions will allow them their due weight and effect; and that you will never suffer difficulties, however formidable in appearance, or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scene into which the advocates for disunion would conduct you. Hearken not to the unnatural voice, which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow-citizens of one great, respectable, and flourishing empire. Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys. The kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defence of their sacred rights, consecrate their Union, and excite horror at the idea of their becoming aliens, rivals, enemies. And if novelties are to be shunned, believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rending us in pieces, in order to preserve our liberties, and promote our happiness."

Grant us then, gentlemen of the North, what we are willing to stand upon—what we will try to stand upon, and what we believe we can. At least, this will save the rest of the States to yourselves and to us. The States that are now in the Union will continue there.

What is it we ask you to do? It is to settle this question as to our present territory. To settle it—how? By dividing it. And how by dividing it? By the line of 36° 30′. Apparently, you think we are asking the North to yield something. I tell you it is we who are yielding. By the decision of the Supreme Court we have the right to go North of this line with our slaves. Now, all we ask you to give us here is the territory south of that line; and even as to that, we give you the right to destroy slavery there whenever a State organized out of it chooses to do so. We are, in fact, yielding to you. We abandon our rights North. Will you not let us retain what is already ours, South?

Is it quite certain that the territory south of the line will be slave territory? Those who repealed the Missouri Compromise, believed that Kansas would be a slave State. It did not turn out so. All we ask is, that you should leave the territory south of the line where it has been left by the decision of the Supreme Court. We freely yield you all the rest.

I do not propose to discuss all the amendments proposed. I confine myself to the single one which, if satisfactorily disposed of, will settle all our troubles.

In conclusion, I ask, oppressed by a consciousness which almost overmasters me—which renders me unfit to do any thing but feel—will you not settle this question here? I feel, and I cannot escape the feeling, that on your decision hangs the question, whether we shall be preserved an united people, or be broken to atoms. The States now remaining in the Union may possibly get on for a few years with something like prosperity; but if this question is not settled in some way, man must change his nature or *war* in the end will come. War! What a word to be used here! War between whom? There is not a family at the South which has not its associations with the North—not a Northern family which has not its Southern ties! War in the midst of such a people! God grant that the future, that the events which

must inevitably follow dissension here, may at least spare this agony to ourselves, our families, and our posterity.

Mr. SEDDON:—It is very clear to me that I ought not to make a prolonged address upon a question which I favor. The only question now before us is: Shall this amendment be made plain? We should deal honestly among ourselves; there should be no cheat—no uncertainty—no delusion here. Our language should be so clear that it will breed no new nests of trouble.

But the address of the gentleman from Maryland requires a brief notice from me. I listened with sadness to many parts of it. I bemoan that tones so patriotic could not rise to the level of the high ground of equality and right upon which we all ought to stand.

I appeal not to forbearance—I ask not for pity. I feel proud to represent the grand old commonwealth of Virginia here, and prouder still that I only come here to demand right and justice in her behalf. Aye! and it is more complimentary to you to have it so. I ask for such guarantees only as Virginia needs, and as she has the right to demand. It is far more complimentary to you to appeal to your sense of justice, to your sense of right, than to your forbearance or pity.

Virginia comes forward in a great national crisis. When support after support of this glorious temple of our Government has been torn away, she comes—proud of her memories of the past—happy in the part she had in the construction of this great system—she comes to present to you, calmly and plainly, the question, whether new and additional guarantees are not needed for her rights; and she tells you what those guarantees ought to be.

Nor does she stand alone. She is supported by all her border sisters. The propositions she makes are familiar to the country. They were made by a patriot of the olden time, a time near to that of the foundation of our Government. They were such as he thought suited to the exigencies of his time. They have since then received a larger meed of approval, north and south, than any other plan of arrangement.

My State offers these resolutions of her Legislature as a basis for our action here, with certain modifications acceptable to her people. One of these modifications has since been accepted by the mover of these resolutions

himself. Most important among them is the provision as to future territory. The gentleman seems to think that Virginia would not insist on this provision as applicable to territory we may never have. It behooves not me to answer such a momentous question. I am only the mouthpiece of Virginia. She insists on the provision for future territory. She and her sister States plant themselves upon it. What right have I to strike out a clause which she makes specific? What right have I to esteem it of so little weight that it may be thrown aside and disregarded? I do not propose to give my reasons, though they would not be troublesome to give. It was an element in the Missouri Compromise that it should apply to future as well as to existing territory.

Does not the gentleman assert that under the laws as they now stand, we have the right to go north of the compromise line with our slaves? What, then, is our position? Under the decision of the Supreme Court we are entitled to participate in *all* the territory of the United States. We are offering to give up the great part and the best part of it, and in payment we are to take the naked chance of getting a little piece of the worthless territory south of the proposed line! Such an idea was never entertained by those who made the Compromise. The idea which governed their action was, beyond all doubt, not that present territory alone should be thus divided, but that the question should be removed from doubt and difficulty for all time, and to give us at the South a chance whatever change might come.

Shall we be rewarded for all we give up, and find full compensation in a clause which itself prevents the acquisition of future territory? The statement is in itself a sufficient answer to the question.

But there was another element in the propositions of the Legislature of Virginia. That, was security against the principles of the North, and her great and now dominant party; it was intended to put an end to the discussions that have convulsed the country and jeopardized our institutions.

It was the policy of our fathers to settle these questions. They determined to make a final and decisive line of demarkation, and to let that be conclusive. But this young people could not be restrained, and when new territory was

acquired the same question arose again. It now comes up once more. Virginia early saw the seeds of trouble in it, because she saw that the tide of emigration would continue to press toward the fertile lands of the South. She saw and she acted. In consequence of her action we are here. Would it not be wise and well as statesmen and as patriots, that you should do what you can for adjustment? do what you can to bring back your sisters of the South who have departed? It is the part of wisdom to settle. Virginia was wise to ask it.

There is another thing. A great and mighty party has arisen at the North that is determined to exclude the institution of slavery, not only from all future, but from all *present* territory. We know that in all ways this party has declared that it would not consent to let slavery go where it does not now exist. More heated zealots, also animated and sustained by this same party, have determined that this natural and patriarchal institution of the South should be surrounded by a cordon of free States, and in the end be extinguished altogether.

Is it not wise in Virginia, that she should see that this project of surrounding the South with free States should be guarded against—most effectually guarded against now and in time to come, and so preserve her dignity and power?

This amendment adopted, and the proposition to Virginia will be a farce. Gentlemen, we hold that as the soul is to man, so is honor to a nation. Honor is the soul of nations. Without it, no nation can have a place in history or among the nations. We of Virginia must have in this Confederation the position of an equal. Equal in dignity—equal in right. In the Congress of the States of this Union, we insist on this as our right. We must have the same protection as the States of the North. Otherwise we are a dishonored people. We might live for a time otherwise, but we should be unworthy a place among the nations. We hold *property*, yes, *our property in slaves*, as rightful and as honorable as any property to be found in the broad expanse between ocean and ocean.

We feel that in the existence, the perpetuity, the protection of the African race, we have a mission to perform, and not a mission only, but a right and a duty.

Upon this subject I have a word to say in all seriousness. Think not, gentlemen of the North, that we propose to deceive or mislead you. We of the South are earnest in what we say. This is a question which we answer to ourselves. We hold that these colored barbarians have been withdrawn from a country of native barbarism, and under the benignant influence of a Christian rule, of a Christian civilization, have been elevated, yes, *elevated* to a standing and position which they could never have otherwise secured. In respect to the colored race we challenge comparison with San Domingo, with the freed regions of Jamaica, with those who have been transferred to the coast of Africa. Ask the travellers who have visited those distant shores to contrast the condition of the colored people there with that of those on our Southern plantations, and they will give you but one answer—they will say, we have redeemed and kept well our high and our holy trust.

But this is a matter with our own consciences, not with yours. We appeal to you to leave it where it is, to leave the colored people where they are. Why should you undertake to interfere with the policy of a neighboring State concerning a people about which you know nothing? We feel, we know that we have done that race no wrong. Deep into the Southern heart has this feeling penetrated. For scores of years we have been laboring earnestly in our mission. In all this time we have contributed far more to the greatness of the North than to our own. Yet all this time we have been assailed, attacked, vilified and defamed, by the people of the North, from the cradle to the grave, and you have educated your children to believe us monsters of brutality, lust and iniquity.

I tell you, that from the time the abolition societies aroused the latent anti-slavery spirit of the North until now, nothing but evil has come of the excitement and discussion. It has spread a horrid influence far and wide; it has for years distilled, and is now distilling its poison and venom all over the land.

It was under English, yes, British, Anglo-Saxon instigation that it first commenced. By this instigation it has been fed, been given life, continuity and power. Think you the English authors of this instigation had any purpose but to disrupt this Republic? They professed to regard slavery as an evil and a sin. The fruits of their action were first manifested in religious societies—first in the largest churches in New England, in the Presbyterian

or Congregational churches, next the Methodist, then the Baptist, and finally, the venom spread so widely, its influence separated other churches. What has the moral influence of this power done? It has made the abstraction of our slaves a virtue. Societies have been formed for that very purpose, inciting their members and others, by the vilest motives, to steal our slaves, to destroy our property.

Nor have they been sufficiently modest to cloak their designs under the veil of secrecy. These people advocated their pernicious doctrines openly in your leading cities, even within the consecrated walls of Fanueil Hall.

Openly among your people, in the very light of day, these efforts were carried on for the destruction of your sister States. There has not been an effort of the law nor an exertion of public opinion to put them down.

These efforts culminated in the actual invasion of my own old honored State, and your people thought they were doing GOD service in signing a petition to our authorities for mercy to John Brown and his ruffian invaders of our soil. And when these men met the just reward of their crime, there was, throughout the North, in your meetings and your public prints, expressions of sympathy for these robbers and murderers. They were looked upon as the victims of oppression, as martyrs to a holy and righteous cause. Gentlemen, consider these things, and tell me, is there not to-day reason for suspicion; on the part of the South for grave apprehension?

But the half is yet to be told; I have looked only at the moral aspect of the question. Dangerous enough hitherto, it becomes far more dangerous when it culminates on the arena of politics, and asks, with the powerful aid of a majority, the interference and the aid of the Government.

As soon as it became the party of one idea it began to draw to it, first the support of one, then another political party. It went on securing the assistance of one after another until it demoralized, until it brought each to ruin. It destroyed the grand old Whig party. Fanatic enough before, when it had brought that party to its grave, it thrust upon the arena of politics this question of slavery in the territories. Then for the first time it raised the cry of "Free Soil," and brought to its support the hearts of a majority of the people of the northern States.

The people of the North and Northwest have long been noted for their acquisitive disposition, especially for the acquisition of lands. This has been manifested in every form. Carried into effect it has made them powerful, until, not long since, they thought they might get entire dominion at no distant day. Then arose in their hearts a desire greater than the greed of land—the greed of office and power. They then saw that perhaps the North alone might control the national government, and with it the South. Then, too, the great class of protected interests at the North—always greater at the North than at the South—joined with them. All these protected classes, whose advantages had been diverted from other classes to which they belonged, joined with landseekers to secure power. Influence after influence of this sort combined, until it produced your great Republican party; in other words, your great Sectional party, which has at length come to majority and power.

I do not wish to dwell upon the principles of that party, or to discuss them; I simply assert that their principles involve all the sentiments of abolitionism. They may be summed up in this: you determine to oppose the admission of slave States in the future.

You say that the whole power of the country, the whole power of the administration, shall be used in future for the final extinction of slavery.

This, now, is the ruling idea of your great sectional party. It is simply the rule of one portion of the country over another. There is no difference between attacking slavery in the States and keeping it out of the territories. It is only drawing a parallel around the citadel at a more remote point.

Now, see how the South is placed. The South has forborne as long as it can, just as long as party organization existed, and as long as the South could keep it in existence. It was only when we saw that the whole united Government was to be turned against us, that we began to think of taking the subject into our own hands.

What are we to expect now, when the power, direct and indirect, of this great Government is to be used in the most effective manner against us? A power which claims that we shall not exercise the rights of States even, a power which seeks to coerce us, when we propose to protect ourselves against this lowering and impending danger. You of the North are

descended from men who honored the scaffold for the very rights we now seek to exercise. So are we. You would deserve to be spurned by the maids and matrons among you, if you refused to protect yourselves against the dangers thus drawing around you. Can you expect less of us?

Do you tell me that this is an artificial crisis? Would seven States have abandoned all the grand interest they possessed in a glorious and happy Confederacy like ours, but for more serious and vital interests, the interests of safety, security, and honor? Think well of these things, gentlemen!

I have hastily endeavored to show you where I conceive we of the South stand. The feelings which I express are entertained likewise by the border States, by all the citizens of the South, by every householder of my State in a greater or less degree.

The State to which I refer, Virginia, is now met in solemn convocation to consider whether she shall remain in the Union or go out of it; and with the most earnest desire to secure to herself a longer connection with the American Union, a Union of so much honor and pride, and with an equally earnest desire to bring back the wandering States of the South which have already left us, she, my own, my native State, comes here to ask for these guarantees. In my deliberate judgment, the Union and the Constitution, as they now stand, are unsafe for the people of the South, unsafe without other guarantees which will give them actual power instead of mere paper rights. Her stake in this controversy is too deep. In my judgment she has asked too little; I think fuller and greater guarantees ought to be required, and that this Convention should not stand upon ceremony, but in a free and liberal spirit of concession should yield to us all that we ask. Be assured we shall ask none but adequate guarantees.

But I am told that Virginia is content with the Crittenden Resolutions—I say this because I am instructed to say so—that is, if we are to treat these resolutions, not as the principles of the man who offers them, but as the principles of the great party just come into power.

Gentlemen, remember that we of the South are already stripped of one-half our sister States; our system is dislocated; the Union is disrupted.

How can you expect now to retain Virginia, to retain the border States, when they stand in the face of such a great, such an immense party? How can you expect Virginia to remain in the Union without these added guarantees?

I told you I would make no appeals to your pity. If we are not entitled to the guarantees we ask, according to the principles of sound philosophy, of right and justice, then we do not ask them at all.

Mr. BOUTWELL:—I have not been at all clear in my own mind as to when, and to what extent, Massachusetts should raise her voice in this Convention. She heard the voice of Virginia, expressed through her resolutions in this crisis of our country's history. Massachusetts hesitated, not because she was unwilling to respond to the call of Virginia, but because she thought her honor touched by the manner of that call and the circumstances attending it. She had taken part in the election of the sixth of November. She knew the result. It accorded well with her wishes. She knew that the Government whose political head for the next four years was then chosen, was based upon a Constitution which she supposed still had an existence. She saw that State after State had left that Government—seceded is the word used; had gone out from this great Confederacy, and were defying the Constitution and the Union.

Charge after charge has been vaguely made against the North. It is attempted here to put the North on trial. I have listened with grave attention to the gentleman from Virginia to-day, but I have heard no specification of these charges. Massachusetts hesitated I say; she has her own opinions of the Government and the Union. I know Massachusetts; I have been into every one of her more than three hundred towns. I have seen and conversed with her men and her women, and I know there is not a man within her borders who would not to-day gladly lay down his life for the preservation of the Union.

Massachusetts has made war upon slavery wherever she had the right to do it; but much as she *abhors* the institution, she would sacrifice everything rather than assail it where she has not the right to assail it.

Can it be denied, gentlemen, that we have elected a President in a legal and constitutional way? It cannot; and yet you tell us in tones that cannot be

misunderstood, that as a precedent condition of his inauguration we must give you these guarantees.

Massachusetts hesitated, not because her blood was not stirred, but because she insisted that the Government and the inauguration should go on, in the same manner they would have done had Mr. Lincoln been defeated. She felt that she was touched in a tender point when invited here under such circumstances.

It is true, and I confess it frankly, that there are a few men at the North who have not yielded that support to the grand idea upon which this confederated Union stands, that they should have done; who have been disposed to infringe upon, to attack certain rights which the entire North, with these exceptions, accords to you. But are you of the South free from the like imputations? The John Brown invasion was never justified at the North. If, in the excitement of the time, there were those to be found who did not denounce it as gentlemen think they should, it was because they knew it was a matter wholly outside the Constitution—that it was a crime to which Virginia would give adequate punishment.

Gentlemen, I believe, yes, I know, that the people of the North are as true to the Government and the Union of the States now, as our fathers were when they stood shoulder to shoulder upon the field, fighting for the principles upon which that Union rests. If I thought the time had come when it would be fit or proper to consider amendments to the Constitution at all, I should believe that we would have no trouble with you except upon this question of slavery in the territories. You cannot demand of us at the North any thing that we will not grant, unless it involves a sacrifice of our principles. These we shall not sacrifice—these you must not ask us to abandon. I believe further, and I speak in all frankness, for I wish to delude no one, that if the Constitution and the Union cannot be preserved and effectually maintained without these new guarantees for slavery, that the Union is not worth preserving.

The people of the North have always submitted to the decisions of the proper constituted powers. This obedience has been unpleasant enough when they thought these powers were exercised for sectional purposes; but it has always been implicitly yielded. I am ready, even now, to go home and

say that, by the decision of the Supreme Court, slavery exists in all the territories of the United States. We submit to the decision and accept its consequences. But in view of all the circumstances attending that decision, was it quite fair—was it quite generous for the gentleman from Maryland to say that, under it, by the adoption of these propositions, the South was giving up every thing, the North giving up nothing? Does he suppose the South is yielding the point in relation to any territory, which by any probability would become slave territory? Something more than the decision of the Supreme Court is necessary to establish slavery anywhere. The decision may give the *right* to establish it, other influences must control the question of its actual establishment.

I am opposed, further, to any restrictions on the acquisition of territory. They are unnecessary. The time may come when they would be troublesome. We may want the Canadas. The time may come when the Canadas may wish to unite with us. Shall we tie up our hands so that we cannot receive them, or make it forever your interest to oppose their annexation? Such a restriction would be, by the common consent of the people, disregarded.

There are seven States out of the Union already. They have organized what they claim is an independent Government. They are not to be coerced back, you say. Are the prospects very favorable that they will return of their own accord? But *they* will annex territory. They are already looking to Mexico. If left to themselves they would annex her and all her neighbors, and we should lose our highway to the Pacific coast. They would acquire it, and to us it would be lost forever.

The North will consider well before she consents to this—before she even permits it. Ever since 1820 we have pursued, in this respect, a uniform policy. The North will hesitate long before, by accepting the condition you propose, she deprives the nation of the valuable privilege, the unquestionable right, of acquiring new territory in an honorable way.

I have tried to look upon these propositions of the majority of the committee, as true measures of pacification. I have listened patiently to all that has been said in their favor. But I am still unconvinced, or rather I am convinced that they will do nothing for the Union. They will prove totally

inadequate; may, perhaps, be positively mischievous. The North, the free States, will not adopt them—will not consent to these new endorsements of an institution which they do not like, which they believe to be injurious to the best interests of the Republic; and if they did adopt them, as they could only do by a sacrifice of principles which you should not expect, the South would not be satisfied; she would not fail to find pretexts for a course of action upon which I think she has already determined. I see in these propositions any thing but true measures of pacification.

But the North will never consent to the separation of the States. If the South persists in the course on which she has entered we shall march our armies to the Gulf of Mexico, or you will march yours to the Great Lakes. There can be no peaceful separation. There is one way by which war may be avoided and the Union preserved. It is a plain and a constitutional way. If the slave States will abandon the design, which we must infer from the remarks of the gentleman from Virginia they have already formed, will faithfully abide by their constitutional obligations, and remain in the Union until their rights are in *fact* invaded, all will be well. But if they take the responsibility of involving the country in a civil war; of breaking up the Government which our fathers founded and our people love, but one course remains to those who are true to that Government. They must and will defend it at every sacrifice—if necessary, to the sacrifice of their lives.

Mr. GUTHRIE:—I came here with my colleagues representing a Southern State. I have had full and free communication with the people of all portions of the South, before, during, and since the election of the sixth of November, and I state here, that I have never dreamed that there was the slightest objection anywhere to the inauguration of Mr. LINCOLN. To-day is the first time I ever heard the question raised, and yet I do not believe that any such objection now exists.

It is said that this is not a fit time to hold such a conference—not a suitable time to consider the questions now before us. Is there any reason why we should not consider the rights of any section of the country, whether a President is going out or coming in? As one delegate I will not consent to postpone the action necessary to secure our rights for any such reason as this.

Now, as to this question of slavery in the Territories. It is true that the Supreme Court has decided it in favor of the South. It is equally true that parties have repudiated that decision both in platforms and on the stump.

When territory has been acquired by the blood and treasure of the common Union, you cannot exclude one portion of the *cestuis que trust* from its rights. The Supreme Court so decided, and its decision was just and equitable.

At the South, we ask for our rights *under the Constitution*. We say, let all questions which affect or concern them be decided. The gentleman from Massachusetts says he will not give them up, that his State will not yield. Well, if this is so, let us go to the ballot box. If the question is decided in the gentleman's favor there, *we know how to take care of ourselves*.

The gentleman from Massachusetts does not understand this question. He does not understand why we of the South want it—why we must have it settled. There *was* a time when the embargo law threw our slaves out of employment. The North then contemplated a dissolution of the Union. Why? Because she thought the Government wanted power—was inefficient. Now, there is a sense of insecurity felt throughout the South. Our property is depreciating, going down every day. We feel this want of security very deeply, this want of faith in the Government under which we live. The South is in agitation.

Suppose some event should in some way strike down the value of your property at the North. Would you not wish to have its security restored? Would you not call for guarantees? If you would not, you are not men. This is all we want; all we ask for, is security. There is nothing in the territorial question that we may not settle by a fair compromise.

The commonwealth of Virginia called this Conference in high patriotism. I have an earnest faith in her sincerity and her purity in doing so. She hoped to meet her sisters animated by the same patriotism—that they would join with her in granting the assurances, in giving the securities we need. Gentlemen, you can give us these securities—these assurances. We shall then go home and tell our people that we can still live on together, in security. Will it do to say that this cannot be done before the inauguration of Mr. LINCOLN? No! No such answer should go to the people of any of the

States—no such answer will satisfy them. Give us the guarantees *here*. We will satisfy the people of the whole nation as to the appropriateness of the time.

There is no truth in the assertions of the gentleman from Massachusetts. We are willing to go before the old commonwealth of Massachusetts with all her glorious memories, willing to go before New York with her half million of voters, confident that both will do us justice. Why stand between us and the people? At least, let us ask their judgment upon our propositions.

We come here to confer, to propitiate, not to awaken old troubles and differences. If there are such existing and which must be settled, why should we not settle them here? We all wish to bring back the seven States which have left us; we have a common interest in them. I think they should not have deserted us; that they should have consulted us first, and then there would have been no necessity. If they were here, their presence surely would not have weakened us, nor would their presence have disturbed the North. We come not here to widen our separation—to drive them further off. We come to consult together, to give and receive justice.

I confess I am not much in favor of the second proposition of amendment. We must regard this as a progressive country. From four millions of people we have risen to thirty millions! Where will we be in eighty years more? There will be in that time a great population in our now unsettled territory —perhaps greater than all our present population. I thought the amendment unwise, but I consented to it, for if we would agree we must all yield something.

And now I hope, and hope most earnestly, that without crimination or recrimination we shall vote in good temper and in good time, so that our proposals may in due time go before Congress and before the people.

Do not let us give up to revolution anywhere, in any section of the Union! Do not you of the North impose upon us the necessity of fleeing our country! God knows this same necessity may come to you of the North, and sooner than you expect it. If disruption—if war must come, one-half your merchants, one-half your mechanics will become bankrupt. You are marching that way with hasty steps. Not one man, North or South, but must suffer if the sad conclusion comes. Our products will depreciate. Next year

not one-half the fields now whitened by the rich growth of cotton will be cultivated if this unhappy contest goes on.

The people of my section, the people of the South, are restless and impatient. They are already in the way of revolution—all these influences are leading them on. Can they remain quiet when the fortunes of one-half of them are struck down? Can you at the North remain quiet under like provocations? And yet harmony may even yet be restored. All these differences may be settled harmoniously. We believe they may be settled now.

Mr. TUCK:—If we should agree to all your propositions, and Congress still should not act upon them, would not these difficulties be still more complicated?

Mr. GUTHRIE:—No, sir! No! We would then tell our people that this Conference would, but Congress would not do any thing to save the country. In such an event we would wait for the ballot box and a new Congress.

Mr. GOODRICH:—Permit me one question to the gentleman from Kentucky. Would this Convention, in his opinion, have been called by Virginia, if either Mr. DOUGLAS or Mr. BRECKENRIDGE had been elected?

Mr. GUTHRIE:—I do not think it would have been called in that event. Let me say, however, one thing which escaped me. It is not a divided Democracy—not the existence of a Whig party, but it is the union of all discordant elements combined, which have brought the abolitionists into power, which has produced this sense of insecurity in the South. It is their combined power which the people of the South feel, and which they wish to guard against.

Mr. CLEVELAND:—I feel bound to say to all here present, that unless this debate stops now, we might as well go home. I have pondered much upon the remark of my worthy friend from Kentucky, that if we could not do good here, at least we ought not to do harm. Why should we do any thing to aggravate these unhappy circumstances? Let us not widen our dissensions; let us do nothing to postpone or destroy the only hope we have for the settlement of our troubles.

Let us be gentle and pleasant. Let us love one another. Let us not try to find out who is the smartest or the keenest. Let us vote soon, and without any feeling or any quarrelling.

Mr. SEDDON:—I fear from some remarks that have been made during this discussion, that not only my motives, but the terms in which I have expressed them, have been misapprehended. I have been untrue to every purpose of my mind, if I have spoken with any bitterness or acrimony. I thought it was my duty to be plain—at the same time temperate though emphatic. I thought I had been so. Nothing is farther from my purpose than the irritation of any section, much less of any member here. Most assuredly I did not intend to create dissension or to give the slightest occasion for personal feeling or recrimination.

The PRESIDENT finding it necessary to leave the Conference, now called Mr. ALEXANDER to the chair.

Mr. CLEVELAND:—I did not mean to stir up anybody. I want to settle these unhappy points of difference here. I want to settle them to-day, now, this very hour. Suppose we do not settle them! Does not border war follow? does not civil war come? I speak to all of you, both North and South. What becomes of your property in such a case? Who wants to stake it all on such a hazard? We settled this question once fairly, and, as everybody thought, finally. That was in 1850. Why was not that settlement permitted to stand? Nothing but the ambition that has sent so many angels down to hell could have ever brought it up again.

It is too late to bring charges against either section now—too late to bring charges against individuals. The question now before us is,—Which is the way to lead the country out of her present danger? We want faith and good works—these alone will do it. If these fail, we have no hope elsewhere. I am in favor of the propositions of amendment submitted. These we can stand upon throughout the land. The people will adopt them. In the name of all that is good and holy let us settle these differences here.

Why talk about territory to be acquired hereafter? We have just the same title to it that the devil had to the territory he offered our Saviour on a certain remarkable occasion—just the same title, at all events, no better. For Heaven's sake, gentlemen, let us act for the good of the country! let us give

to every section its rights—to every man his rights, and let this be remembered through all time as the Convention of Patriots which sacrificed every selfish and personal consideration to save the country!

Mr. GOODRICH:—I wish to make one remark to the Conference, and especially to the gentleman from Kentucky. Much is said here about equal rights. We have always believed in that doctrine. We believe this to be a country of equals. We went into the last Presidential contest as equals—and as such we elected Mr. LINCOLN. Now, when we have the right to do so, we wish to come into power as equals—with that superiority only which our majority gives us. When we are in power and disturb or threaten to disturb the rights of any portion of the Union, then ask us for security, for guarantees, and if need be you shall have both. How would you have treated us if we had come to you with such a request at the commencement of any Democratic administration?

Mr. LOGAN:—I want to refer the report of the majority, and the substitute proposed by the minority, back to the committee. I believe that it is better to have action upon all these questions at the earliest possible moment. The question now is, not which section of the Union is suffering most—all sections are suffering; all are feeling the influence of this agitation; all look with fear and trembling to the future; all desire a speedy and a peaceful conclusion of our differences. If we cannot settle them here—if we cannot induce Congress to submit our propositions of amendment to the people, then I pray from my heart, I hope and believe, that our friends in every section will wait patiently until these propositions can go before the State Legislatures and receive proper consideration there.

The PRESIDENT here stated the proposition, to refer the reports of the majority and the minority of the committee back to the committee, with instructions.

Several members objected to the motion, declaring it not in order.

The motion was thereupon withdrawn.

The PRESIDENT:—The question recurs upon the amendment offered by the gentleman from Maryland, to insert the word "present" before the word

territories, in the first line and the fifth line of the propositions of the amendment to the Constitution submitted by the majority of the committee.

The amendment was adopted without a count of the yeas and nays, and the first section of the majority report, after the adoption of the amendment, is as follows:

ARTICLE 1. In all the present territory of the United States, not embraced within the limits of the Cherokee treaty grant, north of a line from east to west on the parallel of 36° 30′ north latitude, involuntary servitude, except in punishment of crime, is prohibited whilst it shall be under a Territorial Government; and in all the present territory south of said line, the status of persons owing service or labor as it now exists, shall not be changed by law while such territory shall be under a Territorial Government; and neither Congress nor the Territorial Government shall have power to hinder or prevent the taking to said territory of persons held to labor or involuntary service, within the United States, according to the laws or usages of the State from which such persons may be taken, nor to impair the rights arising out of said relations, which shall be subject to judicial cognizance in the Federal Courts, according to the common law; and when any territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population required for a member of Congress, according to the then Federal ratio of representation, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary service or labor, as the Constitution of such new State may provide.

Mr. ROMAN:—I move that when this Conference adjourn, it adjourn to meet at seven o'clock this evening.

Mr. CHITTENDEN:—I move an adjournment of the Conference.

Mr. ROMAN:—Is not my motion first in order?

The PRESIDENT:—The question is on the motion of the gentleman from Vermont.

The motion to adjourn was put and carried.

TWELFTH DAY.

WASHINGTON, TUESDAY, *February 19th, 1861.*

THE Conference was called to order by the PRESIDENT at eleven o'clock.

The proceedings were opened with prayer.

The Journal was read by Assistant Secretary PULESTON, and, after sundry amendments, was approved.

Mr. SUMMERS:—The Committee on Credentials have received and considered the credentials of Mr. FRANCIS GRANGER, of New York, appointed to fill a vacancy in the delegation from that State, occasioned by the resignation of Mr. ADDISON GARDINER. They are satisfactory, and if no objection is made, the list of delegates from New York will be altered accordingly.

No objection was made, and Mr. GRANGER'S name was added to the list of delegates from New York.

Mr. WICKLIFFE:—I ask now that the resolution limiting the time to be occupied by each member in debate be taken up. I have become satisfied that unless we place some restrictions, in this respect, upon the discussions, we shall occupy much more time than we wish to have expended in that way. The session of the present Congress will soon terminate. Our labors will be useless, unless we submit the result of them to Congress in time to secure the approval of that body. The propositions will be debated there, and that debate must necessarily occupy time. I am sure no gentleman wishes to defeat the main purpose of the Conference by delay. The resolution is as follows:

Resolved, That in the discussions which may take place in this Convention upon any question, no member shall be allowed to speak more than thirty minutes.

Mr. DAVIS:—I move to amend the resolution by inserting *ten* minutes instead of *thirty* minutes.

Mr. FIELD:—Is it seriously contemplated now, after gentlemen upon one side have spoken two or three times, and at great length—after the questions involved in the committee's reports have been thoroughly and exhaustively discussed on the part of the South—and when only one gentleman from the North has been heard upon the general subject, to cut us off from all opportunity of expressing our views? Such a course will not help your propositions.

Mr. BOUTWELL:—Massachusetts will never consent to this.

Mr. WICKLIFFE:—If we cannot get Massachusetts to help us, we will help ourselves. We got along without her in the war of 1812; we can get on without her again. The disease exists in the nation now. It is of no use, or rather it is too late to talk about the cause, we had much better try to cure the disease.

Mr. FIELD:—New York has not occupied the time of the Conference for three minutes. Kentucky has been heard twice, her representative speaking as long as he wished. I insist upon the same right for New York. I insist upon the discussion of these questions without restriction or limitation.

Mr. DODGE:—I wish to speak for the commercial interests of the country. I cannot do them justice in ten minutes.

Mr. MOREHEAD, of North Carolina:—I am very desirous to reach an early decision, and yet I do not quite like to restrict debate in this way. Suppose, after holding one morning session, we have another commencing at half-past seven in the evening?

Mr. CARRUTHERS:—We have come here for the purpose of *acting*; not to hear speeches. There is no use in talking over these things; our minds are all made up, and talking will not change them. I want to make an end of these discussions. I move that all debate shall close at three o'clock to-day, and that the Conference then proceed to vote upon the propositions before it.

Mr. ALLEN:—The object which brought us together I presume we shall not disagree about. We came here for the purpose of consultation over the

condition of the country. If this is true, nothing but harm can come from these limitations upon the liberty of speech. The questions before us are the most important that could possibly arise. Before our present Constitution was adopted it was discussed and examined in Convention for more than three months. We are now practically making a new Constitution. Though we as members differed widely when we came here, I think progress has been made toward our ultimate agreement. I think the general effect of our discussions is to bring us nearer together. I think our acquaintance and our association as members lead to the same end.

The gentleman from Kentucky says that we have come here to heal disease. I don't quite agree with him as to the disease. I differ widely from him as to the proper method of treating it. He seems disposed to apply a plaster to the foot, to cure a disease in the head. If these debates should continue for a week, the time would not be lost, the effect would be favorable. We should have more faith in each other, a more kindly feeling would be produced. Do not let us hurry. You may *force* a vote to-day, but the result will satisfy none. Such a course will give good ground for dissatisfaction. You may even carry your propositions by a majority, but what weight will such a vote have in Congress or with the people?

Mr. CHITTENDEN:—We who represent smaller States intend to be very modest here, but you will need our votes when you seek to place new and important limitations upon a Constitution with which we are now satisfied. I will answer for one State, and tell you that she will not listen to a proposition that comes to her with a taint of suspicion about it. If you will not allow her representatives to participate in the examination and discussion of these propositions here, her people will reject them without discussion, if they are ever called to act on them. She has not occupied the time of this Conference for one minute upon the general subject. She may not wish to do so. I submit whether it is wise for you to cut off her right to be heard here, if she chooses to exercise it.

Mr. RANDOLPH:—I agree with the gentleman from Tennessee, that we came here to act and not to talk. We have had talking enough, perhaps too much already. I have drawn up a resolution which I think covers the whole subject, I move its adoption. The resolution was read as follows:

Resolved, That this Convention will hold two sessions daily, viz., from ten o'clock, A.M., to four o'clock, P.M.; and from eight to ten o'clock, P.M.; and that no motion to adjourn prior to said hours of four and ten, P.M., shall be in order, if objection be made; and that on Thursday next, at twelve o'clock, noon, all debate shall cease, and the Convention proceed to vote upon the questions or propositions before them in their order.

The PRESIDENT commenced a statement of the various propositions relating to the subject now pending, when Mr. ALEXANDER moved to lay the whole subject on the table.

The motion to lay on the table was negatived by the following vote:—ayes, 48; nays, 54.

Mr. GOODRICH:—I call for the division of the question.

The PRESIDENT:—So many motions have been made that it is somewhat difficult to decide, by the rules of Parliamentary law, which is in order.

I will divide the questions as follows:

1st. Will the Conference hold two sessions daily?

2d. Shall the debate be closed on Thursday at twelve o'clock?

3d. Shall each member be limited to ten minutes in the discussion?

Mr. JOHNSON, of Missouri:—I hope the questions will be decided affirmatively.

Mr. CHASE:—It appears to me that we can arrange this whole subject without serious difficulty. If Mr. WICKLIFFE will adhere to his resolution, and the other proposals are withdrawn, we can then proceed. If any gentleman finds it necessary to ask for an extension of his time, it will no doubt be granted to him. Mr. RANDOLPH's proposition exacts too much labor. I think the Conference had better limit the time of each member. I am opposed to fixing a time for terminating the discussion. It will not be agreeable to many who may be cut off. It is contrary to the spirit of the rules we have already adopted. I hope we shall not be compelled to vote on the questions one by one, and I will suggest to Mr. RANDOLPH whether it would not be better that his resolution should be withdrawn.

Mr. HOPPIN:—I hope the resolution will pass as it is. We have come here to act. We are all ready to take the vote now. The sooner we vote the better. There is every necessity for prompt action.

Mr. MOREHEAD:—If the proposition had emanated from another quarter, I should feel at liberty to urge its adoption. As it is, I would pay the highest respect to it. I regret extremely to hear the talk about *sides* in this Conference. I came here to act for the Union—the whole Union. I recognize no sides—no party. If any come here for a different purpose I do not wish to act with them; they are wrong. I hope from my heart that we can all yet live together in peace; but if we are to do so we must act, and act speedily.

Mr. CHASE again stated his proposition.

Mr. CRISFIELD:—If I understand rightly, the question should be on striking out the latter clause of the resolution, so as to perfect it and make it meet the case. I make the point and—

Mr. RANDOLPH:—I think the gentleman from Maryland is right.

Mr. ALEXANDER:—I desire to ask whether a resolution to supersede the motion to adjourn is in order?

The PRESIDENT:—I think the question should first be taken on the motion to strike out the last clause in the resolution.

Mr. STOCKTON:—If the Conference felt as I do, it would at once establish such peremptory orders as would bring a speedy termination to this whole business. Upon what, let me ask gentlemen, does the salvation of the Union depend at this moment? What is it alone that prevents civil war now? I answer, it is the session of this Convention—this august Convention! We stand in the presence of an awful danger! We feel the throes of an earthquake which threatens to bring down ruin on the whole magnificent fabric of our Government! Is it possible that we should suffer this ruin to take place? Would it not impeach the wisdom and good sense of our day and generation to permit the edifice which our fathers constructed—to crumble to pieces? No! fellow countrymen, it is necessary that we, by trusting in God, who guided our ancestors through the stormy vicissitudes of the Revolution, should this day resolve that the Union shall be preserved!

In the execution of that resolve let us unfold a new leaf in our national history, and write thereon words of peace. Peace or war is in our hands—an awful alternative! Peace alone is the object of our mission; to restore peace to a distracted country. I have spent my whole life in the service of my country. I love the people of every State in it. They have been under my command and I have been under theirs. I know them, and I know that this Union can never be dissolved without a struggle. Will you hasten the time when we shall begin to shed each other's blood? No! gentlemen, no!

There seems to be but one question which gives us any difficulty in adjusting. That is, about the right of the South to take their slaves into the territories. Is it possible that we can permit this Union to be broken up because of any difference on such a question as this? Better that the territories were buried in the deep sea beyond the plummet's reach, than that they should be the cause of such a deplorable result.

But it is not the value of the territories which is in dispute; it is not whether the North or the South shall colonize them, because, as the gentleman from New York has said, that though the territory south of 36° 30′ had been ten years open to Southern colonization, only twenty-four slaves had been introduced into it. No, the real question is, whether pride of opinion shall succumb to the necessities of the crisis.

The Premier of the incoming administration has declared that parties and platforms are subordinate to, and must disappear in the presence of the great question of the Union. This gives me hope. Let him and his friends act upon that, and this Conference can in six hours, in conjunction with a committee of his political friends, adjust such terms of settlement as will save the Union.

The Roman Curtius offered himself as a sacrifice to save Rome, when informed by the oracle that the loss of his life would save his country. We are now in greater danger than Rome was then; but is there no Curtius for our salvation? We are not called upon to give up life, property, or honor, but to concede justice and equal rights to our Southern brethren. We only want the courage to yield extreme opinions. What power, after victory, refuses to lower the lofty terms which were asserted on the eve of the battle for the sake of peace? But the Republicans say, shall we surrender the fruits of

victory to the vanquished? I answer, how are you to enjoy your fruits without pacification? You expected to govern the whole country. You aspired to the control of the whole empire. Without peace you will not succeed in establishing possession of that magnificent country which your predecessors governed, but you will govern a little more than half of it, and with that you have to provide for war.

It is easy to dispose of the threatening attitude of the South by denouncing it as a rebellion—as treason. It is idle to disguise the danger. The revolt of a whole people, covering a territory equal to half of Europe, is a revolution. You cannot dwarf the movement by stigmatizing it as treason. Its magnitude and proportions make the sword, and not the law, its arbiter. Is it possible that people can be so infatuated as to contemplate the use of the sword to conquer secession? Will you hasten the time when we shall begin to shed each other's blood? Coerce! force fifteen States! Why, you cannot force New Jersey alone! Force the South? They won't stop to count forces—neither side can be frightened. Don't think of it. You cannot frighten either, no more than the hero could be frightened whom the Roman poet has immortalized. Suppose after the expenditure of a thousand millions you shall have stopped dismemberment and subjugated the South, what is to become of the country then? what is to become of the army and its chiefs who have conquered? When the Long Parliament had murdered Charles, subdued Ireland and Scotland, and compelled the deference of all Europe, they supposed they would enjoy the fruits of their victories. They began to discuss the expenses of the army, and the expediency of its reduction. They had hardly commenced when Cromwell entered Westminster Hall and turned out the Republican party of that day. The whole country, tired of war, crouched under the iron heel of the Puritan soldier. The Republican party of England succumbed; Cromwell died; his son resigned the Protectorate, and the Republican party of England rose to the surface and made its last struggle for its power. General Monk and his army approached London, and Parliament with servility waited the pleasure of the army. The army declared for the King, and the King was restored.

When men meet to save the country, they must be prepared to give up every thing—to give their lives if necessary. How can men stop for party platforms when their country is in danger? But will the country consent to be dragged into civil war to maintain the Chicago Platform? It will not.

That Platform was erected upon a perishable foundation. In the language of the New York Senator, it must "disappear."

I appeal to the brotherhood, to the fraternity of the North. My friends, peace or war is in your hands. You hold the keys of peace or war. You tell us not to hasten in this matter. But you do not realize the facts—no one does. It is said that the South challenges and invites war. No such thing. The mad action of South Carolina does not truly represent the South. There are disunionists South as well as North. It is the duty of patriotic men to checkmate the disunionists of both sections. By a proclamation of war, we shall effectually play into the hands and gratify the disunionists of both extremes. Civil war consolidates the South as a unit for disunion. The gallant southern men who have so nobly battled for the Union against great odds, will then be overpowered and forced into the ranks of the defenders of the South. While the South will thus be undivided and stand in solid phalanx, what will be our condition here at the North?

Can it be supposed that the Union men of the Democracy of of the North will stand by and see the country plunged into civil war to maintain the Chicago Platform? Will they acquiesce in the demolition of this Union by these means, when it can be preserved by peace? No, sir! Do you talk here about regiments for invasion, for coercion—you, gentlemen of the North? You know better; I know better. For every regiment raised there for coercion, there will be another raised for resistance to coercion. If no other State will raise them, remember New Jersey. The Republican leaders of the North, with hot haste, have worked through the Legislatures of the several States resolutions of a belligerent character, offering the military power of those States to the Government to subdue the South. Did the people of the North authorize those Legislatures to make any such tenders? Would the people of the North sanction any such nefarious policy? I know well the enormous bribe with which the Republican leaders would seduce the North into fratricidal war. The expenditure of uncounted millions, the distribution of epaulets and military commissions for an army of half a million of men, the immense patronage involved in the letting of army contracts, the inflation of prices and the rise of property which would follow the excessive issue of paper money, made necessary by the lavish expenditure; —these, indeed, are the enormous bribes which the Republican party offers.

How arrogant it is for the Republican leaders to tender the military power of their States! Who gave them or their States authority to raise armies? For national purposes the whole militia of the Union is subject to Congress. Congress alone has power to declare war and to call out the militia, and Congress can only call upon the militia to suppress insurrection or repel invasion. Pause, gentlemen! Stop where you are! You will bring strife to your own doors, to your very hearthstones—bloody, disheartening strife. War will be in your own homes, among your own families. Under ordinary circumstances you would hesitate. If the question was about tariff, you would hesitate and look at the awful consequences. That there is a diversity between us is very true. What of it? It lies in a nutshell. We can fix it in a minute, if you will be calm and act like brothers.

The only question, as I understand it, for I have thought and studied upon it, is this: You of the North will not yield to the South the small privilege of taking their slaves into the territories of the common Union. You will not give them a fair chance with you, even in the Government property—the territories. When the territories become States they will have to take care of themselves. You cannot theorize slave soil into free soil, nor *vice versâ*. Am I not right? Does the South ask any control or power over these territories after they have become States? No, gentlemen; the South demands no such thing. It is not demanded by her, and never will be. All I ask for the South, and all she asks for herself, is this: Let us be free to come with our slaves into all your territories, and hold them there until the territory is made up into States.

I have shown that if peace be not secured, the uprising of the South would be a revolution, and cannot be treated as mere insurrection. The bravado, therefore, of offering armies to the Government, can only have the effect, at this crisis, of preventing a peaceful adjustment. Against all such demonstrations we must fix our faces like flint. Peace we must have. The Union can only be preserved by peace. The South asks no more than the North will concede, if the people of the North can express their sentiments. The South only asks for equal rights, and to be let alone. For thirty years she has asked no more. The South will soon present its cause in an authoritative shape. Their conventions will soon declare their propositions. Let the North be prepared to consider them in conventions representing their people fairly. If this is done, there is no doubt the present crisis will

pass without danger. Until time for these results can be taken, let warlike demonstrations be resisted. Let the Government abstain from collision, even with South Carolina. There is as much of loyalty to the Union at the South as anywhere. It has only disappeared in the presence of danger which threatened their domestic tranquillity, their safety, and their honor. Let the hostile attitude which the North assumed at Chicago give place to the recognition of the rights of the South, and we shall see an outburst of loyalty to the Union throughout the entire South, like that which welcomed to old England its constitutional sovereign after a long and bloody civil war, forced upon the English people by the Puritans. It is the spirit of the same fanatic intolerance which has caused our present troubles.

Intelligent citizens should abandon platforms and stand up for peace. Peace with all nations has been the master policy. It has elevated our country to its present condition of power and prosperity. Do not let us sacrifice peace, and suffer violence and discord to usurp its reign. We have a magnificent future if we can only preserve the Union as our fathers constructed it. While it lasts there is a great light in the firmament in which all may walk in security, hope, and happiness. It is a light reaching far down the depths of futurity cheering and guiding the steps of our children. It is a light shining to the remotest corner of the earth—raising up the down-trodden and illuminating the homes of the victims of oppression. But let that light be now eclipsed, go out in blood and darkness, and the hopes of mankind are forever blasted.

Gentlemen, will you not consider? Shall we not settle the question here, and not trouble the rest of the Union with it? We will settle it fairly and squarely. It is too small a matter to get mad about—to set about destroying the Union. Why quarrel over such a simple question? No, gentlemen, you shall not do it. I am going to talk to you as individuals—as men—as patriots. I know too many of you and too much about you. You love your country too well to destroy her for such a cause. You are too patriotic. The North will never dissolve this Union on any such pretexts. You cannot destroy your country for that. You love it too much. I call on you, WADSWORTH and KING, FIELD and CHASE and MORRILL—as able men, as brothers—as good patriots—to give up every thing else if it is necessary, to save your country. But we don't ask you to give up any thing in the way of principles.

Now that Chicago Platform of yours is a nice paper. It has many good things in it. But it must not control this question. You can keep that platform and save your country: but you must save your country. Shall we go into war upon this little question about the Territories. No! No!!

Under the most favorable circumstances possible for the experiment of self-government, with every possible inducement to preserve our country, we must not give it up. The years of civil war which will succeed dismemberment of the Union will cause true men to seek refuge and security, from military despotism, in some other country. Some Cæsar or Napoleon will spring from the vortex of revolution and war, and with his sword cleave his way to supreme command. If all history is not a failure, and if mankind are now what they have always been, such will be the fate of free government in the United States, in the event of war. Shall we bring such a catastrophe upon us to vindicate the Chicago Platform? No! the American people will rise in their omnipotence and trample into dust the man who dared to put in jeopardy this Union, in order to maintain such demagogism. Away with parties and platforms and every thing else which would obstruct the free and patriotic efforts now making for the salvation of the Union. It shall not be destroyed. I tell you, friends, I am going to stand right in the way. You shall not go home; you shall never see your wives and families again, until you have settled these matters, and saved your good old country, if I can help it. Spread aloft the banner of stripes and stars, let the whole country rally beneath its glorious folds, with no other slogan on their lips but the unanimous cry, THE UNION, IT MUST BE PRESERVED!

Mr. GRANGER:—New Jersey has addressed New York as though she supposed the delegation from that State to be united in its opinions, and its action. Let me set the gentleman himself and the Conference right on that point at the commencement. The members composing that delegation do not agree; very far from it. The vote of that delegation hitherto has been determined by a majority only; a majority reduced to the very smallest point possible now, since the delegation is full. It may be said that New York voted at the last Presidential election against us by a majority of fifty thousand; but let me assure you that if the noble propositions of the majority of your committee, which I read for the first time yesterday, could be submitted to them, the people of New York would adopt them by even a larger majority.

These *are* noble propositions; they are worthy the eminent and patriotic committee from which they have emanated. They present a fair and equitable basis for the adjustment of our difficulties; they are a shield and a sure defence against the dangers which threaten us. They are such as the people expect and such as they want. They know that the politicians who have brought the country to the verge of ruin can be trusted no longer. The time has come when they must act for themselves. Be assured, gentlemen, they will do so.

I wish to say a few words about the last election in New York, for it has been widely misrepresented and misunderstood. How did we go into that canvass? Upon what principles was it conducted? What representations were made? I am one of the men who have struggled to meet and oppose this Republican party from the outset—to avert, if possible, the adoption of its pernicious principles by the people of New York. I took my stand upon the Compromise of 1850, and separated myself politically from all men who could not stand with me on that platform. We struggled on until that Compromise was adopted by the Baltimore Convention.

The Kansas bill was introduced at a most fatal hour. It was distasteful to the whole country; satisfactory nowhere. In due time the Charleston Convention was assembled, and the Democratic party was broken up forever.

What next? Next came the Chicago Convention. It may have been conducted with dignity, and it nominated a candidate. I differ widely from that candidate in my principles and my policy. And yet I believe in him although I opposed his election. I would trust his Kentucky blood to the end, if all else failed. I think he is honest. I have no idea that he will permit the policy of his administration to be controlled by the hotheaded zealots who have been so conspicuous in the last canvass. I expect to see him call to his council board, cool, dispassionate, and conservative men; not men who are driven to the verge of insanity upon this question of slavery.

What next? The Baltimore Convention was held. The tragedy was consummated; the contest was ended. The mere scuffle to secure the control of the Convention which ended in its division, has brought the country into all its present difficulties. If that Convention had presented to the people a

good conservative Democrat, there were seventy-five thousand good old line Whigs who would have buckled on their armor and would have won the battle for him.

When the Southern papers began to threaten disunion because LINCOLN did not suit the South, I was not one who abused or denounced them. I knew the temper of some of the politicians in the free States. I knew the action of the South was not impulsive. I knew there was a reason for it. They said their capital was to be rendered worthless—their property to be destroyed, and their country made desolate. God forbid that I should chide them for thinking so!

The Northern mind is in some respects very different from the Southern. It is not started by slight scratches, but strike the rowel deep, and there is a purpose in it that nothing can conquer or restrain. The people of the North will carry that purpose into execution, with a power as fierce as that of the maddest chivalry of South Carolina. The rowel *was* struck deep and the consequences were not considered.

Subjects have been introduced into this discussion which I should have been glad to have avoided, which it would have been better every way to have avoided. The gentleman from Virginia has referred to the JOHN BROWN invasion. That is one of those subjects. He spoke of the feeling at the North regarding insurrections. I assure you that the North regarded the invader in that case as a foe in your homes—uncurbed and unrestrained—a terrible enemy. I would say to the gentleman from Virginia, that although too many instances among extreme men may have been found of attempts to justify that invasion, such was not the general feeling at the North. Those instances were rare exceptions; and because they were so few and so exceptional, acquired a degree of notoriety and received a degree of attention to which they were never entitled. Such instances as these have always served to prejudice the South improperly against the North. Men are too much given to forming opinions of us from the intemperate acts of a few meddling men.

How do we stand at the present moment in this respect. You will find a few men among us, even now, rash enough to say, "Let these Southern slaveholders go. The 'nigger' will rise upon them and cut their throats!" The

action of such men, I admit, gives some color and justification to your charges and prejudices against the whole Northern people.

I agree with you, gentlemen, that this is now a question of peace or war. I believe it to be so from my very soul. The North has been much to blame in bringing it upon us. What has been the language used at the North? Men have used such expressions as this, "The South secede? Why, you can't kick out the South." And men who knew no better believed the statement to be true. I appeal to northern men to say whether this has not been so. I myself thought four States would go, but I believed secession would stop there. We had more to hope from Louisiana than from any other Gulf State. She has gone, and has now taken up a most offensive and threatening position. Virginia to-day is in more danger of immediate secession than Louisiana was a few short months ago.

My friend from New Jersey says that if this Convention does not prevent it, there must be war. I agree with him. War! what a fearful alternative to contemplate? War is a fearful calamity at best, sometimes necessary I admit, but always terrible. It cannot come to this country without a fearful expenditure of blood and treasure. It will leave us, if it leaves us a nation at all, with an awful legacy of widows' tears—of the blighted hopes of orphans—with a catalogue of suffering, misery, and woe, too long to be enumerated and too painful to be contemplated. For God's sake! let such a fate be averted at any cost, from the country. If it comes at all, it will be such a war as the world never saw. War is commonly, and almost universally, between nations foreign to each other—whose individuals are strangers to each other, and whose interests are widely separated. But we are a nation of brothers, of a common ancestry, and bound together by a thousand memories of the past—a thousand ties of interest and blood. It will be a war between brothers—between you who come to us in summer, and we who visit you in winter. It will be a war between those who have been connected in business—associated in pleasures, and who have met as brothers in the halls of legislation and the marts of commerce. Save us from such a war! Let not the mad anger of such a people be aroused. And, gentlemen, if war comes it must be long and terrible. You will see both parties rise in their majesty at both ends of the line. They will slough off every other consideration and devote themselves, with terrible energy, to the work of death. Oh ye! who bring such a calamity as this upon this once happy

country! Pause, gentlemen, before you do it, and think of the fearful accountability that awaits you in time and in eternity.

But I am here to answer for the State of New York; the Empire State and the people of the Empire State. I have never been classed with the rash men of that State who have aided in bringing about this condition of things. I will not be classed with those who now thrust themselves between the Empire State and those glorious propositions of your committee. They are in the smallest possible majority even in our delegation. All I ask is, that we may have the judgment of the people upon these propositions, and I will be answerable for the rest; and these gentlemen who rely upon the fifty thousand (50,000) majority of last November, will have a fearful waiting for of judgment. Fifty thousand majority! Who does not know how that majority was made up? It was not a majority upon the question of slavery at all. It came in this wise: The opposite party was divided and distracted. The Republican party united all sorts of discordant elements; men voted for Mr. LINCOLN from a great variety of motives. Some, because they wanted the Homestead law; some because they wanted a change in the Tariff; and, gentlemen, let me assure you, there were more men who voted for Mr. LINCOLN—solely on account of the Tariff—than would have made up this fifty thousand majority. I know the people of New York, and I know I can answer for them when I say, Give us these fair and noble propositions and we will accept them with an unanimity that will gratefully surprise the nation.

How does the nation stand to-day? Look at Kansas! She is a State and yet in beggary. She is stretching out her hands to us for relief. We have relieved her for the time, but she will need more aid again. The whole country is excited and agitated. The press, North and South, is full of misrepresentation and vituperation. Sections are arrayed against each other. Men fear to trust each other. The very air is full of anxiety and apprehension. Such, gentlemen, is the miserable condition of the country. The nation is in great peril. Its interests, its institutions, its property, are all in great and common peril. Paralysis has seized upon the whole country. In vain now shall we argue about causes. The effect is upon us. Business is stagnated. Those who have capital do not dare to move it. But we here must do something. Mr. LINCOLN is coming, and all along the route the people are doing him honor. But that triumphal march is insignificant compared

with the anxiety felt throughout the country that this Convention should agree upon some plan that will save the Government and the Union.

In one thing, under other circumstances, I would agree with the gentleman (Mr. BOUTWELL) from Massachusetts. Had the border States elected their members of Congress, I would wait. But the elections in the border States are yet to be held. And upon what idea? Why, sir, upon the idea that their whole interests and their whole property are in danger. Aspiring and dangerous men will go before an excited people full of anxiety and uncertainty for the future, and by them be elected instead of the sound, wise, and conservative gentlemen usually selected to represent those States. Those elections would be a mad scene of aspersion and vituperation. I cannot, I will not trust them. Rather give me in those States the glorious results of years gone by.

I say, and I am proud to declare here, that I had no association with the dominant party in the old Empire State at the last election. I struck every other name from the ticket, except those who voted for Bell and Everett. Glorious names! which received the triumphant endorsement of the mother of Presidents—the grand old commonwealth of Virginia.

Sometimes I meet with men who tell me what is going to be done. They talk of retaking forts now held by seceded States by force, of restoring things to their former condition, as they would about sending a vessel for a cargo of oranges to Havana. But they forget that the next administration, like the philosopher who would move the world with a lever, has no holding spot—no place whereon to stand. It is one thing to hold a fort where you have it, but quite another thing to take it when held by the enemy.

Who can magnify the importance of this Conference to all the nation? It is the most important ever held in this country. It holds the key of peace or war. The eyes of the whole people are turned hopefully upon it. By every consideration that should move a patriot, let us agree. Let us act for the salvation of our common country. I came here very unexpectedly to myself. Long withdrawn from political circles, living in comparative retirement, at peace with the world and myself, I would have preferred to remain there; but when I heard of my appointment as a delegate to this Conference, I felt it my duty to come here and say these few things to you.

And now let me close by again assuring you, that if all you ask of New York is the adoption of the propositions which I heard here yesterday as the propositions of a majority of your committee, New York will do you justice. She will answer "YES" by a most triumphant majority—a majority compared with which any heretofore given will seem insignificant! I will occupy time no farther. There is much which I would add, but this is a time for action and not for words.

Mr. RUFFIN:—There are few members of this Conference who attend its sessions with greater interest than myself. I presume that we have come together influenced by various considerations. There are some, I have no doubt, who do not desire the preservation of the Union—who do not care for the safety of the Government which our fathers founded. They may not avow their purposes, they may even conceal them under specious words, but their purpose will be disclosed when we see them arrayed against all projects of settlement—all measures to quiet the existing excitement. Others may think there is no necessity for any action at all, may think so honestly. But let me assure them they are mistaken—sadly mistaken.

Now, I do not care what motives influence others. It is of no consequence to me what their designs or purposes may be, I have no concealment and no deception. I came here for a purpose which I openly and distinctly avow. I proclaim it here and everywhere. I will labor to carry it into execution with all the strength and ability which my advanced years and enfeebled health have left me. *I came to maintain and preserve this glorious Government! I came here for Union and peace!* (Applause.)

My health is such that if I could avoid it, I would not mingle in this discussion. I would not say one word, if I did not know perfectly well that life or death to my part of the country was involved in the action of this Conference. If gentlemen felt as as deeply as I do, they would deprecate as I do the introduction of party or politics into this discussion, or the slightest reference to them. Of what importance is party, compared with the great questions involved here? Parties or men may go up or down, and yet our country is safe. But such Conferences as this, in such emergencies as the present, must act, if our country is to be saved. Let us discard politics and party—let us be brethren and friends.

A gentlemen asked yesterday whether the Convention would have been called, if a Democrat had been elected President. Certainly not. But considerations of a party character would not have prevented it. The true necessity that called us here, is that a President has been elected by a large majority, and a new and strong party is coming into power, which our people believe entertain views and designs hostile to our institutions. Do not understand me as charging the fact upon the new Government. Perhaps I might say that I do not believe it myself.

But that will not answer. Our people are agitated and excited, and we have come here to tell you all, with sorrow in our hearts, that if you will not do something to restore a confidence that is shaken, we are ruined, and we must see this noble Government go down.

We ask you for new constitutional guarantees; and what are the propositions we make? Is there any thing in them which you cannot grant? Is there any thing which it would be dishonorable for you to yield? You reply to us, that you will consent to call a convention to discuss and adjust matters. That will not do. We must act on the existing state of facts. Seven States are already in rebellion—in revolution! I don't care which you call it; either word is bad enough. Tennessee and North Carolina already form fourteen hundred miles of what is virtually a frontier. We are now the border States; we are to be the theatre of war, if it comes. The slave property we speak of will be in still greater peril than it is now. Now think of these things, and tell us whether we can wait for all this complicated machinery of a convention to be put into operation. At the very shortest, it will take three or four years to accomplish any thing.

But my friend from Massachusetts says he does not wish to do any thing at all; that the North is under duress, and her people would despise themselves if they acted under duress. No! no! This is not true in any sense. We respect the people of the North too much to attempt to drive them, or to secure what we need by threats or intimidation. We want the aid of the people of Massachusetts, and we will appeal to their sense of right and justice.

I believe that these propositions, if adopted, will not only satisfy and quiet the loyal States of the South, but that they will bring back the seven States which have gone out. I must be frank and outspoken here. We cannot

answer for these States. We cannot say whether they will be satisfied. But we can even stand their absence. We can get on without them, if you will give us what will quiet our people, and what at the same time will not injure you.

Gentlemen, we of North Carolina are not hostile to you; we are your friends —brothers in a common cause—citizens of a common country. We are loyal to our country and to our Constitution. We lose both of them, unless you will aid us now.

As for me, I am an old man. My heart is very full when I look upon the present unhappy and distracted condition of our affairs. I was born before the present Constitution was adopted. May God grant that I do not outlive it. I cannot address you on this subject without manifesting a feeling which fills my heart. Let me assure you, in terms as strong as I can make them, that we cannot stand as we are; that unless you will do something for us, our people will be drawn into that mad career of open defiance, which is now opening so widely against the Government. All I ask of you is to let these propositions go to the people—to submit them at once to their conventions, and not wait the action of the Legislatures of all the States. We want the popular voice—the decision of the people, and the whole people; and if it is to avail us at all, we must have it at once and speedily.

Mr. NOYES:—I did not design to trespass upon the time of the Conference at this stage of the debate. But statements have been made upon this floor to-day which I cannot permit for a single hour to remain unanswered. I should be recreant to my conscience, and especially to my State, if I did not answer them here and now.

I came here for peace, prepared to do that justice to every section of the Union which would secure peace—prepared to go to the farthest limit which propriety and principle, and my obligations to the Constitution, would permit me, to satisfy our southern friends. I did not wish to commit myself to any thing, until I had patiently seen and heard all that was to be said and proposed. Even now I regret that this incidental discussion upon a subject entirely collateral has arisen. How thoroughly it shows the idleness and folly of attempting to limit, or trammel, or hamper discussion upon the general questions which are presented for our action!

Sir, I speak for New York! Not New York of a time gone by! Not New York of an old fossiliferous era, remembered only in some chapter of her ancient history, but young, breathing, living New York, as she exists to-day. Full of enterprise, patriotism, energy—her living self, with her four millions of people, among whom there is scarcely to be found a heart not beating with loyalty to the Constitution and the Government.

In behalf of that New York, the one and only one alive now, I propose to reply to some of the statements made here by one of her representatives.

In the name of the popular voice of that State, recently uttered in tones that I supposed any one could understand, I tell you, gentlemen of this Convention, beware of false prophets. *This day*, the Scripture is fulfilled among you. [Pointing to Mr. GRANGER.] "A prophet is not without honor save in his own country, and in his own house!"

New York must stand upon this floor, and upon every other floor, as the peer of every other State. Her representatives must have the same rights as any other—and they must be treated like any other. If, in her judgment, New York ought not to give her assent to these propositions, that assent shall not be given; it can never be secured by threats or intimidations. She must have the same rights as any other State, certainly the same rights as New Jersey.

Mr. STOCKTON:—I am sure the gentleman is mistaken; I said nothing intended as a threat or an intimidation.

Mr. NOYES:—Well, let me say it once for all, New York will yield nothing to intimidation.

Now, what is the question which has led to this most extraordinary discussion? It is simply whether debate shall be hampered, or practically cut off, by short limitations as to time, after one section has had an opportunity of expressing its views.

Virginia has called this Conference together. We thought she had no right to do so, and that no possible good could come from her doing it. But we waived all considerations of that kind, and upon her invitation we came here.

She asks us to consider new and important amendments to the Constitution, alterations of our fundamental law; and in the same breath we are told that we must not discuss them—that we must take them as they are offered to us, without change or alteration.

We take time to make treaties. We do not even enter into private contracts without taking time for consideration and reflection. We have been here a little more than a week. The greater part of that time has been occupied by the committee in preparing these propositions. The discussion has scarcely commenced. I submit to the Conference, is it kind, is it generous, is it proper to stop here? Is it *best* to do so?

Mr. WICKLIFFE:—The gentleman seems to think my resolution was aimed at the delegation from New York. That is not true in any sense. I did not wish to cut off debate at all. I thought we might economize time and still have debate enough to satisfy everybody.

Mr. NOYES:—I believe I perfectly understand your proposition.

Mr. CHASE:—I have agreed to support the resolution, and must adhere to my agreement.

Mr. NOYES:—Personally I might be in favor of the adoption of the half-hour rule, for I think I could say all I desire to say in relation to these propositions within that time. I have certainly no desire that this discussion should be unreasonably protracted. But such limitations are always embarrassing. Other gentlemen do not wish to have them imposed. Mr. FIELD objects to them; and if gentlemen really think they need more time, I think it ungenerous not to yield to their wishes. And I insist that such a course is least calculated to promote conciliation. The more free and full you make this discussion, the more will your results find favor elsewhere. It has been my belief from the beginning, that by careful comparison of our views, by a discussion of all our points of difference, we should, in the end, come to an agreement. I had hoped that such sentiments would have universally prevailed, and that no desire would be shown to force the action of any delegation. I am willing to say for myself that if the thirty minute rule be adopted I will give way at once.

But I must proceed to notice some statements which have been urged here as reasons why we must adopt—

Mr. FIELD:—Will my colleague yield to me for one moment? I have a communication to make which I think will make every lover of his country in this Conference rejoice. It is news from a slaveholding State. It shows that her heart beats true to the Union.

Missouri has just elected delegates to a convention to consider the questions now agitating the Country. I hold in my hands a telegram, stating that a very large proportion of the delegates elected are *true Union men*.

The PRESIDENT:—I will assume it to be the pleasure of the Conference that the telegram be read.

Mr. FIELD then read the telegram announcing that Union delegates to the Convention in Missouri had been elected by heavy majorities. The announcement was received with much applause.

Mr. NOYES:—This news is indeed cheering. It is an additional evidence of the depth to which love for our country has struck into the hearts of its people—another inducement to make us agree—another reason why we should not be led off upon false issues.

The Constitution has provided the only proper way in which amendments may be made to it. If these methods are followed, amendments will be thoroughly discussed and considered, and they will not be adopted unless the interests of the nation shall be found to require their adoption.

The State of Virginia seeks to precipitate action; to secure these vital changes in our fundamental law in a manner unknown to it, and in a manner which, in my judgment, it is not advisable to adopt. I make no complaint of Virginia. It is the right and privilege of any State to make such a request, but it is none the less unconstitutional.

Shall we be told that Virginia cannot wait, that her people are so impatient that they will not give the country time to consider these important changes in its form of Government? Why should there be such indecent haste? Why not wait a week—month, and even six months, if that time is necessary? Be assured, gentlemen, that no substantial alteration of the fundamental law of

this Government will ever be made until it has been discussed and considered by the Press and the people in all its details. The thing is impossible!

I have a few words to say for New York, as I said in the commencement—for the New York of the present day. Where, I ask, is the gentleman's (Mr. GRANGER) warrant of attorney to speak for the people of that State? Where is the evidence upon which he founds the assertion which he makes on this floor that New York will adopt the propositions to which he refers? Let me assure you, gentlemen, that the political principles of the people of New York do not sit thus lightly upon their consciences. They gave a heavy republican majority at the last Presidential election, not because they were carried away upon collateral issues, but because the principles of the Chicago Platform met their approval—because they thought the time had come when the destinies of this nation should no longer be left in the hands of men who would use them only to promote the interests of one section of the Union. Do not mistake, sir, the effect of that great demonstration! The people of New York were in earnest; they went into the election with a strong, determined purpose, and it is too late now to misconstrue or misunderstand that purpose. They were not influenced by collateral issues. Their action was upon the great principles involved. They believed that the platform of the Republican party embodied the true principles upon which the Government should be conducted, and they said so. You will find that their minds are to-day unchanged.

But the gentleman says, the result of recent elections shows that a change in their minds has taken place; that it indicates a strong wish on their part for conciliation and peace. Sir, I deny that such a change has taken place. There may have been slight changes in a few cities where the whole power and strength of the Democratic party has been put forth. But the country, upon the great issues before it, is unchanged. The county of St. Lawrence has just elected every Republican candidate for supervisor. In other counties, nearly the same unanimity prevails. The great heart of the country is still loyal and Republican.

And, sir, these threats of dissolution will all react against you. They operated in the Presidential election only in one way. I have no doubt that these threats gave Mr. LINCOLN five thousand votes in New York City

alone. The people are sick of them. They know that if they once yielded to them, they would be forced to do so again. They do not like these insinuations against the Government involved in the propositions made here. If you wish them to be considered favorably by the people of New York, you must send them out free from all suspicion of duress or intimidation; you must permit them to be examined, discussed, and dissected here, by the representatives of New York and of every other State. I am opposed decidedly to cutting off or limiting these discussions. Let all parties be heard; give them time, and time enough, to deliberate, and the result will be peace and harmony to the country.

Mr. RIVES:—I rise for the purpose of answering some of the observations of the gentleman from New York; and first of all I wish to say a word about the motives and purposes of Virginia in calling this Convention. She has called this Convention together because she believed it would exert a powerful influence for the safety and honor of the country, and the perpetuity of its institutions. She is met *in limine* with the reproach that her action is unconstitutional. How unconstitutional?

Is not our Government based upon the sovereignty of the people? Is not that the idea upon which this Government rests? And when the people act, are they to be told that their action is unconstitutional or improper? Cannot Virginia and her people, acting through their representatives, suggest the means of amendment or improvement in our Constitution to Congress?—the Congress which represents the people, and whose members are servants only of the people? Can she not call together a convention of this kind and suggest measures to be considered by it for the purpose of saving an imperilled country? Virginia knew well that this was to be an advisory Conference merely. She invited commissioners from all the States to come here and present their views, to compare and discuss them, to devise measures for the benefit of the country, in the same way that any assemblage of the people may lawfully do. Has the gentleman looked into the history of our present Constitution? Virginia did the same thing previous to the adoption of that Constitution, which she is doing now.

Some State must invite a Conference, if one is to be had. If it was proper that Virginia should do it before the adoption of our present Constitution, it is eminently proper that she should do it now. There are occasions, sir, in

the history of nations, when men should rise far above the rules of special pleading. This is one of them. Let the gentleman look into the history of the old articles of Confederation; let him read the debates which arose upon their adoption. Virginia originated measures then, far more important than any before us now; and there were gentlemen then, who took the same ground that gentlemen do now, who sought by the use of dilatory pleas, by interposing objections, temporary in their nature, to prevent and delay action upon the great national questions then under consideration. Now, in a time of great peril, when the whole country is convulsed, when the existence and perpetuity of the Government is in danger, Virginia has invoked her sister States to come here and see whether they cannot devise some method to avoid the danger and save the country.

In the preamble to the first ten articles of Confederation, there is to be found an express reference to the action of the State Legislatures in initiating proposals of amendment. Every amendment that has hitherto been made to our Constitution originated with the people, and directly or indirectly through the action of State Legislatures. What purpose can gentlemen have in interposing these dilatory pleas, objections merely for delay, when we all know that Congress is now waiting for—actually inviting the action of this Conference?

Senator COLLAMER, in his speech already referred to, makes the distinct proposition, that when any considerable portion of the people (certainly a much smaller portion than is here represented) desire to have amendments submitted, it is the duty of Congress to propose them, and to do so without committing that body either for or against them. Governor CORWIN, also of the Congressional Committee of Thirty-three, having this subject in charge, is understood to have stated that the committee desire to consider the propositions which may here be adopted.

Now, as I said, these dilatory objections were interposed previous to the adoption of our present Constitution.

Mr. NOYES:—Are we to understand that Virginia then asked for a General Convention to consider amendments to the Constitution?

Mr. RIVES:—No! The Annapolis Convention met. The invitation under which that body was convened was addressed to all the States. Five only

responded, and they proposed a General Convention of all the States, to meet at Philadelphia. Virginia was the first to act and to appoint her delegates. I repeat, that the same objection was then urged, that Congress *or* the States should propose the amendments. The first Convention was just as unconstitutional as this. The two cases were perfectly alike. The crisis is infinitely more important now than it was then. Then, there was no disintegration of the States. They still held firmly together. How are we now? Seven States are out of the Union. *The Union is dissolved!* Virginia loves the Union. She cherishes all its glorious memories. She is proud of its history and of her own connection with it. But Virginia has no apprehension as to her future destiny. She can live in the Union or out of it. She can stand in her own strength and power if necessary. Her delegates come here in no spirit of supplication, nor do they propose to offer any intimidation. She has called you here as brothers, as friends, as patriots. If the future has suffering in store for Virginia, be assured all her sister States must suffer equally.

Mr. PRESIDENT, the position of Virginia must be understood and appreciated. She is just now the neutral ground between two embattled legions, between two angry, excited, and hostile portions of the Union. To expect that her people are not to participate in the excitement by which they are surrounded; to expect that they should not share in the apprehensions which pervade the country; to expect that they should not begin to look after the safety of their interests and their institutions, were to expect something superhuman. Something must be done to save the country, to allay these apprehensions, to restore a broken confidence. Virginia steps in to arrest the progress of the country on its road to ruin. She steps in to save the country. I am here in part to represent her. I utter no menace; intimidation would be unworthy of Virginia, but if I perform my duty I must speak freely. The danger is imminent, *very* imminent.

Our national affairs cannot longer remain in their present condition; it is impossible, absolutely impossible that they should. My Republican friends, will you not take warning? Were there not pretended prophets of old, who cried, "Peace! Peace! when there was no peace"? Political prophets to-day say there is no danger. Have their counsels been wise heretofore? Can you not see that there is danger, and imminent danger in them, now?

Look, sir, at our position! I mean the position of the loyal South. By the secession of these States we are reduced to an utterly helpless minority; a minority of seven or eight States to stand in your national councils against an united North! It is not in the nature of the Anglo-Saxon race thus to stand in the face of a dominant and opposition party. Were the case reversed, you would not do it yourselves. We cannot hold our rights by mere sufferance, and we will not; we do not ask you to hold yours in that way. If the other States had kept on with us—had remained in the Union—we might have secured our rights in a fair contest. Now other paths are open to us, and one of these we must follow.

I desire to say a word in answer to the propositions of my honorable friend from Connecticut. What did he tell us? He said that this was a self-sustaining Government; a Government that possessed the power of securing its own perpetuity, and one that must not yield or make concessions. Sir, let me say that ideas, that principles, that statements of that kind have led to the downfall of every Government on earth which has ever fallen. What but ideas and language of this kind, forced our colonies into rebellion, and lost America to the British crown?

Sir, I have had some experience in revolutions in another hemisphere—in revolutions produced by the same causes that are now operating among us. What causes but these led to the two revolutions in France? One of them I saw myself, where interest was arrayed against interest, friend against friend, brother against brother. I have seen the pavements of Paris covered, and her gutters running with fraternal blood! God forbid that I should see this horrid picture repeated in my own country; and yet it will be, sir, if we listen to the counsels urged here!

It is too late to theorize, too late to differ theoretically. I do not believe in the constitutional right of secession. I proclaimed *that*, thirty years ago in Congress. I have always adhered to my opinions since. But we are not now discussing theories; we are in the presence of a great fact. The South is in danger; her institutions are in danger. If other excuses were necessary, she might justify her action in the eyes of the world upon the ground of self-defence alone.

I condemn the secession of States. I am not here to justify it. I detest it. But the great fact is still before us. Seven States have gone out from among us, and a President is actually inaugurated to govern the new Confederation.

With this fact the nation must deal. Right or wrong, it exists. The country is divided. Wide dissensions exist. A people have separated from another people. Force will never bring them together. Coercion is not a word to be used in this connection. There must be negotiation. Virginia presents herself as a mediator to bring back those who have left us.

The border States are not in revolt; and by border States I mean States on both sides of the border. They are here, and they came here to unite with you in measures that will reunite the country, and save it from irredeemable ruin.

There was one observation of the gentleman from Massachusetts that surprised me. He complained of Virginia for thrusting herself between the Republican party and its victory. It is not so.

Mr. BOUTWELL:—I said that Massachusetts thought her action had that appearance.

Mr. RIVES:—Let me say to you, Republican gentlemen, we wish to make your victory worthy of you. We wish to inaugurate your power and your administration over the *whole* Union. We wish to give you a nation worth governing. Do us at least the justice of supposing we are in earnest in this. We are laboring to relieve you from the difficulties that hang over you. War is impending. Do you wish to govern a country convulsed by civil war? The country is divided. Do you wish to govern a fraction of the country? Behold the difficulties that you must encounter. You cannot carry on your Government without money. Where is the capitalist who will advance you money under existing circumstances?

Gentlemen, believe me, as one who has given no small amount of time and careful reflection to this subject, when I tell you that you cannot coerce sovereign States. It is impossible. Mr. HAMILTON's great foresight made him assert that our strength lay in the Government of the States—of the undivided States. Look at New York. She herself is a match for the whole army of the United States. Look at the South. She stands now almost upon

an equality with you. You may spend millions of treasure, you may shed oceans of blood, but you cannot conquer any five or seven States of this Union. The proposition is an utter absurdity. You must find some other way to deal with them. In the wisdom of the country some other way must be found.

Several gentlemen have referred to our army and our navy. As a citizen of the United States, I am proud of both. I am proud of the country they serve. I have enjoyed at times her honors, at others endured her chastisements. I respect the power which our army and our navy give to our nation, but our army and navy are impotent in such a crisis as this.

Mr. PRESIDENT, even England herself has been shaken to her centre by rebellions in her North with which she has been forced to contend. In Paris, too, I have myself seen regiment after regiment throw down their arms and rush into the arms of the people, of their fellow-citizens, and thus oppose, by military strength, the government under which their organization was formed. Will you repeat such occurrences here? Will you 'destroy the imperishable renown of this nation'? No! I answer for you all—you will not. Now, we, representatives of the South and of Virginia, ask of this Convention, the only body under heaven that can do it, to interpose and save us from a repetition of the scenes of blood which some of us have witnessed.

Our patriotic committee have labored for two weeks—have labored earnestly and zealously. Their report, though not satisfactory to Virginia in all respects, will yet receive her sanction, and the sanction of the border States. The representatives of Virginia know they are yielding much, when they tell you that they will support these propositions. We will do it because they will give peace to the country. Now, sir, when we are just in sight of land, when we are just entering a safe harbor, shall we turn about and circumnavigate the ocean to find an unknown shore? No, sir! no! Let us enter the harbor of safety now opened before us.

Mr. PRESIDENT, I know Massachusetts well. She is a powerful Commonwealth. She has added largely to the wealth, the power, and glory of this Union. I respect the gentleman who has addressed this Convention in her behalf; but when he went out of his way and stated that he abhorred

slavery, the statement grated harshly on my ears. We of the South, we of Virginia, may not and do not like many of the institutions of Massachusetts, but we cannot and we will not say that we abhor them.

Let me recall to the gentleman from Massachusetts who has addressed us, a fact from history. Let me show him that his own State was powerful in colonial times in extending the time for the importation of slaves! Let me tell him that his State has helped to fasten the institution of slavery upon a portion of this nation. Is it for a son of Massachusetts now to complain of the result of the acts of his own State? Is it for him to use these reproaches, which, if not ungrateful, are at least wanting in charity? It was a representative of Massachusetts, Mr. GORHAM, through whose motion and influence the time for the importation of slaves was extended in that period of our colonial history. Virginia ever, in every period of her colonial existence, exerted herself to close her ports against the importation of slaves. It was the veto of her Royal Master alone that rendered her efforts nugatory. It was New England that fastened this institution upon us. Shall she reproach us for its existence now?

Mr. BALDWIN:—At the time of the adoption of our present Constitution, it was well understood that Georgia and South Carolina would not enter the Union without slavery. The only question then was, should slavery have an existence inside the Union or out of it.

Mr. RIVES:—No, sir! The gentleman is mistaken. In the Constitution, as first proposed to the Convention, an unlimited right was given to import slaves. Mr. ELLSWORTH declared that it would be an infraction of *State rights* to prohibit this importation. New England, engaged in commerce, found an advantage in the right of importation, and she endeavored to force it upon the South.

I regard the present course of New England as very unfair. She is herself responsible for the existence of slavery—she is now our fiercest opponent; and yet New Jersey and Pennsylvania, who have not this responsibility, have always stood by the South, and I believe they always will.

It is not by *abhorring* slavery that you can put an end to the institution. You must let it alone. We are responsible for it now, and we are willing to stand responsible for it before the world. We understand the subject better than you do. It has occupied the attention of the wisest men of our time. In fact, it is not a question of slavery at all. It is a question of race. We know that the very best position for the African race to occupy is one of unmitigated legal subjection. We have the negroes with us; you have not. We must deal with them as our experience and wisdom dictate; with that you have nothing to do. The gentleman from Massachusetts may congratulate himself that there are no negroes in that Commonwealth. I ask him what he would do, if he had the race to deal with in Massachusetts as we have it in Virginia?

I said, twenty years ago, in the Senate of the United States, and my whole experience since having confirmed the truth of the statement I repeat it now, that candid minds cannot differ upon this proposition, that the present position of the negroes of the United States is the best one they could occupy, both for the superior and inferior race.

And to the people of New England I have this to say: Your ancestors were most powerful and influential in fastening slavery upon us. You are the very last who ought to reproach us for its existence now. We do not indulge reproaches toward you. It is unpleasant for us to receive them from you. Their use by either can only serve to widen the unhappy differences existing between us. Let us all drop them, and, so far as we can, let us close up every avenue through which dissensions may come. We call upon you to make no sacrifices for us. It will cost you nothing to yield what we ask. Say, and let it be said in the Constitution, that you will not interfere with slavery in the District, or in the States, or in the Territories. Permit the free transit of our slaves from one State to another, and in the language of the patriarch, "let there be peace between you and me."

Let us all agree that there shall be landmarks between us; the same which our fathers erected. Let us say that they shall never be removed. I think upon this point I can cite an authority that will command universal respect. I discovered it in my researches into the history of the very Constitution we are now considering.

Mr. RIVES here read an extract from a letter written by Mr. MADISON after his retirement from public life. I have not a copy of this letter, but the substance of the portion read by Mr. RIVES was a statement by Mr. MADISON, that upon the passage of the Missouri Compromise, President MONROE was much embarrassed with the question of the constitutionality of the prohibition clause; that he took counsel with Mr. MARTIN, who declared that, in his judgment, Congress had no power over the subject of slavery in the territories.

Mr. JAMES:—Will you leave that question just where the Constitution leaves it, upon your construction of that instrument? If so, we will agree to give you all necessary guarantees against interference.

Mr. RIVES:—No! I will not leave it there, for it would always remain a question of construction. I prefer to put the prohibition into the Constitution.

The gentleman from Massachusetts speaks for the North. Massachusetts does not constitute the North. I venerate the Commonwealth of Massachusetts. I have many friends there. I look with pride upon her connection with the Revolution; upon her public men, her manufactures, her public institutions. Her people who have accomplished so much, will not turn a deaf ear to our wants now. We wish to go to her people and obtain their judgment upon our propositions. But Massachusetts is not all the North. Rhode Island constitutes a part of it. She has always spoken for us. She will speak for us to-day. What does New Jersey say? What does the great State of Pennsylvania and the greater Northwest say? Surely they do not echo the sentiments of the gentleman from Massachusetts. They are with us, and we will trust to them.

I dislike this way of answering for sections of the country. I have heard similar language from Mr. CALHOUN. He was fond of saying, "The South says—The South thinks—The South will do," this or that. I did not like it then. It stirred up all the rebellious sentiments of my nature; for I knew the statement was not true. I do not like such language better now. Let the *people* of Massachusetts speak. I know they will not refuse to fulfil the compact of their fathers.

We are brothers. I feel we can settle this important question which portends over us like an eclipse; we can leave this glorious country to our posterity. Once more let me refer to the noble and eloquent counsels of MADISON, and I am done. As children of the same family, as fellow-citizens of a great, glorious, and proud Republic, he invoked the kindred blood of our people to consecrate our common Union, and to banish forever the thought of our becoming aliens.

Mr. EWING:—I have never in any manner countenanced the discussions of slavery and the questions connected with it, at the North. I have always, so far as possible, discouraged those discussions. No good can possibly come from them. Is the North the *censor morum* of the South? We have faults enough ourselves; let us consider and try to correct them, before we interest ourselves so much in those of our neighbors.

If there was any danger that slavery would be extended at the North, I would oppose its extension there, and I would teach my sons to oppose it. But this danger has never existed. Does any one fear that slavery will go into New York or Massachusetts? No sane man thinks or ever thought so.

But it exists, and we must deal with it as it is. As one northern man, I do not want the negroes distributed throughout the North. We have got enough of them now. I have watched the operation of this emigration of slaves to the North. Ten negroes will commit more petty thefts than one thousand white men. We cannot permit them to come into Ohio. Wherever they have been permitted to come, it has almost cost us a rebellion. Before we begin to preach abolition I think we had better see what is to be done with the negroes.

Thirty years ago the subject of abolishing slavery was agitated in Virginia. Some of the most eloquent speeches were made in favor of the abolition movement that I ever read. The act providing for gradual abolition, was, I believe, lost by a single vote. I thought then that the result was an unfortunate one. But there is something to be said on both sides of the question. Had the act passed, the negroes would have been sent South, and we should have had plantation slavery, instead of the humane form which now exists in Virginia. But Virginia would have had one great, one powerful advantage. Her power would have increased tenfold. Free labor

would have come in to take the place of slave labor, and the banks of the Potomac and the James would have blossomed as the rose.

The North has taken the business of abolition into its own hands, and from the day she did so, we hear no more of abolition in Virginia. This was but the natural effect of the cause. Now, we can never coerce the Southern States into abolitionism. It is not the way to convert them to our views by saying that we *abhor* their institutions. But these northern men will not listen to reason. They keep on making eloquent speeches—their pulpits thunder against the sin of slaveholding. All grades of speech and thought are made use of, and the sickening sentimentalism of some of them is disgusting. They repeat poetry. They say:

> "I would not have a slave to till my ground,
> To watch me when I wake—to fan me when I sleep;"

and much more of the same stuff!

In this way false ideas are inculcated throughout the North. The whole scheme is full of falsehood. It would be far better for each man to look for the beam in his own eyes before he troubles himself about the mote in his neighbor's.

England, also, has been very fierce in denouncing slavery in this country, and yet we have no slavery or misery to be compared with that existing in the India provinces. It is said that in a single season two hundred thousand of her subjects were starved to death in one province of Hindostan.

I might say the same thing almost of Ireland. Two millions have died there from famine, and God knows how many more would have perished but for the relief sent from this country. I say, and I have abundant reason for saying, that I never have, and I never will, favor any of these denunciations of southern slaveholders and slavery.

Let us rather look at this subject as members of a common family—let us acknowledge our mutual faults. The slave trade was once fostered by the North. That was when it was profitable, and when large fortunes were made in that trade by northern men. When it became unprofitable the North began

to denounce it, and to call it sinful. Now, we fastened this institution upon the South, cannot we permit her to deal with it as she chooses?

I do not say that there is a necessary conflict between the white and the black races, but I assert that they cannot unite—that they cannot occupy the same country upon an equality. Our free laborers of the North will not work with slaves or with blacks. I have had experience in this matter, and I know I am right. The only way we can do, is to divide the common territory—divide it fairly, honestly.

Suppose there were two sons who succeeded to a joint inheritance of lands. One says to the other, "Your family is not so moral as mine, therefore your sons shall have none of the lands." Would this be right or honest? Would any one attempt to justify it? And yet this is what extreme men of the North are practically saying to the citizens of the South.

The Missouri Compromise was intended to settle the rights of the respective sections in the territories. The line adopted was not unfair to the North. The same line will answer now. I am for adopting it and arranging this difficult subject finally.

But one and another says, "Don't let us extend slavery." To that I answer, that our action will not make one slave more or less. There is no question of humanity involved in our propositions. I cannot see what question is involved so far as the North is concerned. We need no more territory. We do not want New Mexico. We have territory enough now for one hundred and fifty millions of people, and enough for the expansion of our people for one hundred and fifty years.

If gentlemen are found here who wish to make trouble, who cannot see the peril we are in, and how easily we can avoid the danger which threatens us, I shall be much pained, but not half so much as I shall be, to see this Union broken up and the Government destroyed.

I was surprised to hear the assertion of the gentleman from Connecticut, that this was an unconstitutional assembly. I hear to-day the statement made that it is a revolutionary assembly. If these assertions were true I would not be a member of it for one moment. If revolutionary, it is either treasonable or seditious. But it is neither. These gentlemen forget the constitutional right

of petition. We have the right to meet here. We have the right to do just what we are proposing to do, and the right is to be found in the Constitution.

I am surprised, too, at the assertion, that there is a wish here to limit or cut off debate—that this resolution would cut off New York. Would it not cut off Ohio? I have no intention of depriving any gentleman or any State of any right. I do not believe such an intention exists in the Conference.

Mr. MORRILL:—In my judgment many subjects have been considered here, and many things said to the North especially, that are superfluous, and much more that is useless. I have listened to the gentleman from Ohio and to some gentlemen who have preceded him. They have all referred, in terms which I do not choose to characterize, to the action and the opinions of the North.

The gentleman from Ohio refers in strong terms to what he calls the sentimentalism of the North. He has recited poetry which he says is popular there.

Now, once for all, let me ask those gentlemen who are proposing various methods of settling our differences: Do you propose to make war upon the *sentiments*, the *principles* of the North? If you do, we may as well drop the discussion here. Our people, and we, their representatives, cannot meet you upon that ground. Our principles cannot be interfered with; we carry them with us always. Our consciences approve them. We can negotiate with you, and treat with you upon subjects which do not involve their sacrifice. If it is your purpose to attack them, you may abandon all other purposes so far as this body is concerned. The people of the North will never sacrifice their principles. It is useless for you to ask them to do so. It is entirely useless for you to urge war upon the sentiments or opinions of the North.

Again; let me tell you there is no disloyalty in the free States. The word dissolution has not been thought of there during the last half century. In all your discussions, in all your action, remember that we are loyal to the Constitution and the Union.

Strong appeals are made here to the free States. You call them by the general name of the Northern States. Gentlemen undertake to pledge

different sections to this or that policy. We are told that New York—that Massachusetts—that Pennsylvania will adopt or will not adopt various propositions that are made here.

Sir, in my judgment all such questions are unworthy of our consideration. We spend time to little purpose upon them. The true question here is, "What will Virginia do? How does Virginia stand?" She to-day holds the keys of peace or war. She stands in the gateway threatening the progress of the Government in its attempts to assert its legal authority. Evade it as you may—cover it as you will—the true question is, "What will Virginia do?" She undertakes to dictate the terms upon which the Union is to be preserved. What will satisfy her?

Mr. CLAY:—Has not Virginia spoken? Has she not already told us what she wants?

Mr. MORRILL:—I am coming to that point very soon. I assert again that Virginia must not be misunderstood in this matter.

The peril of the time is *Secession*. Six States are already in revolution. A distinct confederacy, a new government, has been organized within the limits of the United States.

Does Virginia to-day, frown upon this atrocious proceeding? No! so far from that she affirms that these States have a right to do what they have done. She boasts that she has armed her people, that she has raised five millions of money, and that she will use both to prevent the interference of the National Government with these States, now in revolution. Whether her course will conciliate the free States—whether under such circumstances the free States will negotiate with Virginia or others in her position, I leave for others to consider. It is my opinion that the people of this country will first of all *demand the recognition of the supremacy of the Government*.

Mr. RUFFIN:—No! I do not understand such to be the position of Virginia. She appeals to both sides to refrain from violence while these negotiations are pending.

Mr. SEDDON:—No! A little farther than that. Virginia *will not permit coercion*. She has plainly declared she will not. But in the very highest spirit of patriotism, she has asked for this Convention, and she proposes to

exhaust the very last means of restoring peace to the Union. This is exactly her position. She hopes, and I hope, that this Convention will interpose to preserve the peace and to save this country from war.

Mr. MORRILL:—I thought I did not misunderstand the position of Virginia. She is armed to the teeth, and she now proposes to step in between the Government and the States. I understand her attitude. It is an attitude of menace. It gives aid and comfort to those who trample upon the laws and defy the authority of this Government.

No action of the Conference can be consummated for months: I might almost say for years. Any propositions we may make must go to the people. They must and will take time for consideration. Endeavor to force their action and you will secure the rejection of the terms proposed. While the people are acting you will have a Government and it must operate. It must operate not upon a section only, but upon the whole country. During this time, does Virginia propose to maintain the position she has assumed? To prevent by force of arms the execution of the laws of the Union in the seceded States? Yes, and we are told that her position is one exhibiting the highest patriotism. In my judgment her position is one of menace, and not of pacification. If I rightly understand her, nothing that is here proposed to be done will satisfy her even if adopted.

And now I wish to ask the gentleman from Virginia (Mr. SEDDON) a plain question, and I wish to receive a frank answer. If this Conference agrees to the amendments proposed by the majority of the committee, will Virginia sustain the Government and maintain its integrity, while the people are considering and acting on the new proposals of amendment to the Constitution? If she will not do this, if this proposition does not meet the heart of Virginia, there is no use—

Mr. SEDDON:—I can let Virginia speak for herself. She has spoken for herself in most emphatic language. She has told you what will satisfy her in the resolutions under which this body is convened. I have no right whatever to suppose that she will accept less. She is solemnly pledged to resist coercion. She will resist it to the very last extremity. She arrived at that conclusion after grave deliberation, and it was attended with every manifestation of concurrence on the part of the people. I have no reason to

suppose there was any hesitation at the time, or that there has been any change since, or that there is any hesitation in her purpose now.

Now, if the gentleman wants my private opinion, I will tell him that whether the propositions of the majority of the committee or her own be adopted here, or by the people, the purpose of Virginia to resist coercion is *unchanged* and *unchangeable*.

Mr. HITCHCOCK:—I rise to a point of order. It appears to me that this discussion is very foreign to the subject before the Conference. It is so long since that subject has been named, that many have doubtless forgotten it. The question is upon the adoption of the resolution limiting the debate. I think we had better keep to the question.

The PRESIDENT:—The gentleman is undoubtedly correct in his statement of the question, but the discussion of the general subject has been permitted to go on without objection by the Convention, and I do not think it would be right to stop it now.

Mr. SEDDON:—I said the position of Virginia was unchanged. She considers this a Government of love and not of force. She thinks there should be no force or coercion used toward any sovereign State acting in its collective capacity. She does not propose to permit such coercion to be used.

And now, having answered the gentleman frankly, as he desired, I wish to ask him a question, and I wish also an explicit and frank answer. My question is this: Is it the purpose or is it the policy of the incoming administration to attempt to execute the laws of the United States in the seceded States by an armed force? The answer to this question involves information of the utmost importance to my State and others whose interests are involved with hers. It should be at once communicated, and especially to my part of the country. I now ask the gentleman, if he knows what the purpose of the incoming administration is in this respect, to state it here, and now. His relations to some of the officers elected will entitle his opinions to grave consideration. I invite a full and frank answer to my question.

Mr. MORRILL:—There is a point in the gentleman's answer which may as well be met, but I will not be diverted from the question I was discussing. I will show him in a moment why I cannot answer his inquiry from any personal knowledge of my own.

Sir, I was endeavoring to ascertain what was the present position of Virginia; to find out what she would accept and be contented. I wanted her to speak emphatically. She has done so. I now understand from Mr. SEDDON, that he has no assurances to give that Virginia will accept the propositions of the committee, and that while any propositions are pending she will resist the enforcement of the laws in the seceded States.

Then let it be understood that Virginia *has* spoken. That she makes the Crittenden resolutions her *ultimatum*, that she must have them and all of them, that nothing less will satisfy her. As I said at the beginning of my remarks, it is idle for us to stay here, useless for us to discuss the various propositions which are made here, unless we expect to satisfy Virginia.

It is important for us to understand her position. I do not under-estimate her influence. When the propositions of this Conference are presented to the people of the free States, the first question they will ask is, "Will Virginia adopt them? Will she be satisfied with them?" If she will not, there will be no action upon them. If she will, her position will exercise a powerful influence upon the people of the North in favor of their adoption.

But if Virginia puts her ancient Commonwealth across the path of the Government, if she stands between the administration and the enforcement of the laws, the execution of its official duty, its positive obligations—if this is the manner in which she proposes to mediate, her mediation will be accepted nowhere. Such I understand to be the position she assumes. It is a position of menace.

Mr. STOCKTON:—If the gentleman from Maine wants to get up a row, we are ready for him. He shall have enough of it right here! I should like to know why he makes such charges against Virginia? They are unfounded; we don't wish to hear them.

(There was at this point considerable confusion in the Conference, which was promptly suppressed by the PRESIDENT.)

Mr. MORRILL:—Gentlemen need not be disturbed or excited. I have accomplished my object. I know now what to expect from Virginia; the North will know what the course of Virginia is to be, and we can all act understandingly. I do not propose to waste valuable time in idle discussions in this hall, when we can come to the true point at once. I do not propose to talk around this question, nor to deceive or mislead the Conference. Other gentlemen may think differently, but I now understand Virginia to say, that the Federal authority shall not be reëstablished by the ordinary means, (where it is resisted) in certain of the States comprised in the Federal Union.

I will now answer the question of the gentleman from Virginia, in relation to the proposed policy of the incoming administration. I have no personal knowledge upon this subject. Mr. LINCOLN I never saw in my life. I know nothing of his opinions, except from his speeches; but I will say, that if he and his administration do not use every means which the Constitution has given them to assert the authority of the Government in all the States—to preserve the Union, and the Union in all its integrity, the people will be disappointed. I have felt and now feel the importance of the action of Virginia, and I have done what I could to learn here what we may expect from her.

In conclusion, let me say, that unless we can have the earnest concurrence of the slave States in whatever we do, and especially unless we have the heart of Virginia with us, our action will give no peace to the country.

Mr. ZOLLICOFFER moved that the Conference adjourn. The motion was lost by a *viva voce* vote.

Mr. BROWNE:—I think we have debated these matters long enough. Let us come back to the question before us. Personally I am in favor of limiting debate to the shortest time, for I feel the necessity for prompt action. I think if Mr. RANDOLPH would strike out the latter clause of his resolution, requiring the final vote to be taken on Thursday next, we should have no difficulty in agreeing to it. Its adoption in its present form might cut off some delegation or some gentlemen from speaking at all. I would not do this. Let every one speak, but let the speeches be short. I move to strike out the last clause of the resolution.

Mr. WICKLIFFE:—I did not expect to raise such a storm by introducing this resolution. I now ask to withdraw it and stop the debate.

Mr. MOREHEAD, of North Carolina:—The gentleman cannot do that, as several motions are involved. I object to his proposal to withdraw the resolution. I move to lay the whole subject on the table, and to make it the special order for ten o'clock to-morrow.

The motion of Mr. MOREHEAD was carried.

Mr. SUMMERS:—I move that when the present session of the Conference adjourn, its next meeting be at seven o'clock this evening.

A MEMBER:—Say eight o'clock.

Mr. SUMMERS:—Well, then, let it be eight o'clock. But let me ask you, gentlemen, not to protract or unnecessarily delay our action here.

Mr. PRESIDENT, my heart is full! I cannot approach the great issues with which we are dealing with becoming coolness and deliberation! Sir, I love this Union. The man does not live who entertains a higher respect for this Government than I do. I know its history—I know how it was established. There is not an incident in its history that is not precious to me. I do not wish to survive its dissolution. My hand or voice was never raised against it. They never will be. The Union is as dear to me as to any living man; and it would be pleasant, indeed, if my mind to-day could be as free from fear and anxiety about it, as the minds of other gentlemen appear to be. But, Sir, I cannot shut my eyes to events which are daily transpiring among a people who are excited and anxious, who are apprehensive that their rights are in danger—who are solicitous for—who will do as much to preserve their rights as any people. They must be calmed and quieted. It is useless now to tell them they have no cause for fear. They are looking to this Conference. This Conference must act. If it does not, I almost fear to contemplate the prospect that will open before us.

Sir! this Conference has now been in session fifteen days. While I have felt reluctant to do any thing which should have the appearance of precipitating our action, of cutting off or limiting debate, I have all the time been pressed with this conviction; that if we are to save this country we must act speedily. I have been in constant communication with the people of Virginia

since I have been here. I know that this feeling of apprehension which existed when I came away, has been constantly increasing in my State since; and even last night I received letters from members of the Convention now in session in Richmond; gentlemen who are as true to this Union as the needle to the pole, informing me that every hour of *delay* in this Conference was an hour of *danger*.

I do not agree with some of my colleagues in their construction of the resolutions of the Virginia Legislature inviting this Conference. I understand that she suggests the resolutions of Mr. CRITTENDEN as *one* acceptable way of settling our present difficulties. She says that she will be satisfied with a settlement on the basis of those resolutions. But she has not made them her *ultimatum*. She has not said she will not consent to any other plan of arrangement. Her purpose was not to draw up certain articles of pacification; to call her sister States together, and say to them, "These or nothing! We have dictated the terms upon which the matter between us may be arranged. We will have these or we will not arrange at all!" I understand her as offering no restrictions whatever. She invites a conference—she asks the States to *confer* together. She expects reasonable concessions, reasonable guarantees, and with these she will be satisfied.

Nor do I know why the gentleman from Maine places Virginia in the position he described, nor upon what authority. I reply to him that he makes a grave assumption when he attributes to Virginia a dictatorial position. I have come here, and I trust my colleagues have also, animated by a single purpose:—that purpose is to save the Union. Virginia claims no greater rights than any other State. She would not take them if they were offered.

Let me say here, that it is my purpose to carry out the wishes of the people of Virginia; that exercising the best judgment I have I shall try to ascertain what that purpose is, and shall do all I can to accomplish it. When the proper time comes I shall cast my vote for the proposals of amendment offered by my colleague (Mr. SEDDON); I shall do so for several reasons. The first and most important of them all is this: The Union is our inheritance—it is our pride. To preserve it, what sacrifice should we not make? Its preservation is the one single desire that animates me. Can I not be understood by my Northern friends? Will you not yield something to our necessities—to our condition? Will you not do something which will enable

us to go back to our excited people and say to them, "The North is treating us fairly. See what she will do to make our Union perpetual!"

Again; I shall vote cheerfully for Mr. SEDDON's propositions, because the Legislature of my State has said that such amendments will satisfy the people of Virginia. I think the Legislature is right. I think in this respect it reflects the will of the people of Virginia. Remember, sir, that these propositions have been for some time before the country, that they have been discussed and commented upon by the public Press—that they will probably settle our difficulties, now and forever. They were introduced into Congress by a distinguished and an able man—a statesman, whose integrity and fidelity no one has ever questioned, and no one will question. It is my firm belief that the States can adopt them without any material sacrifice, and that they will adopt them if they have the opportunity.

But if the CRITTENDEN resolutions—if the propositions of my colleague cannot be recommended by this Conference—do not find favor with the majority here? What then? Shall we dissolve this body, and go home? Shall we risk all the fearful consequences which must follow? No, sir! No! We came here for *peace*. Virginia came here for *peace*. We will not be impracticable. You, representatives of the free States, will not be impracticable. Therefore, I tell you that it is my firm belief that the people of Virginia WILL accept the proposals of amendment to the Constitution as reported by the majority of the committee. I believe these propositions would be acceptable to our people. I believe if we should pass them here, that the Convention now in session in Richmond would at once adopt them and recommend them to the people of that honored member of the Federal Union. Can you not? Will you not give us one chance to satisfy our people, and to save us from that other alternative which I almost fear to contemplate?

I feared when the result was announced, that the late election in Virginia of the delegates to the Convention now in session, would be misapprehended and misunderstood at the North: that the North would regard it as a triumph of the Union sentiment in Virginia. In one sense it was such a triumph. The advocates of immediate and unconditional secession were defeated, were defeated by a heavy majority.

But the members comprising that Convention represent the true feeling of the people who elected them, and they represent the present feeling of Virginia. The people of that State are full of anxiety. They fear that the new administration has designs which it will carry into execution, fatal to their rights and interests. They are for the Union, *provided* their rights can be secured; provided, they can have proper and honorable guarantees. It is useless to discuss now whether they are right or wrong. Such is the condition of affairs now, and it is too late to enter into the causes which produced it. We must deal with things as they are.

I have known many gentlemen who have represented the interests of New England long and well. I know what sentiments filled their hearts years ago, and I do not believe those sentiments are changed now. I appeal to Vermont. Among her representatives here, I see a gentleman with whom, for a long time, I was upon terms of peculiar intimacy. In the whole course of that intimacy I cannot recall a single occurrence which did not impress me with his integrity, his ability, his justice. I appeal to him. I appeal to him by every consideration which can move a friend, which can influence a patriot, which can govern the action of a statesman. I appeal to Massachusetts, to all New England, which I know possesses many like himself; and I ask you to consider our circumstances, to consider our dangers, and not to refuse us the little boon we ask, when the consequences of that refusal must be so awful. Can you not afford to make a little sacrifice, when we make one so great? Can you not yield to us what is a mere matter of opinion with you, but what is so vital with us? Will you not put us in a position where we can stand with our people, and let us and you stand together in the Union? I have no delicacy here. The importance of our action with me, transcends all other considerations. I do not hesitate to appeal to New England for help in this crisis.

If New England refuses to come to our aid, it will not alter my course or change my conviction. In no possible contingency which can now be foreseen shall these convictions be changed. *I will never give up the Union!* Clouds may hang over it, storms and tempest may assail it, the waves of dissolution may dash against it, but so far as my feeble hand can support it, that support shall be given to it while I live!

When the dark days come over this Republic, and there is nothing in the future but gloom and despondency, I will do as WASHINGTON once said he would do in similar circumstances: I will gather the last handful of faithful men, carry them to the mountains of Western Virginia, and there set up the flag of the Union. It shall be defended there against all assailants until the friends of freedom and liberty from all parts of the civilized world shall rally around it, and again establish it in triumph and glory over every portion of a restored and united country.

Sir, the questions which now agitate and alarm the country do not affect the interests of all sections of the Union, or if they do affect all sections, certainly not in the same proportion. The farther sections are removed from each other, the less do the interests and the principles of their people assimilate. Maine and Louisiana, far distant from each other, differ widely. Approaching the line between the slave and free States all these differences grow less. This is shown by the action of this Conference. The border States can settle these questions. They will settle them if you will let them alone. Pennsylvania and Virginia, Maryland and New Jersey, States along the line, whose people are most vitally interested, can have no difficulty in coming to an agreement. With all the possible political interests which you may have, not only are the relations of society, of business, and commerce, to be interrupted, but these States are to form the long frontier between two foreign nations, if that fearful contingency is to happen, so often and so confidently referred to here.

Why, then, should remote sections interfere to prevent this adjustment? If they cannot aid us, why not let us alone? Let them look along the valley of the Ohio River, one of the most fertile sections of the continent, in itself great enough and fruitful enough to support a nation. It has already a large population, and that population is increasing every day. The people are attached to each other by every tie that binds society together. They now live in harmony and friendship; their property is secure. They are prosperous and happy. Such a people *cannot be, must not be divided*.

And therefore, I say, that if we are driven to that alternative; if the representatives of the two extremes will not give us the benefit of their counsel and assistance, the Central States, and the great Northwest, must take the matter into their own hands. North Carolina, Virginia, Kentucky,

Tennessee, with Pennsylvania, New Jersey, and other States near them, must unite with Ohio and the Northwest to save the country. They have the power to do it—they must do it.

Remember, sir, that I only refer to this as a last alternative. It is one to which I hope and pray we may never be driven. I cannot yet give up the hope, that all we need here is patient and thorough discussion and examination of the subject; that when the true condition is understood, we shall unite together to restore confidence to the country. It must be so. The consequences of farther disagreement are too great, the crisis is too important to permit mere sectional differences, mere pride of opinion, party shackles or party platforms to control the action of any gentleman here. The Republic shall not be divided. The nation shall not be destroyed. The patriotism of the people will yet save the country against all its enemies.

Mr. RUFFIN gave notice, that at the proper time he wished to offer two amendments to the second section of the propositions reported by the committee.[1]

Mr. FIELD and Mr. DODGE rose and made motions at the same time.

The floor was given to Mr. DODGE, who moved, that when the Conference adjourn, it adjourn to meet at ten o'clock to-morrow.

Mr. RANDOLPH moved to amend, by inserting half-past ten o'clock.

Several motions were made by different members, and much confusion arose, which was suppressed.

Mr. CHITTENDEN:—We all, no doubt, wish to economize time as much as possible. The prevailing wish seems to be to meet about eleven o'clock to-morrow. That can be accomplished by a simple motion to adjourn, which I make, and which should take precedence of all others.

The PRESIDENT put the motion to adjourn, and declared it not carried.

A MEMBER:—I move to amend Mr. DODGE's motion, by inserting seven o'clock this evening.

This motion did not prevail, and the question was taken upon Mr. DODGE's motion, which was adopted, and the Conference then adjourned.

THIRTEENTH DAY.

WASHINGTON, WEDNESDAY, *February 20th, 1861.*

THE Conference was called to order by President TYLER at ten o'clock, and after prayer by the Rev. Dr. SAMPSON, the Journal of yesterday was read and approved.

Mr. HARRIS:—I desire to call the attention of the Conference to the fact, that the time has not yet arrived when the Conference, by its rules, should commence business. The rule is, that the daily session shall commence at eleven o'clock.

The PRESIDENT:—The Conference, previous to its adjournment yesterday, adopted the motion of Mr. DODGE, fixing this hour for the commencement of the present session.

Mr. WICKLIFFE:—I wish to call attention to the 9th rule in the printed list. It has not been adopted by the Conference. It is in here by mistake. The Committee on Rules did not intend to recommend it. I ask now that it be stricken from the record.

Mr. FIELD:—I rise to debate that motion.

Mr. WICKLIFFE:—Then I withdraw it.

Mr. HARRIS:—I wish to offer a preamble and resolutions, and would like to have them read for the information of the Conference. I ask to have them printed and laid upon the table, so that I can move them as an amendment at the proper time.

The resolutions were laid upon the table and ordered to be printed, and are as follows:

Whereas, The Federal Constitution and the laws made in pursuance thereof, are the supreme law of the land, and should command the willing obedience

of all good citizens; and *whereas* it is alleged that sundry States have enacted laws repugnant thereto. Therefore,

Resolved. That this Convention respectfully requests the several States to revise their respective enactments, and to modify or repeal any laws which may be found to be in conflict with the Constitution and laws of the United States.

Resolved, That the President of this Convention is requested to send a copy of the foregoing preamble and resolutions to the Governor of each of the States, with the request that the same be communicated to the Legislature thereof.

Mr. RANDOLPH:—I must now insist upon having my resolution, offered yesterday, considered. Congress is about adjourning, and, if we do not close our labors to-day, we cannot have our propositions acted upon under the rules of the Senate and House of Representatives. They can be kept out on the objection of any member. I do not wish to debate the resolution, and I hope the debate will not be continued in the general manner it was yesterday.

Mr. FIELD:—There seems to be a disposition to stop debate now, after nearly the whole time has been occupied by the other side. Yesterday the whole session was occupied by a general discussion of this question. It is my right to debate it as generally as other gentlemen have done. I shall avail myself of that right. I may not speak thirty minutes, but I will not submit to the imposition of a different rule upon me, if I can avoid it, from that which has been imposed upon others. The first question is on striking out the last clause of the resolution. On that I have nothing to say except that I ask for a vote by States.

A vote by States was then taken, and resulted as follows:

AYES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, Maryland, New York, New Hampshire, Ohio, Pennsylvania, and Vermont—12.

NOES.—Delaware, Kentucky, Missouri, New Jersey, North Carolina, Rhode Island, Tennessee, and Virginia—8.

Mr. CLAY:—I move to lay the whole subject upon the table. It is useless to attempt to stop discussion in this way.

Mr. CHASE:—I call for a vote by States.

The motion of Mr. CLAY prevailed by the following vote.

AYES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts. New York, Vermont, Virginia, and New Hampshire—10.

NOES.—Delaware, Maryland, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, and Tennessee—9.

Mr. McCURDY:—There is really but one question that ought to engage the attention of this Conference. All others may be settled in half an hour. This question is a great one, and assumes a variety of forms. I wish to vote upon it understandingly, and I want some information from the committee which has had it in charge.

I ask that committee whether they are not proposing a change in the Constitution, which, if adopted, will operate as a direct and effectual protection of slavery in all the territories of the United States? This appears to me to be the true question for our consideration. I wish to know what meaning is attached by its friends to one part of the proposed article.

It states that "the *status* of persons owing service or labor as it now exists shall not be changed by law," &c.; and again, "that the rights arising out of said relations shall be subject to judicial cognizance in the Federal courts according to the *common law*." The *status*, then, shall not be changed. By that term I suppose condition is intended. I understand that perfectly. There shall be no law to change the condition, to *impair* the rights of the slaveholder; but shall there be no law to *protect* these rights? Now, what is intended by this? Why not make this provision plain, and not leave it open to any question of construction? The ghost of the old trouble rises here, and will not down at the bidding of any man. I believe under this article the institution of slavery is to be protected by a most ingenious contrivance. The *common law*, administered according to the pro-slavery view, is to be called in for its protection.

Now I ask the chairman of the committee reporting these propositions what he means by the *common law*? The common law, as we understand it, is the law of freedom—not of slavery. But I do not here propose to discuss that question. I wish to know how the truth really is. How does the committee, how do the friends of this proposition understand it?

By the *common law* a slave is still a man: a person, and not a personal chattel. He may owe service, as a child to its parent, an apprentice to his master, but he is still a *person* owing service. He is all the time recognized as a *man*. As such he may own and hold property, take it by inheritance and dispose of it at pleasure, by will or by contract. All these rights, all the principles on which they are founded, are in direct antagonism to slavery. The argument may be carried much farther, but this is far enough for my purpose. By the slave law, all this is reversed. The master owns the *body* of the slave, may sell or otherwise dispose of him, may make him the subject of inheritance. The slave loses all the attributes of a person, and becomes property as much as the horse or the ox that feeds at his master's crib. These, in a condition of slavery are the rights of the master over the slave. These rights the common law, under this proposition, is to recognize, protect, and enforce. I believe I am not mistaken in this. What other construction can you give the article? It is a distinct proposal to engraft slavery upon the common law: to declare in the Constitution that slavery is recognized and protected by the common law.

Now, the North has always protested against this. She will never consent to it. She understands all the consequences as well as you. No doubt it would be a great point gained for you, to have the Constitution recognize the institution of slavery as part of the common law. For then slavery goes wherever the common law goes. Its rights under this provision are not confined to the territories. Once established, these may be enforced in a free State just as well. It is the old proposition over again, which has come before the American people so many times under so many different guises. It makes slavery national, freedom sectional. If this is so, if such is the construction which it is intended this section shall receive, why not state it openly? why leave it as a question of construction?

This construction involves other considerations. This new kind of common law is to be substituted for the old. The latter has been understood for

centuries almost. Its principles have been discussed and settled. It is a system founded by experience, and adapted to the wants of the people subject to it. Its very name implies that it was not created by legislative authority. A strange common law indeed that would be which is *created by the Constitution*.

But this is not all. Other principles of the common law are subject to change. They are adapted to the advance of civilization, to the wants of communities. Change is the universal law of nature. This new kind of common law is alone to be perpetual.

It is not my purpose to enter into a general discussion of the subject. This point struck me as important, as needing elucidation. If I am wrong in this construction, the committee will correct me.

Mr. EWING:—The proposition contained in the first article of the proposed amendment, is copied from the CRITTENDEN resolutions in substance. It is true that the language is somewhat changed, but the legal effect is identical in both the propositions. The term "*status*" &c., as there used is not applicable to all the territory of the United States. It only extends to that portion of the territory south of 36° 30′. It crushes out liberty nowhere. It changes nothing—no rights whatever. Again, whatever may be the *status* of the person in the State from which he comes, *that* is preserved in the territory, and that alone. It is precisely similar to the case of a contract to which the *lex loci* gives the construction, and the *lex fori* its execution.

I like the common law. I have made it my study. I like the use of this term here. It was a good system when not as perfect as it is now. The common law of England even tolerated slavery until it was abolished. The colliers of the North of England were once, to all intents and purposes, as much slaves as any negro on the Southern plantations, except in the matter of separation of families. I can refer you to a precedent on this subject, which you will find in a book of no very high authority. I mean the novel, *Red Gauntlet*.

The general principle applicable here is this: Whenever you establish the right—no matter how, if you *establish* it—the common law asserts the remedy. There is no crushing out about it. The simple proposition is this: Slavery exists already in that little worthless territory we own below the proposed line. Will we agree that it shall remain there just as it is now, so

long as the territorial condition continues? That is all. There is no mystery or question of construction about it.

Mr. FIELD:—The questions now before the Conference I suppose arise upon the report presented by the majority of the committee, and upon the motion to substitute for that report the propositions of the minority of the same committee.

I propose to add to this report the three following propositions; and I will read them for the information of the Conference.

I. "Each State has the sole and exclusive right, according to its own judgment, to order and direct its domestic institutions, and to determine for itself what shall be the relation to each other of all persons residing or being within its limits.

II. "Congress shall provide by law for securing to the citizens of each State the privileges and immunities of citizens in the several States.

III. "The union of the States under the Constitution is indissoluble; and no State can secede from the Union, or nullify an act of Congress, or absolve its citizens from their paramount obligations of obedience to the Constitution and laws of the United States."

These additions would render the majority report much more acceptable to the northern people than it is in its present shape, though even then, I am bound to declare, I could not support it. I prefer the substitute. In what I have now to say, I shall not confine myself to a discussion of these propositions, but availing myself of the latitude of debate hitherto allowed to gentlemen who have addressed the Conference in favor of the report of the majority of the committee, I shall endeavor to bring to the notice of this body, more fully than I have yet done, my views upon the general question presented for our consideration.

For myself, I state at the outset that I am indisposed to the adoption, at the present time, of any amendment of the Constitution. To change the organic law of thirty millions of people is a measure of the greatest importance. Such a measure should never be undertaken in any case, or under any circumstances, without great deliberation and the highest moral certainty that the country will be benefited by the change. In this case, as yet, there has been no deliberation; certainly not so far as the delegates from New York are concerned. The resolutions of Virginia were passed on the 19th of January. New York (her Legislature being in session) appointed her delegates on the 5th of February. We came here on the 8th. Our delegation was not full for a week. The amendments proposed were submitted on the 15th. It is now the 20th of the month. We are urged to act at once without further deliberation or delay.

To found an empire, or to make a constitution for a people, on which so much of their happiness depends, requires the sublimest effort of the human intellect, the greatest impartiality in weighing opposing interests, the utmost calmness in judgment, the highest prudence in decision. It is proposed that we shall proceed to amend in essential particulars a Constitution which, since its adoption by the people of this country, has answered all its needs; with a haste which to my mind is unnecessary, not to say indecent.

Have any defects been discovered in this Constitution? I have listened most attentively to hear those defects mentioned, if any such have been found to exist. I have heard none. No change in the Judicial Department is suggested. The exercise of judicial powers under the Constitution has been satisfactory enough to the South. The Judicial Department is to be left untouched, as I think it should be. You propose no change in the form of the Executive or Legislative Departments. These you leave as they were before. What you do propose is, to place certain limitations upon the Legislative power, to prohibit legislation upon certain important subjects, to give new guarantees to slavery, and this, as you admit, before any person has been injured, before any right has been infringed.

There is high authority which ought to be satisfactory to you, that of the President of the United States, now in office, for the statement that Congress never undertook to pass an unconstitutional law affecting the interests of slavery except the Missouri Compromise. Well, you have repealed that. You have also every assurance that can be given, that the administration about coming into power proposes no interference with your institutions within State limits. Can you not be satisfied with that? No. You propose these amendments in advance. You insist upon them, and you declare that you must and will have them or certain consequences must follow. But, gentlemen of the South, what reasons do you give for entering upon this hasty, this precipitate action? You say it is the prevailing sense of insecurity, the anxiety, the apprehension you feel lest something unlawful, something unconstitutional, may be done. Yet the gentleman from Virginia (Mr. SEDDON) tells us that Virginia is able to protect all who reside within her limits, and that she will do so at all hazards. Why not tell us the truth outright? It is not action under the Constitution or in Congress that you would prevent. What is it, then? You are determined to prevent the agitation of the subject. Let us understand each other. You have called us here to

prevent future discussion of the subject of slavery. It is *that* you fear—it is *that* you would avoid—discussion in Congress—in the State Legislatures—in the newspapers—in popular assemblies.

But will the plan you propose, the course you have marked out, accomplish your purpose? Will it stop discussion? Will it lessen it in the slightest degree? Can you not profit by the experience of the past? Can you prevent an agitation of this subject, or any other, by any constitutional provisions? No! Look at the details of your scheme. You propose through the Constitution to require payment for fugitive slaves: to make the North pay for them. You are thus throwing a lighted firebrand not only into Congress, but into every State Legislature, into every county, city, and village in the land.

This one proposition to pay for fugitive slaves, will prove a subject for almost irrepressible agitation. You say to the State Legislatures, you shall not obstruct the rendition of fugitives from service, but you may legislate in aid of their rendition, thereby implying that the latter kind of legislation will be their duty. You thus provide a new subject of discussion and agitation for all these Legislatures. In the Border States especially, such as Ohio and Pennsylvania, you will find this agitation fiercer than any you have hitherto witnessed; of which you complain so much. You will add to the flame until it becomes a consuming fire.

You propose to stop the discussion of these questions by the press. Do you really believe that in this age of the world you can accomplish that? You know little of history if such is your belief. Free speech is stronger than constitutions or dynasties. You might as well put your hands over the crater of a burning volcano, and seek thus to extinguish its flames, as to attempt to stop discussion by such an amendment of the Constitution. Stop discussion of the great questions affecting the policy, strength, and prosperity of the Government! You cannot do it! You ought not to attempt to do it!

I wish to speak kindly upon this subject. I entertain no unfriendly feelings toward any section. But while you are thus complaining of us in the free States, because we agitate and discuss the question of slavery, are you not, in a great degree, responsible for this agitation yourselves? Do you not discuss it, and agitate it? Do you not make slavery the subject of your

speeches in the South, and in the presence of your slaves? Do you not make charges against us, which in your cooler moments you know to be unfounded? Do you not charge us in the hearing of your slaves with the design of interfering with slavery in the States, with a design to free them if we succeed?

You have done all this and more, and if discontent, anxiety, and mistrust exist among your people, let me say that such discussion has contributed more to produce them, than all the agitation of the slavery question at the North. But your amendments are not pointed at your discussions. That kind of agitation may go on as before. It is only the discussion on the other side you would repress!

If the condition of affairs among you is as you represent it, have you no duties to perform; is there nothing for you to do? Should you not tell your people what we have assured you upon every proper occasion, that the Republican Party has always repudiated all intention of interfering with slavery, or any other Southern institution within the States? This you all know. Have you told your people this? If you would explain it to them now, would they not be quieted? Do not reply that they *believe* we have such a purpose. Who is responsible for that belief? Have you not continually asserted before your people, notwithstanding every assurance we could give you to the contrary, that we are determined to interfere with your rights? It is thus the responsibility rests with you.

Although such is my conviction, supported, as I think, by all the evidence, I am still for peace. Show me now any proposition that will secure peace, and I will go for it if I can. We came here to take each other by the hand, to compare views, explain, consult. We meet you in the most reasonable spirit. Any thing that honorable men *may* do, we *will* do.

We will go back to 1845 when you admitted Texas; back to the Missouri Compromise of 1820. You certainly can complain of nothing previous to that time. If, since then, there has been any law of Congress passed which is unjust toward you, which infringes upon your rights, which operates unfairly upon your interests, we will join you in securing its repeal. We will go farther. If you will point out any act of the Republican Party which has given you just cause for apprehension, we will give you all security against

it. We will do any thing but amend the fundamental law of Government. Before we do that we must be convinced of its necessity.

When you propose essential changes in the Constitution you must expect that they will be subjected to a critical examination; if not here, certainly elsewhere. I object to those proposed by the majority of the committee—

1st. For what they *do* contain.

2nd. For what they *do not* contain.

I do not propose to criticize the language used in your propositions of amendment. That would be trifling. I think the language very infelicitous, and if I supposed those propositions were to become part of the Constitution, I should think many verbal changes indispensable. But I pass by all that, and come at once to the substance.

I object to the propositions, sir, because they would put into the Constitution new expressions relating to slavery, which were sedulously kept out of it by the framers of that instrument; left out of it, not accidentally, but because, as MADISON said, they did not wish posterity to know from the Constitution that the institution existed.

But I object further, because the propositions contain guarantees for slavery which our fathers did not and would not give. In 1787 the convention was held at Philadelphia to establish our form of Government. WASHINGTON was its presiding officer, whose name was in itself a bond of union. It was soon after the close of a long and bloody war. Shoulder to shoulder—through winter snows and beneath summer suns—through such sufferings and sacrifices as the world had scarcely ever witnessed—the people of these States, under Providence, had fought and achieved their independence. Fresh from the field, their hearts full of patriotism, determined to perpetuate the liberties they had achieved, the people sent their delegates into the convention to frame a Constitution which would preserve to their posterity the blessings they had won.

These delegates, under the presidence of WASHINGTON, aided by the counsels of MADISON and FRANKLIN, considered the very questions with which we are now dealing, and they refused to put into the Constitution which they were making, such guarantees to slavery as you now ask from

their descendants. That is my interpretation of their action. Either these guarantees are in the Constitution, or they are not. If they are there, let them remain there. If they are not there, I can conceive of no possible state of circumstances under which I would consent to admit them.

Mr. MOREHEAD:—Not to save the Union?

Mr. FIELD:—No, sir, no! That is my comprehensive answer.

Mr. MOREHEAD:—Then you will let the Union slide.

Mr. FIELD:—No, never! I would let slavery slide, and save the Union. Greater things than this have been done. This year has seen slavery abolished in all the Russias.

Mr. ROMAN:—Do you think it better to have the free and slave States separated, and to have the Union dissolved?

Mr. FIELD:—I would sacrifice all I have; lay down my life for the Union. But I will not give these guarantees to slavery. If the Union cannot be preserved without them, it cannot long be preserved with them. Let me ask you, if you will recommend to the people of the southern States, in case these guarantees are conceded, to accept them, and abide by their obligations to the Union? You answer, Yes! Do you suppose you can induce the seceded States to return? You answer: We do not know! What will you yourselves do if, after all, they refuse? Your answer is, "*We will go with them!*"

We are to understand, then, that this is the language of the slave States, which have not seceded, toward the free States: "If you will support our amendments, we will try to induce the seceded States to return to the Union. We rather think we can induce them to return; but if we cannot, then we will go with them."

What is to be done by the Government of the United States while you are trying this experiment? The seceded States are organizing a Government with all its departments. They are levying taxes, raising military forces, and engaging in commerce with foreign nations, in plain violation of the provisions of the Constitution. If this condition of affairs lasts six months

longer, France and England will recognize theirs as a Government *de facto*. Do you suppose we will submit to this, that we can submit to it?

I speak only for myself. I undertake to commit no one but myself; but I here assert, that an administration which fails to assert by force its authority over the whole country will be a disgrace to the nation. There is no middle ground; we must keep this country unbroken, or we give it up to ruin!

We are told that one State has an hundred thousand men ready for the field, and that if we do not assent to these propositions she will fight us. If I believed this to be true, I would not consent to treat on any terms.

From the ports of these seceded States have sailed all the fillibustering expeditions which have heretofore disgraced this land. There, have those enterprises been conceived and fitted out. Their new government will enter upon a new career of conquest unless prevented. Even if these propositions of amendment are received and submitted to the people, I see nothing but war in the future, unless those States are quickly brought back to their allegiance.

I do not propose to use harsh language. I will not stigmatize this Convention as a political body, or assert that this is a movement toward a revolution counter to a political revolution just accomplished by the elections. Nor will I speak of personal liberty bills, or of northern State legislation, about which so much complaint has been made. If I went into those questions, much might be said on both sides. We might ask you whether you had not thrown stones at us?

Did not the Governor of Louisiana, in his message to the Legislature of his State, recommend special legislation against the supporters of Mr. LINCOLN? Is there not on the statute books of Maryland a law which prohibits a "black Republican" from holding certain offices in that State?

Mr. JOHNSON:—There was a police bill before the Legislature of Maryland, in which some provision of that kind was inserted by one who wished to defeat it. Its friends were compelled to accept the provision in order to save the bill. The courts at once held the provision unconstitutional. All that is so.

Mr. FIELD:—I am answered. It is admitted that the Legislature of that ancient State did place upon her statute book an act passed with all the forms of law, containing a provision so insulting to millions of American citizens.

Mr. HOWARD:—Will Mr. FIELD permit me a single question? I ask it for information, and because I am unable to answer it myself. I therefore rely upon his superior judgment and better means of knowledge. It appears to me that Massachusetts, Maine, and New York have gone much farther. The charge is a serious one. Maryland has never refused to submit to the decisions of the proper judicial tribunals. The Constitution has provided for the erection of a tribunal which should finally decide all questions of constitutional law. That tribunal has decided that the people of the slave States have a legal right to go into the territories with their property. The gentleman from New York tells us he is in favor of free territory, and his people are also.

Now, I wish to ask, where in the Constitution he finds the right to appeal from the decision of the Supreme Court to the popular voice? In what clause of the Constitution is this power lodged? Where does he find this right of appeal to the people, a right which he insists the North will not give up?

Mr. FIELD:—I am happy to answer the question of the gentleman from Maryland, and I reply that when once the Supreme Court has decided a question, I know of no way in which the decision can be reversed, except through an amendment of the Constitution. I have the greatest respect for the authority of the Supreme Court. I would take up arms, if necessary, to execute its decisions. I say that States, as well as persons, should respect and conform to its judgments, and I would say they must. But I am bound in candor to add, that in my view the Supreme Court has never adjudged the point to which the gentlemen refers; it gave opinions, but no decision.

I was about to state, when I was first interrupted, that the majority report altogether omits those guarantees, which, if the Constitution is to be amended, ought to be there before any others that have been suggested. I mean those which will secure protection in the South to the citizens of the free States, and those which will protect the Union against future attempts

at secession; guarantees which are contained in the propositions that I have submitted as proper to be added to the report of the majority.

But, sir, I must insist, that if amendments to the Constitution are required at all, it is better that they should be proposed and considered in a General Convention. Although I do not regard this Conference as exactly unconstitutional, it is certainly a bad precedent. It is a body nominally composed of representatives of the States, and is called to urge upon Congress propositions of amendment to the Constitution. Its recommendations will have something of force in them; it will undoubtedly be claimed for them in Congress that they possess such force. I do not like to see an irregular body sitting by the side of a legislative body and attempting to influence its action.

Again, all the States are not here. Oregon and California—the great Pacific dominions with all their wealth and power, present and prospective—have not been consulted at all. Will it be replied that all the States can vote upon the amendments? That is a very different thing from proposing them. California and Oregon may have interests of their own to protect, propositions of their own to make. Is it right for us to act without consulting them? I will go for a convention, because I believe it is the best way to avoid civil war.

Mr. WICKLIFFE:—If a General Convention is held, what amendments will you propose?

Mr. FIELD:—I have already said that I have none to propose. I am satisfied with the Constitution as it is.

Mr. WICKLIFFE:—Then, for God's sake, let us have no General Convention.

Mr. FIELD:—I think the gentleman's observation is not logical. He wants amendments, I do not. But I say if we are to have them, let us have them through a General Convention.

And I say farther, that this is the quickest way to secure them. If a General Convention is to be called, let it be held at once, just as soon as possible. If gentlemen from eight of the States in this Conference represent truly the public sentiment of their people, as I will assume they do, there is no other

alternative. We must have either the arbitrament of reason or the arbitrament of the sword. The gloomy future alone can tell whether the latter is to be the one adopted. I greatly fear it is. The conviction presses upon me in my waking and my sleeping hours. Only last night I dreamed of marching armies and news from the seat of war. [A laugh from the Kentucky and Virginia benches.]

The gentlemen laugh. I thought they, too, had fears of war. I thought their threats and prophecies were sincere. God grant that I may not hereafter have to say, "I had a dream that was not all a dream."

Sir, I have but little more to trouble you with. In what I have said I trust there has been no expression that will be taken in ill part. I have spoken what I sincerely felt. If there has been an unkind word in my remarks I did not intend it, and am sorry for having uttered it.

For my own State and for the North I have only to say that they are devoted to the Union. We have been reminded of HAMILTON's opinion, that the States are stronger than the Union, and that when the collision comes the Union must fall. This is a mistake. In the North the love for the Union is the strongest of political affections. New York will stand by the flag of the country while there is a star left in its folds. If the Union should be reduced to thirteen States—if it should be reduced to three States—if all should fall away but herself, she will stand alone to bear and uphold that honored flag, and recover the Union of which it is the pledge and symbol. God grant that time may never come, but that New York may stand side by side with Kentucky and Virginia to the end. That we may all stand by the Union, negotiate for it, fight for it, if the necessity comes, is my wish, my hope, my prayer. The Constitution made for us by WASHINGTON, FRANKLIN, MADISON, and HAMILTON, and the wise and patriotic men who labored with them, is good enough for us. We stand for the country, for the Union, for the Constitution.

I found yesterday upon my table a pamphlet bearing the title of "The Governing Race." It contains a sublime passage from LONGFELLOW's poem of "The Ship," which, as it closes the pamphlet, shall also close my observations:

"Thou, too, sail on, O Ship of State!
Sail on, O UNION, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
We know what Master laid thy keel,
What Workmen wrought thy ribs of steel,
Who made each mast, and sail, and rope,
What anvils rang, what hammers beat,
In what a forge and what a heat
Were shaped the anchors of thy hope!
Fear not each sudden sound and shock,
'Tis of the wave and not the rock;
'Tis but the flapping of the sail,
And not a rent made by the gale!
In spite of rock and tempest's roar,
In spite of false lights on the shore,
Sail on, nor fear to breast the sea!
Our hearts, our hopes, are all with thee,
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee,—are all with thee."

Mr. WHITE:—I shall not occupy much of the time of the Conference. All the speeches that have been made, and all the declamation that has been uttered on this floor, have not made a single convert. Last of all would I wish to follow the gentleman who has just taken his seat. He proposes to postpone action, asserts that we are acting without consideration, in haste, and without due deliberation. I look upon this subject from a different point of view. I believe the motive of Pennsylvania in first responding to the invitation of Virginia was to induce the States to meet here in council, and remove that peril which now threatens our common country.

Pennsylvania had another reason. She is a border State; she has a deeper and more vital interest in the present unhappy differences than New York or the North. If there is to be war; civil, unnatural war, whose country is to be

devastated, whose fields laid waste and trampled down? They are those of the border States—of Ohio, Pennsylvania, Illinois, Indiana, and possibly New Jersey. These are the States that are to suffer. Gentlemen from New York and the North East, in the bosom of their families, their towns and cities not in the least danger, may be as impassive as the granite rocks that bind their shores. We have a deeper, a more vital interest; therefore we feel and speak. When Pennsylvania received the invitation of Virginia, South Carolina, Georgia, and other States had seceded. Dangers were accumulating. Then it was that the old conservative Keystone State threw herself into the breach. She sent her delegation here to save the country and not to change the Constitution—not to alter it, but to explain it and to give our Southern sisters the guarantees they once did not ask and did not need. We believed that the great majority of the people of the Southern States were Union loving men, who choose to sail under the flag of the Union, rather than under any piratical and treasonable banner. We knew there were rebels within those States, as there is a faction at the North composed of men as much rebels as they are. We knew, also, that there was a large body of men at the South, who, though loyal at heart, were in a state of great anxiety and apprehension, and who might be stirred up by demagogues, through appeals to their State pride and other influences, to take a stand against the Union.

The Republicans denied that they wished to interfere in any manner with the institution of slavery. We have come here to give the slave States a declaratory exposition of our views. We have come bearing the olive branch. We are met by the South in a spirit of conciliation. The delegates tell us that they hope to be able to bring back their erring sister States into the fold of the Union, if they can go to them bearing satisfactory guarantees from us. Pennsylvania is willing that we should give them that opportunity. We have lived in harmony with them: we wish to live in peace with them. If the seceded States will not come back, if the other Southern States cannot bring them back, then, are we in any worse position? No, sir! we are not. We desire to place ourselves right before the world. Then, if some States will not stay in the Union, on their heads be the responsibility. Then, if any wrong has been done, if any right has been violated, Pennsylvania will not be responsible. We shall have done our duty, on them will the responsibility rest. They must answer for it before the world and before the judgment-seat.

What will be the consequence of postponing action on this subject? We are strengthening the position of the seceded States. We

> "Keep the word of promise to the ear,
> And break it to the hope."

Every rebel will rejoice at our inaction.

The continuance of Virginia in the Union depends upon the action of a convention now in session in Richmond. If we send her commissioners home to say to that convention, "The North will wait two years and then consider your propositions," what will the convention say to that? The seceded States have at this moment commissioners at Richmond entreating Virginia to join their Confederacy, and to detach herself from the free States. If we fail to act, who can fail to foresee the consequences? Maryland is about calling a convention. She, too, will act, and she will go where her associations and her interests carry her.

From this you can infer some of the reasons why Pennsylvania has sent her commissioners here. Her object was not delay. Her wish was for action—speedy action. She wishes to do all she can to accelerate action. She wishes to have some plan laid before the country at once—something fair to all sections—and then, with, the alternatives before them, let the people decide. She wishes to pour oil on the troubled waters.

We are told by our friend from New York, that the amendments are badly drawn. If so, let him help us to correct them. No one can do it better. Surely there is talent enough in this Conference to remedy such defects as are suggested by him.

Gentlemen say they do not wish to convert free territory into slave territory. Neither do I. We are not doing that. All the territory south of the line proposed is slave territory already. The adoption of these propositions does not extend slavery at all.

The first advantage the Republican party ever obtained in Pennsylvania, was on account of the repeal of the Missouri Compromise, followed by the decision of the Supreme Court, declaring that the normal condition of the territory was a condition of slavery, and on that ground holding the Missouri Compromise unconstitutional. Such being the state of the matter,

do we lose any thing by the prohibition of slavery north of 36° 30′? No! All that vast territory north of the line will be dedicated to freedom. The South asks that faith shall be kept; that slavery in the territory south of the line shall not be interfered with. This is the only material averment in the declaration.

The second article contains a modification of the Constitution which was not intended. This I understand it is proper to amend.

Another proposition is to put a barrier into the Constitution, which will prevent the acquisition of territory in future by joint resolution. To this I am sure the gentleman from New York will not object.

Sir, I have read and carefully considered all the proposed amendments. To my mind they present no essential changes, or modifications, or constructions, of that instrument. I can see no injury in them to the interests of the North. I think they are rather to the advantage of the North. I believe the people of the North will hasten cheerfully to adopt them.

Now, if we can adopt them—if we can make them a part of our organic law, and thus settle these differences, who will not be glad? There is still a deep and abiding love of the Union in the hearts of all the people. They will hail with joy any action of yours which tends to strengthen it.

Mr. TUCK:—I should not address the Conference at this time if I did not discover early signs of closing the debate, and I prefer to be clearly understood upon the subject of discussion before it closes.

I well understand the appeals of the border slave States. They think that one-half their number are already out of the Union. They deem themselves weakened by their defection. I well understand the inquiry of the eloquent gentleman from Virginia, when he asked, on the second day of the session, "Can't you understand our position?"

I have listened to appeals stronger and more eloquent than I ever expect to hear again. The representatives from the South on this floor are skilful in debate and eloquent in speech. Were there no view of the case but the one they present, I might become a convert myself.

They have seen half of the slave States, acting on the theory of right claimed by the South, undertake to go out of the Union. If they love the States they represent, and the Union of all the States, they should be filled with apprehension and alarm. The venerable gentleman from North Carolina (Judge RUFFIN) has appealed to us with an ardor, patriotism, and eloquence which has produced an indelible impression upon my mind, while the gentleman (Mr. SEDDON) from Virginia, in describing parallels of attack which the North, as he said, were constructing, in the course of events, about the institution of slavery, commanded my undivided attention. Yet gentlemen greatly err in assuming that we of the North are acting under some wizard influence, and, out of pure malignity, are plotting the overthrow of slavery. There is no plot or general concert in the action of the North on this subject. We are, like the South, subject to general laws affecting mind and morals, as well as pecuniary concerns, which laws cannot be disregarded. We cannot act otherwise than we do. Ideas and principles control, and we and those whom we represent will act in accordance with them, whatever be the consequences.

Much is said here about saving to the Union the slave States not yet gone. All I have to say on this point is, I wish to save them, and I trust we shall have less trouble with the seven than with the fifteen.

The chair was here taken by Mr. ALEXANDER.

The people of this country, North and South alike, obey the laws of interest and morality. There is no disposition at the North to destroy slavery. Let these accusations and criminations be heard no more. What I am about to say may weigh but little, but I know something of the North, and a little of the South. I fully believe that the institution of slavery within the States should be left with them exclusively—that such is the prevailing sentiment of the North. I say so because there is no disposition at the North to interfere with it. Do we believe that we can manage slavery better than you? No, sir! I believe that we could not manage it so well. If we had been reared on your soil in the midst of slavery, we could manage it just as well. It is a mistake and a pernicious error, for the South to believe that either party at the North proposes to raise any question relating to slavery within State limits. There is not a man at the North who could stand up long enough to fall down, if he should take such a position.

There are problems connected with slavery which we cannot solve; we do not wish to undertake their solution. We will leave them with you.

What, then, should we do? My answer is, live along as we have done before. We will live with you in the Union, under a Constitution that requires us to help you keep the peace. Where you dwell, we will dwell. Your people shall be our people, and where you die, we will die. Our Constitution is good enough for a people who are wise enough to live under it. With such a Constitution, Virginia proposes to leave the Union.

Will you leave the Union because the Constitution has not been rightly construed? No; for it has been construed to your entire satisfaction. It has been made to speak your views. The judges of our Supreme Courts represent your opinions. There has never been a construction of the Constitution adverse to your interests. The Dred Scott decision protects slavery in all the territories according to your desire, though against our strong conviction of law and right. Will you leave the Union because you have not had the Government your share of the time? You have had possession and control of it for fifty years out of seventy-two; and during a large portion of the twenty-two years, when we have had the President from the free States, the administration has been under the control of southern sentiments, and southern interests have been in the ascendency, through the servility of northern men. Do you leave the Union in order to secure the protection of a better Constitution? No; for they who have left us have said that the Constitution was well enough, if the people were sufficiently enlightened to live under it. Why is it, then, with all these facts before you, that you propose to turn away from the Government of our fathers, from all the glories of the past, the blessings of the present, and the hopes of the future, to hunt for new and better things under a new Government?

You are going out of the Union because you say we propose to immolate you—to turn you over to the mercies of a Government of slaves set free. How unfounded is such a belief! Are we not brothers still? I doubt whether there was a better feeling between the masses of the North toward you ten or seventy years ago than there is to-day. Can you find better fortunes elsewhere? Where do you propose to go? To the doubtful fortunes of a Southern Confederacy? You certainly are not acting with your accustomed prudence and forethought. You know what the teachings of history are in

relation to nations in that belt of latitude. You know how they have always compared with northern nations. Together the two sections may be prosperous and powerful; separated you can judge where the advantage must fall. Had we not better try and get along as we are?

This Conference presents some singular scenes. Although made up, so far as the North is concerned, of members of both political parties, yet, by a majority, it supports southern views of southern interests as earnestly and emphatically as any southern man has done. In all conflicts of the past and present you have carried your points, and you have reason to think you may do so in future. Yet you insist upon separation. Be assured, you will experience as bitter feuds among yourselves as you do in the fellowship of those you leave. You cannot be reconciled to even the existence of a minority against you, but you will find you cannot escape the minorities, and may fall into one yourselves. You propose to join the fortunes of the Southern Confederacy, in which, there is a contention already. You turn your backs upon the Government of the Father of his Country, whose portrait is before us, and join your fortunes to a mere southern nationality. Beware of the act. Look back over the last two thousand years, and contrast the stability of governments in southern latitudes with those more northern, under latitudes which you leave. Mexico, Central America, and South America, furnish valuable lessons on this Continent, while the Eastern Hemisphere is, in this respect, full of instruction. Will you leave a people whose character and habits are like those which have produced the permanence and power of Russia, France, and England, and ally yourselves to those more southern people who have not hitherto enjoyed stability, power, or happiness? Is it not wiser to stay where you are, to scorn the pernicious doctrines of new teachers, and to live and die under the flag of our fathers?

The annexation of Texas opened a Pandora's box of evil. Had not that taken place, the Missouri Compromise would not have been repealed. Had not that Compromise been repealed, the shadow of our present troubles would not have arisen.

You speak of the opposition of the North to slavery. Believe us or not, it is true, nevertheless, that slavery is regarded at the North as strictly a State institution; as such, we are content to let it remain; we desire to let it remain

such. But let not the North be misunderstood in its position. The North is willing to let slavery remain where it is—where our fathers left it; but against its extension into the territories, the North is inflexibly and unalterably opposed.

If there is any thing to pacificate I am in favor of pacification, but in favor of it according to the Constitution. The Constitution embraces all that any State can reasonably ask or honorably concede. But if from change of circumstances or other causes, the men of the South are of the opinion that their interests are overlooked or ill-defined, I, for one, will favor a call of a convention to consider amendments to the Constitution, and I will vote for such amendments as shall give as substantial protection to the South as the North ought to ask for, in the change of circumstances.

I submitted an address and resolutions a few days since for adoption in this Convention, which I hope may be carefully read before being rejected. They contemplated a convention, and their design is to give assurance of justice to the public. I oppose the proposition for an address by the committee, to be issued to the public after our adjournment. We wish to know beforehand what we adopt, and to weigh every word. There is a northern sentiment to be regarded as well as a southern sentiment.

We of the North have heard much said in denunciation of us, and have thought it political clap-trap and gasconade. But if we are made to believe in your hostility to us and the Government, we may conclude it is best to let you leave us. We have no fears in trusting ourselves, if necessary, to our industry, our habits, and enterprise, separate from the slaveholding States. Opinions are changing rapidly. I do not like the idea of maintaining the Union by force of arms. It is not in accordance with the theory of our Government.

A Virginian stated only a few days ago, that there was nothing which the South could ask or that the North could give, that was not found in the Constitution. But you say that we do not understand it alike—that the two sections differ in their construction of it. Well, if that is so, we are willing to submit to the courts.

You have always fared well enough there. If that is not enough we will leave the whole subject, amendments and all, to a General Convention. That

we now propose. We propose it fairly, not for any purpose of delay or postponement. Call the convention as early as it can be done. We will aid you. We will go home and in good faith urge our people to go into the convention, and there patiently and fairly consider all your claims, all your complaints. We would urge them to concede all they can without a sacrifice of principle. We will do this as a party, and with all our strength. Now, this does not quite come up to what you want, but is it best for you to insist upon breaking up the Government on that ground? That is neither sensible nor safe. We are like two lobes in the same skull; one cannot outlive the other. Destroy one and you destroy the other. I do not believe this Republic can stand without the Union which our fathers made. But it will stand—it must stand. Wise counsels will yet prevail. You will yet believe us sincere in our desires to relieve you. The end of the Union has not come—it is not coming. The Union will yet outlive us and our posterity.

Mr. FRELINGHUYSEN:—In rising to express briefly my views, I feel oppressed and embarrassed in view of the magnitude of the subjects we are discussing, and in the presence of this distinguished auditory. I cannot claim to represent an Empire State with its four millions of people, nor a Bay State, which we are told, with its wealth, its enterprise, and its commerce, can settle a new State every year. But with my colleagues, I represent a State which performed her part in the dark night of the Revolution—her share in that great struggle for our priceless institutions—a State which has ever since been faithful in the discharge of all her constitutional obligations. In that bloody conflict, upon her own soil, New Jersey joined hands with the North and South. There is scarcely a church spire within her borders beneath whose shadows does not lay the remains of some of the entombed patriots in that great conflict from both these sections, commingled with those of her own sons!

New Jersey was true to the Union in that great struggle—she has always since been true; and under the favor of Providence she always will be faithful to the Union and its memories, so inseparably connected with the glory and honor of her sons. Other States may have done as much, may have as good a record, may be entitled to equal credit with her. But in all her past history, I can point to her fidelity to the Union and her sister States with no blush of shame upon my brow. Other States might be wanting! New

Jersey never! She has always been true to her constitutional obligations; she has always kept—never sought to avoid them.

With a narrow stream separating her from a slaveholding State, there were never any underground railroads in New Jersey; she never rescued a fugitive slave from the custody of the law; no *personal liberty* bill ever disgraced the pages of her statutes, nor ever will disgrace them. In 1793 she enacted a statute providing for the prompt return of fugitive slaves found within her limits. She subjected any judge required to act under it, to imprisonment, if he neglected to perform his duties. That law has ever since been in force. It was reënacted in 1836, and again in 1846, when some of its defects were amended. Courteous as just, she provided by another law, passed in 1820, that any southern gentleman visiting her territory, might bring with him his household slaves, travel in, through, and out of the State, or even take up his temporary residence as securely in this respect as at home. This law was reënacted in 1847, and again in 1855; one of my worthy colleagues here was associated, upon the commission which revised this act, with that distinguished New Jersey Republican, WILLIAM L. DAYTON.

In the recent unhappy political contest, New Jersey, ever anxious to do justice to all sections of the Union, and injustice to none, as if hesitating and doubtful toward which of the two parties in that struggle she ought to incline, extended her fraternal hands to North and South, by giving one-half her electoral vote to each; thus showing that she still retains her unselfish spirit, which leads her to sacrifice her own preferences to her duty to the Union.

In the same spirit to-day she bears her full share of the heavy sorrow that rests, like a pall, over the people of the whole country as they witness this glorious fabric, which our fathers erected and cemented with their blood and their prayers—trembling, shattered, and dismembered. In the conciliatory spirit of my State, I, as a Jerseyman, proud of the title and every thing connected with it, wish to say a word to the South in all frankness and candor. I freely tell you that, in my opinion, you have a right to guarantees, and to constitutional guarantees. It is no answer to say that the Constitution has not been broken. That is not the question now. Reference has been made to the fact that WASHINGTON signed the present

Constitution. Yes, but when he did so we had a population of but three millions, and now we have a population of upward of thirty millions. Is it surprising that some change should be required in that instrument with this great change in the nation? The balance of power so long fluctuating between the free and the slaveholding States has at length entirely changed. It has now come to us of the free States, and therefore we are bound to respect the claims of the South, and quiet the apprehensions of its people.

It is of little use to make patriotic speeches here. The South demands guarantees, and I feel under obligations to respond to that demand. I assert as a general principle, that whoever has a right is entitled to have it guaranteed. I believe there is not a gentleman here, who, in his heart, does not think so. If it is right for them to have these guarantees at all, they should have them to-day. I do not care whether Virginia occupies a menacing attitude or not, my moral code is still the same; it is not effected by any thing that has been done or can be done by Virginia or any other State. It is my belief that nineteen-twentieths of the people of the North to-day are in favor of giving to the South all the guarantees it asks against all interference with slavery in the territories. Some say, "We admit this, but we will do nothing until the Republican President is inaugurated on the 4th of March." I am ready to do it now; and my obligations to do right will not be changed by the 4th of March rolling over my head.

Gentlemen have made eloquent and patriotic speeches asserting their determination not to interfere with the rights of the South. That is very pleasant and very proper. But those speeches are the expressions of individuals, and they pass away. Where is the man who will consent to hold any political right at the will of any man or class of men, no matter how kindly disposed? We all require security. The highest and grandest aim and object of government is not the stability and peace of society, but a well-grounded confidence in the minds of the people of the perpetuity of that stability and peace.

The South asks the right to use and occupy a portion of the common territory of the country. As a northern man I will accept the compromise, and I believe a large majority of the people will agree with me. You, gentlemen of the South, have asked that the arrangement may be extended to territory hereafter to be acquired. New Jersey has voted in this

Convention against interference with slavery in the territory, present or future, and she is the only northern State that has cast her vote in favor of your demand. Her representatives have been told somewhat sneeringly, that while slaveholding States voted against this proposition, New Jersey was the only free State that voted for it. Well, we accept the responsibility, and will bear it. New Jersey has made up her record. There it stands, and there let it stand forever. We are proud of it. If civil war is to come, if this land is to be deluged with fraternal blood, when that time comes there will not be a northern State represented here that would not give untold millions to be placed upon that record by the side of New Jersey.

The fact is, sir, we have acquired our liberties too cheaply. Had we purchased them at the cost our fathers did, by coloring the snows of winter by our blood tracks, and by passing the summers in the unhealthy morass, we should have learned to prize them more highly; we should be more patriotic and less proud, more sensible and less sensitive.

A word further on the subject of extending this provision to territory hereafter acquired. Gentlemen, you do not want that provision; you do not need any provision as to future acquisitions. You are better off without it. No present rights are involved in it. You are providing for a contingency which may never, and probably never will happen. Would it not be inconsistent for a nation to commit suicide because a constitution is not made to meet an improbable contingency? You have territory enough for the next two hundred years. You say you require it to maintain your honor, to preserve your fair equality, to maintain your lawful rights. Permit me to say you have no rights in territory which we never owned, and I hope never may. This is no question of honor or equality. But if we should acquire territory and should then exclude you from it, will it not then be time enough to resort to the expedient of national suicide as a remedy for the wrong? Nor do you require it for any particular purpose. You have within your States room for all the increase of a century. Your interest is to retain your sons at home and develop the wealth and advance the prosperity of your States, and not to send them to the western wilderness where one-half die in the process of acclimation. The fact that you are all in favor of placing in the Constitution new *restrictions* as to the *acquisition* of territory, proves you do not consider you need more territory. I heard it said, the other day, by a gentleman from Virginia, that the South wanted the provision for a

finality, to end forever this dispute about slavery. With all my heart I sympathize with him in his desire to end this discussion forever. You think you have suffered from these discussions at the South; so have we at the North. It has separated families and neighborhoods; it has broken up and scattered Christian churches; it has severed every benevolent society of the land; it has destroyed parties; it broke up the good old Whig party, and more recently sapped the strength and vigor from the Herculean Democracy. It now threatens the dissolution of the Union. Let us crush the head of the monster forever. Let us do it by restricting and defining its limits in existing territory.

Suppose the word "future" had been inserted. You do not wish to destroy all probability of the adoption of this proposition at the North. These proposals could not pass Congress, with the word "future," by the requisite vote; and if it passed Congress, there is no hope that twenty-five out of twenty-eight States would have adopted it. With it you would have given great strength to the opposition at the North. It would have created a more powerful anti-slavery party than ever before existed. No, you are better off by confining the provisions of this compromise to present territory—you having, as well as the North, in the contemplated amendment a veto on the acquisition of territory.

The North will want new territory before you will desire it. They will demand Mexico and Cuba for the advantages of trade. You then, having the veto power, can say to them—No, gentlemen, we will not agree to it unless our particular institution is there respected; or, if you please, you may go further and say, We will not acquiesce unless this territory comes in as a slave State so as to restore measurably the balance of power in the Government. With this veto power you would have the North in your hands, and could make your own terms. You make the provision more of a finality by letting it stand as it is.

But gentlemen say, they want the amendment for another purpose, in order that they may induce States that have gone out to return. Here, again, I sympathize with you. I had rather bring back South Carolina than to secure the annexation of both the Canadas. I would give more for one American than for a regiment of John Bulls. Ungenerous as South Carolina has been, I would receive her home again. I desire the States to return. Let their place

at the Federal Board remain vacant for them. Let the stars of their sovereignty on our nation's ensign remain unobliterated and without further dishonor. We are ready to receive them. But this provision as to future territory is not necessary for their return. The same considerations to which I have alluded, and which, will satisfy you that such provision is not requisite, will satisfy them. The guarantees which the North are ready to give as to the representation, taxation, and return of property, and the compromise as to the existing territory, will do much to satisfy them. To effect a compromise, you of the South must demand as little as you can render satisfactory to your people, and we of the North must give as much as our people will approve, and both parties must consent to avoid all objectionable phraseology.

Now, a few words to my friends of the North. There is resting upon us a grave responsibility. We are bound to settle this question finally in this Convention. Talk about a convention of the people! We who have no constitution, we who are tied up to no technicalities, must settle it. We of the North may meet political death; but let political death come, it is enough to have lived for, if we can settle this question.

But one asks, Will you strike hands with treason, and enter into compacts with rebels and traitors? Yes, sir! I will strike hands with just such rebels and traitors as I see around me; and I would give them what they ask as cheerfully and as freely as I would give a glass of water to a soldier returning wounded and weary from the field of battle.

But it is said we must first see whether we have a Government. We must try the strength of the Government. We must know whether the Government can assert its supremacy and compel obedience to its laws. Sir, that is just what I do not want to try. What, try the strength of the Government! and do so at the end of an administration in which corruption and treason and every evil principle have been contending for the mastery, when our ships are all away beyond sea, when our arms and our fortifications are out of our hands, when our treasury is bankrupt, our people divided, insolvency and ruin threatening our country, and all the Gulf States defying the authority of the Government? No, sir! this is no time to try the strength of the Government. When we do that, let us select some more auspicious period.

But another says these proposals of amendment contravene the Chicago platform. What if they do? Is the Chicago platform a law to us? Is it a law to any one? It was passed upon ten minutes' consideration in a convention of five thousand people. If it was a law, the convention should have been perpetual and never dissolved, in order that the law might have been subject to requisite modifications without a change of circumstances. A strange manner in which to enact such a law! But things have changed since the Chicago Convention. In fifty days, fifty years of history have transpired. This is enough to release us from the obligation, if any existed. It is not a law; it is a doctrine, the spirit, the policy of the party that it undertakes to enunciate. It is not a law, because a majority of the people have never given it their sanction. Mr. Lincoln was elected by less than a majority. And in his vote how many old Whigs and Democrats may be counted who did not support him *because* he stood upon the Chicago platform, but because they preferred him to either of the opposing candidates. And even if it is a law, I call upon the North to support the proposals of amendment here submitted. Let us, as Republicans, be honest, and when the opportunity offers are we not bound so to change the Constitution that three-fourths of all our present territory, now open to slavery, shall be consecrated to freedom? Yes, we are bound to relieve that three-fourths from slavery. All we need to do to secure this, is not to carry slavery where it is not, but to secure it where it is. I can go home to the Republicans of New Jersey with a clear conscience and say to them, that by our action here we have not carried slavery one inch farther than it was before. If they are not satisfied with that, they must be dissatisfied.

But there is one plank in the Chicago platform to which I will call the attention of my Republican friends. It must not be forgotten. I read from a genuine copy which I brought from Chicago myself.

"*Resolved*, That to the Union of the States, this nation owes its unprecedented increase in population, its surpassing development of internal resources, its rapid augmentation of wealth, its happiness at home and its honor abroad, and we hold in abhorrence all schemes of disunion, come from whatever source they may."

It is a rule of construction, that all parts of an instrument must be construed together; that due regard and effect must be given to all parts of it, unless they are clearly repugnant. Will any gentleman tell me how the Union can be more effectually preserved than by controlling disunion? It is by granting what is asked to those who might disturb its tranquillity, when they ask nothing unreasonable. This resolution every patriot can subscribe to; and I hold that it can be as effectually violated by the neglect to do all we can to turn aside disunion, as by affirmative action against the Government. And let me say that the party in this country which goes between the people and the preservation of the Union, will sink so low, eventually, that a bubble will not return to mark the spot where it went down. But I cannot understand how any one who is honestly opposed to the extension of slavery, as a political institution, can refuse the compromise proposed. The federal courts, to which we have committed the power, have decided that slavery, of right, goes into all the territories. The distinguished Republican from Massachusetts has told us that the court cannot be so organized, even if we keep the power, as to change that decision in twenty-five years. In that time the whole question will be determined. Now we have an opportunity, at once and forever, by constitutional enactment, to prohibit slavery from going into three-fourths of the territory, by simply agreeing that as to the other one-fourth, while it remains a territory, the *status* of slavery shall not be changed. I confess I have not the ingenuity to contrive how I should apologize to an audience of Republicans for refusing such a contract.

Now, what can we of the North, we Republicans, do? By a settlement here we can retain the Border States, and, in my opinion, that is equivalent to saving the Union. Retain the Border States and the seceding States must come back. If the Border States go, I believe war is inevitable. How can two sections exist with only an imaginary line between them. I do not believe the South will ever consent to give up the Capital, claimed to be within her borders, and the North could never surrender it. Sir, I shrink from the

prospect of civil war. The picture of civil war has often been painted, and by abler hands than mine. Its calamities and miseries, the sufferings that attend it, strike a chill of horror to the soul. But such a picture as a civil war in this country would be, has never been drawn. History would be searched in vain for its parallel. A civil war between the members of a family, between brother and brother, father and son, who have all enjoyed the same blessings which their fathers made early and bloody sacrifices to secure! Shall it be said that such a people, for such a cause, risked their interests, their country, their all, and rushed blindly into the calamities of a civil war? He has read history to little account who has not learned that such a warfare is, in its nature, not only cruel, but protracted. It is like letting loose the hurricane. Passion and poverty, carnage and crime, desolation and death, become the condition of a hitherto happy people. For thirty years Germany was ravaged, and millions slain by a contest occasioned by a difference in religious opinions. For more than thirty years the war of the Roses devastated England. The French Revolution, including the "Reign of Terror"—originating in a question of taxation and terminating with the supremacy of Napoleon—lasted nearly ten years. For a like decade civil war raged between England and Scotland, originating in a question of authority between the King and Commons, and ending in Cromwell's protectorate. Why, I ask, if we admit this fiendish visitant to our borders, should we anticipate that our fate would be more favorable? No! war is to be averted, and a nation still covered with glory is to be preserved by holding the Border States in the Union.

If I am asked what I would do; I answer, Compromise—compromise! Two gentlemen cannot live in a parlor together a single day without reciprocal compromises. I would not be "stiff in the back and firm in the knees." There is such a thing as too much "backbone." I say I would "back down" to save the country. I am not ashamed of the expression. Our Government itself was a compromise, and in nothing more so than as to the slavery question. Henry Clay was the great compromiser. The Missouri Compromise was his. Resigning his office as Speaker, on the floor of Congress by irresistible argument, and eloquence unequalled—though twice defeated, he succeeded in establishing the compromise line of 36° 30′—and thereby erected a barrier which severed the angry currents of opinion on this distracting theme, and which was as valuable to this nation as the isthmus at the

equator, holding in check the mighty ocean on either side. The North has compromised before; let her do it again. Let our friends at the South take as little as they can, and let the North yield as little as she can, but let us come together. The party that stands between the people and the preservation of the Government will be crushed to atoms. It will be remembered in history only with curses and indignation.

We all love this Union, and we mean to preserve it. There is no one here who, as he has witnessed the freedom, the comfort, the prosperity, and the pure religion disseminated among the people, has not hoped this nation was to accomplish great social and moral good for our whole race. Yes, in fond conception we have seen her the Liberator and Equalizer of the world—walking like an angel of light in the dark portions of the earth. These sacred anticipations may not be disappointed without a fearful accountability somewhere. And, sir, suffer me to say that this whole people have a strong regard for each other, notwithstanding the petulant differences which have arisen between us. Kindred blood flows in our veins, and that of our fathers mingles on the same field; and even now, in the day of our country's peril, our affections meet at the hallowed grounds of Mt. Vernon, of Marshfield, and of Ashland.

We have our history. WASHINGTON and FRANKLIN, and HENRY and SUMTER, as well as Bunker Hill, and Yorktown, and Trenton, are yours, and they are all ours.

We have our religion—and with every diurnal revolution of this sphere, from North and South, through the efficacy of a common faith, a goodly company are ascending to that realm of peace where their harmonious union shall never more be severed. And to-day, from a thousand hearthstones in the sunny South, and in the more rigid North, the family prayer ascends to the Father of us all, for a blessing on our common country and for the preservation of this Union. Those prayers will be heard, and this priceless Union will be preserved.

Mr. WICKLIFFE:—I wish to call the attention of the Conference for a moment to another subject, in order that members may give it their consideration. I shall call up my motion to terminate the debate upon the report of the committee early to-morrow, and ask to have the discussion

closed on the 21st instant. I am sure that I shall be sustained in this by every member who wishes to have this body come to any agreement. I wish to have the vote taken on the *twenty-second day of February*, that we may see whether the same day that gave a WASHINGTON to our Fathers, may not give PEACE to their posterity.

Mr. DODGE:—I have listened with intense interest to the addresses which have recently been made to the Conference. I respect the ability which they have exhibited—I honor the patriotism which has produced them. They have presented the important principles involved in the action of this Conference in a much more interesting and forcible manner than I could; and I would not occupy the attention of this body with a single observation, if I had the good fortune to be associated with a delegation in which unanimity of opinion and feeling prevailed. But I am not so fortunate. In that delegation I find many shades of opinion. I respect the views of my brother delegates. It is not for me to assume to sit in judgment upon them. I give each one of them credit for the same honesty and integrity which I claim for myself; and if I happen to differ from them, I claim that such difference honestly arises from the different paths in life which we pursue, which may lead us to take different views of the same subjects as they are here presented.

The Conference has heard the ideas of political and professional men expressed upon the important questions now presented for its consideration. These ideas have been well expressed, and we have all been interested in hearing them. Will you now hear a few words from a body of men who have hitherto been silent here, but who have a deep and abiding interest in the happiness and prosperity of the country and in the preservation and perpetuity of the American Union?

Sir! I am here as a plain merchant, out of place, I very well know, in such a Conference as this; but accident has brought me here, and I will tell you how and why I came. Three weeks ago I left my business—which in times like these certainly deserves all my attention—to come to the city of Washington on business of a public character. I came at the suggestion and request of the Chamber of Commerce of New York, hoping, in my humble way, to serve the public interests in this crisis. Inconvenient though it was, and involving personal sacrifices of no ordinary character, when others

thought my country had need of my poor services, I did not hesitate to respond to her call. And I hope I may never hesitate under such circumstances.

I came here to visit Congress, as a member of a committee, bearing a petition to that body signed by more than thirty-nine thousand of my fellow-citizens, all interested in the welfare and permanence of this Government. This number included more than twenty thousand business men and firms. This petition was earnest and emphatic. In it, we asked and prayed that Congress would adopt some plan that would settle our present sectional troubles; that would relieve the country from the anxiety and apprehension which pervaded it, and permit business and commerce to resume their accustomed channels, with assurances of safety in the future. We knew that the time had arrived when patriotic men must act; that commercial and financial ruin was impending. Our petition set forth, that in the opinion of the signers, the plan contained in what were called the "Border State Resolutions" was best calculated to secure the end desired. We thought those resolutions ought to be satisfactory to the reasonable and true Union men of the South, and that they ought not to be obnoxious to the prejudices or objections of the people of the free States. Still we were not strenuous—we were not committed to any particular plan. All we desired, was to secure such action on the part of Congress and the Executive, as would satisfy the country; such action as would give the country peace.

When we came to Washington we met *seventy* republican members of the Senate and House of Representatives. We had with them a most satisfactory and delightful interview. It gave me renewed hope for my country and her interests when I heard the expressions of conciliation and good will which these gentlemen used; I felt my confidence renewed.

Besides these gentlemen, who met and heartily coöperated with us, there were several members from the Border States whose expressions were not less friendly, although they did not think it expedient to act with us. Our committee made all the representations and explanations which were deemed necessary; and having performed my duty in that connection, in the earnest hope that we had influenced the action of Congress in the right direction, I was about to return home with my colleagues, when I received a telegraphic despatch requesting me to attend the meeting of this

Conference. I obeyed the summons; and since I received it, I have been laboring with all the ability, strength, and power with which GOD has blessed me, to secure the adoption of some plan here, that would settle our difficulties and avert from our beloved country the evils with which she is now threatened.

Sir, there has not one moment passed since I came here, during which I have not felt a deep and overpowering sense of the grave responsibility which rests upon myself and the other members of this Conference. I am accustomed to the trials, vexations, cares, and responsibilities of business; I know how to meet and grapple with them calmly. But I do not feel so here. My days are anxious and excited—my nights are wakeful and sleepless. In all the weary watches of last night, I could not close my eyes in slumber. The reason was, because I saw from a point of view which you do not, the certain and inevitable ruin that is threatening the business, commercial interests of this country, and which is sure to fall with crushing force upon those interests, unless we come to some arrangement here.

I speak to you now as a business man—as a merchant of New York, the commercial metropolis of the nation. I am no politician, I have no interest except such as is common to the people. But let me assure you, that even I can scarcely realize, much less describe, the stagnation which has now settled upon the business and commerce of that great city, caused solely by the unsettled and uncertain condition of the questions which we are endeavoring to arrange and settle here.

I tell you what I do not get from second hands, but what I know myself, when I assure you that had not Divine Providence poured out its blessings upon the great West in an abundant harvest, and at the same time opened a new market for that harvest in foreign lands, bringing it through New York in its transit, our city would now present the silence and the quiet of the Sabbath day. Why is this? It is because we, who have lived together in harmony with each other, a powerful and a happy people, are breaking up—are preparing to separate and go out from one another!

The merchants of our great commercial cities of Baltimore, Philadelphia, New York, and Boston, are not listless or unenterprising men. They are accustomed to the interests, the bustle, the excitement of business. They

have heretofore seen their stores crowded with buyers. During the day the interiors of their places of business were like busy hives. Not unfrequently have their clerks been obliged to labor all through the night to secure and send off the goods which they had sold to reliable customers during the day. When business is good and driving throughout our commercial cities, wealth and comfort are secured to merchants and agents engaged in commerce in those cities, and it indicates general prosperity in the country to which the goods purchased are transmitted. It shows a healthy condition of affairs both in city and country.

How stands the matter in those cities to-day? Now, just when the spring trade should be commencing, go to the extensive and magnificent establishments for the sale of goods in any of the cities I have named, where goods are sold which in prosperous times found their way into almost every family to a greater or less amount in this great country. What will you see in those cities now? The heavy stocks of goods imported last autumn, or laid in from our own manufactories, remain undisturbed and untouched upon the shelves. The customers are not there—they have not made their appearance. The few who have come at all, come not as buyers, but as debtors who cannot pay, and whose business is not to make purchases but to arrange for extensions. The merchants, in despair, are poring over their ledgers; checking off the names of their insolvent debtors, a new list of whom comes by each day's mail. Their clerks sit around in idleness reading the newspapers, or thinking mournfully of the wives and children at home, who will go unclad and hungry if they are discharged from their places, as they know they must be, if this condition of things shall continue. All alike, employers and employed, with all dependent upon them, are looking anxiously, and I wish I could say hopefully, to the Congress of the United States, or to this Conference, as the only sources from which help may come.

There are thousands and tens of thousands belonging to these classes all over the country who must have relief, or their ruin is inevitable. And then look at that other class, numerically larger, perhaps, certainly not less worthy of our regard, who are dependent upon these; I mean the mechanics, the day laborers, and those in turn dependent upon them. What are they to do? If some change does not come, if something is not done again to start the wheels of commerce and business, what is to become of them?

And look, too, at New England! She has latterly been the workshop of the South and the West. She has furnished their people with her manufactures—they have been her market. An excellent market, too, have they furnished her; she has grown rich through their consumption. How stands the matter with New England to-day? True, some of her shops are running, but many more are still. The noise of the loom, the rattle of the shuttle, have ceased in many of her factories, while others are gradually discharging their operatives and closing their business. But I will pursue this branch of the subject no farther. No one acquainted with the facts, will deny that the whole country is upon the eve of such a financial crisis as it has never seen—that this crisis will come as sure as that the sun will rise, unless we do something to avert it!

What is it that has thus stopped the wheels of manufactures and arrested the ordinary movements of commerce? What is it that has produced this unusual and uncommon stagnation of business? What is it that has driven away from the markets of the North those hitherto so welcome to them? I do not propose to go into the history of these questions. I will not attempt to enlarge upon the answers to them. I can condense the answer into few words. It is because anxiety, distrust, and apprehension, are universally prevailing. Confidence is lost. The North misunderstands the South—the South misunderstands the North. Neither will trust the other, and the consequences to which I have adverted necessarily follow.

I am a merchant. I am unused to public discussions or arguments, but I am a business man, and I take a business view of this subject. I can see as clearly as I can see the sun at noonday the causes of our present embarrassment. I believe I can see equally clear how those causes may be removed.

We have come here for a grand and lofty purpose. What nobler work can engage the mind of a true patriot than that of devising the means of saving his country when it is in peril? That work is ours. In performing it, are we not acting under a grave and solemn responsibility? We are, sir! The *people* will hold us responsible for the manner in which we perform this great trust. I know the people of this country. They value this Union. They will make great sacrifices to save it. They will disregard politics and parties—they will cast platforms to the winds of heaven, before they will place the Union in peril.

The delegates from New England in this Conference seem to be the most obstinate and uncompromising. They aver that they cannot agree to these propositions because their adoption involves a sacrifice of principles—that New England is opposed to slavery, and will not consent to put it into the Constitution, nor to its extension. They say the people hate slavery, and will not for that reason accept these proposals.

I do not believe one word of this. I know the people of New England well; they are true Yankees; they know how to get the dollars, and how to hold on to them when they have got them. They are a shrewd and calculating as well as an enterprising people; they understand their interests and will protect them. They will not sit quietly by and see their property sacrificed or reduced in value. Once show them that it is necessary to adopt these propositions of amendment in order to secure the permanence of the Government, and to keep up the property and other material interests of the country, and they will adopt them readily. You will hear no more said about slavery or platforms. They will never permit this Government, which has contributed so much to their wealth and prosperity, to be sacrificed to a technicality, a chimera. The people of New England know how to take care of themselves. Give them a chance, and they will settle all these points of difference in some peaceful way.

I am not here to argue or discuss constitutional questions. That duty belongs to gentlemen of the legal profession. I have lived under the Constitution. I venerate it and its authors as highly as any man here. But I do not venerate it so highly as to induce me to witness the destruction of the Government rather than see the Constitution amended or improved.

I regret that the gentlemen composing the committee did not approach these questions more in the manner of merchants or commercial men. We would not have sacrificed our principles, but we would have agreed—have brought our minds together as far as we could; we would have left open as few questions as possible. These we would have arranged by mutual concessions.

Mr. PRESIDENT, I speak as a merchant; I have a deep and abiding interest in my country and its Government. I love my country; my heart is filled with sorrow as I witness the dangers by which it is surrounded. But I came here

for *peace*. The country longs for peace; and if these proposals of amendment will give us peace, the prayer of my heart is, that they may be adopted. Believing such will be their effect, I will vote for them. I would like to say much more, but I will not occupy time that is now so valuable. Let us approach these questions in a spirit of conciliation. Above all, let us agree upon something. Let us do the best we can, and then let us go home and ask the people to approve our action. The people will approve it, and their approval will give us *peace*!

Mr. SMITH, of New York:—I did not propose to take any part in this debate. The Conference is made up of men, many of whose names are historical, and are intimately connected with the history of the country. I preferred to leave the whole discussion to them.

But as we are all seeking a common end, there are some views which have occurred to me that I thought should be presented, inasmuch as they appear not to have engaged the attention of others. New York, I am aware, has occupied considerable time, and I owe an apology on her part for trespassing farther upon your time.

We are here in a family meeting. On one side Virginia thought the parent was so ill that the family ought to be called together. I thought yesterday that we were undergoing some family discipline—that New York had in some way disgraced herself, and needed correction. I did not know what she had done; but I supposed the reproof was administered to her in a kindly spirit, though it was uncalled for.

The work proposed to us is, to be sure, a work of conciliation. But call it by whatever name you may, nothing less is proposed than an alteration of the Constitution. When we are asked to alter a Constitution that was made by WASHINGTON and MADISON, under which the country has grown to wealth and happiness, we certainly ought to approach the subject with the utmost deliberation. If we were settling family differences only, we would deliberate. How much more should we do so when we are dealing with the great principles which uphold our Government!

It is by great principles that nations are governed and their destinies are shaped. The world is governed by ideas and not by material interests. These

facts must be kept distinctly in view by those who take upon themselves the business of making constitutions.

It is stated that we are called here to settle the terms upon which certain sectional differences are to be arranged. We ought, then, first to ascertain what is the extent—what the limit of these differences.

In the first place, it is agreed that no constitutional rights have yet been invaded. The occasion for fear is not what *has been*, but what *may be* done. I suppose we are all alike tenacious of our rights, whether we derive them from the Constitution or from any other source. The rights of the State are just as important to New York as to Virginia. But it is said that appearances exist that indicate an intention on our part to interfere with some of the institutions of the South. We ask for the proof. None is forthcoming—nothing but the most vague and indefinite suspicion.

We propose to give the most satisfactory and absolute guarantees on that subject—the subject of interference with Southern institutions—even to put those guarantees into the Constitution. But that is not satisfactory—we are told that we cannot be trusted. I should hope that no Northern State could ever be truthfully required to admit that it had given cause for such an apprehension. But it is evident that this is not the real occasion of calling us together. What, then, is the occasion?

It is said, that certain sectional rights in the Territories must be secured and guaranteed. In that view I desire to call the attention of the Conference to two or three points in the plan of the proposed security.

As I understand the scheme, it is this: It is proposed to divide our present territory by the line of 36° 30′, with a view to have emigration from the free States go north, and from the slave States go south of that line. This is made in connection with a limitation preventing the acquisition of future territory. Now the first thing that impresses me is the objection to placing any such restraints upon emigration.

Mr. CLAY:—I think the gentleman misunderstands the report. I have seen no proposition that proposes to confine or restrain emigration.

Mr. SMITH:—I concede that there is no express provision restricting emigration, but such I think will be the effect of the amendments.

By the third section, Congress is prohibited, forever, from interfering with the subject of slaves, and the sixth section makes the others, with certain provisions of the Constitution as it now stands, irrepealable and unchangeable. No matter how much the condition of the country may change; no matter if all but the most inconsiderable fraction of the people may desire to change them; these propositions must stand as long as this country stands, a part of its fundamental law.

These are the general provisions which the scheme contains. It is offered as a measure of peace; of conciliation; to calm and quiet the existing excitement.

I think I am right in saying that when you are making a constitution you should consider all the conditions of the people who are to be governed by it; that you should keep in view all sections and opinions. It is my belief that instead of calming the excitement these propositions will aggravate it—will arouse it to a pitch it has never yet attained. I believe this, because the entire proposition goes counter to the fundamental ideas upon which our Government is based.

It proposes to *establish* slavery South. Is not this the first time in the history of the Constitution that it has ever been proposed, by affixing an article to that instrument, to *establish*—to *plant* slavery in territory which was free when it was acquired? The ordinance of 1787 prohibited slavery from going into the territory which was acquired by it.

In similar language the article proposes to abolish slavery in the territory north of the line. It is well to consider what is the legal condition of that territory now. New Mexico and Arizona were free when we first acquired them. Is not this provision wholly unnecessary? Mr. CLAY left such language out of the Missouri Compromise, as he avowed, on the ground that slavery could not legally go into territory free when it was acquired, without the aid of affirmative legislation. Previous and up to the year 1850, there was no difference of opinion among lawyers on this question. All agreed with Mr. CLAY.

Now, slavery has gone into a portion of this territory; violently too; without such legislation. Limits are prescribed to it, it is true, but *it is there*, and in this way. *That* is the *status* which is to be recognized, constitutionalized by

these articles. I am aware that there is a law of the territory that authorizes slavery, but slavery went there without law, in spite of the opinions and opposition of Mr. CLAY.

This is shown by the debate of 1850. It is proposed now to convert the territory south of the line of 36° 30′ into slave territory, and to make that conversion irrevocable. Suppose these propositions had been applied at the moment the territory was acquired. Then certainly slavery would have been carried there by force of these articles alone. The principle would have been the same; one case being no stronger than the other.

Mr. PRESIDENT, I shall not enter into any discussion of the merits or demerits of the question in any other than its political aspects. I have nothing to say respecting the morals of slavery. If there is virtue in the institution, you have the credit of it; if there is sin, you must answer for it. And here let me say that you discuss the moral aspect of slavery much more than we do. We hold it to be strictly a State institution. So long as it is kept there, we have nothing to do with it. It is only when it thrusts itself outside of State limits, and seeks to acquire power and strength by spreading itself over new ground, that we insist upon our objections.

Whatever the consequences may be, we should not conceal from each other the true condition of public opinion in our respective sections. A correct knowledge of this is essential and indispensable. It is in view of this opinion that our proposals should be framed, if they are ever to be adopted. The settled convictions of a people formed upon mature examination and experience, cannot be easily changed. This should be understood at the outset.

Now, I respectfully submit that no sentiment, no opinion ever took a firmer hold of the Northern mind—ever struck more deeply into it—ever became more pervading, or was ever adopted after maturer consideration, than this: That it is impolitic and wrong to convert free territory into slave territory. With such convictions the North will never consent to such conversion. Never! never!

This was the view of Mr. CLAY. His opinion always had great weight at the North. Mr. CLAYTON, of Delaware, declared to the same purpose, and avowed that Northern men could not be expected to consent to this. We, at

least, know how this opinion is consecrated in the hearts of the people of the North, and how idle it is for statesmen to run counter to it.

We are told by the gentleman from Maryland, that all the South wants is to have the force of the decision of the Supreme Court acknowledged as to that part of the territory south of the line, in consideration of which the South will yield what she gains by that decision in the territory north; and also that we must do this, or the slave States will be driven to join those States that have seceded. Now, it is due to frankness to say, that the North does not acquiesce in that statement; that the point as made by the gentleman from Maryland, has been *decided* by the Supreme Court. We know that the Chief Justice of that court has expressed his own opinion that way; but we don't know that it has been *decided* by that court. But if it has been so decided, the very ground of the decision is a misapprehension. If I rightly understand the language of Chief Justice TANEY, he insists that the Constitution expressly affirms the right of property in slaves. I think it does not. The North thinks it does not.

Mr. SMITH then proceeded to discuss the facts in the Dred Scott case, and the various opinions declared by the judges, showing that the decision did not extend so far as claimed by Mr. JOHNSON, and that the question of the *right* to hold slaves in the Territories was not presented by the record in that case.

Mr. WICKLIFFE:—There were two questions involved in the Dred Scott case. One was, the authority of Scott to sue; the other was, upon the constitutionality of the Missouri Compromise. Both these were decided in that case, and both were decided by the Supreme Court years ago.

Mr. SMITH:—I am aware of the views taken by the gentleman from Kentucky. I am stating as a matter of fact how this decision is regarded by a large portion of the people of the North. I am aware that the Southern construction of the decision is different, and some at the North concur in it. I am trying to see how the majority propositions will suit the people who agree with the Northern view.

I understand it is claimed that the court decided that slaves were property, and that the Constitution did not permit any restraint to be laid upon the owners of that property in the Territories. Yes, the court did decide that the

owner had the right to take his slaves into the Territory and hold them there; and to that extent they were property. It is a prevalent idea at the North that the Southern construction of this decision is not fair, and that it would be dangerous to adopt it.

We do not subscribe to the doctrine that the Constitution expressly affirms the right of property in slaves. We may be wrong; it may be a mere misapprehension. But with their present opinions, the people of the North will hesitate long before they make this express affirmation a part of the organic *law*.

Again; if the Constitution affirms this right, and was understood to do so by its framers, what was the need of the rendition clause? The Constitution is the supreme law in the free States as well as in the slave States. Under this construction the rights of the owner could have been enforced like any other right of property in the courts of law, without any provision for the rendition of slaves.

These are some of the opinions that are entertained at the North. They may be right or they may be wrong, but they have been deliberately adopted, and they prevail extensively. They cannot be changed by our action here. In all we do they must be respected. They are *constitutionally* entertained.

This proposition to carry slavery into the Territories, opens the discussion of the merits of that institution. Gentlemen say they wish to stop the discussion; that there has been too much of it already; that such a discussion would be especially unfortunate now. I do not propose to enter upon it here. But I desire to know in what manner you could more effectually invite discussion than by placing your proposed amendments before the people?

You must not forget that the people of the North believe slavery is both a moral and a political evil. They recognize the right of the States to have it, to regulate it as they please, without interference, direct or indirect; but when it is proposed to extend it into territory where it did not before exist, it becomes a political question, in which they are interested, in which they have a right to interfere, and in which they will interfere. Such an attempt they consider it their duty to resist by all constitutional means.

The establishing of slavery in the Territories is the practical exclusion of free labor in them. True, there is no direct provision for the exclusion of free labor in your propositions, but such will certainly be their effect. I appeal to gentlemen from the South to say from their own experience whether free labor *can* be employed side by side with slave labor. This presents another consideration. You of the South ask us to guarantee a right which you say is very important and very dear to you. You ask that your children may enter into and possess these new Territories. We know it. But the North asks the same privilege. We want our children to go there, and live on the labor of their own free hands. They are excluded if slavery goes there before us.

Mr. PRESIDENT, the people of the North do understand, that we are in a contest—a great and important contest. Yet it is one that can be carried on without trampling upon each other's rights—without attempting to secure any unfair advantage. That is the way the North proposes to carry on this contest in relation to the *extension* of slavery. This contest is between the owners of slaves on the one side, and all the *free men* of this great nation on the other.

There is another fact that should be kept in view. The Territories are the property not of the individual States, but of the General Government. They are held by the Government in trust, I grant. But in trust for whom? For the whole *people* of the Union; not in trust for thirty-four distinct States. The idea that these Territories are subject to partition—that South Carolina has the right to demand her thirty-fourth part of them in severalty, is one that by the North cannot be entertained. It is this idea which has produced that other more mischievous one—that an equilibrium must be maintained between the free and the slave States; in other words, between freedom and slavery. Where did this idea creep into the Constitution? It never has found, and it never will find, favor with the people of the North.

We may talk around this question—we may discuss its incidents, its history, and its effects, as much and as long as we please. And after all is said—disguise it as we may—it is a contest between the great opposing elements of civilization—whether the country shall be possessed and developed and ruled by the labor of slaves or of freemen.

Leave it where it is, and all is well. We can live in peace while it is a State institution; extend it, and who can answer for the consequences? Leave it where it is! I humbly suggest that in that direction lays the only path of peace. So long as the Territories are common property, so long will the people insist upon protecting their interests in them. In a Government like ours, conflicts will ensue. The Constitution provides the proper and peaceful way of settling them; and it is not by a partition of every subject in which a mutual interest exists.

Mr. SEDDON:—Does the gentleman consider this a nation, or a federal union of States?

Mr. SMITH:—If I did not consider this a nation I should certainly not be here.

Mr. SEDDON:—Is not the whole machinery of the Government federative? Is not its whole action that of a confederation? Is not the recent election of Mr. LINCOLN a proof of the fact? He was elected by less than a majority of the people.

Mr. SMITH:—In all the action of the Government with other governments, we are a nation as much as France or England. In every thing pertaining to the acquisition of territory we are a nation. The rights of the States are preserved in the Constitution, I admit, but their power is to be exercised subject to the powers reserved by the Constitution to the General Government. In all that respects these powers the Government is supreme.

I have only sought to state some of the opinions which are conscientiously entertained at the North upon subjects connected with these propositions. They *are* entertained there, and they must be respected by the Conference.

This doctrine of the preservation of the balance of power is a new doctrine. It was unknown to the framers of our Constitution. In my opinion it is a most mischievous doctrine to the country, and can only produce the most pernicious results. It is closely akin to the doctrine once broached in the Senate of a *duality* of the Executive, which, extended, would require a President for every sectional interest. Such ideas were never popular at the North. I do not think they would operate very well in practice at the South.

Mr. CLEVELAND:—Will the gentleman give way for a motion to adjourn?

Mr. SMITH:—Certainly.

On motion of Mr. CLEVELAND the Conference adjourned to ten o'clock to-morrow.

FOURTEENTH DAY.

WASHINGTON, THURSDAY, *February 21st, 1861.*

THE Conference was called to order by the President, at ten o'clock and fifteen minutes A.M., and prayer was offered by Rev. Dr. STOCKTON.

The Journal of yesterday was read and approved.

Mr. WICKLIFFE:—As I stated yesterday, I now wish to call up my resolutions relating to the termination of the debate, and to have a vote taken upon them.

Mr. CHASE:—Will Governor WICKLIFFE permit me to make a formal motion, which cannot give rise to discussion? It is this: The resolutions passed by the Legislature of Ohio, under which myself and my colleagues hold our seats, make it my duty to lay before the Conference the resolves I now offer. I ask to have them read, laid upon the table, and printed.

The resolutions were read, and the motion of Mr. CHASE concurred in.

The resolutions are as follow:—

Resolved, That it is inexpedient to proceed to final action on the grave and important matters involved in the resolutions of the State of Virginia, in compliance with which this Convention has assembled, and in the several reports of the majority and minority of the committee to which said resolutions were referred, until opportunity has been given to all of the States to participate in deliberation and action under them, and ample time has been allowed for such deliberation and action.

Resolved, therefore, That this Convention adjourn to meet in the city of Washington, on the 4th day of April next; and that the President be requested to address a letter to the Governors of the several States not now represented in this body, urging the appointment and attendance of Commissioners.

Mr. EWING:—I wish to state here that I do not concur in these resolutions.

Mr. WICKLIFFE:—I now offer two resolutions, one providing that debate shall cease upon the report of the committee, at 10 o'clock to-morrow. The other, that five minutes shall be allowed to the mover of an amendment to explain it, with five minutes to the committee to reply. Upon reflection, I will offer a third: That a motion to strike out and insert shall not be divided. If desired, a vote may be taken on the resolutions separately, as I wish to have each stand upon its own merits. I will not discuss these resolutions, for I think all must be impressed with the necessity for passing them now.

The resolutions were as follow:—

Resolved, 1st, That at 10 o'clock, the 22d February, 1861, all debate upon the report of the Committee of one from each State shall cease, and the Convention will proceed to vote, and continue to vote until the whole subject shall have been disposed of.

2d. If an amendment be offered by the Commissioners of any State, or the minority of such Commissioners, five minutes is allowed for explanation, and the like time is allowed to the committee to resist the amendment, if they desire to do so; and the mover of the amendment, or any member of the same State, may have five minutes for reply.

3d. A motion to strike out and insert shall not be divided.

Mr. CHITTENDEN:—I shall not debate these resolutions. As I am engaged in taking notes of the discussion, I cannot enter into a contest for the floor, and I would not if I could. My State has not occupied a moment of time on the general subject, nor are her delegates very anxious to address the Convention at all.

Whether the Conference will give one of us a few minutes or not, is simply a question of policy, of which I am not a disinterested judge. It is possible that some suggestions might be made which would be worthy of attention.

Mr. GOODRICH:—I move to amend by inserting Saturday, instead of to-morrow, in the first resolution.

Mr. RANDOLPH:—There is force in the remark of the gentleman from Vermont. No State should be cut off. I suggest that the States whose delegates have not addressed the Conference, should have the preference.

Mr. JOHNSON, of Missouri:—I represent a youthful State. She is not the daughter of any particular State or section, but of the Union. We Missourians love the Union, but we have fully arrived at the conclusion that the time has come when something must be done to prevent our entire separation. We have hitherto remained silent. We came here to preserve the Union. Not that we love the Union less, but we love our rights more. We love our rights more than the Union, our property, or our lives. We desire to come to a speedy adjustment. Ten days of Congress only remain. It will be difficult even to introduce our propositions, still more to get them considered. I sustain the motion of the gentleman from Kentucky; and Missouri will vote for it.

Mr. WICKLIFFE:—I will make the proposition as acceptable as possible. I will insert one o'clock instead of ten.

Exclamations were heard from several members of, "Let us agree," and the question being taken on the first resolution as amended, it was adopted.

Mr. BACKUS:—I move to insert in the second resolution, ten minutes instead of five, wherever the word occurs. That time is none too long to state the purpose of an amendment properly.

Mr. NOYES:—Is this resolution designed to exclude all discussion upon an amendment, except by the member moving it and the committee?

Mr. WICKLIFFE:—No! Such is not the intention. Any one can speak five minutes. I rely on our sense of propriety not to abuse this construction of the resolution.

The amendment of Mr. BACKUS was decided in the negative by a vote *viva voce*.

The resolution was then adopted, together with the resolution relating to motions to strike out and insert.

Mr. BROWNE:—I move that when the Convention adjourn, it adjourn to meet at half-past seven o'clock this evening.

Mr. CHASE:—I hope the Conference will not hold night sessions. Our day sessions are protracted and very laborious. I agree with Commodore STOCKTON, that night sessions are dangerous.

Mr. MOREHEAD, of Kentucky:—I do not agree with Mr. CHASE. I have particularly observed the demeanor of all the gentlemen in the Conference, and know that they are as well fitted for business at five o'clock in the afternoon as at ten o'clock in the morning.

A vote by the States was called for, which resulted as follows:

AYES:—Delaware, Illinois, Kentucky, Maryland, Missouri, New Jersey, New York, North Carolina, New Hampshire, Pennsylvania, Rhode Island, Tennessee, and Virginia—13.

NOES:—Connecticut, Indiana, Iowa, Maine, Massachusetts, Ohio, and Vermont—7.

Mr. WILMOT:—In pursuance of the instructions of the Legislature of Pennsylvania, I offer the following. I wish to have it laid on the table, and printed, that I may move it as an amendment to the committee's report at the proper time.

The motion of Mr. WILMOT was agreed to, and the amendment is as follows:

"And Congress shall further provide by law, that the United States shall make full compensation to a citizen of any State, who in any other State shall suffer, by reason of violence or intimidation from mobs and riotous assemblies, in his person or property, or in deprivation, by violence, of his rights secured by this Constitution."

Mr. DENT:—I ask that the following may be adopted as an additional rule:

"When the vote on any question is taken by States, any Commissioner dissenting from the vote of his State, may have his dissent entered on the Journal."

Mr. CHASE:—I suggest whether it would not be better to call the yeas and nays, on the motion of any Commissioner. I have heretofore introduced a resolution to that effect, which, with the gentleman's permission, I will now call up.

Mr. DENT:—I won't insist.

Mr. CHASE'S resolution was taken up as follows:

"The yeas and nays of the Commissioner of each State, upon any question, shall be entered upon the Journal when it is desired by any Commissioner, and the vote of each State shall be determined by the majority of Commissioners present from each State."

Mr. GUTHRIE:—I hope the gentleman will waive the first part of the resolution. I think it is the best way not to disclose our divisions any farther than is indispensably necessary.

Mr. CHASE:—I copied the rule *verbatim* from the one adopted by the Congress of the Confederation. I think it right and fair. But I have no

objection to modifying it, so as to have the yeas and nays called on the motion of any entire delegation.

Mr. DENT:—I did not withdraw my motion. I think it will accomplish all we need. It will be taken, of course, that those who do not dissent vote with the delegation.

Mr. REID:—I think it is entirely too late to talk about saving time. How long will it take to have the names of dissenting delegates called? For one, I desire to exercise my rights under the authority of the State I represent. I will not consent to waive them. When the vote of my State is cast, I wish to have the record show who is responsible for it.

The question was taken on the resolution offered by Mr. CHASE, and it was rejected, and the additional rule proposed by Mr. DENT was adopted.

Mr. COALTER:—I offer the following, which I shall move as an amendment to the report. I ask that it be laid on the table, and printed:

"The term of office of all Presidents and Vice-Presidents of the United States, hereafter elected, shall be six years; and any person once elected to either of said offices, shall ever after be ineligible to the same office."

The above motion to lay on the table and print was agreed to.

Mr. BRONSON:—I also have an amendment, of which I ask to have the same disposition made. It is as follows:

"Congress shall have no power to legislate in respect to persons held to service or labor in any case, except to provide for the rendition of fugitives from such service or labor, and to suppress the foreign slave trade; and the existing *status* or condition of all the Territories of the United States, in respect to persons held to service or labor, shall remain unchanged during their territorial condition; and whenever any Territory, with suitable boundaries, shall contain the population requisite for a representative in Congress, according to the then federal ratio of representation, it shall be entitled to admission into the Union on an equal footing with the original States, with or without persons held to service or labor, as the Constitution of such new State may prescribe."

Mr. BRONSON's motion was agreed to.

Mr GUTHRIE:—I call for the order of the day.

The PRESIDENT:—The order of the day is called for, and the gentleman from New York has the floor.

Mr. SMITH:—At the adjournment yesterday, I had proceeded to state two or three grounds upon which I think the proposals of amendment to the Constitution reported by the majority of the committee would be unacceptable to the North, and I had also stated some special objections to action in this way and at the present time.

The next consideration to which I would invite attention is this: Is it necessary or wise for the Conference, composed as it is of friends of the Union, or is it *expedient* thus to encounter the settled sentiments and convictions of the people of so large a section of the country? It is not necessary, for various reasons. This territorial question is, after all, a question to be looked at in a prospective view. Why is it necessary to disturb the Constitution by inserting such a provision as you propose? Why is it necessary for gentlemen from the South to have it in, in order to enable them to stand with their people at home?

Slavery is now in New Mexico. That must be acknowledged as a fact. The South think it rightfully there—the North believe it is there wrongfully. But its existence in the territories is a fact nevertheless. President LINCOLN cannot help it if he would. The Supreme Court will affirm its rightful existence there, whenever the question comes before that body. That Court cannot be changed before these territories are admitted as States, if the disposition exists to change it. You claim that the question is already decided. How, then, can it be important to you to press the adoption of these sections as a part of the Constitution? My judgment is, that it is best to leave this subject alone—that that is the true way to save the Union.

Gentlemen of the South, remember that if you must stand at home with your people, so also must we. There is a *North* as well as a *South*!—a northern people as well as southern people. You press us hard on these subjects. But can men who are rational ask us to abandon our own people, to go counter to their convictions and sentiments? We cannot do it! You

would not respect us if we did! I am very sure that if this Conference is to attain any beneficial result, it must abandon all idea of coercion or intimidation as applied to the friends of the Union.

It is said we are contending for a party platform—that we are letting party stand between us and the Union. I could trample parties and platforms under foot to preserve the Union, but I cannot understand how honest men can abandon principles because a party has adopted them into its platform. Do not tell us that by adhering to the Union and the Constitution, we are simply adhering to a party platform. Our principles are at least as dear to us, as yours are to you; you must not expect us to sacrifice them either to promote our own material interests or to promote yours.

Let us then sink the question of slavery in the Territories. Let the courts take care of it if need be, or let it be dealt with when it properly comes up. "Sufficient unto the day is the evil thereof." In that direction lays the path of peace.

But perhaps it may be suggested that such a course would really leave no plan to be adopted. Perhaps so. Is it, then, not true that we are having all this trouble over a contingency that may or may not arise? That the Constitution is sufficient for all purposes but this, you aver; and yet you say in the same breath that the Court has settled this question entirely and finally in your favor. Why not be satisfied, then, with the settlement? Can you make it more of a finality in the way you propose? No, gentlemen; believe me when I tell you that the true remedy does not consist in endeavoring to humiliate the people of one section for the benefit of another. Remember we are dealing with the *American* people; I would not throw the Constitution into the vortex of disunion that is opening before us; I would preserve it rather as a rock on which we can all safely stand. Do not throw away the compass by which alone we can safely be guided!

If I were to suggest a suitable remedy, what I think a wise plan, it would be the one adopted on a similar occasion, when one of the States set itself up in opposition to the General Government, with such very beneficial results; and that would be, to have the Government appeal to the people for support —to throw itself into the arms of the people. The result then has become historical. It is remembered with pride and pleasure by all. I would have a

similar course pursued now. The result would be equally grand, equally gratifying. It would rally every patriot, every friend of the Union from every section, to its support. You, gentlemen of the South, now friends of the Union, still give it the strength of your support, the favor of your countenance, and you shall be supported and sustained as you can be in no other way. You shall have the support of the power of the Government and of every friend of the Union in the country.

You remember how those patriotic statesmen, CLAY and WEBSTER—differing from the Executive, opposing his election with all the strength of their gigantic intellects—when the authority of the Government was questioned, and South Carolina, under the lead of Mr. CALHOUN, undertook to set herself up in opposition to it—how they waived all former differences, and instead of encouraging secession by their delay and timidity, without asking for new guarantees or for amendments of the Constitution, came voluntarily and earnestly to the support of the Executive and the administration, because the Executive was right, and was the chosen instrument of the people to preserve the integrity of the Union.

Mr. BARRINGER:—If the gentleman will excuse me, I will state that the course of the Executive against South Carolina was universally acquiesced in except in that State. And yet the opinion that President JACKSON far exceeded his powers, was equally unanimous. That precedent has been greatly misinterpreted.

Mr. SMITH:—I thank the gentleman from North Carolina. He entertains his opinions, I do mine, as to what then saved the Union. I should not probably be able to make him think with me; but I feel sure that the idea prevails quite extensively, that South Carolina returned to the path of duty then, because the power of the Government was wielded by an honest and energetic Executive. She came to the conclusion that any other course would probably be attended with danger.

Our present differences had no very remote origin. They belong to our own generation, and we ought to be compelled to deal with them. I think the so-called compromise of 1850 was the cause of all our troubles—that instead of saving the country it brought it into greater danger than it ever was before.

Mr. BARRINGER:—I wish to make a suggestion on that point.

Mr. SMITH:—I hope the gentleman will not forget that he will have a full opportunity to answer me. I am nearly through, and generally no good comes of interruptions. They only consume time.

I was about to say, that I do not propose to go into the question of who was to blame for that repeal. I agree with gentlemen from the South, that there is no profit now in discussing the origin of our troubles—in inquiring who set the house on fire before we put on the water.

Mr. CLAY:—Does the gentleman do justice to Mr. CLAY, when at one moment he says that Mr. CLAY held up the arms of the administration, strengthened the Executive, and aided the Government in putting down secession, and in the next, states that the compromise of 1850 was the cause of all our troubles, when it is well known that Mr. CLAY strongly favored that compromise?

Mr. SMITH:—When I speak of the unhappy effect of the compromise measures of 1850, I ascribe no wrong motives to Mr. CLAY or any one else. If he approved that compromise, I have no doubt he did it in the full belief that it would be beneficial to the country. Experience has shown that he was mistaken. Saying this is doing no injustice to Mr. CLAY. I spoke only of effects. I spoke of the zeal and the energy with which the patriots and eminent statesmen of all parties of this country have been accustomed to come forward and sustain the administration when any necessity existed for doing so. Now let this Conference—let all true friends of the Union everywhere, with one voice, without attempting to place any section or any man in a false or disagreeable position, unite in one determined effort in behalf of the Union, and in an attempt to bring the rash and dangerous men who would seek the destruction of the Government back to a sense of duty. Let us address the country, let us show that we are devoted to the Union, far beyond any considerations of party or self; let us invoke the aid of all true and patriotic men; let us ask them to lay aside for the time all other considerations, and give themselves for the present to the country! The spirit of the old time is yet alive. We can call it out in more than its old strength and vigor, and it will save the country. Our private interests may suffer, but the great interests of the Union will be strengthened and

preserved, and the Constitution, which has been our pride and strength, will not be dragged down into the great whirlpool of disunion. I appeal to the venerable and able men around me, who bear historic names—who have been themselves long connected with the Union and its Government, to join us in our struggle to save the Constitution.

The views I have expressed may be chimerical. I have advanced them with no little diffidence, but I felt called upon to state them in the discharge of a duty I owe to a people who love and will make great sacrifices to save the Constitution and the Union.

A majority vote, one way or the other here, would be of little consequence. It would carry no weight with it. But if the members of this Conference would all unite in such an appeal to the country, the response would be instantaneous and effective. The heart of the country is loyal; the heart of the South is loyal, I believe. We have abundant evidence that it is not too late to rely upon the Union men in Missouri and Tennessee!

Mr. CARRUTHERS:—The vote of Tennessee is entirely misunderstood.

Mr. SMITH:—Perhaps so. I have no acquaintance with the people of Tennessee. But I will not occupy the time of the Conference farther. I have spoken plainly, but I have spoken what I believe to be the honest convictions of a large majority of the people of this Union. Once more I say, let us not destroy the Constitution!

Mr. CLEVELAND:—I have not got up to make a speech. We have had too much speech-making here. It may be very well for gentlemen to get up and make long arguments and eloquent appeals, and show their abilities and powers, but it all does no sort of good—nobody is benefited, and no opinions are changed. I shall take no such course. I want to see whether this little handful of men who meet every day in this hall, cannot get together and fix up this matter which has been so much talked about. Let us pay no attention to the great men or the politicians. They have interests of their own. Some of them have interests which are superior to those of their country.

In the common affairs of life there are always a great many differences of opinion. Some treat these differences one way—some another. Foolish men

go to law, and always come out worse off than when they started. Sensible men get together, and talk matters over; one gives up a little, the other gives up a little, and finally they get together. Now, friends, that is just what I want to see done here.

We are all friends—friends of the Union and of each other. Nobody wants to give up the Union, or hurt Mr. LINCOLN. The South has got frightened—not exactly frightened, but she thinks the Republicans, since they have got the power, are going to trample upon her rights. She wants the North to agree not to do so. Now I should like to know what objection there was to that? Who is afraid to do that? If we could go to work at this thing like sensible men, we could settle the whole matter in two hours.

Now about these propositions. I do not see any thing alarming in them. I have not set to work to pick flaws in them. Leave that to the lawyers. I don't care much about them, nor does the North care about them. If the South will take them and be satisfied—if they will stop this clamor about slavery and slavery extension, I think she had better have them. For one, I am sick of the whole subject.

Let us then go about the work like sensible men; let us stop making long speeches and picking flaws in each other. It is a matter of business, and pretty important business. Let us consider it as such, and from this moment let us throw aside all feeling, and set about coming to some understanding. We can do it to-day as well as next week. I do not know that these propositions are the best that can be made; but if they are not, let us talk the matter over like good Union men, and see what is best. When we can find that out, let us agree. If we stay here and make speeches until doomsday, we shall be no better off. I am for action, and coming to an immediate decision.

Mr. COALTER:—If the vote of Missouri is to be taken as an evidence of her devotion to the Union, it must also be understood with this qualification: Her interests and her sympathies unite her closely with the South. She feels, in common with others, her share of anxiety for the future. She is devoted to the Union, and at the same time she insists that it is fair and right that these guarantees should be given.

It has been distinctly avowed on this floor that the people of certain sections of the North *abhor* slavery. Ought we not to be distrustful when a party

entertaining such sentiments comes into supreme power? If Massachusetts abhors *slavery*, how long will it be before she will abhor *slaveholders?*

Ignorance is the source of all our difficulties. The people of the North know little of the condition of the negro in a state of slavery. We know that the four millions of blacks in the South are better off in all respects than any similar number of laborers anywhere.

But I rise only to correct a false impression in regard to Missouri. I have only besides to express my full conviction that if the North will not give us these guarantees, we are henceforth a divided people.

Mr. GOODRICH:—Mr. President, the object of this Convention, assembled on the call or invitation of Virginia, is, as set forth in the preamble and resolutions of her General Assembly,

"To restore the Union and Constitution in the spirit in which they were established by the fathers of the Republic;" or, as otherwise expressed, "to adjust the present unhappy controversies in the spirit in which the Constitution was originally made, and consistently with its principles."

This agrees, in substance, with the purpose of the Republican party, which, in the words of the Philadelphia platform, is declared to be that of "restoring the action of the Federal Government to the principles of WASHINGTON and JEFFERSON."

Virginia announces to the other States that she "is desirous of employing every reasonable means," and is "willing to unite" with them "in an earnest effort" for the accomplishment of this common end and object of that State and the Republican party; and she is moved to make this her "final effort," by "the deliberate opinion of her General Assembly, that unless the unhappy controversy which now divides the States of this Confederacy shall be satisfactorily adjusted, a permanent dissolution of the Union is inevitable," and by a desire to "avert so dire a calamity."

Massachusetts, equally willing to unite with the other States in an earnest effort to further the same end, accepted the invitation of Virginia, and sent Commissioners here to represent her.

The honorable Chairman (Mr. GUTHRIE) of the committee to report a plan of adjustment, in his opening speech, advocated with earnestness and eloquence a restoration of the Constitution to the principles of the fathers. The distinguished gentleman (Mr. RIVES) from Virginia demands a "restoration of the Constitution to the landmarks of our fathers," and his colleague (Mr. SEDDON) urges a return to the "policy of our fathers in 1787."

This assumes that we have departed from the principles and landmarks of our fathers, and from the policy of 1787. The call of the Convention assumes this; the platform of the Republican party assumes it, and the gentlemen whose remarks I have quoted assume it, and it is true.

The particular object of a return to the principles and landmarks of the policy of 1787, as stated in the preamble and resolutions of the General Assembly of Virginia, is, "to afford to the people of the slaveholding States adequate guarantees for the security of their rights." This implies that such a return will afford these adequate guarantees. I agree that it will; and I am ready, and Massachusetts is ready, to adjust this unhappy controversy, and to give the guarantees demanded in exactly this way.

Stated in these general terms, there is a perfect agreement between us. But we find a wide difference when we go one step farther, and learn precisely what Virginia claims would be a restoration of the Constitution to the principles of the fathers, and a return to the policy of 1787. This she has told us in one of the resolutions sent out with the call for this Convention. That resolution is as follows:

"*Resolved*, That in the opinion of the General Assembly of Virginia, the propositions embraced in the resolutions presented to the Senate of the United States by Hon. JOHN J. CRITTENDEN, so modified as that the first article proposed as an amendment to the Constitution of the United States shall apply to all the territory of the United States, now held or hereafter acquired south of latitude 36° 30′, and provide that slavery of the African race shall be effectually protected as property therein during the continuance of the territorial government, and the fourth article shall secure to the owners of slaves the right of transit with their slaves between and through the non-slaveholding States and territories, constitute the basis of

such an adjustment of the unhappy controversy which now divides the States of this Confederacy, as would be accepted by the people of this Commonwealth."

It was in reference to these propositions that the gentleman (Mr. SEDDON) from Virginia, has asked us the question, "Are we not entitled to these added guarantees according to the spirit of the compact of our fathers?"

The true answer to this question is the pivot on which this whole controversy must turn. If the slave States are not entitled to these added guarantees, "according to the spirit of the compact of our fathers," then Virginia, as I understand her Commissioners, and the resolutions of her General Assembly, does not claim them. She stands upon her rights according to that compact. And all such rights Massachusetts is ready to accord to her, fairly and fully.

By the spirit of the compact of our fathers is meant, the Constitution as they understood it, and as the people of that day understood it. And this is what is meant by the "landmarks of the fathers." All admit that the Federal Government should be administered now, as it was administered by its framers. This is what gentlemen from the slave States, in giving utterance to their intense devotion to the Union, say.

Then, what is the Constitution, as understood by those who framed it? What does it mean when interpreted by the light of the policy of 1787? and what is the spirit of the compact which they made? This is the question we are called to consider. In my remarks I do not mean to wander from it.

So far as the Constitution touches the question out of which the present unhappy controversy has arisen, I say it means this: That slavery, as it existed or might exist within the limits of the original States, should not be interfered with to the injury of the lawful rights of slaveholders under State authority; on the contrary, that it should have the right of recaption, and a qualified protection; but that outside of those limits, otherwise than in this right of recaption, it should never exist, neither in the territories nor in the new States.

And let me say here, that when I speak of the original States, I mean the territory of those States as then bounded. Alabama and Mississippi

belonged to Georgia, Tennessee belonged to North Carolina, Kentucky belonged to Virginia, Vermont belonged to New York, and Maine belonged to Massachusetts, and were parts of the thirteen original States, at the time the Constitution was adopted. When, therefore, I speak of territory outside the original States, I do not refer to territory within any of the States named.

Mr. BOUTWELL:—I trust my colleague does not claim to speak for Massachusetts, when he denies the right of any State of this Union to establish and maintain slavery within its jurisdiction, or to prohibit it altogether, according to its discretion. This right was reserved to the States; and States in this Union, whether original or new, stand on a footing of perfect equality.

Mr. GOODRICH:—I certainly do not claim to speak for Massachusetts, though I believe the opinion of the great majority of her people agrees with my own on this subject. However, what I claim is, that Ohio and the other States of the northwestern territory have no constitutional power to legalize slavery within their limits; that they were admitted into the Union without any such power, and that every other new State formed from territory outside the limits of the original States, according to the "spirit of the compact of our fathers," should have been admitted without that power, or the right to acquire it. This I will now proceed to show.

On the first day of March, 1784, the northwest territory, constituting the present States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, was ceded by Virginia to the United States. The jurisdiction of the United States was then exclusive and paramount, or soon became so—such other States as had claimed any right of jurisdiction having ceded it. The cession of Virginia was made by THOMAS JEFFERSON, SAMUEL HARDY, ARTHUR LEE, and JAMES MONROE, who were delegates in Congress from that State, and had been appointed Commissioners for this purpose. On the same day the cession was made, Mr. JEFFERSON, in behalf of a committee, reported a plan for temporary governments in the United States territory then and afterwards to be ceded, and for forming therein permanent governments.

That plan provided, "that so much of the territory ceded, or to be ceded, by individual States to the United States, shall be divided into distinct States." It is obvious that this plan contemplated the possession of territory in no

other way than by cession from the States. It was expected that Georgia and North Carolina would cede their western lands, now the States of Alabama, Mississippi, and Tennessee, as they did some years later; and Mr. JEFFERSON's plan was intended to embrace those lands or territories to be ceded. Consequently, the following provisions, which were part of the plan reported, were intended by him to apply to Alabama, Mississippi, and Tennessee, viz.:

"After the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in the said States, otherwise that in the punishment of crimes."

Here the States were evidently those to be formed in United States territory. And farther on in the plan it is stated,

"That the preceding articles shall be formed into a charter of compact, and shall stand as fundamental Constitutions between the thirteen original States, and each of the several States now newly described, unalterable ... but by the joint consent of the United States in Congress assembled, and of the particular State within which such alteration is proposed to be made."

This was a proposition to exclude slavery forever after 1800, not only from the territories which had been, and might afterwards be, ceded, but from the States to be formed in them, and to make it a fundamental Constitution between the original States and each new State. It excited a short discussion, and was postponed from time to time to the 19th of April, when Mr. SPEIGHT, of North Carolina, moved to strike it out. The motion was seconded by Mr. REED, of South Carolina. The vote by States, on the motion to strike out, was:

YEAS.—Maryland, Virginia, and South Carolina—3.

NAYS.—New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and Pennsylvania—6.

This was under the Confederation articles, which provided that the vote on all questions should be taken by States, each State casting one vote; that no proposition could be adopted without the vote of seven States in favor of it, and that the vote of no State could be counted unless two members, at least,

were present. As there were but six States in favor of the proposition to prohibit slavery after 1800, it was stricken out.

There was but one member present from New Jersey, and the vote of that State was not counted. The member present voted for Mr. JEFFERSON'S proposition. Another vote from that State would have made the required number, and carried the measure.

In North Carolina, WILLIAMSON voted for prohibition, and SPEIGHT against it. One more vote from that State would have made seven States for the proposition, and it would have been carried.

JEFFERSON voted for his own proposition to prohibit; and if one of the other two members present from Virginia had voted with him, that, too, would have made the required number of seven States.

The vote North and South, by members, was in favor of prohibition: North, 14; South, 2—total, 16. Against prohibition, South, 7.

The majority was more than two-thirds; enough to carry it over an executive veto under the present Constitution, and yet it was defeated. And this vote was given in favor of absolute and unconditional prohibition, and that alone, without the right of reclaiming fugitive slaves, or any proposition, or any expectation to confer it. Under the Confederation, no such right existed, nor was it agreed to till more than three years afterwards, and then with the greatest reluctance, and as a matter of compromise, as I will presently show.

Such was the action of the American Congress in 1784—a unanimous vote from the North, and two in nine from the South—in favor of excluding slavery forever after 1800, in all new States to be formed, in territory ceded or to be ceded, embracing Tennessee, Alabama, and Mississippi, in the extreme South. Nothing can be clearer than that the interdiction was to apply to all such States, and to constitute a fundamental Constitution between them and the original States, unalterable without the consent of Congress. The new State was to be deprived of all power to admit slavery. This proposition was made and voted for by JEFFERSON. But how many votes would such a proposition receive in this Convention? Not many, I fear, even from the free States. My friend and colleague, though strongly

anti-slavery, and earnestly devoted to freedom in the Territories, is afraid I shall commit Massachusetts to this old Jeffersonian doctrine of no slavery, and no right to establish it in the new States.

From this time till July, 1787, the question of slavery in the Territories and new States remained open and unsettled. In 1785, RUFUS KING renewed Mr. JEFFERSON's proposition to prohibit, and it was referred to a committee by the vote of eight States; but it never became a law, a few from the South always preventing it.

The Federal Convention to revise the old, or frame a new Constitution, assembled in Philadelphia on the second Monday of May, 1787. And here let me read a single paragraph from a lecture by Mr. TOOMBS, of Georgia, delivered in Boston in 1856. It is as follows:

"The history of the times and the debates in the Convention which framed the Constitution, show that the whole subject of slavery was much considered by them, and perplexed them in the extreme, and that those provisions which relate to it were earnestly considered by the State Conventions which adopted it. Incipient legislation providing for emancipation had already been adopted by some of the States. Massachusetts had declared that slavery was extinguished by her Bill of Rights. The African slave trade had already been legislated against in many of the States, including Virginia, Maryland, and North Carolina, the largest slaveholding States. The public mind was unquestionably tending toward emancipation. This feeling displayed itself in the South as well as in the North. Some of the present slaveholding States thought that the power to abolish, not only the African slave trade, but slavery in the States, ought to be given to the Federal Government; and that the Constitution did not take this shape, was made one of the most prominent objections to it by LUTHER MARTIN, a distinguished member of the Convention from Maryland; and Mr. MASON, of Virginia, was not far behind him in his emancipation principles. Mr. MADISON sympathized to a great extent. Anti-slavery feelings were extensively indulged in by many members of the Convention, both from the slaveholding and the non-slaveholding States."

Mr. MADISON's testimony is important here. He was a member of the old Congress in New York, until the assembling of the Constitutional

Convention, and took his seat as a member of that body.

The History of the Ordinance of 1787, by Hon. Edward Coles, contains the following statement, as made to him by Mr. Madison:

"The old Congress held its sessions, in 1787, in New York, while at the same time the Convention which framed the Constitution of the United States held its sessions in Philadelphia. Many individuals were members of both bodies, and thus were enabled to know what was passing in each—both sitting with closed doors and in secret sessions. The distracting question of slavery was agitating and retarding the labors of both, and led to conferences of intercommunications of the members."

I quote this testimony now, to show that Conferences were held between the members of Congress and the Federal Convention, upon the subject of slavery. I shall quote farther from it on another point, after turning for a moment to the proceedings of Congress.

On the 9th July, 1787, the Convention having been in session about two months, the ordinance for the government of the Western Territory, which had been reported in a new draft on the 26th of the preceding April, and ordered to a third reading on the 10th May, and then postponed, was referred to a new committee, consisting of Messrs. Carrington, of Virginia; Dane, of Massachusetts; R.H. Lee, of Virginia; Kean, of North Carolina; and Smith, of New York. Two days afterwards, July 11th, Mr. Carrington reported what has since been known as the "Ordinance of 1787," with the exception of the 6th article of compact, prohibiting slavery. When it came up the next day, the 12th, for a second reading, Mr. Dane rose and stated as follows:

"In the committee, as ever before, since the day when Jefferson first introduced the proposal to prohibit slavery in the territory, it was found impossible to come to any arrangement; that the committee desired to report only so far as they were unanimous; that they, therefore, had omitted altogether the subject of slavery; but that it was understood that any member of the committee might, consistently with his having concurred in the report, move in the house to amend it in the particular of slavery. He therefore moved as an amendment, to add a prohibition of slavery in the following words:

"That there shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted."

And as a compromise, Mr. DAVIS proposed to add the following proviso:

"Provided always, that any person escaping into the same, from whom labor-service is lawfully claimed in any one of the original States, such fugitive may be lawfully retained and conveyed to the person claiming his or her labor or service as aforesaid."

This was at once unanimously accepted by the slave States. The next day, the 13th, the ordinance was passed, every slave State present, viz.: Delaware, Virginia, North Carolina, South Carolina, and Georgia, and every member from those States voting for it. The same prohibition—which a large majority of the South had resisted when presented alone—was now, when accompanied with the proviso, unanimously agreed to.

Here was a sudden change. But the proviso giving the right of reclamation in the said territory, only partially explains it. For a full explanation we must turn again to the Convention. And the first thing is a further extract from Mr. MADISON, respecting a letter, before quoted, as follows:

"The distracting question of slavery was agitating and retarding the labors of both bodies—Congress and the Convention; and led to conferences and intercommunications of the members, which resulted in a Compromise, by which the Northern, or anti-slavery portion of the country, agreed to incorporate into the ordinance and Constitution, the provision to restore fugitive slaves; and this mutual and concurrent action was the cause of the similarity of the provisions contained in both, and had its influence in creating the great unanimity by which the ordinance passed, and also in making the Constitution the more acceptable to the slaveholders."

Mr. MADISON, also, in the Virginia Convention, urged the ratification of the Constitution for the following among other reasons, viz.:

"At present, if any slave escape to any of those States where slaves are free, he becomes emancipated by their laws; for the laws of the States are uncharitable to one another in this respect. This clause was expressly

inserted to enable owners of slaves to retain them. This is a better security than any that now exists."

General PINCKNEY, one of the delegates in the Federal Convention, from South Carolina, in a debate in the House of Representatives of that State on the Constitution, said:

"We have obtained a right to remove our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all the circumstances, we have made the best terms we could, and on the whole I do not think them bad."

In the speech made by Mr. WEBSTER on the 7th of March, 1850, he remarked that:

"So far as we can now learn, there was a perfect concurrence of opinion between those respective bodies—the Congress and the Constitution—and it resulted in this ordinance of 1787."

When Mr. WEBSTER had closed his speech, Mr. CALHOUN arose, and among other things, said:

"He, Mr. WEBSTER, states very correctly that the ordinance commenced under the old confederation; that Congress was sitting in New York at the time, while the Convention sat in Philadelphia; and that there was concert of action.... When the ordinance was passed, as I have good reason to believe, it was upon a principle of compromise; first, that this ordinance should contain a provision similar to the one put in the Constitution, with respect to fugitive slaves; and next, that it should be inserted in the Constitution; and this was the compromise upon which the prohibition was inserted in the ordinance of 1787."

This agrees with Mr. MADISON. The idea he conveys could scarcely have been more identical with Mr. MADISON if he had used MADISON's words. When the Southern members of Congress voted unanimously for the 6th Article, or anti-slavery clause in the ordinance, with the proviso in respect to slaves escaping into the Territory, it was with the understanding that the Convention would insert a similar provision in the Constitution respecting slaves escaping from one State to another; and this—its insertion in both—was the compromise upon which the prohibition was inserted in the

ordinance. Such is the concurrent testimony of Mr. MADISON and Mr. CALHOUN.

We will now turn to the ordinance of 1787, and see whether it applies, as the one proposed by Mr. JEFFERSON in 1784 did, to the new States as well as to the Territories, and is the basis of State as well as Territorial Governments, and was so intended. It declares as follows:

"For extending the fundamental principles of civil and religions liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish these principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said Territory; to provide also for the establishment of States and permanent governments therein, and for their admission to a share in the Federal councils, on an equal footing with the original States, at as early periods as may be consistent with the general interest.

"It is hereby ordained and declared by the authority aforesaid: That the following articles shall be considered as articles of compact between the original States and the people and States in the said Territory, and forever remain unalterable, unless by the common consent."

Then follows six articles of compact. Part of the fifth and the sixth are in these words:

"ART. 5.... Whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent Constitution and State Government; *provided* the Constitutional Government, so to be formed, shall be republican and in conformity to the principles contained in these articles."

"ART. 6. There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted; *Provided, always*, That any person escaping into the same from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid."

Such is so much of the ordinance as bears directly upon the point I am discussing. And the Convention, as if for the very purpose of giving the unequivocal sanction of the Constitution and of the country to this compromise, and of establishing it as the permanent policy of the Government, expressly provided that the "engagements entered into before

the adoption of this Constitution shall be as valid against the United States under this Constitution, as under the Confederation."

This ordinance, then, which was an unalterable compact, prohibiting slavery, and fixing and establishing freedom as the basis of all laws, constitutions, and governments in the Territory forever—State Constitutions and Governments of course included—was made valid by the Constitution itself. And on this point I refer to the highest Southern authority, the late Judge BERRIEN, who was thoroughly pro-slavery in his views, and should certainly be ranked among the ablest lawyers and statesmen Georgia has ever produced, who spoke to this precise point during the compromise discussion in the United States Senate in 1850, as follows:

"Validity was given to their act by the clause in the Constitution, which declares that contracts and engagements entered into by the Government of the Confederation, should be obligatory upon the Government of the United States established by the Constitution."

It is the "act" of Congress in passing the ordinance referred to here. This being so, it was the same in effect as though the ordinance had been written word for word in the Constitution itself. A contract can be made valid, only by making it binding and obligatory upon the parties to it, according to its terms and meaning. To make an unalterable compact valid is to make it perpetually binding.

Having shown that the articles of compact in the ordinance were unalterable; that validity was given to them by the Constitution itself; that in express terms they applied to States as well as to Territories, and must, therefore, being made valid by the Constitution, necessarily have been understood and intended by Congress and the Convention to prohibit slavery as effectually in one as the other, I will now show very briefly that they were also so understood in all parts of the country.

Mr. WILSON, of Pennsylvania, a prominent member of the Federal Convention, and also of the State Convention for ratifying the Constitution, remarked in the latter as follows:

"I consider this clause as laying the foundation for banishing slavery out of the land.... The new States which are to be formed will be under the control

of Congress in this particular, and slavery will never be introduced among them."

Mr. WILSON speaks of the clause authorizing the prohibition of the African slave trade.

In the Massachusetts Convention to adopt the Constitution, Gen. HEATH said:

"Slavery cannot be extended. By their ordinance Congress has declared that the new States shall be republican States, and have no slavery."

Colonel BLAND, a member of the Convention from Virginia, said he "wished slavery had never been introduced into America," and that "he was willing to join in any measure that would prevent its extending farther." To allow it in new States would not prevent its extending farther, and therefore it was prohibited in such States.

Doctor RAMSAY, a member of the Convention of South Carolina, in his History of the United States, says:

"Under these liberal principles, Congress, in organizing colonies, bound themselves to impart to their inhabitants all the privileges of coequal States.... These privileges are not confined to any particular country or complexion. They are communicable to the emancipated slave, for in the new State of Ohio, slavery is altogether prohibited."

This compact, then, applies to State as well as Territorial governments, and was so understood in all sections of the country—northern, central, and southern—when the Constitution was ratified.

Let me now call attention to the very significant proviso to the sixth article. What does the word original mean, and what does the whole article mean with that word in the proviso?

"There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, &c.; *Provided, always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive

may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid."

This means that there shall be neither slavery nor involuntary servitude, except for the purpose of reclaiming such fugitives—and I admit that slaves were intended—as are lawfully claimed in any one of the original States. The very fact of the proviso implies that Congress understood that the right of reclamation could not exist, unless it was excepted.

And of course it could only exist for the purpose excepted. The intention was to grant the right to the original States, but to limit it to them. It is impossible to conceive of a measure for framing the proviso as it is, if that had not been the intention. As the ordinance itself made provision for the formation of new States, such States must have been in the minds of members when acting upon it. If the object had been to authorize the reclamation of slaves escaping to this territory from other States than original States, it is certain the word "original" would have been omitted. It was intended for the purpose of limiting the right.

Now observe that this article, proviso and all, is part of an unalterable compact to which the Constitution has given validity. Nobody pretends Congress has ever had the power to alter it. Mr. TOOMBS denies any such power in express terms. A law which Congress cannot alter has substantially the force and effect of a constitutional proviso. This, then, is the only law for the reclamation of fugitive slaves in the five States of the northwest territory; and there can be no other, the Constitution having made it perpetually valid.

Such obviously is the meaning and legal effect of the fugitive slave provision in the ordinance. And the meaning of that, derived as it is not merely from the consent of the Federal and State conventions, but from their concurrent action, necessarily fixes the meaning of the provision on the same subject in the Constitution, and shows how it must have been understood. As the two were parts of the same compromise, of course neither was understood to be inconsistent with the other. The provision in the Constitution is in these words:

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation

therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

So far as this describes, or was understood to describe, persons held to service or labor as slaves, it necessarily must also have been understood to apply only to the original States. This follows from what has already been shown. And it must have been so understood for another reason, because it was only "in" and "under" the laws of those States that persons could be held to service or labor as slaves. Under the laws of the Territories and new States, their being so held was forever prohibited. Hence, none but those escaped from one of the original States could ever be legally liable to reclamation, according to the understanding and intention of the original parties to this compact. This manifestly was the meaning of "the fathers," when the ordinance and Constitution were framed and ratified.

The two provisions must be construed together. That in the ordinance was intended for the Territories and new States, and that in the Constitution for the original States. If that in the Constitution had been intended for the Territories, it would have read, "escaping into another State or into the Territory," and that in the ordinance would have been entirely omitted. The proviso to the prohibition in the Missouri Compromise in 1820 is a striking confirmation of this. That was copied, word for word, from the ordinance of 1787, or original compromise, except substituting for the words "in any one of the States," the words "in any State or Territory of the United States," as follows:

"*Provided, always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive," &c. And in the compromise of 1820:

"*Provided, always*, That any person escaping into the same from whom labor or service is lawfully claimed in any State or Territory of the United States, such fugitive," &c.

Why say "in any State or Territory of the United States," instead of "in any one of the original States," as in the ordinance of 1787, unless the Congress of 1820 understood the latter to limit the right of recovering fugitive slaves to the original States, and meant by the Missouri bill to extend it to all the

States and Territories? They did extend it, but in palpable violation of the "spirit of the compact of the fathers," and of the "policy of 1787."

Originally the Southern States committed themselves to the policy of slavery restriction, by a compact in the nature of a contract for a consideration. By their own votes, they relinquished all pretence of right to any slaves beyond the jurisdiction of the original States. Slaveholders, as such, voluntarily shut themselves out of the new States, in consideration of the right of recovering their fugitive slaves in whatever part of America they might take refuge. The object, as I have clearly shown, was to secure to slavery in the original States the right of recovering fugitives, whether their escape should be from one of those States to another, or to the Territories and new States; but to make that the limit, both of the right of recovery on one side, and of the obligation to permit or allow it, on the other.

It follows, then:

First: That as between the new States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, no right of reclamation exists, or can exist, there being no power in Congress, as the South admit, to alter the compact in the ordinance of 1787, which denies this right.

Second: That no person, escaping from those States into any other State or Territory, can be reclaimed as a fugitive slave, because no person can be held as a slave under their laws.

Third: That no slave escaping from the slave States of Missouri, Arkansas, Texas, Louisiana, or Florida, into Ohio, Indiana, Illinois, Michigan, or Missouri, can be lawfully reclaimed as a fugitive slave, because Missouri, Arkansas, Texas, Louisiana, and Florida are not *original* States.

Fourth: If slaves escape from any State or Territory other than the original States, into the States of the northwestern territory, no lawful power can touch them. The moment they reach those States they become free, because labor or service cannot lawfully be claimed of them in an original State.

Fifth: After the Missouri Compromise of 1820, slaves escaping from Arkansas and Missouri, for example to Kansas, Nebraska, Iowa, and Minnesota, could be reclaimed, but escaping to Illinois, Wisconsin,

Michigan, Indiana, and Ohio, they could not be. And the Congress of 1820 so understood it. The particular in which the Missouri proviso was altered in copying from the ordinance of 1787, is proof enough of this.

But did the framers of the Government intend to distinguish in this manner between new and original slave States? Certainly not; and the reason is, they did not mean to have any new slave States. Otherwise they certainly did mean to make this distinction, for nothing can be clearer than that Louisiana and Missouri cannot go to Ohio to recover fugitive slaves within the meaning of this "compact of the fathers;" while Georgia can. Manifestly we have departed from the system devised by the fathers in allowing Missouri, Texas, Arkansas, Louisiana, and Florida to be admitted with slavery, which explains, and nothing else can, this anomalous condition of things.

There can be no escape from these conclusions, but to deny that the ordinance has ever had any validity under the Constitution; which would be scarcely less than to deny that the Constitution itself had ever been a valid instrument. Having the like unequivocal sanction of national authority, and expressing alike in the words of Mr. Toombs, "the collective will of the whole," they must stand or fall together.

Originally the territory was not divided by the line of 36° 30′, or by any other line giving part to freedom and part to slavery. It was all secured, and by consent of the South, to freedom. There is nothing, therefore, in the original compromise, to justify the remark of the Editor of the Boston *Courier* in a recent number of that paper, that "below the line of 36° 30′, the South have the right of prescription." Freedom has an older prescriptive right to all the Territories. The line established by the compromise, between slavery permitted and slavery prohibited, was the boundary line between the then existing States and the Territory of the United States; or the line between exclusive national jurisdiction and the jurisdiction of the States. It is an erroneous assumption, therefore, that the free States, by the introduction of slavery south of 36° 30′, as well as north of it, would receive more than a fair share or moiety of rights and privileges, as between States or parties entitled to equal privileges. The idea that the extension of slavery under the Federal Government can be claimed by anybody south or

north as a right, is wholly inadmissible. The *Courier* will hold the following declarations from Mr. WEBSTER to be good authority, if others do not:

"Wherever there is a foot of land to be staid back from becoming slave territory, I am ready to assert the principle of excluding slavery." "We are to use the first and last, and every occasion which offers, to oppose the extension of slave power."

"I have to say, that while I hold with as much integrity, I trust, and faithfulness, as any citizen of this country, to all the original amendments and compromises in which the Constitution under which we now live was adopted, I never could, and never can persuade myself to be in favor of the admission of other States into this Union as slave States with the inequalities which were allowed and accorded to the slaveholding States then in existence by the Constitution. I do not think that the free States ever expected, or could expect, that they would be called upon to admit further slave States.... I think they have the clearest right to require that the State coming into the Union, shall come in upon an equality; and if the existence of slavery be an impediment to coming in on an equality, then the State proposing to come in should be required to remove that inequality by abolishing slavery or take the alternative of being excluded. I put my opposition on the political ground that it deranges the balance of the Constitution."

Wherever there is a foot of land to be staid back from slavery! Every occasion to be used to oppose the extension of the slave power! New States to abolish the inequality of slavery, or be excluded! I suppose Northern conservatives of the class referred to have endorsed those doctrines and declarations of Mr. WEBSTER a thousand times, as sound, national, conservative, and constitutional. But no Republican, so far as I know, has ever proposed to go an inch beyond the line of policy they indicated. The Chicago, or Republican Platform, certainly does not. And yet that same line of policy, when advocated by Republicans, is denounced as unsound, sectional, radical, and unconstitutional.

We have a great deal said about the equality of the States; of the new with the original States. This is said to be a fundamental doctrine of the Constitution.

It is claimed that citizens of the slaveholding States have an equal right in the Territories with the citizens of the non-slaveholding States; and I admit they have. But it is also claimed that they have the same right to the protection of property in slaves as property in cotton. This I deny. There is no such doctrine of State equality in the Constitution, nor was any thing like it contemplated by its framers. On the contrary, the Constitution denied this doctrine by clear implication, certainly for the first twenty years. It withheld from Congress the power to prohibit the importation of slaves into the "existing" States till 1808, while their importation into the Territories and new States might be prohibited at once. Ohio was admitted in 1802. Congress had power to prohibit the importation of slaves into that State from that time, and did do it in effect by the very terms and conditions of her admission, which required that her Constitution and Government should not be repugnant to the ordinance of the 13th of July, 1787, which interdicted slavery. But Congress had no power to prohibit the importation of slaves into Georgia till after 1808. Georgia and Ohio, therefore, in this respect, were not political equals from 1802 to 1808.

Nor have the States been all political equals in the sense claimed, since 1808. It will surprise many to be told that there is nothing in the Constitution about State equality, and especially nothing that affirms the equality of the new with the original States, even after 1808. And yet this is true. The only passages which refer to the new States, except impliedly in the importation clause, are these: "New States may be admitted by Congress into the Union; but no new State shall be formed or erected within the jurisdiction of any other State." There is nothing, certainly, in this language to show that the new States were to be admitted on an equality, or an equal footing with the original States.

And yet provision was made, when the Constitution was framed, for the admission of all the new States to be formed in United States Territory then possessed, "on an equal footing with the original States." But it was a footing of equality which was in nowise inconsistent with an absolute denial of the right to establish the inequality of slavery. And this is proved by the only compact in the English language contemporaneous with the Constitution which touches the subject, namely, that part of the fifth article of compact in the ordinance of 1787 which I have already quoted. There can be no shadow of claim that any thing else secured, or pretended to

secure, the right of new States to admission into the Union on an equal footing with the original States. That, I admit, did. It is, to repeat it, in these words:

"Whenever any of said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent Constitution and State Government; *provided* the Constitution and Government so to be formed, shall be republican in conformity to the principles of these articles," the 6th, which prohibited slavery, included.

And this is all there is, contemporaneous with the Constitution, on the subject of the equality of the States. The very instrument, then, which secured the admission of new States, on an equal footing with the original States, itself provided that they were never to tolerate slavery.

The new States, then, neither were to have, nor have they, any political equality which the prohibition violates, as Southern gentlemen contend. Certainly those formed and admitted under the plan of Government devised by the fathers, have not. In this sense they are not political equals. The original States were, from the beginning, and have ever been, political equals in this and every sense. Not, however, because the Constitution says they are, for it says nothing on the subject; but because they were independent sovereignties, and as such, made a compact which united them under one Federal Government, with discriminating restrictions upon the subject of slavery, or upon any other subject. But the fact that the evil and inequality of slavery existed in the original States, and was tolerated from necessity, was no reason why it should be allowed in the Territories and new States, where it did not and need never exist. So the power of the Territories and new States was sufficiently restricted to secure equality in personal rights and freedom to all the "inhabitants." Of course it cannot be pretended that the mere fact that one or more States had established, and had power to perpetuate slavery, secured to new States the right to establish and perpetuate the same enormity, as a necessary result of State equality. That would make the right or power of one State, resulting from State equality, necessarily coextensive with tolerated evil in another. Manifestly "the fathers" had no such idea as this. Theirs was the common sense and

rational idea that a moral and political evil which existed in the old States, and could not be removed, need not for that reason be tolerated in new States.

The Constitution guarantees to each State a republican form of Government merely; but the ordinance of 1787 provides that the "Constitution and Government of each new State shall be republican." Why this difference? In the original States slavery existed, or in most of them; and so far they were anti-republican in fact and practice, though republican in form. The framers of the Constitution, having no power to abolish this anti-republican institution of slavery in those States, did nothing more than guarantee them Governments republican in form. But having the power to exclude it from the new States, they did exclude it, and provided that their constitutions and governments should be republican. That this was the reason for the difference may be inferred from the remark of LUTHER MARTIN, a distinguished member of the Federal Convention, that "slavery is inconsistent with the genius of republicanism," and of General HEATH in the Massachusetts Convention, that "Congress has declared that the new States shall be republican and have no slavery." No other reason can be given. Thus republicanism in fact, and not in form merely, was made a condition of admitting new States. This is part of the unalterable compact to which validity was given by the Constitution. The Constitution, therefore, while it guarantees a republican form of government, does in fact, by giving validity to the ordinance, guarantee republican governments to the new States. This is another very significant fact harmonizing perfectly with all the other facts in the original plan for extending the Union by admitting States from Territories.

The States are all equals, or not, according to the terms of their admission. The original States became members of the Union upon the single condition of ratifying the Constitution, which left them at liberty to tolerate slavery or not. But the States formed in the only Territory which belonged to the United States at the time the Constitution was framed, were admitted on condition that slavery should be perpetually interdicted within their limits, and as parties to an unalterable compact to that effect.

Slavery was regarded, South as well as North, when the Constitution was adopted, as a moral and political evil. This had been the general sentiment

of the country many years before, and continued to be long after that period. The representatives of the extensive district of Darien in Georgia, on the 12th of January, 1775, spoke of slavery as "founded in injustice and cruelty, and highly dangerous to our liberties." JEFFERSON pronounced it "an injustice and enormity." The present Chief Justice of the United States, Mr. TANEY, who acted many years ago as counsel of Rev. Mr. GRUBER, who was indicted in the State of Maryland for preaching a sermon on the evils of slavery, spoke as follows in his defence:

"Mr. GRUBER did quote the language of our great act of National Independence, and insisted on the principles contained in that venerated instrument. He did rebuke those masters who, in the exercise of power, are deaf to the call of humanity, and he warned them of the evils they might bring upon themselves. He did speak in abhorrence of those who live by trading in human flesh, and enrich themselves by tearing the husband from the wife, the infant from the bosom of the mother, and this was the head and front of his offending. So far is he from being the object of punishment in any form of proceeding, that we are prepared to maintain the same principles, and to use, if necessary, the same language here in the Temple of Justice, and in the presence of those who are the ministers of the law."

"A hard necessity, indeed, compels us to endure the evils of slavery for a time. While it continues it is a blot on our national character; and every real lover of freedom confidently hopes that it will be effectually, though it must be gradually, wiped away, and earnestly looks for the means by which the necessary object may be best obtained. And until it shall be accomplished, until the time shall come when we can point, without a blush, to the language held in the Declaration of Independence, every part of humanity will seek to lighten the galling chain of slavery, and better, to the utmost of his power, the wretched condition of the slave."

Mr. JOHNSON, of Maryland:—Where did you get that?

Mr. GOODRICH:—I got it from a printed sermon recently preached by Dr. ORVILLE DEWEY, of Boston.

And Mr. CALHOUN, in the United States Senate, in 1838, said that "many in the South once believed that slavery was a moral and political evil;" and Mr. BUTLER, late a United States Senator from South Carolina, said in the

Senate in 1850, that he "remembered the time when slavery was regarded as a moral evil, even in South Carolina."

In such a state of public sentiment, it is certainly no marvel that slavery was not allowed to extend into the Territories and new States. It was not prohibited in the northwest territory, because it was supposed to be, or would become, an evil in that territory particularly, or a greater evil there than anywhere else; but because it was regarded as an evil everywhere, and therefore wrong to permit its extension anywhere, when there was power to prevent it. There can be no doubt it would have been prohibited in the Territories and new States of Alabama, Mississippi, and Tennessee, if Georgia and North Carolina, previous to the Federal Convention, had ceded them to the United States upon the same conditions Virginia had ceded the northwest territory. Proof of this is found in the fact that the plan of territorial governments interdicting slavery forever after 1800, embraced all territory ceded, or to be ceded by individual States; and still further proof is in the fact, that the cessions by Georgia and North Carolina, after the adoption of the Constitution, were upon the express condition that slavery should not be prohibited; thereby showing that the policy of the Federal Government, as they understood it, was restrictive of slavery in the far southern latitudes as well as in the more northern, and that they expected the power to restrict would be exercised, if not withheld in the deeds of cession. A proposition was, in fact, made to apply the anti-slavery clause of 1787, to all the southern part of the Mississippi territory, now the southern parts of Alabama and Mississippi, by the act of April 7th, 1798, it being supposed at one time that it belonged to the United States; but the debate shows that the proposition was withdrawn because the jurisdiction was in Georgia, or because not five members of Congress, after the question was examined, believed otherwise. Georgia claimed absolute title and right of jurisdiction, and denied all right on the part of the United States to interfere with slavery. Congress did, however, prohibit the importation of slaves into the territory, and declare every slave so imported to be entitled to his freedom. This was probably wholly unauthorized, as it was six years before Georgia ceded it to the United States, and ten years before Congress had power to prohibit the importation of slaves into that State. But these facts show a strong disposition on the part of "the fathers" to curtail and

circumscribe slavery, even in the far south, and at the hazard, too, of exercising doubtful power.

Nothing can be clearer than that the original States had a right to form a Federal Government on such terms as to themselves as they could mutually agree upon, and to fix the terms upon which they would permit new members to be admitted. The Northern States were under no obligation to protect slavery at all, not even by permitting fugitives to be reclaimed within their limits. If, then, they were willing to concede that right to the original States, only upon condition that slavery should not be allowed to extend, who will say they had not a right to make that condition, or that, if agreed to, it would not be valid and binding? With their views of slavery, believing it to be a moral and political evil, it was certainly their first and highest duty to make effectual provision against its extension, before undertaking, for any reason, to give the least protection to it. Such provision they supposed they had made, and it was this that justified them, if any thing could, in conceding the right of reclamation.

The free, or northern States, in the exercise of their admitted right in deciding upon the terms of Union, insisted on making it a fundamental and ever-binding condition that no obligation to protect slavery in Illinois should ever exist; and this was done for reasons which render it morally certain that they would have insisted on the same condition in reference to Missouri, if Missouri had been part of the original territory. It would be preposterous to suppose that while they would not consent to guarantee slavery in any manner in Illinois, because they believed it to be a moral and political evil, they meant at the same time to make a Government that could obligate them to guarantee it in the adjoining Territory or State of Missouri, either by the return of fugitive slaves, or in any other manner. They meant no such thing, nor can an honest interpretation of the terms of union bind them to such guarantee now. The right to recapture fugitive slaves could not exist without the consent of the free States; and as that consent was given upon conditions and with limitations, by necessary implication and every sound principle of construction, they reserved the right to say whether it should exist upon other conditions and with other limitations, or without either condition or limitation.

Mr. WICKLIFFE:—No one from Kentucky or Virginia wishes to alter the ordinance of 1787. For GOD's sake spare us the argument.

Mr. GOODRICH:—I understand no alteration is proposed in the ordinance; nor am I arguing against any such proposition. I am showing what the policy of 1787 was, and what the compact of the fathers was. And I am doing this because it is in the spirit of that policy and compact that Kentucky and Virginia tell us they wish to have this controversy adjusted. Massachusetts and the other Northern States meant to fix, and supposed they had fixed, a limit to their connection with, and responsibility for slavery. By consenting to the clause which secured the right of reclamation, they did become responsible for it to a certain extent. So far as it was supposed, when that clause was agreed to, that its effect would be the recapture of fugitive slaves, and their return to bondage, and so far as the purpose was to make such recapture and return lawful, so far the responsibility of adding to the security of slavery was voluntarily assumed. But this was limited to the existing States by excluding slavery from all United States territory. If any part of such territory had been left for slavery —enough for a single slave State—it might be said that its extension from a part was for reasons applicable only to a part, and so could not be considered as establishing the principle of non-extension. But now this cannot be said. Not a foot was left for slavery.

We thus see what the state of things would have been to-day if foreign territory had not been acquired. Such acquisitions were not originally contemplated, and of course not provided for. The first—Louisiana—was deemed unconstitutional by Mr. JEFFERSON, and yet it was made while he was President; but with no right, "according to the spirit of the compact of the fathers," to place the Federal Government or the States under any other relation to slavery in subsequently acquired territory than that which they sustained to it—the only one they would consent to sustain—in the Territories possessed at the time that compact was made.

A great deal is said about State rights. But the doctrine of State rights proves too much. Massachusetts had a clear and undoubted right originally to limit her obligations upon this subject. And she did limit them. The original compromise was "better security" to slavery in the original States, with no extension of it to the Territories and new States. This better security

was the accepted consideration for waiving the right to extend, and Massachusetts may rightfully insist on this waived right to extend, so long as this "better security" is demanded of her.

Southern gentlemen in this Convention propose to be governed by the principles of the founders of the Government, and by the Constitution, or compact of union, as those founders understood it. By that they say they are willing to do as the fathers did, and adjust the present unhappy controversy by applying to new territory the same principles which the fathers applied to the old. Let me assure gentlemen from the slave States that if they are really in earnest in offering these terms of adjustment, this unhappy controversy can be settled in less than an hour's time. Having always claimed the right to recapture fugitive slaves in territory acquired since, as well as in that acquired before the adoption of the Constitution, the slave States have ever been bound, upon every principle of honor and fair dealing, to concede the original consideration for it, that is, prohibition. A purpose secretly entertained when that compromise was made, to use the Government in the manner it has actually been used, to enlarge the area of slavery and the obligation to guarantee it, would have been dishonest and fraudulent; but the fact that this purpose was conceived afterward, as it doubtless was, does not alter the case a whit. No man possessed of the facts can honestly claim that the bargain between the North and South, interpreted according to the true interest and meaning of both parties at the time of making it, can justify the extension of slavery a rod beyond the original States, or a particle of protection to it beyond the right to recover fugitives from such States.

Having thus shown, as I think I have, that an essential element in the basis of the "more perfect Union" on the question of slavery, was the principle of non-extension, we find the first failure to assert this principle was in the omission to apply it to the Louisiana purchase. The importation of slaves into that territory was immediately prohibited. That probably cut off the only source of supply from which danger of extension was then apprehended. The policy of the Government was well understood, and no apprehension of a practical departure from it existed. There was nothing in the circumstance of the purchase, or the reasons for making it, to excite such apprehension. But it was seen on the application of Missouri for admission, that the ordinance of 1787 should have been applied to it at the

time of the purchase. If it had been, Louisiana, Missouri, and Arkansas would never have become slave States (the few slaves in New Orleans and vicinity being emancipated, as they should have been, upon some equitable principle), and the Missouri Compromise, which was the second departure from the original policy, would never have been made. The third was the annexation of Texas as a slave State, and the argument to divide it into three or four more. Annexation led to the war with Mexico, and the acquisition of a large part of her territory, and to the compromise of 1850, by which it was Congressionally agreed that the States formed in that territory might be admitted with slavery, if their Constitutions should so prescribe. This was the fourth departure from the original policy of prohibition. The fifth was the repeal of the Missouri Compromise in 1850, and the attempts to subjugate and enslave Kansas. That repeal made the change from the original policy radical and total. Certainly it is high time "to restore the Union and Constitution in the spirit in which they were established by the fathers."

And now, sir, I propose to begin the work of "restoring the policy of 1787," by applying the ordinance of 1787 to every foot of organized and unorganized territory, wherever situated, which now belongs to the United States, precisely as the fathers applied it to every foot of such territory at the time the Constitution was made; and I ask, in all earnestness and seriousness, what any member of the Convention can have to say against this, who sincerely desires to "restore the Union and Constitution in the spirit in which they were established by the fathers of the Republic," and is "ready to adjust the present unhappy controversy" in the same spirit? What, I beg to know, can be said against this mode of adjustment by those who are in favor of a "restoration of the Constitution to the principles and landmarks of our fathers," and of a "return to the policy of 1787"? Can any man doubt that that ordinance would have been extended over all these territories in 1787, if they had belonged to the United States at that time? Let slavery, then, be prohibited now precisely as the fathers prohibited it then. Copy that old ordinance word for word, and give it legal force and effect, and make it the basis of all laws, and all constitutions, and all governments in these Territories forever, because the fathers gave it such force and effect, and made it the basis of all laws, and all constitutions and all governments forever in all the Territories of the Union, in 1787. If that would not be a

return to the "principles and landmarks of the fathers," and to the "policy of 1787," then I beg to know what would be? How is it possible—I put it to you, gentlemen of the South—how is it possible to persuade yourselves that the principles and policy of 1787 can be restored by adopting the resolutions of the General Assembly of Virginia? By what process is it that the gentleman (Mr. SEDDON) from Virginia, has come to believe that the South is entitled, according to the spirit of the compact of the fathers, "to the added guarantees" of which he speaks? According to the spirit of that compact it is manifest the slave States are entitled to no added guarantees.

But another of the Virginia Commissioners (Mr. RIVES) tells us that this question of slavery in nowise concerns the free States. On this point I will quote from a very high authority, which Virginia, certainly, will respect. Mr. MADISON was a member of the first Congress under the Constitution. A colleague of his, Mr. PARKER, proposed a duty on the importation of slaves, and said he "hoped Congress would do all that lay in their power to restore to human nature its inherent privileges, and, if possible, wipe off the stigma under which America labors." Mr. MADISON, in remarking on that proposition, among other things said:

"Every addition the States receive to their number of slaves tends to weaken and render them less capable of self-defence. In case of hostilities with foreign nations, they will be the means of inviting attack instead of repelling invasion. It is a necessary duty of the General Government to protect every part of their confines against danger, as well internal as external. Every thing, therefore, which tends to increase danger, though it be a local affair, yet, if it involve national expense and safety, becomes of concern to every part of the Union, and is a proper subject for the consideration of those charged with the general administration of the Government."

And we hear, too, a great deal about war, civil war, if this unhappy controversy is not satisfactorily adjusted, which means upon the terms proposed by the slave States. But do gentlemen mean that an appeal will be made to the sword, unless the Constitution shall be so amended as to "provide that slavery of the African race shall be effectually protected as property in all the territory of the United States, now held or hereafter acquired south of latitude 36° 30´"?—which is the proposition of Virginia.

If that is what is meant, then let me, before I close, read an extract from one of the last speeches made by HENRY CLAY in the Senate of the United States. It is as follows:

"If, unhappily, we should be involved in war, civil war, between the two portions of this Confederacy, in which the effort upon the one side should be to restrain the introduction of slavery into the new Territories, and upon the other side to force its introduction there, what a spectacle should we present to the astonishment of mankind, in an effort, not to propagate rights, but—I must say it, though I trust it will be understood to be said with no design to excite feeling—a war to propagate wrongs!"

Mr. HOWARD moved an adjournment.

Mr. BRONSON objected, raising the question of order. He claimed that the Conference, by adopting the resolutions of Mr. RANDOLPH, had fixed the limits of the sessions, from 10 o'clock A.M., to 4 o'clock P.M.

The motion of Mr. HOWARD was not concurred in.

Mr. LOOMIS:—I feel that this is an important crisis in the affairs of the country. Perhaps it is the most important that ever occurred in American history. The first Convention of thirteen scattered States was earnestly engaged in protecting the liberties which had been won in the Revolution. It gave us a Constitution under which, for more than seventy years, we have lived prosperously and happily. Now political contests have taken place. New questions have arisen, and one portion of the Union believes the Constitution inadequate to protect its interests. The question which we are obliged to consider is: How shall we save the country? Disguise it as we may, deceive ourselves as we may, the country is in danger—in great and imminent danger. A solemn duty is imposed upon each one of us. How shall we save the country?

Virginia has invited this conference of her sister States. Pennsylvania responded to her call with all activity. Pennsylvania has responded because she understood and appreciated Virginia. There is great misapprehension in the North concerning this venerated State, as well in regard to her motives as in regard to the principles and feelings that influence her people in their intercourse with and their action toward other States of the Union. I know

Virginia well. I have associated with her people. I have practiced before her judicial tribunals.

Some years ago I was greatly pressed by an abolitionist who was indicted in Virginia, to undertake his defence. He was very fearful that he would not receive an impartial trial, that the court and jury would participate in the public excitement. I told him that he need indulge in no such misapprehensions. I knew Virginia too well for that. I told him, however, that if he desired it, I would go; but it was simply to defend him, and secure him a fair trial—to act as his counsel. I could not represent his sentiments, for I am not and never was an abolitionist. I assumed his defence. I told him I would go, and I went. I did find great excitement there, but it did not surprise me. Many valuable slaves had shortly before escaped, some of them through the assistance and instrumentality of my client. Judge Fry was the presiding judge of the court. His liberality, and that of all his officers, was great—as great as I ever enjoyed in my own State. The sheriff of the county drew thirty-six jurymen. Of these, twelve were slaveholders, twelve were abolitionists, and twelve were non-slaveholders. When the jury was finally empannelled it consisted of nine abolitionists and three non-slaveholders.

I never saw in my whole professional life a trial conducted with greater fairness or justice. The whole of it was entirely satisfactory to myself, and I believe to my client.

I have ever since entertained a feeling of the highest respect for Virginia. Her abstractions I confess I could never understand, nor did I ever wish to. They are her exclusive property, and she never uses them to the injury of her neighbors. If she chooses to make the resolutions of '98 a matter of importance, I do not know that anybody is injured.

I regretted to hear the imputations upon Virginia which some gentlemen have seen fit to make. Menace is not the habit of that ancient commonwealth. She does not indulge in it, and it would not become her. The gentleman from New York intimated that if a State came to him with a menace he would meet it with a menace. In this I agree with him. If Virginia came here with a menace I should meet her with defiance. But happily for us we have no occasion to consider the question in this light. If

ever a State came to meet her sisters, to consult for the common good in a proper spirit, Virginia does so now.

A military chieftain once, when approaching his death, lamented that he had no children to transmit his name and his qualities to posterity. Virginia will never need to take up such a lamentation. She has children enough. She is the mother of WASHINGTON and JEFFERSON, of MADISON, MARSHALL, and CLAY. Rightly and justly she has been called the mother of States. She is the mother of States, and of millions of freemen.

I honor and respect Virginia, for she deserves it. She was among the foremost in the Revolutionary struggle; and since it was terminated, she has exhibited a continued example of patriotism and loyalty. Her sons have been among the ablest in our legislative councils, and even to-day she sets a noble example before the country, for the emulation of her sister States. Our interests are inseparably connected with her own. We will acknowledge the fact, and act in view of it. Let her remember, also, that she has a common interest with us. She will do so because she will be faithful to her old traditions as well as to her present duty.

I cannot believe that the time has come when it is necessary for us to contemplate a dissolution of the Union. The people are not prepared for such an awful event. We do not yet know how heavy sacrifices they will make to avoid it. Some States have left us I know, but I believe their absence is but temporary. We must have them back, and we will. As for the Border States leaving us in the present condition of affairs, with the present feeling of friendship for them, *that* I regard as an impossibility. Why should the Border States go out of the Union when three-fourths of the present Congress are ready to give them all the guarantees they ask?

But let not Pennsylvania be misunderstood in her position. She will yield a vast deal for peace. She will examine and recognize the rights of every section of the country. She believes that when this is done, it is the duty of all to stand by the Union. She believes that the Border States cannot connect themselves with a so-called Southern Confederacy without involving themselves in a vortex of ruin. The President of the Southern Confederacy already talks about the smell of gunpowder, and about battles at the North. Well! he is a brave man no doubt, but if he will invade

Pennsylvania we will resist him. Pennsylvania has gold enough to calm her friends; she has iron enough to cool her enemies.

But Pennsylvania desires no war. She will do all that an honorable State can do to avoid war. In that temper she sends her delegates here, and they will do all that honorable men can do to carry out her wishes. She has no desire to be a frontier State with her four hundred miles of border, which she must guard and protect if disunion takes place on the terms suggested. She will do all she can to avoid disunion. She is now a central State—the keystone of the arch. She wants no imaginary line drawn along her border, with herself on one side of it and enemies upon the other.

Pennsylvania has always kept faith with the Union. She has always performed all her duties toward the Federal Government with cheerfulness and fidelity. Her three millions of people are true to all their obligations now to the Government as well as to her sister States. Her voice is for peace. She would at all hazards avoid disunion. She would make many sacrifices to avoid civil war. Last of all, she would do all she could to save the Union; she would never permit the destruction of the country. My own position is easily defined. I fully sympathize with and endorse the position of Pennsylvania.

Mr. Loomis referred to the election, installation, and message of the Governor of Pennsylvania, also to various resolutions of political conventions in Pennsylvania, in confirmation of his own views of the sentiments of the people of that State, and continued:

I shall dwell but a short time upon the provisions of the proposed amendments. I can live under the Constitution as it is, or as it will be if these amendments are adopted. I shall uphold the Constitution. I shall commit myself to no opposite course. The whole amendment is connected with and concerns the question of slavery in the Territories. This has always been a fruitful source of trouble.

The character of the relation of the Government to the Territories, and the interests of the States in them, were questions raised in most of the States when the Constitution was adopted.

The compromise of 1820, it was hoped, settled one question concerning them—the question of slavery. But upon the repeal of the compromise the difficulty was opened again. Pennsylvania never took as ultra ground respecting this subject as many other States. She thought its importance was magnified. It is magnified now. If the South secured the amendment proposed it would not avail her much. The granting of it would not injure the North. The territory is unfitted for the profitable employment of slave labor. That is shown by experience. In ten years scarcely ten slaves had found their way into New Mexico and Arizona.

This is a question of sectional interest, and may be one, to some extent, of political power. Examine, for a moment, the true interests of both the North and South, in the question as it is now presented. I mean the interest of the extremes, for the Border States certainly cannot have a very deep interest in it. They lay between the two sections, and to some extent sympathize with both. The valuable portion of our present territory is north of the line proposed. It is rich in agricultural and mineral resources. It will be changed in time into a number of powerful and wealthy States. Is it not desirable now to exclude slavery from them forever? Then as to the territory south. It is smaller in extent, and almost infinitely less valuable. Much of it is barren desert which can never be cultivated. Considered as a material interest, the South is asking but little. The North is giving up almost nothing, by

agreeing to give the South the control of this section while it remains a territory. But the South does not ask even that. She simply asks to have those rights guaranteed, the existence of which are already practically conceded.

As to future territory, I would raise no question about it. We want no more territory north or south. Its acquisition would only be attended with new troubles. New questions would be raised to threaten the quiet of the country and the stability of our institutions. Why should we trouble ourselves about the acquisition of new territory when we have already enough for one hundred millions of people?

We may form a Constitution which will be entirely satisfactory to the nation now. We may extend our territory in such a way as to render a change indispensable. Considerations of climate and race will be constantly occurring, which will require new changes. The Federal Constitution may have been well enough adapted to the four millions of people to whom it was first applied, and it is not strange that the growth of the nation, and the new interests which have since arisen, should require some changes now. I say that we need no more territory.

What objection, then, can there be to compromising this matter, to arranging it to the satisfaction of all parties, if the rights of all can be regarded and secured? The course which I would follow in such a case, would be that indicated by traditional policy of statesmen in whom our people have had confidence—the policy of such men as HARRISON and HENRY CLAY.

I do not regard the provisions relating to slavery in the District of Columbia as of any practical consequence to the North. Pennsylvania cares little about it. There would seem to be a propriety in countenancing slavery here so long as it exists in the adjoining States.

The Border States ask us now for these guarantees. They ask them earnestly and in a spirit of loyalty to the Union. My answer to such a request, urged in such a spirit, is, that I would give them any guarantees I could within the limits of the Constitution.

Pennsylvania forms one of the brotherhood of States. She is in the Union, and she will remain there. She is bound to it by all the memories and associations of the past, and by all the hopes of the future. She will discharge, as she always has discharged, all her duties, all her obligations to the Union. No State exceeds her in devotion to it. But, at the same time, she will not be unmindful of her duties and her obligations to the other States. She would discharge these obligations as she can afford to discharge them, in a spirit of generosity and conciliation. In that spirit she will give her assent to these propositions of amendment. I believe I have fairly represented the opinions of Pennsylvania in what I have said, and I rely upon her people—my constituents—for my justification.

Mr. CHITTENDEN:—I will consult the pleasure of the Conference whether I shall proceed with my observations now, or during the evening session?

Mr. MOREHEAD: I think the Conference had better adjourn. I make the motion.

The motion was adopted, and the Conference adjourned to meet at half-past seven o'clock this evening.

EVENING SESSION—FOURTEENTH DAY.

WASHINGTON, THURSDAY, *February 21st, 1861.*

THE Conference was called to order at half-past seven o'clock, Mr. ALEXANDER in the chair.

Mr. CHITTENDEN: I feel gratified by the kindness which has given me an opportunity of making a few observations to the Conference, and I shall not abuse it.

The delegates from Vermont have acted throughout the session under great embarrassment. We hold our appointments from the Executive of that State. Her Legislature was not in session when the Virginia Resolutions were adopted, and the day fixed for the meeting of the Conference was so early

that no time was given to the Governor of Vermont for consultation, or for taking any other means of ascertaining the temper of the State in relation to the Virginia plan. We were summoned by telegraph—myself upon an hour's notice—to come here, and we obeyed the summons.

By the rules of the Conference we are prohibited from correspondence with our constituents upon the subject of its action, and we are entirely without recent information concerning their views and wishes. But one course remains to us, and that we must inflexibly pursue. That is, to apply the propositions upon which we are called to vote, to the known and established opinions of our people upon the principles involved in them; and if these principles coincide with their opinions, to give our assent; if they do not, to withhold it. We hold it our duty to respect and obey the opinions of our constituents; and in our action here, such obedience is a pleasure.

First of all, before referring to the merits or demerits of these propositions, I wish to be informed distinctly upon one point. One section of the Union requires guarantees; the other does not. Here are two parties having different interests, proposing to themselves different courses of action. One of them proposes these guarantees in the form of what it calls a compromise. There are many subjects which, in the experience of life, we are obliged to compromise. All of us understand the meaning of the term. It implies that when two parties differ upon a subject of common interest, each is to yield something to the other, until both reach an agreement upon a middle ground, and the difference is settled. But one consequence always follows, always must follow, or it is in nowise a compromise: *Both parties are bound by the agreement.*

There is another way in which compromises are effected. When opposing parties cannot come to an understanding, they agree to submit the matters in difference to some tribunal that can decide between them. A like consequence always follows from such a proceeding. The parties agree to *submit* to the decision, to be *bound* by it, and mutually undertake to carry it into effect, whatever the decision may be.

There is still another way in which a *political* compromise may be made. Its terms may be agreed upon, and then it may be submitted to the people for adoption. When adopted, it becomes the law of the land—equally binding

upon all sections of the country. If it is rejected, the party which proposed it has secured its submission to the proper tribunal—it has been considered, and that party should, upon every principle of law or morality, acquiesce in the result.

Except in one of these three methods I know of no way in which a *compromise* can be made. Let us apply these methods to the questions before us. One of them must be adopted if we *compromise* at all.

In fact there is one principle which forms the very foundation of our Government, and it should be kept constantly in mind. We cannot negotiate, we cannot legislate, we cannot *compromise*, unless all parties will acknowledge its binding force. If there is a party that does not acknowledge this, in my judgment that party has no right to be here. It is not a Republican party. I do not use this term in a party sense, but in the sense which is used in the fourth article in the Constitution, where the United States are required to guarantee to every State a *republican* form of Government. The principle to which I refer is this: That the will of the majority, constitutionally expressed, must control the Government, and all questions relating to it; and that will must be respected and obeyed by the minority.

Now, if the members representing the free States will accept these propositions of amendment in good faith—will agree to submit them through Congress to the people of the States, and to be bound by the decision of the majority, whatever that decision may be—will you, gentlemen of the slave States, do the same? I do not refer to the States which have undertaken to withdraw from the Union. I only call upon the members for the States here represented. You have the right to speak for your respective States. You are sent here for that purpose. You ask us to give our votes for proposals which are certainly unpleasant, not to say offensive to us, and to use such influence as we possess to induce Congress to submit these to the people. You express the highest degree of confidence in the result. This is *your* plan of compromise. If we resist it, you charge us with standing between the people and your plan—of sacrificing the Union to our platform. Very well. If we will submit your propositions to the people, and agree to be bound by and to acquiesce in their decision, will you do the same? If you will, it may be of service to protract this

discussion, to make these propositions as acceptable as possible. If you will not, we are wasting time. We may as well stop here. Believe me, sir, Vermont, as well as every other free State, will have too much self-respect to agree to the terms of a compromise which will bind one party and will not bind the other.

There is one thing farther which we must understand. It has been frequently referred to in debate, and I shall not enlarge upon it. Time must elapse before these propositions can be acted upon. The free States expect faithfully to observe all their duties to the General Government—to keep faith with it as they always have. Will the slave States do the same? Will they not only *not obstruct* the Government in the execution of the laws, but will they *aid* the Government in executing the laws? The answer to this inquiry is as important as the other.

Now, it is useless to tell the people of the free States, that such is the present condition of the South, such is the apprehension and distrust prevailing there, that we must give them these guarantees at once, without any longer delay or discussion—that if we do not they will secede. Such an argument as that, sir, is an unworthy argument; it is unfit to be used in an assembly of men met to confer upon the Constitution. This is not the way in which good constitutions are made, for one of the several parties to present its ultimatum, and then insist upon its adoption, under the threat that if it is not adopted they will go no farther. If such is the true condition of affairs in some of the States, and the gentlemen representing them are the best judges, then before proceeding to amend the Constitution to satisfy them, I think we had better try to put them into a frame of mind suitable for negotiation. A Constitution adopted in that way would be good for nothing. Let it once be understood that such claims will be recognized, and we shall have amendments to the Constitution proposed as often as any section can find a pretext for proposing them. The agreeable course to us all would be to yield to your pressing appeals. But you ask us to compromise upon most extraordinary terms. You will not give us the slightest assurance that the people of the slave States will acquiesce in the vote of the whole people upon your propositions. You even say, you will not acquiesce, if the decision is adverse. You are in doubt if they will be satisfied if the decision is in their favor; and some gentlemen frankly avow that these propositions in themselves are not satisfactory. The gentleman from Virginia, with an

openness and a frankness which seems a part of his nature, tells us in substance that Virginia will not be satisfied with these; that Virginia is settled in her determination that slave property shall be respected; that it has as high a right to protection as any other property, and in some respects higher; that Virginia will have these rights acknowledged and secured *under* the Constitution, or she will not be satisfied. The statement that she will *not be satisfied*, has a very peculiar and expressive signification.

Such being our present condition, I have little hope that good can come of our deliberations. We have started wrong. We should have settled the questions first, that the Union must be preserved, the laws enforced, and the duty of every State toward the Union performed, in every contingency and under all circumstances. Having resolved this, we could then go on, carefully consider the wants of every section, and we could afford to be generous in meeting the views of our Southern friends.

I feel more diffidence than I can well express in being obliged to differ so widely from the opinions of the gentlemen who have introduced the proposals contained in the majority report, and who have advocated them with such signal ability. I have less hesitation in expressing my unqualified dissent from the representatives of the free States, who pledge the people of those States so unreservedly to the support of these propositions, if Congress will submit them to their constituents. I object to these pledges, because I know they are deceptive, that they are made without authority, and that they will never be fulfilled. The South may as well understand this now, as hereafter.

The Union is precious to the people of the free States. They look upon it with a feeling closely approaching to reverence. They have looked upon its dissolution as the greatest national calamity possible. They have been taught to regard the idea of dissolution as a sin. Now, when the subject is forced upon their attention, when Conventions are called throughout the South to discuss it, when in some of the States the process has already commenced, I am well aware they will make heavy sacrifices to preserve the Union. They will sacrifice their prosperity, political influence, friendship, social relations, yes, their lives, to secure its perpetuity. But they will not sacrifice their principles which they have conscientiously adopted. No, not even to save the Union.

But let me not be misunderstood. A Government that cannot be maintained without the sacrifice of those principles upon which all good governments are founded, is not worth preserving. Such is not the case with *ours*. Its preservation requires no such sacrifice; and if we made it, the sacrifice would be useless. The habit once commenced, we should be called upon to repeat it over and over again, until at length we should have a Government destitute of principle.

The people of the slave States believe that slavery is a desirable institution, that a Government founded upon it would be most desirable. It has been declared here, that it is even a missionary institution, and that the North, in attempting to overthrow it, interposes between the slaveholder and his Maker, thereby preventing him from performing a duty toward the African race which his ownership imposes upon his conscience. Well, that is a question between yourselves and your consciences. We do not wish to interfere. Keep the institution within your own State limits, and we are content that you should have all the credit, and honor, and glory that pertains to it. Over and over again the truth has been asserted here, that there never has been, and is not now, any party, or any considerable number of men in the free States, who entertain the idea of interfering with slavery in the States. The opinions of a few rash men who entertain other views, are no more respected among us than among yourselves.

But the growth and extension of slavery outside of State limits, in the Territories which are our common property, present a very different question. If the North permits it there, to that extent it becomes responsible for slavery. I do not care what term you use to describe the feeling of the North in relation to slavery. One gentleman says that the North *abhors* it, and the use of the term has excited much comment. I may be still more unfortunate, but it is my duty to say that you cannot present an idea more repulsive to the northern mind or the northern conscience, than that of making the North responsible for the existence, expansion, growth, extension, or any thing else relating to slavery. Right or wrong, this sentiment has taken a firm hold of the northern mind. There it is, and it must be taken into account in every proposition which depends for its success upon the action of the North. Sneering at it will do no good; abuse will only make it stronger. You cannot legislate it out of existence. From this time forward, as long as the nation has an existence, you must expect

the determined opposition of the North to the extension of slavery into free territory. If your proposals of amendment involve *that*, we may accept them, Congress may propose them, the South may adopt them; but the answer of the North to them all will be an emphatic, a determined, *No!*

Mr. GRANGER:—If you Republicans will let us go to the people, we will show you what they will do. I think I understand the wishes and feelings of the people of the North.

Mr. CHITTENDEN:—No doubt. The gentleman says he supported the BELL and EVERETT ticket. The record of his State shows to what extent his opinions are in sympathy with those of the people of the North.

Mr. President, for a time I did expect profitable results from this Conference. As I watched it from day to day, it seemed to me that generally the States had been very fortunate in the selection of their representatives; that few of extreme opinions had been selected; and that such a body, animated by common love for the Union, and by a common desire to secure a perpetuity of its blessings, must finally come to an agreement which would satisfy all; or if not, to an agreement in which all would acquiesce. In that belief I had determined to give my assent to the most extreme propositions which might be made here, that did not run counter to the position of my State upon the question of slavery extension, if those propositions would quiet the country and settle our present difficulties.

But when I heard it announced on this floor that the propositions contained in the majority report even, which do provide for the extension of slavery into the Territories, which involve a direct constitutional recognition of slavery for the first time, which place it above and beyond legislation, which take it out of the hands of posterity, which compel the North to pay for fugitives; and when I heard it stated that even these were not enough to satisfy the South, that Virginia must have something more, that she was "solemnly pledged against coercion, that she would not agree to abide by the decision of the people upon these propositions," then hope went out from my heart! I have not since had any expectation that much good would come from our deliberations.

I have refrained from entering into the merits or demerits of slavery. I have refrained, so far as I could, from repeating what has been better said by

others than I could say it. The point which I wish to press upon the Conference is this: Speaking for one State, we frankly tell you that she will not enter upon a compromise which is not fair and mutual, which does not bind both parties.

But, sir, although I have thus expressed myself, I do not at all despair of the Republic. I do not believe that a dissolution or destruction of this Government is to take place. Its origin and its existence have been characterized by too many signal interpositions of Providential favor. We cannot look into the future. I have no desire to do so. If we all conscientiously perform our prescribed duties, if we are faithful to ourselves, to our people and our Constitution, He who rules the nations will take care of the rest. It may be that the clouds which now cover our horizon will be swept away, carrying with them all these subjects of difficulty and danger, which alone have troubled the quiet and the prosperity of the American Union.

Mr. LOGAN:—Instead of dreaming, like Mr. FIELD, of news from the seat of war, and of marching armies, I have thought of a country through which armies *have* marched, leaving in their track the desolation of a desert. I have thought of harvests trampled down—of towns and villages once the seat of happiness and prosperity, reduced to heaps of smoking ruins—of battle-fields red with blood which has been shed by those who ought to have been brothers—of families broken up, or reduced to poverty; of widowed wives, of orphan children, and all the other misfortunes which are inseparably connected with war. This is the picture which presents itself to my mind every day and every hour. It is a picture which we are doomed soon to witness in our own country, unless we place a restraint upon our passions, forget our selfish interests, and do something to save our country.

We feel these things deeply in the Border States. The people of these States bear the most intimate relations to each other. They are closely connected in business. They associate in their recreations and their pleasures. The members of a large number of their families have intermarried. State lines, except for legislative purposes, are scarcely thought of. The people of Kentucky, Ohio, Indiana, and Illinois, are one people, having an identity of sympathy, of feeling, and of interest.

We have in the West a section of country known as the dark and bloody ground. The historical incidents connected with it are of the most sad and mournful character. There is buried under it an ancestor of almost every family descended from the early settlers of the West. But this ground is limited in extent. If we are to plunge this country into civil war—if we are to go on exasperating the sections until they take up arms against each other, then shall we make a dark and bloody ground of all the Border States. We shall desolate all their fields, and carry sorrow and mourning into every family within their limits.

Should we not have a deep interest in avoiding war? Should we not labor with, and entreat the people of all sections to help us avoid it? If it comes, we are to be the sufferers. Upon *our* heads the ruin must fall. We cannot and will not talk about abstractions now. We are impelled by every consideration to do all we can to settle our differences, and keep off the evil day that brings civil war upon our happy and prosperous country, and to prevent the devastation of that country.

I wish to say a few earnest words to my brother Republicans. You object to these propositions because they are pressed just now when the new administration is coming into power. You say that there is no need of them, and that they involve submission on your part, as a condition of your enjoying the fruits of the victory you have won. Let me assure you that no one labored harder for the triumph of Mr. LINCOLN than myself; I exerted what little influence I had; I paid my money to secure his election; I now wish to give him an honorable administration. I believe he will make a good President, and I wish to give him a united country to rule. This can only be done by a settlement of our troubles. No one will rejoice over that settlement more than Mr. LINCOLN.

Fellow Republicans, the only way that opens before us now to settle them is, by adopting the report of the committee; by permitting the people to adopt it. Can you, dare you, refuse to let these propositions go to the people? Dare you stand between the people and these propositions?

I would appeal to you on another ground. Remember that it is the minority that is asking for these guarantees. You are just coming into power. The country has approved of your action in the election of Mr. LINCOLN. You

can afford to be liberal. Liberality is a noble trait in any character, whether it be that of an individual or political party.

There are reasons why the South should be apprehensive now. The organizations of the old Whig and Democratic parties had nothing sectional in them. There were no resolutions in their platforms which could give the South any cause of alarm. The content between these parties did not involve any sectional interests whatever. Now, it is undeniable that the organization of the Republican party was brought about by the agitation of the slavery question in its various forms.

It is not strange to me that the success of that party in the late election should be misconstrued and misunderstood by the South, and that the people there should be apprehensive for the result.

If the Missouri Compromise had not been repealed we should not have found ourselves in our present condition. It was the repeal of that compromise that brought the Republican party into power. The masses of the people do not sympathize with extremists on either side. The Republican party took the middle ground, and thus rendered itself acceptable to them.

After the repeal of the Missouri Compromise came the Kansas agitation. In this the North was right and the South was wrong. Slavery was attempted to be forced upon an unwilling people. They resisted—the American people always will resist injustice. The excitement pervaded the whole country. Sympathy was excited for Kansas, and properly enough. This excitement benefited the Republican party—it injured all others. It overwhelmed all other considerations. The aspect of the slavery question was remembered in Kansas; elsewhere it was forgotten.

In this way, was the Republican party brought into power. I say now that if the Union is dissolved, that party will be responsible; responsible, as that party has now the power to prevent it.

The gentleman from Vermont, who has put his argument in a very ingenious way, insists that before the North is called upon to act on these propositions, that the South ought to declare whether she will be satisfied with them. I do not think so. I am perfectly aware of the difficulties under which the

Representatives of the slave States are laboring. They cannot answer this question. Let the gentleman remember, when he presses this point so hard, and with such apparent candor, that even he will not undertake to answer for New England. More than that, he denies the authority of those who undertake to answer for the North. I do not believe the gentleman is very extreme in his opinions; but let him remember that the South should be treated fairly, and that she is placed in circumstances of peculiar embarrassment. It raised the hair upon Republican heads when they were told that Virginia had presented her ultimatum. Now complaint is made that she has not done so, and that she will not say what will satisfy her.

I feel that I have no interest in this question, except the interest of a citizen. I have no special interest in it. I ask nothing of politics, but I do feel for my country. I may be wrong. I do not claim infallibility; but I cannot bring my mind to the conclusion that we ought not to adopt these proposals. I cannot see any practical injury to the North in them, and I can see much benefit to the South.

The North is vitally interested in the preservation of peace, in the preservation of her commerce, and other relations with the South. These relations cannot be broken up without great injury to the Northern people. My heart would rejoice if we could think alike upon these propositions, and adopt them with a degree of unanimity that would give them weight with the country.

I would not assail the motives of gentlemen. Doubtless there are men who honestly believe that such a proposition ought only to be considered in a General Convention. In my judgment such a Convention would be utterly useless. It would lead to endless discussion, which would not be conducted with the decorum that characterizes these proceedings. It would amount to nothing.

No, gentlemen, there is a better way than that. Let us have no General Convention, but let us induce Congress to submit our propositions at once to the people. In no other way, in my judgment, can we avoid the disunion that threatens us. In no other way can the country be saved in her present peril.

Mr. DAVIS, of North Carolina:—[2]

Mr. ORTH:—Mr. President, I have thus far avoided any participation in the general discussion of questions which have claimed the attention of this Conference. My purpose has been to give a calm and careful attention to whatever may be offered for our consideration; to hear with unbiassed judgment the grievances which are the subject of complaint, and to afford redress, if redress be necessary.

Virginia, rich in her patriotism of the past, rich in her historic treasures, has called upon her sisters to convene and consult with reference to the condition of the Union, and the matters which are supposed to threaten our future peace and welfare. Indiana heard and heeded that call. To her it was as the voice of a mother to her child. It was a voice which none of the States of the great Northwest—carved out of that vast domain which Virginia granted to the United States as the common property of all—could fail to hear with favor. If dangers threaten the common welfare, if the future peace of this land is to be disturbed, it was well for Virginia, as in other days of danger, to sound the alarm, and invite a general council. In pursuance of that call, Indiana is here, and here to listen. She feels conscious that she has by no act of hers infringed upon the rights of any of her sister States; that she has been faithful to her constitutional obligations—seeking for nothing but what was right, and ever ready to remedy any wrong. Occupying this position, her representatives on this floor would be derelict in their duty if they attempted to assume any other, or to pursue any course of action inconsistent therewith.

What, then, in all candor, are the grievances of some of our sister States, as presented by their delegated authority to this Conference? Nothing of a tangible nature calling for practical and definite action. A deliberative body ought not to act upon the fears or imaginations of those desiring such action. The mere election of President of the United States by the votes of the northern portion of this Union, affords no just ground of complaint. That election is valid, being in strict conformity with all the requirements of the Constitution. The peculiar notions or political opinions of that President cannot be the ground of a just complaint, so long as these opinions in their practical operations do not interfere with or contravene the provisions of that Constitution. The opinions and principles of the President elect, however obnoxious they may be to any portion of the people of this Union, are harmless so long as his political opponents have in their control the

legislative and judicial departments of the Government. The question of slavery in the Territories, if ever any real cause of grievance to any portion of the Union, is in process of final settlement, and will be settled before the close of the present Congress in a manner acceptable to a large majority of the American people. What, then, is left? "Personal Liberty bills" in some of the States; and these are being repealed as rapidly as possible; and so far as practical results are concerned, they have been a dead letter on the statute books ever since their enactment.

The non-enforcement of the fugitive slave law. The history of the country since the year of its enactment clearly shows that no law among the national statutes has received more prompt and vigorous execution, notwithstanding its exceedingly odious features. Here, then, is the list of grievances, or I might more properly say supposed grievances; and for a failure to redress them, this Government is threatened with civil war. To justify this unnatural and diabolical resort to arms, the chimera of "State sovereignty" is invoked. And what is State sovereignty? The gentleman from North Carolina has endeavored to enforce this doctrine, and deduce from certain premises, the right of a State, when she feels herself aggrieved, to secede from her sister States, and assume an independent position and a separate nationality. The fallacy of the gentleman's position, in fact the fallacy of the doctrine of "State rights," and the deductions made therefrom by the school of politicians and statesmen to which the gentleman belongs, arises from confounding the terms State rights and State sovereignty, and using these as though they were convertible terms. The several States of this Union possess certain rights clearly defined, and known and understood by the reader of American political history. Subject to the restrictions of the national Constitution, they have the right to establish, regulate, and control their internal police and entire polity so far as it affects the persons and property subject to their jurisdiction; to regulate trade, commerce, contracts, marriage, the acquisition, possession, control, and disposal of real and personal property; also the assessing and collecting of taxes, and disbursement of the public revenue.

These are some of the main rights belonging to the States as such, but these do not in any just sense constitute sovereignty. The several States of the Union are not now and never have been sovereign States. They never possessed the right to declare war, to make peace, to coin money, to enter

into treaty with nations, and none of them ever endeavored or attempted to exercise any such rights as these. These are attributes of sovereignty, as laid down by writers upon the laws of nations, and recognized as such by the civilized world. Examine the history of your several States, and tell me whether in any one of them any act or fact can be found which would entitle either of them at any time, past or present, to be recognized as sovereign independent nations?

Mr. RUFFIN:—Will the gentleman from Indiana permit me to inform him that during the Revolutionary War, the State of North Carolina had laid the foundation of a navy, and at the close of hostilities she transferred her vessels to the United States.

Mr. ORTH:—I thank the gentleman from North Carolina for the interruption, and for the allusion to the local history of his State, of which I was not before aware.

There, then, we have a single instance of one of the States taking one step toward sovereignty, by the establishing of a navy. I believe this is the only instance now remembered, and this instance affords the strongest argument in favor of the position I assume and am endeavoring to enforce. North Carolina, it seems, had taken one step toward sovereignty; and yet upon the adoption of our national Constitution, upon the creation of the only sovereign Government in this Union, the *Government of the Union*, she transfers to that sovereign her infant navy; she relinquishes her only attribute of sovereignty—if such it be—to the United States, and merges herself with her sister States into that Union of States which has hitherto been our boast and pride, as well as the admiration of the world.

The several propositions now pending before us do not meet my approbation, and cannot receive my support. They are in the shape of amendments to the Constitution, and are all in the interest of slavery, seeking to strengthen that institution, and to give it an importance far beyond what the fathers were willing to concede. While the North is willing to recognize and enforce the requirements of the Constitution touching the various aspects of the slavery question, so nominated in the bond, they feel unwilling to grant new guarantees to a system which the civilized world is beginning to hold in detestation, and which is inimical to free institutions,

and the only subject of contention that will ever seriously disturb the peace and prosperity of the Union. I am opposed to the proposition before us: First, because the grievances complained of are not of that serious character requiring any amendment of our fundamental laws. Secondly, because I am in favor of the Constitution as it is, firmly believing that no good reason exists for its change, and that an honest adherence to its wise provisions is our surest guarantee for real or supposed grievances, and that the present of all times is the most unpropitious moment to attempt any change or modification. Party politics in all their embittered madness rule the hour, but calm times and cool heads will be required whenever the American people desire to enter upon so hazardous an experiment. Let the Constitution remain; it has hitherto been, and will continue to be, the palladium of our rights, the sheet anchor of our safety. Thirdly, under no state of circumstances that can possibly arise among us as a people, will I ever consent, by word, thought, or deed, to do any thing to strengthen the institution of slavery. I regard it as an evil which all good men should desire to see totally eradicated; and I hope for the day to dawn speedily when, throughout the length and breadth of the land, freedom shall be enjoyed by every human being, without reference to caste, color, or nationality. While I am willing to tolerate its existence where it now is, I am unwilling to extend its boundaries a single inch, and will not give it any guarantee, protection, or encouragement, save what it can exact by the strict letter of the fundamental law. Beyond that I will never go; beyond that Indiana will never go; and to this, gentlemen from the other side had as well become reconciled. It is the *ne plus ultra* of the American people, and to that they will adhere through all coming time. If, in consequence of this position, the foundations of society are to be broken up, civil war inaugurated, and the destruction of the Government attempted, you must remember we are standing upon the Constitution, in favor of sustaining the laws of the land, denying the existence of any real grievance; and standing thus with that consciousness of strength which integrity imparts, you must strike the first blow, cross the Rubicon, commit the foul and damning crime of treason, and bring upon your people ruin, devastation, and destruction, and call down upon your guilty heads the curses of your children and the disapprobation of the civilized world!

Mr. BRONSON:—For what purpose was this Conference called? Why have we come here? I suppose we are here to do something, to accomplish something. If we are only here to make speeches, and not to arrive at conclusions, our mission is useless. The greater portion of the debate hitherto has been made up of set speeches, all like the circumlocution office in one of Dickens' novels, showing "how not to do it." I am not in favor of pursuing this course any longer. Let us talk the subject over like business men, in a sensible way, and then come to a vote. I think we may do something which will prove effectual, and I hope we shall. My political opinions are well known. For more than forty years I have belonged to one political party. I did not come here to speak. I did not intend to speak at all, and shall now only submit a few observations.

I hail from the old Democratic party. The most of you are members of the opposition. I do not know how or why I was selected as one of the delegates from New York. I do not even know how the vote of that delegation will stand on these proposals of amendment. I suppose the dominant party has taken care to send a majority of its members. If I was a mere politician, I do not know but I should be in favor of breaking up the Conference, and of doing nothing; but being only a Democrat, I desire to transmit to posterity the blessings of a good Constitution and a good Government.

The country has become disquieted. Its peace has been disturbed by the acts of politicians. Many have become disgusted with the present condition of affairs, and are unwilling to act or vote. A large portion of our people have become alarmed. They think their rights have been invaded. Some of the States have gone. GOD knows whether they will ever come back again. If we act wisely, perhaps they may. But there is occasion enough for alarm. I have felt alarmed for a long time. One way suggested to get these States back is by conquest. But what are we to do with a conquered State? Shall we establish a military despotism over it?

We all have the right to express our opinions, and I will express mine. There are eight other slave States whose condition is to be considered. If we do not act here, will they not leave us and join their sisters? I hope they will not. I would not raise my voice in this Conference, if it were not for the purpose of inducing them to stay.

Virginia, that noble old Commonwealth, has invited us together. She proposes the CRITTENDEN resolutions, and asks us to consider them. Now she is charged with standing in the way of the Government. This is not true. Blessed are the peacemakers, and the position of Virginia in this matter is that of a peace-maker. I thank her for bringing us together.

Two-thirds of the speeches here have been made by those of a political party to which I never belonged. I do not understand either their purposes or wishes. Perhaps I may be behind the times. I have not been actually engaged in politics for more than twenty-five years. During a large part of that time I have been engaged, in my humble way, in the administration of justice in the State I here in part represent. I do not know but I may be falling into the common fault of making a speech. If I do, you must check me. Again I say, I thank Virginia for her invitation. Why should we not confer together? Six or seven States—no matter which—are gone. If nothing is done, eight or nine others will follow, and other divisions will come as a matter of necessity. Rhode Island—patriotic Rhode Island—will not go with New England in this Conference. She will not separate from her southern sisters. Connecticut, I think, will not stay, and New York, I believe, will stand with the South.

How is it, or why is it, that we should do nothing? Why should we break up and go home? Have not all the States asked us to come here and do this work? Why did their legislatures take the trouble to send us here? All this circumlocution might have better been done at home.

Will a Convention answer the purpose, when another Confederacy has been formed in our very midst? It would be two years at least before any thing could be accomplished by a Convention, and then it would be too late. We all know how delegates to such a Convention are elected. We all know how much time would be consumed before the Convention could meet. I say we cannot bear the delay. I ask the gentleman (Mr. BALDWIN) of Connecticut whether he thinks it would be safe to delay.

Mr. BALDWIN:—I think it is always safe to follow the Constitution. I think we can follow the example of Kentucky.

Mr. CLAY:—I would suggest to the gentleman from Connecticut that the representatives of Kentucky are here to speak for her.

Mr. BRONSON:—Kentucky has sent delegates to this Convention since she passed the resolutions to which the gentleman refers. I think we cannot stand upon the ground taken in these resolutions. I do not believe Kentucky herself would be satisfied with them now.

It is strange to see gentlemen so cool and apathetic under such circumstances. Is no one alarmed for the safety of the old flag about which so much is said? Can the Border States stay with us when their brethren are gone? If the action of the North in relation to slavery is such as to drive out South Carolina, can Delaware and the other Border States remain? For one, I do not wish to put this Constitution into the hands of a General Convention. Who can tell what such a convention would do with the Constitution; what it would do with the decisions of the Supreme Court, under which so many of the vexatious questions have been settled? It would be worse than attempting to settle our differences in a town meeting. I would hesitate long before I would submit such questions to a convention. Before they could be settled in that way, the Union would be gone forever. The process would be too slow. I have nothing to gain in this matter. My only wish is to spend my few remaining days in the United States, and to transmit the blessings of our Government to my children.

Some of the Republican members here subordinate their platform to their country. I commend them for it; these are noble sentiments. Men should abandon platforms when they tend to destroy the country. I concur in the sentiments of the gentleman from Illinois, uttered this morning. They also are noble sentiments.

I venerate our Constitution. When made, it was equal to any ever framed. Nothing short of Almighty Wisdom could have framed a better. But was it given to human wisdom, to WASHINGTON and MADISON, to foresee all the events of the future? The Constitution has held us together for three-fourths of a century; that is a wonder in itself; but its makers did not foresee this day—a day when Freedom itself was in danger of perishing.

Why this hesitation about amending the Constitution? New York accepted it reluctantly, and only ratified it upon the assurance that it should be amended as she proposed. It is not so holy a thing now, that it may not be amended.

WASHINGTON, you must remember, signed the Fugitive Slave Law of 1793, as well as the Constitution.

We are told by gentlemen from New York and Connecticut (Mr. NOYES and Mr. BALDWIN), that the action proposed here is unconstitutional. It does not become these gentlemen to raise this objection. There was never an amendment of the State Constitutions, in either of the States they represent, adopted, that was not brought before the people in substantially the same way.

Much has been said here about modern civilization and the spirit of the age. It is said that these are hostile to slavery. Suppose they are? What have we to do with them? The example of England, also, has been referred to, as well as that of France. True, they have abolished slavery by name, but they have imported apprentices from Africa, and Coolies from Asia, and have placed them under the worst form of slavery ever known. England tolerates slavery in her mining districts to-day in a worse form than that existing in the Southern States. She has millions in India worse off than slaves. She has been the greatest land robber on the earth. She has contributed to the support of the Juggernaut, and has forced the Chinese at the point of the bayonet to eat opium. Do you forget that she ruined the capitol in this city, and blew it up, in 1814? I do not deny her virtues, but I do not care to follow her example.

Our fathers said slavery was strictly a State institution, and they would not meddle with it by the Constitution. Their doctrine is true now. The Union cannot be preserved if we interfere with the institutions of the States.

I will not stop to refer to the Missouri Compromise, or the compromises of 1850 and 1854. I will only say that the North understood these to settle the slavery question, and professed to agree not to meddle with slavery hereafter in the States. But the cry of freedom was raised, and its new apostles, during the last campaign, went through the land preaching destruction to slavery. What did they mean but that slavery was to be assailed at every possible point? This doctrine was involved in their platforms, and advocated in their speeches. They collected all the bad things ever said about slavery, whether true or untrue, and published them. The purpose to assail the institution was everywhere owned.

I wish to say a word about the Territories. What great harm would be done if all the Territories were thrown open to slavery? By the decision of the Supreme Court in the Dred Scott case, they are open already. But in the greater part of them slavery cannot exist at all. New Mexico has a slave code. So have the Cherokee and other Indian tribes; and yet slavery does not and cannot flourish among them. It cannot make head against the obstacles which oppose it, and yet you will attack it even there. If you do so, civil war is inevitable.

But what mischief is done if slavery does go into the Territories? It will not add another to the degraded race of Africans. It is a blessing to the slave if he may be permitted to go with his master into these new Territories. In the old slave States he is compelled to work in gangs under the whip of a driver, with no one to look after his health or comfort. Take him into one of these new Territories, and there are one hundred white men and women to protect each individual of his race, and to see that he suffers no wrong. It is a blessing to take him out of the plantation gangs, and to place him in a new country. Then why not let him go there and live in peace? Your zeal to exclude slavery from the Territories only injures the African race. If there is a good substantial reason for this exclusion I shall be glad to hear it. Up to this time I have heard no good reason stated. Although I have declared myself a Democrat, in this Conference I am no party man. Show me any good reason for not adopting these proposals of amendment and I will oppose them. But until that reason is shown they will receive my support. So far as I can judge, no argument has been proposed here against these propositions which is not of a partisan character.

The rights which the slave States now ask to have us recognize, are guaranteed to them by the Constitution as it now stands. We are giving them nothing new. Every lawyer is familiar with the rule of constitutional construction, that all the rights not expressly granted to the General Government are reserved to the States. Let us carry this principle into effect now. It is all that we are asked to do. Let us do something. Let us amend these propositions; make them as unobjectionable as we can, and send them to Congress. Let us urge Congress and the country to adopt them. In their adoption there is safety; there is great danger in their rejection.

Mr. POLLOCK obtained the floor, and at twelve o'clock the Conference adjourned to ten o'clock to-morrow.

FIFTEENTH DAY.

WASHINGTON, FRIDAY, *February 22d, 1861.*

THE Conference was called to order by President TYLER, at 10 o'clock A.M., and prayer was offered by Rev. Dr. SUNDERLAND.

The Journal of yesterday was read, corrected, and approved.

Mr. WICKLIFFE:—It will be necessary that some plan be adopted to defray the expenses of the Conference, and of printing the Journal. I move the appointment, by the President, of a committee of three to take those subjects into consideration.

The motion was adopted, and the President appointed Mr. JOHNSON, of Maryland, Mr. POLLOCK, and Mr. GRANGER as such committee.

Mr. HITCHCOCK:—I have an amendment in three sections which I shall offer to the report of the committee. I ask that it may be read, laid on the table, and printed.

The motion was agreed to, and the amendment read as follows:

Strike out Section 3, and insert the three following:

SEC. 3. Congress shall have no power to regulate, abolish, or control within any State the relations established or recognized by the laws thereof, touching persons held to service or labor therein.

SEC. 4. Congress shall have no power to discharge any person held to service or labor in the District of Columbia, under the laws thereof, from such service or labor, or to impair any rights pertaining to that relation under the laws now in force within the said District, while such relation shall exist in the State of Maryland, without the consent of said State, and of those to whom the service or labor is due, or making to them just compensation therefor; nor the power to interfere with or prohibit members of Congress, and officers of the Federal Government whose duties require them to be in said District, from bringing with them, retaining, and taking away persons so held to service or labor; nor the power to impair or abolish the relations of persons owing service or labor in places under the exclusive jurisdiction of the United States, within those States and Territories where such relations are established or recognized by law.

SEC. 5. Congress shall have no power to prohibit the removal or transportation of persons held to labor or service in any State or Territory of the United States, to any State or Territory thereof, where the same obligation or liability to labor or service is established or recognized by law; and the right during such transportation, by sea or river, of touching at ports, shores, and landings, and of landing in case of distress, shall exist; nor shall Congress have power to authorize any higher rate of taxation on persons held to service or labor than on land.

Strike out Section 7, and insert:

SEC. 9. Congress shall provide by law, that in all cases where the marshal, or other officer whose duty it shall be to arrest any fugitive from service or labor, shall be prevented from so doing by violence of a mob or riotous assemblage, or where, after arrest, such fugitive shall be rescued by like violence, and the party to whom such service or labor is due shall thereby be deprived of the same, the United States shall pay to such party the full value of such service or labor.

Mr. TURNER:—I offer the following resolution:

Resolved, That the time fixed upon to commence voting upon the questions before this Convention, be postponed until Monday, February 25th, at 12 o'clock M.

I am as desirous as any member of the Conference can be for action. Illinois is a Border State, and she feels, in common with the Border States, a deep interest in the questions we are discussing here. But I think a false issue has arisen, and that it ought to be corrected. This issue has been forced upon us, and it will go to the country unless corrected. Very little time has yet been occupied by Indiana, Illinois, and Ohio, but we wish and we ought to be heard.

Mr. JOHNSON, of Missouri, moved to lay the resolution upon the table.

The vote was taken by States, with the following result:

AYES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Pennsylvania, Rhode Island, Tennessee, and Virginia—10.

NOES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Ohio and Vermont—10.

Mr. TURNER:—I see the resolution does not meet with favor. I will withdraw it.

Mr. CHASE:—I offer the resolution again. I wish to appeal to this Conference in the name of peace, not to press this vote to-day. We have been discussing general questions. There has been little or no discussion touching the merits of the proposed amendments to the Constitution. Do gentlemen suppose that if it is pressed through in this way, it will meet with favor when it comes before the country? Let me assure you, gentlemen, that you will not give the country peace by such a course.

There is a prospect that all sections of the Union may yet be induced to agree to a General Convention. The floor is so parcelled out that the Western States cannot be heard. Why do you force the vote in this manner? Two-thirds of Congress must concur, or these propositions cannot go to the people. The same two-thirds can suspend the rule at any time. There is no

necessity for passing these propositions to-day. I regret that the proposition of Mr. WICKLIFFE, limiting the speeches to thirty minutes, has not prevailed. It was withdrawn.

Mr. WICKLIFFE:—No! It was laid on the table by enemies.

Mr. POLLOCK:—I have the floor. I will occupy it only thirty minutes, with the understanding that those who follow will do the same. We still have time for six speeches.

Mr. CHASE:—I have but little more to say. When we have a rule, we know what it is. A general understanding will amount to nothing. I have insisted that it was inexpedient to press these matters to a decision before the inauguration of Mr. LINCOLN; but when overruled I have cheerfully submitted. I now appeal to gentlemen to yield, and let us take the final vote on Monday.

One word now as to a General Convention. I have faith in that, and believe we can agree to call one. The idea was started by Kentucky, and promptly followed by Illinois. I have seen a copy of the "Louisville Journal," which strongly advocates it. It is practicable, and the country will assent to it.

Mr. HOUSTON:—The delegates from Delaware desire that the vote should be taken to-day. We have not discussed these propositions, and do not wish to discuss them. We want action.

Mr. BACKUS:—I concur in the views of the gentleman from Delaware. Discussion, so far, has tended very little toward harmony or unanimity. I am in favor of closing the general debate to-day. But I do protest against that part of the resolution we have adopted, which limits the discussion of an amendment to five minutes, and confines the reply to the committee. We ought not thus to be restricted and choked down. I will not move to amend the resolution now under discussion. It will answer my purpose to give notice that I shall move to amend the five-minute rule.

Mr. COOK:—We ought to have an opportunity to present the views of Illinois. As yet we have had none. We cannot justify ourselves to our people unless we do.

Mr. WICKLIFFE:—I move to lay the whole subject on the table. I want to test the question. Debate and discussion change the mind of no one. We have now been here eighteen days, and the country is expecting a decision.

The vote upon Mr. WICKLIFFE'S motion was called by States, and resulted as follows:

AYES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Rhode Island, Tennessee, and Virginia—9.

NOES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Ohio, Pennsylvania, and Vermont—11.

Mr. BACKUS:—I now offer my proposition as a substitute for Mr. CHASE'S resolution, as follows:

Resolved, That the resolution heretofore passed, limiting debate on amendments that shall be offered to the report of the Grand Committee, be so amended as to allow the delegates who may desire, to speak not exceeding ten minutes on each amendment.

Mr. CHASE:—I do not wish to seem unreasonable. As my resolution meets with objection, I will withdraw it in favor of the one adopted by my colleague.

Mr. WICKLIFFE:—Have gentlemen calculated how many hours this will take? It will amount to a total defeat of all action. We could not get through by the middle of next month.

Mr. EWING:—I favor the resolution. All should have a fair chance.

Mr. HOUSTON:—I move to amend, giving each delegate ten minutes.

Mr. WILMOT:—I object to that very strenuously. Many delegations are divided. I hope the resolution will pass as it is.

Mr. HACKLEMAN:—I approve of the rule as it now stands. Practically, it gives ten minutes.

Mr. RANDOLPH:—I move to lay the resolution on the table. We adopted the rule unanimously.

Mr. WILMOT:—The motion is not in order. We have once voted not to table the resolutions.

Mr. HOUSTON:—I will withdraw my motion, at the instance of the gentlemen around me.

Mr. CHASE:—The question is upon the adoption of the resolution offered by Mr. BACKUS. I have accepted it in place of the one offered by myself.

The PRESIDENT:—It is subject, at any time, to a motion to lay on the table.

Mr. RANDOLPH:—That is my motion.

The motion to lay the resolution of Mr. BACKUS on the table was lost by the following vote—the vote by States being requested by Mr. CHASE:

AYES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Pennsylvania, Rhode Island, Tennessee, and Virginia—10.

NOES.—Connecticut, Indiana, Illinois, Iowa, Maine, Massachusetts, New Hampshire, New York, Ohio, and Vermont—10.

Mr. GUTHRIE:—I presume we all desire to know the result of our labors. I regret to see so much feeling manifested. Perhaps some of us had better take the benefit of the prayers of the church on Sunday. Some of us wish to get our propositions to Congress at an early hour. Those who oppose us—those determined to defeat action, can speak on until the fourth of March. I hope such is not their intention.

Mr. TUCK:—If the rule is abused, the Convention will stop the abuse.

At this point there were loud calls of "question," and the President put the question to vote, *viva voce*.

The PRESIDENT:—I think the Noes clearly have it.

Mr. CHASE:—A vote by States was called for by several members.

Mr. BARRINGER:—Is this resolution intended to give the right of reply? If so, we shall have a half-hour speech upon every amendment.

Mr. BACKUS:—If any member wishes to divide his time, he can do so; but he can only occupy ten minutes in all. We are called to deliberate, as well as to act. We are asked if we wish to stave off final action? I answer, No. I want speedy action. But at the same time let us have deliberation. I wish to give a vote that my constituents will approve.

The PRESIDENT:—The vote will be taken by States.

The resolution was adopted by the following vote:

AYES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Ohio, Pennsylvania, and Vermont—11.

NOES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Rhode Island, Tennessee, and Virginia—9.

Mr. HALL offered the following, which was read, laid on the table, and ordered to be printed:

Amendment to Section 3 of the Committee's Report, to come in after the words "retaining and taking away persons so bound to labor:"—"but the bringing into said District of persons held to service for the purpose of being sold, or placed in depot to be afterwards transferred to any other place to be sold as merchandise, is forever prohibited, and Congress may pass all necessary laws to make this prohibition effectual; nor shall Congress have," &c.

The PRESIDENT:—The Conference will proceed to the order of the day, and Mr. POLLOCK has the floor:

Mr. POLLOCK:—Brevity is always a virtue. I intend to practice that virtue now. I would not make a single observation, if I did not feel that by keeping silence I should neglect my duty. As it is, I do not intend to occupy the time of the Conference more than twenty minutes.

When the committee upon the subject invited Pennsylvania to furnish a block for the Washington Monument in this city, they asked also for a motto, to be inscribed upon it, which should express some idea characteristic of Pennsylvania. What was the motto selected in behalf of that great State? Did we go to Germantown and invoke the memories of the

mighty dead? Did we ask the motto of Valley Forge? No, brothers, no! Pennsylvania stood by the side of the grave of Penn, the man of peace, and in his example she found her motto, and it stands inscribed upon her contribution to that monument to the Father of his Country to-day. There may it stand forever. "*Pennsylvania was founded by deeds of Peace.*" How noble the sentiment! How characteristic of that Commonwealth!

Animated by the same sentiment, filled with the same spirit, herself asking nothing, requiring nothing, Pennsylvania comes into this Conference and says to every delegate here, "*Peace, Brothers, Peace.*" She is not for war. She believes that the power of kindness is far greater than that of the sword; that in the affection of brother toward brother there is greater strength than in all the iron contained in all her thousand hills and mountains. She comes here at the instance of a sister. She heard the voice of that sister asking for consultation, and she obeyed it. She is here, and in the right spirit.

A word now as to the motive of Virginia in calling the States together. Some object that Virginia comes bearing the olive branch on the point of the bayonet. Not so, sir. She is placed in a peculiar position, and I appreciate it. She does not make use of threats. These exist only in the imagination of gentlemen. I am willing to meet her here upon the very ground she takes, and unite with her in saying, "Our Union as it is, now and forever." We are here taking counsel, not with traitors, not with secessionists, but with lovers of the Union.

The people love the Union; they will not give it up. They are true. My heart almost leapt from my bosom when that telegraph message was read from Missouri a few days ago. Tennessee has taken up the cry, "Union for ever," The nation is troubled. All nations are, at times. But our troubles are not insurmountable. We are all here together to settle them. Why not settle them, and give peace to the Union, and joy to the hearts of the people?

We can settle our difficulties. The right feeling animates gentlemen from both sections. Where was the heart in this Conference that did not start with emotion, when, some days ago, that glorious old patriot from North Carolina (Mr. RUFFIN) told us of his devotion to the Union? Who did not honor and respect him? Old men and young men wept as they listened. Friends! Countrymen! I come here from a Border State. These States have a

vital interest in the result, therefore we speak earnestly. Let us say to the angry passions of the country, "Peace, be still!"

The Border States are united; they have common interests. Beside the hearthstones of each, sit wives, and children, and families, connected with each other by ties of blood, of interest, of social intercourse. We are one. Is Maryland or Delaware ready to say that either will part company from Pennsylvania? No! We are brethren—come weal, come wo, we will stand by each other, and we will stand by the Union.

Gentlemen say there will not be war, if we do not agree. I wish I could think so, but I cannot. But if war should come, let me ask the gentlemen from New York who think principles are standing in their way, will you take the risk? Will you see the soil of Pennsylvania drenched with blood? Can you risk all this hereafter, when you can avoid it by accepting a proposition that involves no sacrifice of principles? Never in my whole life have I felt the weight of official responsibility as I feel it now. God grant that war may be averted from the country!

Let the lightning this day flash to the extreme limits of the Union, the glad tidings that we have settled these questions. The message would be received with gratitude and thanksgiving. Our friends in the Border States say, "We love the Union, we wish to stay in it; we do not wish to be driven out." Can you not, will you not, do something for them? Let us trust this matter to the people. I am not afraid to trust the people of Pennsylvania. New York and Massachusetts, trust yours!

We talk calmly of war, but we forget its calamities. Let us remember that we should not sacrifice one life for this paltry abstraction. Let us remember how great are the miseries of war. Let us think of the rush of angry armies, of the widows and orphans, of the sorrow and desolation that war always leaves in its path.

Christian men! remember that our great Saviour was a Prince of Peace—that he came to conquer with peace, not with the sword. "The Lord God omnipotent reigneth."

Disunion is a crime against every thing. Above all, it is a crime against God. Christians, pause and reflect. Let me entreat you to help us save this

country from disunion.

I speak earnestly. We Pennsylvanians are upon the border. Our soil must be the battle ground. Upon us will the heavy trouble fall. Once more I say, let us trust the people. They are always right. They will do something; and honest men, sincere men, tell us that unless something is done, the border slave States cannot be retained in the Union.

I am not here as a party man, but as an American citizen, and a citizen of Pennsylvania. I am here to perform my duty to the whole country, if I can find out what that duty is.

Our friends say there is great apprehension at the South that the Republican party meditates unconditional interference with Southern rights. I do not believe for a moment that there is any ground for such an apprehension. But, nevertheless, it exists. Acting upon it, several States have withdrawn from the Union. We must deal with it in the best way we can. If we can satisfy our southern brethren, in the name of peace let us do it. I labored for the election of Mr. LINCOLN, but I never understood that hostility to slavery was the leading idea in the platform of his party. Pennsylvania had other interests—other reasons very powerful, for supporting him. There was the repeal of the Missouri Compromise—ruinous discriminations in the Tariff —the corruption of the Government—the villanous conduct of its high officers; these and other considerations gave Mr. LINCOLN more strength in Pennsylvania than the slavery question.

There are sentiments and opinions at the North that must be respected. There are sentiments and opinions at the South that must be respected; but there are no differences that cannot be honorably adjusted. The only practicable way that I can discover is to adopt the plan reported by the committee, and secure its submission to the people.

How can we do greater honor to this glorious day, which gave the immortal WASHINGTON to his country and to the world, than by marking it on the calendar as the day that secured the safety and perpetuity of the American Union?

Mr. SUMMERS:—The Committee on Credentials have examined the case of Mr. J.C. STONE, who is commissioned as a delegate from Kansas, and are

of opinion that he is duly accredited.

Mr. FIELD:—I understand that he was appointed by Mr. BEEBE, the Secretary of the Territorial Government.

Mr. CLAY:—There is a provision in the Kansas Act authorizing the Secretary to perform all the duties of the Governor in his absence.

Mr. BROCKENBROUGH:—I represent an old and honored Commonwealth. I speak, remembering the maxing that "a soft answer turneth away wrath." But I should disregard my duty if I did not reply to what was said a few days ago, in arraignment—in unfair and improper arraignment, of Virginia.

Virginia occupies no menacing position, no attitude of hostility toward the Union or her sister States. Virginia knows that "eternal vigilance is the price of liberty." She knows, too, that there is good policy in the maxim, "in peace prepare for war." Her action is only such as is dictated by a prudent foresight. How unkind, then, are such taunts against Virginia, the mother of us all. She comes here in a paternal spirit; she desires to preserve the Union; she disdains to employ a menace; she knows that she never can secure the cooperation of brave men by employing menaces. No! She wishes to use all her efforts to perpetuate the reign of peace.

Another says we are seeking to secure an amendment of the Constitution by the employment of unconstitutional means, and that this meeting is a revolutionary mob—that these eminent men of the country assembled here, constitute a mob. No, sir! No!

Mr. BALDWIN:—If the gentleman from Virginia refers to me, he quite misunderstood me. I said only that the action proposed here was not contemplated by the Constitution, and was revolutionary in its tendency.

Mr. BROCKENBROUGH:—I cannot for my life so consider it. This is merely an advisory body. We are here to devise an adjustment, and to lay it before Congress. We are exercising the right of petition, and that is a sacred right. Is this revolutionary? No, sir! You would insist that Congress should *receive* a petition, although that body had no right to act upon it. If so, how much more should our petition be received, when we seek to preserve the

Union, and when the Constitution expressly authorizes Congress to act in such a case.

The gentleman from Vermont said last evening, that a pledge from the South to abide by the result would be a condition precedent to the submission of the proposition at all, and yet he says he cannot pledge Vermont. Why, then, does he ask us to pledge Virginia?

Mr. CHITTENDEN:—I am not willing to be misunderstood. I thought my language was plain. What I said was, that no one could pledge the free States for or against these propositions; but I did say we could pledge them *to abide by the Union, whatever* the result might be. *That* is the pledge we ask from the South.

Mr. BROCKENBROUGH:—Well, that is a pledge we have no authority to give. We cannot accept these propositions as a boon from any section. We must have them as a right, or not at all.

But let me address myself at once to the momentous question. It seems that we can agree upon every thing but this question of slavery in the Territories. So far as that subject is concerned, Virginia has declared that she will accept the Crittenden resolutions. She and her southern sisters will stand upon and abide by them. If gentlemen will come up to this basis of adjustment with manly firmness, the electric wires will flash a thrill of joy to the hearts of the people this very hour. Why not come up to it like men?

The Supreme Court has already established the rights of the South, so far as this question is concerned, upon a basis which is satisfactory. Under the Dred Scott decision, the people of the South have the right to go into any portion of the Territory with their slaves. You, gentlemen of the North, will not abide by that decision. You have declared in your platform that it is a miserable dogma. How can we be satisfied with such a guarantee for our rights as that?

But it is said that this part of the Dred Scott decision is only an *obiter dictum*; that the question was not presented by the record. This is not so. As was said by Governor WICKLIFFE, the other day, there were two questions in that case. The judgment of the court was upon them both, and both were presented by the record.

We know that the dominant party has elected a President on a purely sectional issue, and in deadly hostility to our institutions. We believe, from all the indications of the times, that our institutions are utterly insecure. Therefore we ask these guarantees. Give them to us, and from that time you will restore peace and quiet to the country. You at once attach the Border States firmly to you forever. I hope you will do so; but I tell you that the Border States cannot be retained unless you will consent to give such guarantees as will bring back the seceded States, and unite us all in a glorious confederation.

Sentiments have been uttered here that grate harshly on the minds of Southern gentlemen. It is said that this is a war of ideas. If so, then there is certainly that irrepressible conflict about which we have heard so much. But it is not true that slaves exclude free labor. Come to the harvest homes of Western Virginia. There you will see the union of white and black labor—see the two races working harmoniously together. The mechanics are white, the field hands are black. Those only make such assertions who know nothing about it.

You insist at the North that slavery is a sin. If it is as you claim it to be, a sin, the sum of all villanies, then we may as well separate. We cannot live together longer.

If we cannot have the aid of other sections, the Border States must take the subject into their own hands, and settle it for themselves. These States, with one exception, have shown a most excellent spirit. Let them all come up to the work to-day; on this natal day of WASHINGTON, of whom it was said that nature had denied him children, in order that he might be indeed the Father of his Country. New Jersey has most nobly responded, through her distinguished sons, but especially through the voice of that eloquent man, who swept with a master hand the chords of the human heart, in his remarks here, and tones of heavenly music responded to the touch.

The whole nation stands on tiptoe awaiting the final result of the action of this Conference. All sections are ready to make sacrifices, but sacrifices are not required. Let us act, and then go home. A grateful people will bind the wreath of victory around your brows, for "Peace hath her victories not less than War."

We make no appeal to the sympathies of gentlemen. We ask you to do justice, simple justice to the South. Do it, and you will do honor to yourselves. Give us the guarantees we ask, and my word for it, you will see the seceded States coming back one by one, and we shall see ourselves once more a happy and a united people!

Mr. WILMOT:—It is not my purpose to enter upon the wide field that has been opened in this debate. I did not intend to speak at all. I know well the position I occupy before the country. I am regarded by those who do not know me as an extreme man. I am, if I know myself, a man of moderation, and, I trust, of firmness. I make these remarks because the time has come when I must separate from my delegation. I concede every thing to their patriotism, good intentions, and integrity. But I must separate from them in the votes they are about to give.

We are called here to consider the condition of the country. It is said that condition requires our interference—that such interference is necessary. The country has just passed through one of those conflicts which are incidental to our form of Government. It has borne the trial, and I think it is safe.

Those who insist that certain things shall be done, place us in a delicate position. You say that you do not object to the inauguration of Mr. LINCOLN, but you refuse to permit his principles to be carried into effect. We say that we have not merely elected Mr. LINCOLN, but we have decided the principles upon which his administration shall be conducted. You refuse to permit this, and say that you will leave us and revolutionize, unless we consent to a counter resolution.

The contest in which we are now engaged is not a new one. It is of twelve or fifteen years' standing. It assumed new proportions when we acquired Texas. Texas, under the laws of Mexico, was then free. We insisted that slavery should not be recognized there. You claimed that it should—that slavery should go into all the common Territories of the Union. You succeeded. You procured what you claim is a decision of the court in your favor. But the people would not give the question up. The issue was formed —Slavery or Freedom; and on that issue we went into the late election. It was well understood in all its bearings. It was discussed and argued upon both sides and all sides, and the people determined the question against the

South. In my section of the country there was no change. In all the excitement of a Presidential contest, I do not know of twenty votes that were changed. The opinions of the people were formed before; now they have declared them.

My first allegiance is to the principles of truth and justice. Convince me that your propositions are right, that they are just and true, and I will accept them. I will sustain them to the end. If they are wrong—and I now believe them to be—I will never sustain them, and I will show my faith in GOD by leaving the consequences with Him.

Any substantial change in the fundamental principles of government is revolutionary. Yours may be a peaceable one, but it is still a revolution. The seceded States are in armed revolution. You are in direct alliance with them. You say the Government shall not retake the forts, collect the revenue, and you ask us to aid you in preventing the Government from doing its duty.

Permit this, and the judgment of the world will be that we have submitted to the inauguration of your principles as the principles of the Government. It would exhibit a weakness from which the country could never hope to recover. These are reasons satisfactory enough to me. I cannot vote for the first article.

Mr. WICKLIFFE:—Do you wish to get the seceded States back?

Mr. WILMOT:—Certainly I do.

Mr. WICKLIFFE:—How do you propose to do it?

Mr. WILMOT:—I cannot say that I have any special way. It is their duty to return. There are better methods of coercing them than to march our army on to their soil. Now I understand it is your purpose to intrench slavery behind the Constitution.

Mr. RUFFIN:—Certainly. That is true—in a certain portion of the Territories.

Mr. WILMOT:—I thought I was not mistaken. The Government has long been administered in the interest of slavery. The fixed determination of the North is, that this shall be no longer.

Mr. HOUSTON:—Will the gentleman hazard the assertion that such has been the policy of Tennessee, Maryland, or Delaware?

Mr. WILMOT:—I did not intend to say more than that such has been the general policy of the Government. Another objection to the proposed amendment is its ambiguity. Its construction is doubtful, when it should be plain. Don't let us differ when we go home. If we do we shall settle nothing. Some will claim that the first article does not furnish a slave code. Others will claim that it does, and such I think is a fact. I am also opposed to the second article. I do not think it is right thus to bind posterity. I am opposed to the third article, except the first clause. If you think there is really a purpose at the North to interfere with slavery in the States, I am willing a declaratory amendment should be adopted prohibiting such interference. I like that of Mr. FIELD much better. I can go for that with all my heart.

As to the foreign slave trade we ask nothing. The laws are well enough as they are, if properly enforced. Besides, you make too much of it. You will claim hereafter that this formed one part of the compromise. It will amount to nothing.

Mr. BARRINGER:—But the South wants the foreign slave trade prohibited.

Mr. WILMOT:—Do not the statutes prohibit it? Why not enforce them?

Mr. BARRINGER:—We had rather have the prohibition in the Constitution.

Mr. WILMOT:—I am opposed also to abrogating the power of Congress over the District of Columbia. I hope to see slavery abolished in the District.

Mr. WICKLIFFE:—Will the gentleman from Pennsylvania abide by the decision in the Dred Scott case?

Mr. WILMOT:—Certainly, so far as it decides what is in the record.

Mr. SEDDON:—You will not permit it to settle the principle?

Mr. WILMOT:—I will not, any more than Virginia would accede to the decision upon the Alien and Sedition Laws. I will be frank and go farther. If

the Court had undertaken to settle the principle, I would do all I reasonably could to overthrow the decision.

Mr. SEDDON:—My voice has failed me to-day, and I do not know that I can speak in audible tones, but I will try.

I understand the gentleman who last addressed us to say, that there are to be incorporated into the administration of the Government two new principles: one is, that there shall be no slavery in the territories; the other is, that the action of the Government shall be on the side of freedom. And furthermore, that slavery is to be regarded as a purely local institution, and that slaves are not to be regarded as property anywhere except in the slave States. Now, that was just the way in which I interpreted the action of the North in the last election, and it is precisely this view which has led to the secession of the States. The gentleman well understands that a different view of their rights under the Constitution prevails among the Southern people. Will he also understand and recognize the fact, that the Supreme Court has clearly given the sanction of its opinion to the Southern construction?

Mr. WILMOT:—Ought not the action of the Government under WASHINGTON to be a precedent of some weight in our favor?

Mr. SEDDON:—I cannot accede to that. Now the North has inaugurated this policy. We of the South say it is a subversion of the Constitution. The gentleman must as freely admit that the party just coming into power must of necessity be a Northern party. It can have no affiliation with any party at the South. Now I ask, can we, as a matter of policy or justice, whose rights are so vitally involved, sit by and see this done? Slavery is with us a democratic and a social interest, a political institution, the grandest item of our prosperity. Can we in safety or justice sit quietly by and allow the North thus to array all the powers of the Government against us?

The hour of one o'clock having arrived, the PRESIDENT announced that under the resolutions adopted by the Conference, general debate must cease, and the Conference would proceed to vote upon the report of the General Committee, and various amendments proposed thereto.

Mr. FIELD:—I rise to a question of privilege. What was done by the Conference with the credentials of the gentleman from Kansas?

The SECRETARY:—The practice heretofore has been, to consider a gentleman a member, when the Committee on Credentials report in his favor.

Mr. FIELD:—Then I move to reconsider the action of the Conference in this case.

Mr. PRICE:—I rise to a question of order. The committee have reported in favor of Mr. STONE, and that is conclusive.

The PRESIDENT:—I think the Conference has a right to pass upon the credentials.

Mr. FIELD:—I have a serious objection to the admission of the gentleman from Kansas. He holds the commission of the Secretary of the Territory alone, from a man who has never been appointed Governor. It is very irregular. It looks as though the gentleman was sent here only for the purpose of giving the vote of Kansas to certain propositions.

Mr. JOHNSON, of Missouri:—The delegate comes here with an appointment under the seal of the State of Kansas. The act admitting Kansas provides that all the territorial officers shall exercise jurisdiction until others are elected. I think it is in very bad taste for the gentleman from New York to question the regularity of the appointment.

Mr. WICKLIFFE:—I make a point of order. We have decided to proceed to the vote at this time.

The PRESIDENT:—I think this is a privileged question.

Mr. HOUSTON:—I respectfully appeal from the decision of the PRESIDENT.

Mr. MOREHEAD:—I move to lay the whole subject on the table.

Mr. FIELD:—I ask for a vote by States.

The PRESIDENT:—It is somewhat difficult to decide what motion has precedence. What was the motion of the gentleman from New York?

Mr. FIELD:—I moved a reconsideration of the action of the Convention admitting Mr. STONE. Let us have a vote on that motion. It is as good a test

as any.

Mr. MOREHEAD:—I insist that the question is upon my motion to lay the whole subject on the table.

The question was taken upon the motion of Mr. MOREHEAD, with the following result:

AYES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Pennsylvania, Rhode Island, Tennessee and Virginia—10.

NOES.—Connecticut, Illinois, Indiana, Maine, Massachusetts, New York, New Hampshire, Ohio, and Vermont—9.

Mr. CLAY:—I would ask, as a matter of courtesy, not to say of common decency, that Mr. STONE may be permitted to state how and why he came here.

Mr. STONE, of Kansas:—I understand that I was appointed by the Secretary of Kansas, who was at the time the Acting Governor. I understand that the appointment was made in accordance with the Enabling Act of Kansas. I am not inclined to argue my right to a seat in the Conference.

Mr. FIELD:—I wish to ask the gentleman only one question. Was not Governor ROBINSON actually in possession of his office before the delegate received his appointment, and is he not in such possession now?

Mr. STONE:—He was, and is.

Mr. ALEXANDER:—I call for the reading of the fourth Rule.

The fourth Rule was read by the Secretary, as follows:

4TH RULE.—A member shall not speak oftener than twice, without special leave, upon the same question; and not a second time, before every other who has been silent shall have been heard, if he chooses to speak upon the subject.

Mr. FIELD:—In order to bring the subject fairly before the Conference, I will put my motion in the form of a resolution, as follows:

Resolved, That the credentials of Mr. STONE, who desires to act as a Commissioner from Kansas, be referred back to the Committee on Credentials, with instructions to that committee to report the facts concerning his appointment, and whether it proceeded from the Territorial Secretary.

Mr. SUMMERS:—I wish the Committee on Credentials to stand right with the Conference. We accepted the commission of the Acting Governor as *prima facia* correct.

Mr. VANDEVER:—I wish to offer a resolution.

Mr. GUTHRIE:—All resolutions are out of order.

The PRESIDENT:—I think resolutions under the ruling of the Conference cannot now be considered.

Mr. CURTIS:—I ask leave for the State of Iowa to vote on the motion to lay the subject of the admission of the delegate from Kansas on the table.

The motion was granted, and Iowa being called, voted No; and the vote stood: Ayes, 10; Noes, 10. And so the motion was lost.

Much discussion here ensued on the subject of the admission of the delegate from Kansas, which was participated in by Messrs. STOCKTON, CLEVELAND, COALTER, and others, when

Mr. STONE observed that he had no desire to force himself into the Conference, and until the question was settled he thought it proper to withdraw.

The resolution offered by Mr. FIELD was adopted without a division.

VOTE ON THE PROPOSITIONS AND AMENDMENTS.

The PRESIDENT:—The Conference will now proceed to the consideration of the report of the General Committee, and the amendments thereto. The question will be taken on the adoption of the first section reported by the Committee of One from each State, which the SECRETARY will now read.

The SECRETARY read the report as follows:

SECTION 1. In all the present territory of the United States, not embraced within the limits of the Cherokee treaty grant, north of a line from east to west on the parallel of 36° 30′ north latitude, involuntary servitude, except in punishment of crime, is prohibited whilst it shall be under a territorial government; and in all the present territory south of said line, the status of persons owing service or labor as it now exists shall not be changed by law while such territory shall be under a territorial government; and neither Congress nor the territorial government shall have power to hinder or prevent the taking to said territory of persons held to labor or involuntary service, within the United States, according to the laws or usages of the State from which such persons may be taken, nor to impair the rights arising out of said relations, which shall be subject to judicial cognizance in the Federal Courts, according to the common law; and when any territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population required for a member of Congress, according to the then Federal ratio of representation, it shall, if its form of Government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary service or labor, as the constitution of such new State may provide.

SECTION 2. Territory shall not be acquired by the United States, unless by treaty; nor, except for naval and commercial stations and depots, unless such treaty shall be ratified by four-fifths of all the members of the Senate.

SECTION 3. Neither the Constitution nor any amendment thereof shall be construed to give Congress power to regulate, abolish, or control, within any State or Territory of the United States, the relation established or recognized by the laws thereof touching persons bound to labor or involuntary service therein; nor to interfere with or abolish involuntary service in the District of Columbia, without the consent of Maryland, and without the consent of the owners, or making the owners who do not consent just compensation; nor the power to interfere with or prohibit representatives and others from bringing with them to the city of Washington, retaining and taking away, persons so bound to labor; nor the power to interfere with or abolish involuntary service in places under the exclusive jurisdiction of the United States within those States and

Territories where the same is established or recognized; nor the power to prohibit the removal or transportation, by land, sea, or river, of persons held to labor or involuntary service in any State or Territory of the United States to any other State or Territory thereof where it is established or recognized by law or usage; and the right during transportation of touching at ports, shores, and landings, and of landing in case of distress, shall exist. Nor shall Congress have power to authorize any higher rate of taxation on persons bound to labor, than on land.

SECTION 4. The third paragraph of the second section of the fourth article of the Constitution shall not be construed to prevent any of the States, by appropriate legislation, and through the action of their judicial and ministerial officers, from enforcing the delivery of fugitives from labor to the person to whom such service or labor is due.

SECTION 5. The foreign slave trade, and the importation of slaves into the United States and their Territories, from places beyond the present limits thereof, are forever prohibited.

SECTION 6. The first, third, and fifth sections, together with this section six of these amendments, and the third paragraph of the second section of the first article of the Constitution, and the third paragraph of the second section of the fourth article thereof, shall not be amended or abolished without the consent of all the States.

SECTION 7. Congress shall provide by law that the United States shall pay to the owner the full value of his fugitive from labor, in all cases where the marshal, or other officer, whose duty it was to arrest such fugitive, was prevented from so doing by violence or intimidation from mobs or riotous assemblages, or when, after arrest, such fugitive was rescued by force, and the owner thereby prevented and obstructed in the pursuit of his remedy for the recovery of such fugitive.

Mr. GUTHRIE:—I hope now the Conference will proceed in the regular way, and that the majority report will be first perfected so far as amendments are concerned, and that then it may be adopted.

Mr. SEDDON:—I move to amend the first section by inserting, after the words "in all the present territory south of said line," the words "including

the Cherokee grant," and I call for a vote by States on the adoption of the amendment I propose. My object is to carry out the instruction of the committee. A small part of the grant lies north of the line. It is better to include the whole.

Mr. BACKUS:—I move to amend the amendment proposed by the gentleman from Virginia, by substituting the word "excluding" for the word "including," and on my motion ask a vote by States.

Mr. RUFFIN:—I think the gentleman does not understand the effect of his amendment.

Mr. BACKUS:—I do not think we ought to regard the Cherokee grant at all.

Mr. FRANKLIN:—I think both the amendments important.

Mr. SEDDON:—We must recognize the Cherokee Territory, and not divide it. Upon mature reflection, I think the amendment is important.

The vote was taken upon the motion of Mr. BACKUS, and resulted as follows:

AYES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Ohio, Pennsylvania, and Vermont—11.

NOES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Rhode Island, Tennessee, and Virginia—9.

The PRESIDENT:—The question is now upon the amendment offered by the gentleman from Virginia, as amended by the Conference.

Mr. GUTHRIE:—I hope the amendment will not be adopted. It is not necessary to the sense of the article. It is cumulative in its effect. We have expressly excluded the Cherokee grant, lest we might seem to overrule the Cherokee treaty by a provision of the Constitution.

The vote was taken by States, on the adoption of the amendment proposed by Mr. SEDDON, as amended, with the following result:

AYES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Ohio, and Vermont—10.

NOES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Pennsylvania, Rhode Island, Tennessee, and Virginia—10.

Thus the amendment was lost.

Mr. PRATT:—I wish to enter my dissent from the vote of Connecticut.

Mr. FRANKLIN:—I now offer as a substitute for the first section, as reported, the following:

Strike out after the words "United States," in the first line, and insert as follows:

"Not embraced by the Cherokee treaty, north of the parallel of 36° 30′ of north latitude, involuntary servitude, except in punishment of crime, is prohibited. In all the present territory south of that line, the *status* of persons held to service or labor, as it now exists, shall not be changed; nor shall any law be passed to hinder or prevent the taking of such persons to said territory, nor to impair the rights arising from said relation; but the same shall be subject to judicial cognizance in the Federal courts, according to

the common law. When any territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population equal to that required for a member of Congress, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary servitude, as the constitution of such State may provide."

Mr. FOWLER:—Let us first perfect the original. I move to amend by inserting after the word "prevent," in the first section, the words "or facilitate."

Mr. REID:—I think we ought to perfect the section before we vote on a substitute. I move to amend it by inserting after the word "line," after the words "territory south of said line," the following words: "involuntary servitude is recognized, and property in those of the African race held to service or labor in any of the States of the Union, when removed to such territory, shall be protected and"—

I have not expressed my views at large upon the subject of the committee's report. I have earnestly wished to settle the perplexing questions which now distract the country. I do not rise to make a speech. I have not come here to exact more than the North can honorably grant, nor to deceive the North in the result, if the rights of the South are not protected. Our property is involved in your action. You can afford to be liberal. If you intend to recognize property in slaves, write it down in the bond. If the North wants any protection, name it, and we will put it into the bond. If you fear that slavery may go north of the proposed line, we will give you any assurance to the contrary. But I tell you that on the other side we require reciprocal terms. Nothing else will satisfy the public sentiment. Twelve months hence and we will not take what we now offer to take.

What are we talking about? Every one knows that the African race is better off at the South than it could be elsewhere. We do not wish to disrupt the Union. You are doing it on a mere Northern abstraction. Suppose a foreign power asked you what you were fighting about, what would be your answer?

But I was saying that the only way is for the North to be liberal; to be reciprocal; to make us entirely safe. Our security must be put into the bond

and be faithfully preserved. The present *status* of the States in the Union is deceptive. If I am to remain in the Union, it don't suit me. If I am to go into a southern confederacy, it is just what I should want. Beware, gentlemen of the North! You are cutting yourselves off from future glory and expansion.

Mr. VANDEVER:—The gentleman from North Carolina wants the distinct recognition of slavery in the bond. I would like to refer him to the condition of this question when the Constitution was adopted. The men of that time would not assert such a position. They did not think it proper or necessary. If we adopt his views we attempt to sit in judgment on the men of that day. Mr. CALHOUN understood this matter perfectly, and in one of his speeches refers to the unwillingness of the Convention to recognize slavery specifically. The sentiment of Iowa is that no such recognition ought to be made now. I am opposed to the amendment.

Mr. SEDDON:—I consider this an important amendment, and a very just one. The principle upon which we are proceeding is that of partition. We, with our property are prohibited from going north of the line. The exact correlative of that would be, that you should be prohibited from going south with your institutions. That we do not ask. On one side involuntary servitude is prohibited. On the other we simply ask that it may be recognized. We give up two-thirds of the territory altogether. All we ask is protection in the remaining one-third.

What is the meaning of this proposition as it now stands? Who does not see that its meaning is ambiguous? It requires us to give up territorial protection, and leaves us with nothing but the shred of a right protected by the Federal courts. Once more let me tell you, that in my opinion the South will never consider this a satisfactory adjustment. You say we are protected by the principles of the common law. Who can tell what this will amount to? Assuming the territorial government to be favorable, it could do nothing. You leave it powerless. Suppose a citizen of Virginia emigrates to the territory south of the line with his property. He would have no earthly right except under the laws of Virginia. The power to enforce those laws is a thousand miles away. If we are to make a partition, let it be a partition. As the provision stands, it is the unfairest bargain ever made. It is all on the side of the North. In common fairness and honesty, I submit that the North ought to vote for this amendment.

Mr. ORTH:—There is much that is worthy of consideration in the remarks of the gentleman from Virginia. I hope earnestly that we shall not adopt a proposal of amendment that admits of two interpretations. If I could vote for the report of the majority at all, I would throw around it all the protection it needs. This is a new and peculiar species of property which we are now making the Constitution recognize and protect. If the South is entitled to the proposition itself, I think they are entitled to this amendment. After all, it is only making the amendment express just what we know its friends claim it implies.

Mr. GUTHRIE:—I would have preferred the direct recognition by express terms of slavery south of the line proposed, and I voted that way in the committee. I suppose, however, that the clause as it stands recognizes the *status* there, as it now exists—that it prevents all interference with the *status*. Would you prefer to put into the proposition certain express terms which would destroy all chance of its adoption by the people? I do not think the world is governed by ideas alone. It is governed by ideas and material interests. The Constitution of 1787 secured the interests of the slaveholder in the States. This clause does the same in the Territories. No man can be cheated by it unless he cheats himself. Gentlemen favoring the amendment must know that at least it will not improve the prospects of the proposition with the people. Do you wish to break up the Conference? This is an effectual way of doing it.

We ask for this proposition substantially as it stands. The North can give it to us if it chooses. If it will not, then we shall go home and tell our constituents. They must decide for themselves what they will do. This will settle the Territorial question effectually. What more do we want? The additional guarantees? These are provided for in the other clauses.

Mr. CHITTENDEN:—I call for a vote by States on Mr. REID's amendment.

Mr. BARRINGER:—I shall vote for the amendment of my colleague. I have occupied no time in the general debate, but now I do desire to say a few words about this amendment, and the proposition to which it is offered. The amendment brings up the very *gist* of the matter. Differences of opinion exist as to the effect of the clause. The amendment settles them. This is no place to talk about devotion to the Union. To be a Union at all it must be

one that recognizes and protects the rights of all. Any other Union is not worth the name; is not worth preserving. We came here, it is true, to save the Union. We came here to devise the means of saving it. Practically the Union is already dissolved. If not dissolved it is disintegrated.

We ask first, additional guarantees for our rights—for Southern rights. They must be such as will satisfy our people, and bring back the States that have left the Union. Short of this they will amount to nothing. I know the public opinion of the South on these important questions. I have closely watched its growth. My own convictions as to what it will require are decided. Unless you use language and adopt terms in your proposals of amendment which will satisfy the seceded States—which will induce them to return to the Union—your labors will have been in vain.

What is our claim? It is this, in short: We claim that every Southern man has the right to go into the Territories with his property, wherever these Territories may be. The Territories belong to both; to the South as well as to the North. We want equality. We have no wish to propagate slavery, but every man at the South does wish to insist upon his right to enter the Territories upon terms of perfect equality with the North, if he chooses to do so. He may not exercise the right, but he will not give it up.

We want a division of the Territories. We want to set up landmarks so that neither we nor our posterity shall dispute hereafter about the line.

North Carolina has instructed us to say to this Conference, that if the CRITTENDEN amendment can be adopted here, we can carry it almost with unanimity. There will be a struggle even with our own people, but we can induce them to adopt it.

We have three hundred miles of border in common with South Carolina. Our trade and our associations are in that direction. It is useless to deny that South Carolina has sympathizers among us in her recent movement. You must consider these things, and give us a chance. We must base our argument on principle; we must stand upon terms of perfect equality.

The proposition needs this amendment. As it stands it is ambiguous. It is worse than that, for its construction will depend on the opinion of a Territorial Judge.

Mr. CRISFIELD:—I come from a State that is deeply interested in the subject of slavery. Nevertheless, I shall vote against the amendment of the gentleman from North Carolina.

I belong to that class of politicians which believes that the people of every section of the Union have a right to go into all the Territories of the Union, and take with them their property and hold it in safety. But we ought not, in our proposals of amendment to the Constitution, to insist upon what will be repulsive to any section of the Union. I think the amendment is unnecessary —that the right we claim is sufficiently protected without it. As it stands, neither Congress nor the Territorial Government has the right to impair the *status* of the slave. What farther protection do we need? What other can we have? Why should we insist upon the adoption of a new style of language? We ought not to be unreasonable; we ought to content ourselves with the proposition as it stands, and not put expressions into it which will make the whole repulsive to a large section of the country, and which, in all probability, will defeat the whole amendment when it comes before the country. I am not even sure that we could get it there. I doubt whether it would pass Congress.

This is a very serious and important question. We wish to stay the hands of extremists on both sides. We wish to stand by the Union. If war comes, our soil is to be the battle ground. I wish to avoid war. I will insist upon this, and I will consent to no extreme opinions.

Mr. VANDEVER:—I do not see why Mr. GUTHRIE cannot accept the proposed amendment. He and the gentleman from North Carolina are both aiming at the same thing. The amendment is certainly the clearest. Do you suppose the people are not going to understand the subject thoroughly? Do you suppose that they will be deceived by any such transparent disguise of words? You do not pay them a very high compliment by such a supposition.

I must vote against the amendment, because I am opposed to the *principle* of protecting slavery in the Territories. Such is the sentiment of the North. If it was not, I should vote for the amendment.

Mr. MOREHEAD, of Kentucky:—As I intend to vote against the amendment, it is due to the Convention that I should state the reasons for my vote. I am in favor of a clear recognition of all the rights of the South,

especially of our rights in the Territories. I voted for the CRITTENDEN amendment in the committee. I thought the North ought, in justice to us, to adopt that amendment. We, in this Conference, have selected a Committee of One from each State—a committee of able men, and we have placed this subject in their charge. They have consulted together. They have ascertained the views and feeling of the different sections of the country; they have embodied the result of their labors in this report. The question now presented appears to my mind to be this: After all the time and ability they have given to their report in the present distracted and perilous condition of the country, shall I consent to put words into the amendment of the Constitution which they recommend, that will ensure its defeat when it comes before the people?

I know as certainly as that GOD rules in heaven, that unless we come to some satisfactory adjustment in this Conference, a convulsion will ensue such as the world has never seen.

I have been travelling for nearly two months in the seceded States. I believe I understand the temper of their people. I have found there an all-pervading dissatisfaction with the existing state of things, but I have also found great devotion to the Union. I think we can yet save the seceded States. But at least let us save Texas and Arkansas. As it is, black ruin sits nursing the earthquake which threatens to level this Government to its foundations. Can you not feel it, while there is yet time to prepare for the shock? If this giant frenzy of disunion raises its crested head—if red battle stamps his foot, the North will feel the shock as severely as the South.

Such is the prospect before us, and near to us, and yet gentlemen say that they will not give *one* guarantee to avert such dire calamities. Will not the gentleman from New York do one thing to save that Ship of State of which he spoke so eloquently, when she is already among the breakers, and driving so rapidly toward that rocky shore against which her ribs of steel cannot long protect her? We are patriots all—we are bound to act together —to do something—to do our duty, and our whole duty—to do what will ultimately preserve the Union.

Mr. PALMER:—A few days ago the Conference listened to a deliberate defence of the institution of slavery by its friends from the slave States, in

which at least one gentleman from a free State (Mr. EWING) participated. That defence could have had but one object. That object was to place us who do not believe in slavery in such a position that we could not agree to a compromise without endorsing the views then expressed. Gentlemen expect us to give up our opinions and concur with them. I have but one remark to make to all such suggestions. We entertain our opinions on the subject of slavery; we cannot, we will not surrender them.

We are told that this contest must cease, or the Union must perish. I am inclined to think so myself. We stand ready to make any reasonable compromise to save the Union, short of sacrificing our opinions. You, gentlemen of the South, cannot be satisfied unless our capitulation is complete.

I do not assent to much that is said here about the Border States. If the Union is not dissolved until the Border States go to fighting each other, it will last forever.

Mr. REID:—If we all mean the same thing, let us put it into the bond. Then there will be no room for misunderstanding or controversy. If you leave this article open to construction, nothing will be settled. The gentleman is mistaken if he supposes that I wish him to adopt my arguments. I do not. If this provision, as it stands, protects slavery in the Territories south of 36° and 30′, why not say so in express terms? I question whether the article, as reported, recognizes property in slaves at all. I wish to settle the question now and forever. I do not wish to have my purpose perverted. I wish to carry home to North Carolina a reasonable story. We have given up all our rights in the territory north of the line. Let the North be reciprocal. What shall I tell my people at home? That I have given away their rights in more than one-half the territory, and have not even secured a provision protecting property in slaves in the remainder?

The vote, on the request of Mr. CHITTENDEN, was taken by States, and resulted as follows:—

AYES.—Virginia, North Carolina, and Missouri—3.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland,

Tennessee, Kentucky, Ohio, Indiana, Illinois, and Iowa—17.

So the amendment was lost.

Mr. CARRUTHERS:—Tennessee approves the sentiment of the amendment, but she thinks the requisite security is already given.

Messrs. BUTLER and CLAY, of Kentucky, and Mr. DENT, of Maryland, asked to have their dissent recorded from the votes of their respective States.

Mr. BARRINGER:—I wish to make a suggestion in relation to Mr. FRANKLIN's substitute. I think it is not in order. The Conference has already determined to perfect the committee's report, before substitutes are to be considered.

Mr. CURTIS:—I now move to amend Mr. FRANKLIN's substitute, by striking out all after the word "prohibit," in the third line, down to and including the words "common law," and inserting instead thereof the words, "but this restriction shall not apply to territory south of said line."

My proposition is offered in good faith, and to show that Iowa is disposed to compromise. I do not say that this is as far as she will go. I have inserted the very words used by our fathers. They prohibited slavery north and tolerated it south of the line. This was the original proposition of Virginia. If there is any thing in its ethics, they are Virginia ethics. Slavery now exists in these Territories. Let it be there. There is slavery in Kansas, Utah, and Nebraska. We cannot help it. It appears to me that the South ought to accept this amendment. It recognizes the opinions of our fathers. This was JEFFERSON's idea when he drew the ordinance of 1787.

The Constitution does recognize the relation of master and slave, in my opinion. I do not like it, I confess. You in the South do not regard your blacks as slaves in the absolute sense of the term. You have a right in their services, not in their bodies. You recognize them as *men* in various ways.

Again I say, I do not offer this amendment to embarrass the action of the Conference. It secures slavery south of 36° 30′.

Mr. GUTHRIE:—This amendment would not be satisfactory either to the South or myself. In my judgment, it ought not to be adopted. We claim the

right under the Constitution as it is, to go into all the Territories of the Union with our property. This right is confirmed to us by the decision of the Supreme Court. There will be no compromise, if we cannot go home to our people and tell them that you concede this right south of 36° 30′. Otherwise, they would throw the propositions in our faces. As it stands, the article gives you security, North. As it would be when this amendment is adopted, it would give the South law and litigation. We want peace. We cannot take this amendment.

Pending the consideration of the amendment offered by Mr. CURTIS, on motion of Mr. JAMES, the Conference adjourned to ten o'clock to-morrow morning.

SIXTEENTH DAY.

WASHINGTON, SATURDAY, *February 23d, 1861.*

THE Conference was called to order at ten o'clock A.M., by President TYLER, and its proceedings commenced with prayer from Rev. Dr. BUTLER.

The Journal of yesterday, in part, was read. The Secretary stated that he had not found time to complete it.

Mr. ALEXANDER:—I move to rescind the resolution adopted yesterday allowing ten minutes to a member proposing an amendment, and ten minutes for the reply. I do not propose to discuss the motion. I think all will agree upon the necessity of rescinding the resolution. This will leave the five minutes' rule in full force.

A vote by States was asked by several members.

Mr. SEDDON:—I wish to call the attention of the Conference to this subject for a moment. I hope the present rule will not be changed. The debate up to yesterday was upon general questions. We have not yet gone into detail. We tried the operation of the ten minutes' rule yesterday. I am sure that it will not be claimed that any gentleman abused it.

Mr. JAMES:—We have scarcely discussed a question of detail connected with an article in the committee's report.

Mr. ALEXANDER:—I will withdraw my motion.

Mr. VANDEVER:—I tried to offer a resolution yesterday which I deemed important. It was then ruled out of order. I am sure it is in order now. It reads as follows:

Resolved, That whatever may be the ultimate determination upon the amendment of the Federal Constitution, or other propositions for

adjustment approved by this Convention, we, the members, do recommend our respective States and constituencies to faithfully abide in the Union.

Mr. BRONSON:—I rise to a question of order. The report of the committee and the amendments thereto, are the special order of business. We ought not to permit collateral questions to be brought in. We adjourned yesterday with the amendment proposed by Mr. FRANKLIN as a substitute for the first article of the committee's report before us. To that Mr. CURTIS, of Iowa, had offered an amendment, which was under discussion. Let us keep to our rules.

The PRESIDENT:—I think the resolution of the gentleman from Iowa is in order now.

Mr. VANDEVER:—I hope the question will be taken upon my resolution at the present time. All the questions we have been discussing are, in my judgment, secondary to another which ought to be first decided. Is this Conference true to the Union—true under all circumstances? If so, I regard it as highly important that the Conference should give some expression to that effect. Even if we should settle this great contention about slavery to-day, other questions might afterward arise. I am quite prepared to see a claim set up, to what is called the right of peaceful secession. I would guard against all such claims. The passage of this resolution would have a beneficial effect upon the public mind. I think we still have a Government which can protect itself and the nation. My constituents believe this preliminary question quite as important as that of protecting slavery in the Territories.

Mr. RANDOLPH:—I move to lay the resolution introduced by the gentleman from Iowa, on the table.

Mr. BUTLER:—I want the resolution read again.

Mr. VANDEVER:—Let us all go on to the record. I ask a vote by States.

The resolution was read, and the vote being taken by States, resulted as follows:

AYES.—Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, and Ohio—11.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, Indiana, Illinois, and Iowa—9.

So the motion to lay the resolution on the table prevailed.

The PRESIDENT:—The Conference will now proceed to the consideration of the order of the day. The question is upon the amendment offered by the gentleman from Iowa, to the substitute for the first section of the report of the committee, offered by the gentleman from Pennsylvania.

Mr. HITCHCOCK:—I came into this Conference with the honest and single purpose of healing the unfortunate differences which now distract the country, having no sinister ends to answer. That purpose has hitherto remained unchanged. To accomplish it, there is nothing I will not sacrifice except principle and honor. I think the amendment of the gentleman from Iowa is, in substance, just the same as Mr. FRANKLIN'S substitute. In the one, a fact is implied; in the other, the same fact is expressed. I understand that neither proposition can command the support of those gentlemen in the Conference who favor a National Convention. Neither can the amendment command the approval of the border slave States. Certainly not all, if it can any of them. The adoption, then, of this amendment, will operate as a defeat of the first section of the proposed amendment of the Constitution. Neither party in this Conference will accept it. While, therefore, I believe it ought to be accepted—while I believe it amounts to nearly the same as the original proposition, I will not peril the Union upon a mere question of form.

I did not come here to inquire into causes. Our differences exist, and I do not think they were occasioned by the success of the Republican party in the last Presidential election. The plotters against the Union have seized upon the occasion to accomplish their designs.

By no fault of their own, several of the Border States are placed in a very unfortunate position. They wish to remain in the Union, but their people insist that certain of their rights shall be previously secured; in other words, guaranteed.

It is my firm belief that if the inauguration of President LINCOLN was over, if his administration had been for a few months in operation, we should all be at peace. Now, we must act upon the facts as they are presented to us.

I must vote against the amendment of the gentleman from Iowa in order to give the original proposition a fair chance. I wish to have it distinctly understood that this is the reason why I cast my vote against his amendment.

Mr. JAMES:—I do not rise to debate the question at length, now before the Conference. I think that this amendment brings us at once to the true issue which the case presents. We have hitherto been talking about abstractions. Now we come directly to the point. As this is a Conference to settle disputed questions, the sooner we come to the true points in issue, the better.

What is the cause of our present differences? It is not found in any action of the North. No Northern State proposes to disrupt the Union or to threaten its stability. But certain of the Southern slave States come here and say to us that certain alleged rights of theirs must be secured, or they cannot induce their people to consent to remain in the Union.

I have heard a great deal said in this Conference about civil war. Now, civil war is not a pleasant subject to consider; but, gentlemen, I pray you to remember that the North proposes no civil war. She declines to consider the subject at all, now. If civil war is brought upon the country, it will be your work, not ours. The North will do all she can to stay your hands—to prevent you from plunging the country into civil war. She will not enter upon it until you force her to do so. When you begin it, and force her into war in order to defend the Government and the Union, I have no doubt she will enter the field and carry on civil war until the Union is restored and its enemies put down. Let me ask you, gentlemen, who have so much to say about war, whether you had not better leave that question where it is?

It has been assumed, and very often stated here, that the present Constitution gives the right to the Southern slave owner to take his negroes into any of the Territories of the United States, and hold them there as slaves. I think it would be well for you not to act so entirely upon that assumption. A different view prevails quite extensively at the North. It will be a long time before that view is changed.

Now, you gentlemen of the South propose to restore the Missouri Compromise line. To induce us to adopt it, you say that the territory south

of it is a barren, worthless desert—that slavery can never obtain a substantial foothold there. Why, then, do you make the subject one of so much importance? Why do you risk all the calamities of civil war and a disruption of the Union for such a poor reward? We should distrust all your statements, we should disbelieve all your professions of patriotism, if we could for a moment credit the assertion that you would break up the Union on such a worthless pretext.

You ring the changes in our ears upon the decision of the Supreme Court in your favor. Let me tell you plainly that there is no section of the Union in which the decisions of that court have been so fully and fairly respected and observed as in the free States of the North. With that you should be satisfied.

You are in trouble; that is evident. Your troubles have been caused by the repeal of the Missouri Compromise. That, again, was your work, not ours. We opposed the repeal to the end. You had the power and you carried it. Now the North is indifferent about the restoration of that compromise; but if that will satisfy you, restore the *status quo*, and the North will stand by you. But you must not expect now, that the North will do any thing better for you than to extend the provisions of the Missouri Compromise to the Pacific Ocean.

Mr. CARRUTHERS:—The gentleman from New York who has last addressed the Conference, appeals to us to accept the amendment now proposed, upon the grounds of justice and equity. What is the present state of the case? We claim the right to go into all the Territories with our southern property. The Supreme Court has confirmed this right to us. With this advantage in our favor, we have met here to compromise. What is the proposition now? It is to give the North all the territory north of 36° 30′, and to leave all questions concerning the territory south of that line without any adjustment at all! That gentleman favors no compromise at all. He proposes that we should go home without any adjustment. Shall we go back to our excited people and say this: "The North will make no adjustment with you"? Is this the way to settle the important questions that now distract the country?

We have not come here for war; we have come here for peace. We have come to settle all the questions between us upon a fair and equitable basis. How are we met? Gentlemen from the North say they will give us nothing. All we ask is right and justice—that right which the Constitution and the Court has given us in *all* the territory, *secured in one-third of it*. With that we will be content.

Some gentlemen object to the phraseology of the article. Let them have all that their own way. They stop here to quarrel about words? Settle those as you like, but we ask all the friends of the Union to stand by, and reject all amendments which affect the substance of the article. Such a course will end all contention.

We read in Sacred History that the Israelites were once so conscientious that they would not fight on Sunday. They were attacked and overthrown. They finally agreed to compromise the question of conscience so far as to fight in self-defence on Sunday. They were attacked then, and the enemy was overthrown.

The report is not such as we could wish it might be, but, such as it is, we will accept it and stand by it. We will adopt it, and we ask the North to adopt it, in the true spirit of compromise.

Mr. LOGAN:—I am under the necessity of believing that the gentleman from Iowa is in earnest, in offering this amendment; but if I were to present it, I should not expect any one to believe I was in earnest. What is the compromise which this amendment proposes? It is, in substance, that the North will take three-fourths of the Territory under the Constitution, and the rest by force. If gentlemen entertain such views, we might as well come to a direct vote at once, and see whether any thing can be done.

The gentleman from Iowa says this is the Missouri Compromise; but it lacks much of it. Besides, circumstances have greatly changed since 1820, when the compromise was adopted. Now, seven States have left us and gone out of the Union, and we are acting in view of that fact. There is a contest between the North and the remaining Southern States, and the latter have no better chance in that contest alone, than Turkey had in the grasp of the rugged Russian Bear. The gentlemen from these States do not threaten.

All they say is, "If we cannot agree longer together, let us go in peace. We will fight only in self-defence."

They ask us further, "If we stay with you, how do you intend to treat us? As equals, or as inferiors?" If as inferiors, we cannot sustain ourselves with our people, saying nothing of our own self-respect. I acknowledge the force of these inquiries.

A civil revolution terminated at the last election. The power to wield the Government came into the hands of the Republicans. The circumstances suddenly change. Political power leaves the South. What now shall we give them in place of that? Shall we leave these States at our mercy? This is an earnest time. We should act as if the fate of a great nation depended on our action. If we intend to say we will do nothing, let us say so plainly, and not by indirection.

Mr. MOREHEAD, of North Carolina:—I thank GOD I hear a voice such as I have just heard from *that* section of the country (Iowa)! I have been a member of a recent Legislature of North Carolina, in which there was a majority of secessionists. I have been jeered at in that body for the opinions I have expressed, for I have told those gentlemen repeatedly that if we could once get the ear of the North, the North would do us justice. They pointed me to the raid of JOHN BROWN—to the meeting in Boston, where the gallows of JOHN BROWN was carried with solemn ceremonies into the Cradle of Liberty. They pointed me to the man who presided over that meeting, since elevated to the high and honorable position of Governor of Massachusetts. Notwithstanding all this, I have replied that the masses of the northern people would deal fairly by us. I have told these secessionists to their teeth that Mr. LINCOLN was properly elected under the Constitution, and that he ought to be inaugurated. Their reply was, "Kansas, and the JOHN BROWN raid!"

Now, I ask this Conference to look for one moment at the effect of the amendment which is proposed. It withdraws all constitutional protection from us north of 36° 30′. Adopt it, and what has Massachusetts to do but to import her foreigners into the country south, and take possession of it. New York will back her, and we shall be swept from the face of the earth.

If the gentleman from New York means to say that the nation can put its foot on to the neck of the States and crush them into submission, let him go into Virginia and join in another JOHN BROWN raid. Virginia will treat him as she did JOHN BROWN. No! the gentleman has not studied the motto of the Union. There is the *E pluribus* as well as the *unum*. If the new President proposes to come down to the South and conquer us, he will find that the whole temple shall fall. We can be crushed, perhaps, but conquered, *never*!

Mr. BRADFORD:—Maryland has, under the lead of her constitutional Chief Magistrate, determined to preserve her position of neutrality, and not by any action of hers to add to the prevailing excitement on either side. She has done what she could to allay the existing irritation, and will continue to pursue the same policy she has hitherto adopted.

Here is a large file of amendments. Almost every delegation has given notice of an intention to offer one or more. If we begin to adopt them, I feel sure that we shall destroy all hope of an ultimate agreement.

Mr. President, I desire to make an emphatic declaration to this Conference. It is this: Give us the report as it came from the committee, without substantial alteration, and there is no power on earth that can draw the State of Maryland out of the Union! Maryland has been called the heart of the Union. The day she leaves the Union, that heart is broken! I am now inclined to set my face against all amendments. I think that is the better course.

In the populous section of the State where I reside, the universal cry is, "For God's sake, settle these questions!" Why can we not settle them? The committee inform us that the members of which it is composed, were nearly unanimous upon all points except the territorial question. Will reasonable men not yield a little to each other in order to settle that?

Then let us look calmly at the consequences which must follow our disagreement. I will enter into no panegyric of the Union. To use an often repeated expression, it needs none. It is enshrined in the hearts of the people with all the glories of the past, with all the glorious hopes of the future. It has given us a position in the front rank of the nations. There is every prospect that it will make us in the end the most powerful among the

nations. Who can look unmoved upon the spectacle of such a Union about to fall into fragments? What sacrifice too great to avert such a ruin?

We all understand, we all agree that we can save the Union by settling this miserable question of slavery in the Territories. We should be unworthy of ourselves and our trusts, if we set our division upon this question above the preservation of the Union. How can it be possible that Union men, or even politicians, can hesitate as to which path ought to be taken? One leads to ruin, the other to a haven of safety.

It will be a world-wonder hereafter, if we do not agree. The people—the whole country, will stand aghast at the spectacle of folly we present. I would not, for all the wealth and honors the nation could bestow, be remembered hereafter as a man who stood between these measures of pacification and the people who should finally decide upon them. I would not have the priceless blessing of the Union put in peril for a single hour, when its safety can be purchased at so small a cost.

Mr. HACKLEMAN:—The civilized world is amazed at the present condition of one of the greatest Governments on the face of the earth. I participate in that amazement myself. What is that condition? In a time of profound peace, of great prosperity, with the Government itself in the hands of southern men, State after State has dared to attempt to sever its connection with the Union. Even Florida, which has cost us so many millions, which ever since we had her has been a constant slough of expenditure, says we cannot even have the national property which happens to be within her territorial limits!

I am not so strong a believer in the effect of legislative action as many others. I have looked at the main points of our differences in the light of history, and it is my belief that the laws of soil and climate will settle this question of slavery in the Territories, much more effectually than we can settle it by any legislative or constitutional provisions.

The Missouri Compromise once settled this Territorial question in a manner satisfactory to the South. Through the influence of the South it was repealed. Now the South desires to have its provisions restored. As I understand the amendment of the gentleman from Iowa, it exactly restores the *status quo*.

We are told, farther, that the natural allies of the border slave States have left them; that, reduced in numbers, they cannot maintain their position against the North. This assumes that the North is hostile to the South. I deny it. I say that my state is the natural ally of Kentucky, a more powerful ally than she ever had South.

Parties are governed by certain natural laws. A party which adopts a principle at war with the sentiments of the people may succeed for a time by the force of party drill, but in the end it will go down. The CALHOUN doctrine destroyed a party. Under the operation of the same law the Democratic party has gone down. But you cannot destroy a party before its time. The effort of Virginia now is to overthrow the Republican party. The effort will not succeed. It is equivalent to an attempt to overthrow the country.

I am not frightened at this idea of giving guarantees. I do not think them of much importance. I am willing to give such as are reasonable. We hold to a certain extent to your doctrine of State sovereignty, and would protect it.

Our people North and South are too much alike in many respects. We are all inclined to stand too much upon party abstractions. This is almost the only reason why we cannot agree.

We are told that some things stated here grate harshly upon the ears of gentlemen from the South. The converse of this is equally true. I can take a rebuke, I trust, in a good temper, but I do not like to be stabbed in the house of my friends. I do not like to have doctrines and opinions imputed to me and my party which are only entertained by a little knot of fanatical abolitionists in the neighborhood of Boston; a few men who will not vote under the present Constitution, and who are led and controlled by LLOYD GARRISON and WENDELL PHILLIPS.

Mr. HOUSTON:—I am strongly averse to the introduction of the subject of party into the deliberations of the Conference. I did not intend to allude to party at all; but since the subject has been referred to in such impassioned terms, I feel that I must say a word about it.

Many references have been made in this debate to the opinions of WASHINGTON. I wish his opinions were better observed and respected. I

refer to his appeal to his countrymen not to form parties with reference to geographical lines, and asking them to frown indignantly upon every attempt to form such parties.

What WASHINGTON foresaw, at length has come to pass. Parties have been formed, and are now in existence, divided by geographical lines, having no interests or opinions in common. But no such parties can long exist without threatening the stability of the Government.

So long as parties were national in their character; so long as they excluded sectional interests from their platforms, their existence was a benefit rather than an injury to the Union. Gradually they have all drifted toward sectionalism, until now we find ourselves in a position which taxes the ability and ingenuity of the ablest men to provide for the existence even of our Government.

Now, I see no chance of safety for us until we reëstablish political parties upon their old bases, excluding all sectional considerations. When this is accomplished, the country is safe. It can only be done by settling this territorial question, and removing all inducement to the formation of sectional parties.

The election of Mr. LINCOLN was a fair election. It afforded no just pretext for secession, much less for the formation of sectional parties, or for creating sectional issues.

The time has come when the advice, the counsels of WASHINGTON, become his most precious legacy to the country. Shall we not regard the solemn admonitions of the Father of his Country?

I would ask our friends from the North—for they are our friends and not our enemies—whether they will not listen to these counsels of WASHINGTON? He was always ready, always willing to submit to just compromises, when they were necessary to the peace and happiness of his country. Will they not emulate his example now?

Delaware does not feel any special interest in this question of slavery in the Territories. She would have it settled in that way which would promote the interests of the whole Union. Her present impression is, that the report of the committee presents the most practicable and equitable mode of

adjustment. Long ago Delaware favored the abolition of the slave trade. She has been consistent in her course on that question ever since. It is not unlikely that she may soon favor the abolition of slavery within her limits. Her progress has been in that direction. When the present Constitution was adopted, Delaware had fifteen thousand slaves. Now she has not more than eighteen hundred.

Mr. TUCK:—I recognize the reason and propriety of the wishes of the gentleman from Maryland, to try the proposition now before the Conference upon its merits. I certainly do not desire to have time taken up in unnecessary delay. I do not think much of these statements about civil war. Nor is there any attempt here to defame or injure any section. No member here has any such intention. We seem to be divided into two parties. Both are willing to act; neither asks for delay. One desires action through Congress, the other through the people, acting in General Convention. We all have confidence in the people. What do you see in this Conference? One-half of the Republicans here, are ready to join hands with those who would invoke the action of Congress, and carry their propositions through, to send them at once to Congress. I am ready to carry your propositions directly to the people.

A word now to the Democrats in this Conference. You have always been our superiors in political address and management. You expect in four years to bring the Government back under your control. My strong bias is in favor of a General Convention. That bias I got from the old Democratic party. The first mention of such an idea I found in an article in the "National Intelligencer"—a paper which certainly does not advocate radical views. I am aware of the opposition which this idea will meet with here, and yet I have heard many gentlemen from the South say, that this idea carried out—the question fairly submitted to the people, and decided by them, their decision would be satisfactory. And would not many of the Southern slave States be satisfied with a decision upon these questions by a General Convention? Would not Georgia, Kentucky, Maryland, and Tennessee be willing to submit their interests to such a tribunal?

Now, I wish to ask the members representing the Southern States in this Conference, whether, when we offer you a General Convention, fairly elected, which shall patiently hear and firmly decide all our points of

difference, you had not better accept it? I assure you, gentlemen, in the most perfect good faith, that a convention is the best alternative the North can now offer you. It is a fair and an honorable alternative; and because it is so, the North will insist that it ought to be satisfactory to you. If you refuse it, I ask you whether, in the sight of GOD and Man, you will not have stood between the country and peace? We act in secret here, but in the end all our actions will be exposed to the world. It will be seen that we were ready to do justice to you, and to submit all your claims to the final verdict of the people. Should you not at least wait for their decision?

Mr. DONIPHAN:—Will the gentleman support these proposals of amendment in a convention of the people, and will he use his influence to elect members of such a convention who will do the same? If the North will give us such pledges as will secure that kind of action, perhaps we will go for a General Convention. Without such a pledge, a General Convention would be worse than useless.

Mr. WICKLIFFE:—I am glad I have obtained the floor for a few minutes. I feel that it will be very painful for me to address the Conference, on account of physical debility.

But I came here with the single purpose of accomplishing the settlement of one or two important questions. Permit me, once for all, and for the last time, to tell the gentlemen from New Hampshire and Connecticut, that they wholly misunderstand the import of the action of the Legislature of Kentucky, and the views of the "Louisville Journal." I have said, before, that in view of the fact that Congress could not settle our difficulties, the Legislature of Kentucky asked for a National Convention, as our only hope of making an adjustment. After this came the invitation of Virginia, like a bright beam of hope. Virginia invited you all, New York, New Hampshire, and Massachusetts, and the other States, to meet and consult for the public safety. If you did not wish to secure our common safety, you should not have accepted her invitation.

Mr. BOUTWELL:—Then we are to understand that if we do not favor the CRITTENDEN resolutions, we should not have come here at all.

Mr. WICKLIFFE:—I say nothing of the kind. But I insist that you should tell us now, what the conclusion is to which you have arrived. We want to

know what you gentlemen, representing the Northern States, intend to do. Give us your votes. We have had enough of discussion, which amounts to nothing. If you will consent to no arrangement, let us know it now. We have a duty to perform toward our own people. We wish to relieve them from suspense, so that they may determine what their future course shall be, in view of the fact that you will do nothing for them.

Mr. COOK:—If Illinois had understood that she was only to come here for the purpose of agreeing to the propositions of Virginia as announced in the resolutions which accompanied her invitation, the Conference may be assured that Illinois would not have appeared here at all. She understood that she was invited to a *Conference*, in which all the States were to meet upon a basis of perfect equality. The very resolutions of the Legislature of Illinois, under which we received our appointments, assert that their adoption is not to be regarded as an assent to the resolutions of Virginia.

We think we are not passing the limits of propriety, when we insist that we should be permitted to state the views and opinions of the people of Illinois, on the questions which this Conference proposes to decide. To state what we will and what we will not concede. There seems to be an unwillingness to give us this permission. If the people are now ready to give their sanction to the propositions contained in the Virginia resolutions, they would send delegates here who would accept these propositions without debate or discussion. They have not yet done so. If they intended to limit our right of private judgment, they have certainly not yet expressed any such intention. They understand, and we have not forgotten, that there is a broad distinction between the guaranty of old rights and the creation of new ones.

We now understand just what the South proposes. The question is plainly and distinctly presented to us, whether we will assent to a constitutional recognition of the right to hold slaves in a portion of the Territories of the United States. It is not a question of prohibition at all. We are required to assert the affirmative right of holding slaves independent of State laws, and under the Constitution.

Gentlemen present us this question, and coolly tell us we want no more discussion, no more arguments, no examination of our respective rights under or outside the Constitution. We wish you to tell us at once whether

you will assent to our wishes or not. If you will not, then comes some dark insinuations about going home to their people, and certain consequences are to follow, of the precise nature of which we are not informed.

Gentlemen, when was the sanction of the American people ever secured to an important proposition in such a way as this? If we are not to exercise our judgment, and act according to its dictates, upon every proposal of amendment here presented, then, for one, I care not how soon our deliberations end. Until we better understand our relative positions than we seem to at present, I do not see much use in prolonging the discussion.

Mr. EWING:—Some concession must be expected from both sides, or we cannot agree. As a Northern man, I feel it to be my duty to get these propositions made as acceptable to the North as I can, and then to ensure their submission to the people. Even then, we are not committed to the support of these propositions, though I myself should feel so to some extent. A single question is now presented to us. Shall we accept these propositions when they are perfected as far as they can be, or shall we submit to a dissolution of the Union? I am willing to say that I will yield my personal opinions for the purpose of concession, and I do not think I show myself an inferior man by doing so. In all disputes, the firmest men are the first to yield. Let a man be firm as a rock in battle, but conciliatory in council; especially in such a council as this, where the lives of millions may be concerned. There is a firmness which is but another name for imprudence—for rashness. Take the case of a railroad collision. One engineer may have the right of track; it may be the duty of all others to recognize that right, and not interfere with his exercising it. But, if another gets on to it, he who has the right would not be justified, if, in its exercise, he ran blindly on, and produced a collision, destroying the lives of his passengers, when he could have avoided the collision. So it is here. We may be right—the North may be right; but we should not hazard the existence of the Union by a determination to exercise that right at all events, when, by some slight concessions, we could save the Union. Let us use our judgments—let us act in view of the facts here presented, with that prudence and discrimination which we apply to the ordinary affairs of life, and all will yet be well.

Mr. KING:—I have not spoken hitherto, and should not now say a word, but for the remark of the gentleman from Kentucky. I come here as one of the representatives of the State of New York. As such I am the equal—the peer of any representative of any other State on this floor. I do not intend to be lectured into or intimidated from doing any thing which my judgment tells me I should not do, or should do.

Speaking for New York, I say that she holds her allegiance to the Constitution and the Government of the United States above and beyond any other political duty or obligation. With this obligation always before them, her representatives have come here to consult with you upon the present condition of the country. I am as old as the gentleman from Kentucky. I recognize no right in him to lecture me on my political duties. I revere the Constitution of my country. I was educated to love it, and my own father helped to make it. I cannot sit still and hear such declarations as have been hourly repeated here for the last few days.

Mr. SEDDON:—Does the gentleman consider this a consolidated Government or a confederation of States?

Mr. KING:—I consider this a confederation of States under the Constitution, and that in all that respects the General Government, every good citizen owes an allegiance to it above and beyond that which he owes to his State or to any other political authority. And that statement comprises nearly all I wish to say. The State of New York at all times, in peace or war, has been loyal to the Constitution; and, although some of her representatives here may undertake to make you think differently, she always will be. Yes! loyal with all her strength and power! And as one of her representatives, I shall yield nothing on her part to threats, menaces, or intimidations. I believe the Constitution as it now stands gives you guarantees enough—all you ought to have.

Mr. GOODRICH:—I ought not to permit this vote to be taken, without a word of reply to the remarks of the gentleman from North Carolina. The impression would certainly be derived from his speech that Governor ANDREW, of Massachusetts, approved of the JOHN BROWN raid. This is not true. There is not a particle of truth in the assertion. There is a gentleman here, who heard Governor ANDREW state publicly when he first heard of

that raid, that JOHN BROWN must be crazy. It is true that a meeting was held in Boston to raise funds to support the poverty-stricken family of JOHN BROWN. Governor ANDREW, I believe, presided; and a single paragraph taken from some remarks he made on that occasion, has been scattered broadcast over the country. In order to understand what he did say, both the context and what followed it are indispensable. Those were carefully suppressed. The opinions of Governor ANDREW are well known. They are in sympathy with those of the people of Massachusetts. Neither he nor they approved the JOHN BROWN invasion.

Mr. RANDOLPH:—I call the gentleman to order. He is discussing a subject which is strictly personal, having no connection with the report of the committee, or the amendments offered to that report.

The PRESIDENT:—I think the remarks of the gentleman from Massachusetts are not in order.

Mr. GOODRICH:—Well, I cannot proceed in order. I only desired to correct a misapprehension. I do not quite understand why these misrepresentations should be made, and then objections interposed to their correction.

Mr. HOPPIN:—I rise, Mr. President, to address the Conference with great reluctance. If there is a gentleman within the sound of my voice whose heart is full of anxious solicitude for the safety of the country, he will know how to sympathize with me. I do not represent a State containing four millions of people, but one of the smallest in the Union; and yet little Rhode Island has a heart which beats true to the Union. It so happened that she was one of the last to accept the Constitution; but when she did accept it—when she took upon herself its obligations—she became faithful to it, and she has ever since been true.

I feel that my position is peculiar. I cannot judge of other men as some gentlemen do. The North is full of men who do not concur in my opinions upon the question of slavery. I know they are honest and honorable men. I should do injustice to them and to myself, if I believed them to be either corrupt or enemies of the Union and of good government; and it is just the same in the South as in other sections. Looking around me upon these able and patriotic representatives, who come here with full hearts and tell us of

their position—of the feelings of their people—of the anxiety and apprehension which is so deeply felt among them, can I believe that these men are dishonest? that they do not mean what they say? No, sir! Nobody can be so unjust and unfair as that.

I think of these questions which we are discussing earnestly and continually. My heart is torn by conflicting emotions. I wish to perform my duty toward all sections, and I do feel sure that something must be done for our southern friends. They wish to remain in the Union—they do not wish to be driven out; and they tell us in all sincerity that something must be done to satisfy their people, or they cannot keep them in the Union. I know that the questions presented here are very embarrassing to the North, but we must decide them. We must do the best we can, and the North will sustain us; our constituents will approve our action.

Rhode Island wishes to act fairly by all. She does not herself, need any amendments to the Constitution; but if her sisters need them, she will consider their necessities. Her delegation here acts unitedly, and it's members are influenced by the same spirit. We have done all we could to bring ourselves to a rational conclusion; and we feel, my friends, as though this body ought never to separate until we come to an agreement—until we come to some compromise which will be satisfactory to all.

I cannot now, in the short time that remains, go into a minute examination of the various points presented. This has been done by abler men. But I do feel that although the questions may be difficult, there are none of them which, as sensible men, we cannot settle. Don't let us forget our great mission and descend into personal abuse. Do not let us forget our high duties. Let us perform them in a friendly and a Christian spirit. Let us look at the facts as they are. Let us not spend our time in trying to find out who struck the first blow, or who is responsible. Let us all unite together in one great, final effort to save the country and the Union.

As matters now stand, we who represent Rhode Island can see no way more desirable than to vote for and support the report of the committee. And yet we do not insist upon that report. Show us any thing better, and we will go for it. But we will do nothing to widen the breach—we will do all we can to heal it. My friends, I say once more, let us go to work earnestly, and do not

let us separate and go to our homes, until we can carry with us the glorious news that we have healed up all dissensions and adopted a plan that will secure the Union and make it perpetual.

Mr. CROWNINSHIELD:—I understand that the proposition of the gentleman from Iowa is to restore the Missouri Compromise. If so, does not his proposition commend itself to the Conference as one that will command the respect and support of the country? I have asked, many others have asked, what is the cause of our present difficulties? The question meets no direct reply—no definite answer. The repeal of the Missouri Compromise is referred to, hinted at, as the principal cause. If an answer were extorted, I think it would be, the repeal of that Compromise.

The history of the Missouri Compromise is so simple that we all understand it. Southern men forced the measure upon the North. The few northern men who voted for it were swept out of their political existence at the election which followed its passage. Which section is responsible for its repeal—the North or the South? You say its repeal was moved by a northern man. Very true! But he was a northern man who had adopted southern principles, and who sought to secure the favor of the South by this act. Southern men supported his proposition and carried it through Congress against the votes and the remonstrances of the North.

The South, then, established and destroyed the Missouri Compromise. The South wishes to have its provisions restored. Why, then, are you not satisfied to have it put into the Constitution, and so make it permanent and perpetual, if the North will consent to it? Are the circumstances of the South so much changed? If it was equitable in 1820, *à fortiori* it ought to be equitable in 1861. Territory has been acquired since 1820, it is true, but it is all or nearly all, south of the compromise line. Restore the Missouri Compromise and this territory will be devoted to southern institutions. What territory has been acquired since? Will gentlemen reply, "Oregon"? I insist that Oregon was virtually acquired before. It only required the final agreement upon a boundary line.

If there is any proposition in which the North can concur—any that will restore harmony between the North and the South—it is the restoration of

the Missouri Compromise. If any other is proposed less favorable or just to the North, I do not believe the people will adopt it.

I am not insensible to the condition of the country. Neither are my colleagues, nor the constituents they represent. But you must not expect us here, in the worst emergency you can imagine, to forget or throw away the rights of our people. If we consent to support this amendment, it is as far as we can go. You ought not to ask us to go farther.

Mr. DENT:—I will only occupy one moment. Maryland has spoken in language which satisfies me. As I understand him, I concur in what my colleague has said.

Now the nut is to be cracked. The majority report proposes to give up three-fourths of our territory to the North absolutely, retaining the little balance for the South. The amendment proposes to pick the kernel out of the balance, and to leave the husks to us. To that we shall agree when we are compelled to; not before.

Mr. JOHNSON, of Missouri:—The Supreme Court has already decided, in terms which are not ambiguous, that Congress has no right, under the Constitution, to prohibit slavery in the Territories. Now, our brethren of the North propose to give us the Missouri Compromise. What do they mean? Do they intend to give us a substantial right—one that we can enforce and rely upon, or do they intend to keep it from us? They are shrewd as well as honorable men. They know that the effect of this amendment will be to leave the territory south of the line, without the slightest acknowledgment or guaranty, just where it is at the present time, so far as slavery is concerned.

The construction placed upon the Missouri Compromise was, that the prohibition of slavery north of the line which it established, implied the right of holding slaves south of the line. At the time of its adoption there was, in respect of this construction, no difference of opinion: Such was the construction of Mr. WEBSTER.

Now you propose to leave it still for Congress to legislate as to the territory south. You secure that north, by a prohibition in the Constitution; you will get that south, by the action of Congress.

The decision in the Dred Scott case may be reversed. It afforded no permanent protection. One of your leaders (Mr. WILMOT) says he will war against it. The gentleman from New York (Mr. SMITH) denies the force of the decision in this respect. Now, gentlemen, all we of the South want, is to have this question settled. You know well that the adoption of this amendment, so far from settling it, leaves it all open; or rather it settles the question North, and leaves it open South. The country is in danger—that all concede. Will you, because you do not agree in opinion with the Supreme Court, refuse to join us in one more effort to save the country?

Mr. CLAY:—I have not unnecessarily occupied a moment of the time of this Conference, and it is not now my intention to occupy the whole ten minutes to which I am entitled. But I do wish to express some of the opinions which I entertain upon the questions immediately under our consideration. "Red Gauntlet" has been cited as an authority in this body, but I think I might cite another of the same class which would be more in point. It is the "Bleak House," by Charles Dickens, in which the circumlocution office is so graphically described. It would be decidedly more appropriate to our present action.

Why have we come together? What brought us here? We have come to devise the means of saving a distracted and bleeding country. What the South asks you to do, is, to recognize the property which her citizens possess; and when they take that property to the Territories, to secure its protection there, or rather to protect it south of the line of 36° 30′. Will you do it? Are you going to do it? If you intend to recognize our property south of this line, write it down so plain that my constituents can understand it—so that they will not be cheated. If you intend to do nothing, let us know it at once. We will then know what to expect, and how to advise our people.

The question of slavery is but an incident to the great questions which are at the bottom of our divisions. Such differences have brought war after war upon Europe. It is, after all, the old question of the balance of power between the different sections and different interests. Who does not remember that in 1832 and 1833 the Tariff brought up the same questions? Why did South Carolina then threaten to nullify? Because nullification then, was one of the effects which the disregard of the rights of a section caused.

The South have always insisted upon terms of equality with the North. To this equality no one can deny she is justly entitled. So long as new States came in *pari passu*, North and South, she was satisfied. When this equilibrium was disturbed, she began to insist upon guarantees. Now, when you propose to put the point of equilibrium out of sight altogether, the South insists upon these guarantees, as not only necessary, but indispensable to her safety. This is right and fair. The North would insist upon the same thing, under like circumstances.

Gentlemen from the North have complained here that we have not stated exactly what would satisfy us. We have told you what we wanted over and over again. We want the CRITTENDEN resolutions. We told you that, when we first came here. We have now been here for nearly four weeks, and the CRITTENDEN amendment has never once been submitted to a vote. Since our difficulties first assumed importance, there has never been a measure of pacification suggested which has met with such a measure of acceptance as the CRITTENDEN resolutions. State after State has sent petitions to Congress asking for their adoption. Almost the entire South, with Virginia, the Mother of States, in the advance, tells you that these resolutions will be an acceptable measure of pacification, and yet you will not give us a vote upon them; you will scarcely consent to consider them. Even the committee, whose report is so unsatisfactory to the North (and a portion of the South also), does not appear to have given them much attention.

Mr. President, in behalf of the South, I think I know what to say. If our differences are to be settled at all, we must have our property in our slaves in the Territories recognized; and when that property is constitutionally recognized, it must be constitutionally protected. Such, I know, are the sentiments of the people of Kentucky.

Mr. ALLEN:—I wish to ask the attention of the Conference for only one moment to the true aspect of the question now before us. We are asked if we will suffer the Union to be destroyed on account of the Territory of New Mexico. Let me ask these gentlemen who it is that proposes to break up and destroy the Union? It is the South—it is *not* the North. But all that I pass by.

If it were merely a question of who should have the beneficial possession of our present unoccupied territory, we would give that up at once to the South. But it is not a question of possession at all. It is *the* question which shall control and give direction to the policy of the country—the institutions of Slavery or the institutions of Freedom! You ask for a provision in the Constitution which will place that policy under the control of the institutions of slavery. This we cannot grant you.

We of the North stand where our fathers did, who resisted the Stamp Act; who threw overboard the tea in Boston harbor. We have been taught to resist the smallest beginnings of evil; that this is the true policy. *Obsta principii* was the motto of our fathers. It is ours. The debates of this Conference, and those of the Convention of 1787, will stand in a strange contrast to each other.

Mr. BALDWIN:—I now offer the minority report of the committee, with the accompanying resolutions as an amendment to—

The PRESIDENT:—The gentleman from Connecticut is not in order.

The vote was then taken by States, upon the amendment offered by Mr. CURTIS, to the substitute proposed by Mr. FRANKLIN, for the first article of the section reported by the General Committee, with the following result:

AYES.—Maine, Vermont, Massachusetts, Connecticut, Iowa, and New York —6.

NOES.—New Hampshire, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, and Ohio—12.

And the amendment was lost.

Mr. CORNING:—I dissent from the vote of New York.

Mr. WILMOT:—I wish to be recorded as voting Aye!

Mr. DODGE:—I dissent; I am against the amendment.

Mr. WOOD:—I wish my vote recorded in favor of the amendment.

Mr. COOK:—And so do I.

Mr. LOGAN:—I am the other way.

Mr. TUCK:—I dissent from the vote of New Hampshire.

Mr. GRANGER:—And I from that of New York.

Mr. WOLCOTT:—I dissent from the vote of Ohio. I notice that my colleague, Mr. CHASE, is not present at this moment.

Mr. BRONSON:—I also dissent from the vote of New York. My associate, GEN. WOOL, is confined to his room by a severe indisposition. For his benefit, and as I know he feels a deep interest in these votes, and desires to have his name appear upon the record, in his behalf I offer the following resolution:

Resolved, Whereas JOHN E. WOOL, a delegate from New York, is unable to attend the Convention, from sickness, therefore that he be permitted, when he does attend, or by communication in writing to the Secretary, to have his dissent recorded, as to any vote of his State.

This resolution was agreed to without a division.

The PRESIDENT:—The question now will be upon the adoption of the substitute proposed by the gentleman from Pennsylvania (Mr. FRANKLIN), to the first section of the article reported by the committee.

Mr. FRANKLIN:—Before that question is taken, I desire to accept certain verbal amendments which have been proposed by various members, which will, I think, improve the substitute which I offer. These amendments are as follows:

1st. In the fifth line, as printed, after the words "nor shall any law be passed," insert the words "by Congress or the Territorial Legislature."

2d. In the sixth line, after the words "the taking of such persons," insert "from any of the States of this Union."

3d. In the eighth line, before the words "according to the common law," insert the words "course of the."

4th. In the seventh line, after the words "prevent the taking of such persons," insert the words "from any State in the Union."

These amendments I adopt, and wish them to be treated as incorporated into my substitute.

The PRESIDENT:—Such will be assumed as the pleasure of the Conference, as no objection is made.

Mr. GUTHRIE:—I am content, on the part of the committee, that the substitute offered by the gentleman from Pennsylvania should be adopted in the place of the first section of the article reported by the committee. It amounts to the same thing, and is expressed in shorter and better language.

Mr. FRELINGHUYSEN:—I move to amend Mr. FRANKLIN'S substitute as follows:[3] I think these words would be more acceptable to the people of the Northern States.

Mr. PALMER:—Does not the gentleman's amendment involve an Hibernicism? I think if we are to adopt the report of the committee, the FRANKLIN amendment admits of no improvement. It had better stand as it is. If we undertake to change it we shall all get to sea.

Mr. FRELINGHUYSEN:—I withdraw my proposition.

Mr. JAMES:—It was moved yesterday to insert the words, "or facilitate" after the words "hinder or prevent," in that part of Mr. FRANKLIN'S

amendment which negatives the right to pass laws. What was done with that?

Mr. FOWLER:—Nothing. I moved it, and I insist upon the motion.

Mr. GUTHRIE:—I submit to the Conference whether this amendment is necessary or proper. Suppose some new question arises relating to slavery which it may be greatly for the interest of the Territory to protect. Suppose mines are discovered, and the Territory should want slaves to work them. Shall we put it into the Constitution that no law shall be passed to encourage their emigration?

Mr. BRONSON:—I see no need of it.

Mr. JAMES:—The point generally comes out. Now you say that you will have the right to go into the Territory with your slaves, and no law shall be passed to prevent you, no matter how much such a law would promote the material interests of the Territory. The converse of this you will not agree to. You are not content to let slavery stand by itself, you must have it nursed by the Territorial Legislatures. Does slavery always require such partiality? I say the power of the Legislature should be exercised on both sides, or it should not be exercised at all. I am trying to perfect the article. If it is to pass, and go to the people as a measure of pacification, and if you expect them to adopt it, you must not have it so one-sided and unfair. The people will understand it—it will be our duty to explain it to them, and to give them its history.

Mr. GUTHRIE:—But your amendment would prohibit the passage of a law permitting the transit of a slaveholder through the Territory with his property. Remember, also, that the prohibition only continues so long as the territorial condition exists.

Mr. SMITH:—Before this vote is taken, I wish to call attention to the character of the prohibition. "Nor shall any law be passed to hinder or prevent the taking of such persons to said Territory, nor to impair the rights arising from said relation," &c. Now, this is very broad. Suppose a law giving the right of transit to the people of the free States, or any law for their protection in the Territory, as inhabitants, is held by the Territorial Judge to "impair the rights arising from said relation." He holds it

unconstitutional. Where is the remedy? What views are entertained upon some of these points in some sections of the South we know. If you do not adopt this amendment it is quite in the power of the Legislature to exclude any person from the Territory whose presence there may be thought injurious to slavery. Did the committee intend this?

The question upon the adoption of Mr. FOWLER's amendment resulted as follows:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Indiana, Illinois, and Iowa—10.

NOES.—New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, and Ohio—10.

So the amendment was rejected.

Mr. GROESBECK:—I move to amend the substitute offered by Mr. FRANKLIN, by inserting after the words "nor shall any law be passed," the words "by Congress or the Territorial Legislature." I think this is necessary to make our intention plain. Otherwise it might be said that the prohibition did not apply to Congress.

Mr. FRANKLIN:—I think the suggestion a very proper one. I will accept the amendment.

Mr. WILMOT:—I only wish to understand where we are. Have we disposed of the word "facilitate"?

The PRESIDENT:—That amendment was not adopted.

Mr. WILMOT:—Then I move to insert before the word "*status*," the word "legal."

Mr. RUFFIN:—That raises again every question we have been discussing. The word, as used in the substitute, only refers to the status *in fact*.

Mr. GUTHRIE:—This brings up all our old troubles. Let us reject it.

Mr. RANDOLPH:—I wish to understand this subject, and what will be the effect of adopting this amendment. I understand that the slave has what we

call a *status*. The substitute of Mr. FRANKLIN is intended specifically to recognize and protect that *status* in the Territories as fully as it is protected and recognized in the States. I think it has that effect. Adopt the amendment, and the effect is precisely the opposite. The amendment rescinds the *status*.

Mr. PALMER:—I wish to make an inquiry of the mover. Does the amendment, after all, make any difference? Must not any *status*, not against law, be, of necessity, a *legal* status?

Mr. WILMOT:—No. I think there is a wide difference, and the South thinks so. One is a status in fact, the other, one in law.

Mr. LOGAN:—I hope we shall not adopt the amendment. We all want these questions settled. The amendment opens them all wider than before. If we intend to give the South the right she asks for, and, as I think, rightfully asks for, let us give it to her in plain and unequivocal language. Let us not give her a legacy of litigation, by using words which mean one thing or the opposite, according to the construction you place upon them. I wish to settle all these questions fairly. The amendment leaves the question as to what constitutes a *legal status*, to be decided by the Court. The North would claim that there cannot be such a thing as a legal status, a legal condition of slavery. The South would claim the opposite.

Mr. WILMOT:—If the amendment of the gentleman from North Carolina had been adopted, I would not have moved this. The section then would have been unambiguous and clear. Now it is all open to construction.

Mr. CHASE:—In my judgment it is unimportant whether the amendment is adopted or not. The condition of the slave in the Southern States is one arising out of law, established by legislative provisions. *Status in fact* must mean *status in law* as well as *status in fact*.

I have listened with attention to the appeals made by gentlemen who urge the interests of the South in favor of a settlement of these questions. But you are now prosecuting a plan which will be the subject of debate throughout the country. Adopt your article in either form, and the question, What does status mean? will still remain.

A majority of the people have adopted the opinion that under the Constitution slavery has not a legal existence in the Territories. The triumph of this opinion is not the result of any sudden impulse. A President has been elected, and a Government will soon be organized, whose duty it will be to respect and observe the opinions of the people. You are now seeking, by the adoption of a single section, to change these opinions and this policy. Do not deceive yourselves, gentlemen. You will never accomplish this result so easily. You are presenting such a subject for debate and excitement as the country never had before. It is best we deal frankly.

The vote was taken upon the adoption of the amendment, and resulted as follows:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, Indiana, Illinois, and Iowa—9.

NOES.—Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, and Ohio—11.

And the amendment was rejected.

Mr. GOODRICH:—I move to insert in the substitute offered by Mr. FRANKLIN, after the words "south of that line," the words "not embraced by the Cherokee treaty."

A word of explanation. Do we intend to prohibit the Cherokee Nation from changing the status of persons within their Territory, if they think proper to do so? Would not this be a violation of our understanding, if not of our treaty stipulations with these Indians?

Mr. EWING:—I have looked into this subject, and I do not think the proposition would be improved by the amendment.

Mr. GOODRICH:—Then I will withdraw it for the present.

Mr. GUTHRIE:—I hope the vote on the main question will now be taken. It is evident that the sense of the majority is against accepting amendments.

Mr. GOODRICH:—That obliges me to renew my motion. I do renew it, and ask for a vote by States.

The vote upon the amendment offered by Mr. GOODRICH was taken, with the following result:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, Pennsylvania, Ohio, Indiana, Illinois, and Iowa—11.

NOES.—Rhode Island, New Jersey, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, and Missouri—9.

So the amendment was adopted.

Mr. TURNER:—I move to amend the substitute offered by Mr. FRANKLIN, by inserting after the words "hinder or prevent," the words "or encourage."

I think there is a palpable difference between the word "encourage" and the word "facilitate." The former is broader and less restricted. If this measure is to be commended to the favor of the North, it should be deprived of this one-sided character.

Mr. GUTHRIE:—We have already decided this question. In every practical sense the words are synonymous.

The vote was taken upon the amendment offered by Mr. TURNER, and resulted as follows:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Indiana, Illinois, and Iowa—10.

NOES.—New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, and Ohio—10.

And the amendment was lost.

Mr. GUTHRIE:—I ask the Conference now to let us have a vote.

Mr. SEDDON:—Not just yet. I move to amend the substitute offered by the gentleman from Pennsylvania, by the insertion after the clause providing for the division of the territory, of the following:

"All appointments to office in the Territories lying north of the line 36° 30′, as well before as after the establishment of Territorial governments in and over the same, or any part thereof, shall be made upon the recommendation

of a majority of the Senators representing, at the time, the non-slaveholding States. And, in like manner, all appointments to office in the Territories which may lie south of said line of 36° 30′, shall be made upon the recommendation of a majority of the Senators representing, at the time, the slaveholding States. But nothing in this article shall be construed to restrain the President of the United States from removing, for actual incompetency or misdemeanor in office, any person thus appointed, and appointing a temporary agent, to be continued in office until the majority of Senators as aforesaid may present a new recommendation; or from filling any vacancy which may occur during the recess of the Senate; such appointment to continue *ad interim*. And to insure, on the part of the Senators, the selection of the most trustworthy agents, it is hereby directed that all the net proceeds arising from the sales of the public lands, shall be distributed annually among the several States, according to the combined ratio of representation and taxation; but the distribution aforesaid may be suspended by Congress, in case of actual war with a foreign nation, or imminent peril thereof."

Mr. SEDDON:—I invite the careful and deliberate attention of the Conference to the provisions of this amendment. It is commended by high authority. It is commended by nothing inferior to the wisdom and experience of our honored President. It is intended as a division of the territory between the North and the South.

Now, to insure a fair operation of the provisions of the Constitution, as they will stand in that instrument when amended as we propose, we deem it very essential that the rights of the southern section should be secured by such an amendment as this. It will be noticed that Mr. FRANKLIN'S substitute precludes us from any appeal to Congress or the Territorial Legislatures for affirmative protection. The powers of those bodies will be negative only. We have nothing left, then, but the Federal Courts. We ask now that we may not be subjected to the government and power of Federal officers, whose opinions are against us—who will exercise those powers for our oppression. Congress or the President may send into a Territory in the southern section, a set of officers who are anti-slavery propagandists, who will exercise all their official powers to our injury. I hold this amendment to be eminently just and fair. We have no protection from Congress; none from the Legislature. Is there a chance, even, unless such a provision is adopted, that

the South will ever be placed in the favorable possession or enjoyment of the rights you are willing to concede to us?

The latter portion of the amendment is equally just. The Government holds the public lands in trust. It is better to divide their proceeds at short intervals, and thus remove the subject from all danger of corrupting influences. But I shall leave this to be discussed by the mover.

Mr. PALMER:—I move to rescind the ten-minute rule adopted by the Conference, so far as the President is concerned.

The motion of Mr. PALMER was agreed to without a division.

President TYLER:—I am very grateful for the compliment which the Conference extends to me in the vote which has just passed. I will not abuse its kindness.

The amendment which is offered may, at first sight, appear to be extraordinary; but I wish to say, in all seriousness, that all my experience in public life leads me to favor its adoption. I wish to have the Conference understand fully its import and meaning.

That policy is the best, which reduces within the narrowest limits the patronage to be exercised by the Executive authority. Every party out of power has discovered that in the patronage of the President there is a voice of greater potency than is heard elsewhere in the Government. This amendment places a limitation upon the power of the President. It confers upon a majority of the Senators from each section the power to recommend appointments to office, and this will be found in practice equivalent to the power of appointment. It is the only practicable limitation of Executive patronage. The power of the Executive in this Government is very great. Limit it, abridge it as you may, and the President will have a power in the Government which is not possessed by any sovereign of any throne in Europe.

This is not a political question. Our warrant for the adoption of this plan will be found in the tranquillity it will give to the country—in the peace which will result from it. We are now settling differences between the States. Adopt this provision, and we secure unanimity forever. You will always find that dissatisfaction is confined to limited portions of the

country. The North is content with the existing state of things—so is three-fourths of the South. Remove this power from the Executive, and those measures will be adopted which will promote the welfare of the greater number. Do you not see that you have in this way good security for the selection of the best men?

Suppose the Government should start to day on this new policy—that it should avoid all propagandism—should place honest, competent men, only, in office—should let all others understand that there was no chance for them—should permit both sides, all sides to be fairly represented. You would ensure peace, secure quiet in the country forever. You would thus heal the wound, not cicatrize it. How small would be the cost of so great a victory!

May I not go one step farther. I have heard with pleasure the feelings expressed, the references made, to the Cotton States. I have scarcely heard an unkind word said against them. We have come here to cement the Union—to make that Union, of which gentlemen have so eloquently spoken, permanent, noble, and glorious in the future as it has been in the past—not to be content with it as a maimed and crippled Republic.

Now, eight flourishing States are practically lost to us. The crest of the noble Mexican Gulf has separated from us. Let us exert every power we possess to bring them all back to the fold. Why should we not? Every motive of interest or patriotism should induce us to do so. Suppose the States were vacillating and in doubt where to go. Suppose they were set up for sale in market *overt*, and the States of Europe were to bid for them—for this, not only the richest portion of our own country, but of the world—because this portion of our land has an element of wealth and power which must be prized and valued wherever commerce is known. What would not one of the Powers of Europe give for this favored section? The treasures of the continent would be opened. Nations would unlock the caskets of their crown jewels to secure it. England would double her national debt to have it; so would France; so would Russia. And yet we stand here higgling over these little differences which alone have caused our separation. Is it not better that we should rise to the level of the occasion, and meet the requisition of the times, instead of expending precious hours in the discussion of these miserable abstractions?

We talk about the events of the Revolution and their consequences. Have we forgotten our revolutionary history? Have we forgotten the MARIONS, the SUMTERS, the PICKENS, of those times? Has the spirit of sacrifice which, animated those men wholly departed from their descendants? God forbid!

Our body politic is not free from disease. The disease should be treated properly and judiciously. Whenever disease shows itself we should apply a suitable remedy—one that is suggested by the pharmacy of mutual brotherhood, and yet powerful enough to reach every nerve in our political system.

It is to accomplish this purpose that we have come together. It is to secure this desirable result that I urge the adoption of this amendment. I press it because I feel that it will give peace to all sections. Adopt it, and from that moment you may date the beginning of the return of the seceded States into the fold of the Union. How heartily would we welcome their return! Do we not all desire it? Has not Virginia a heart large enough to give them their old place in the Union? Has not Rhode Island and New Jersey?

I say my proposition will accomplish this, and a single reason will disclose the ground of my faith. It preserves the equilibrium, the balance of power, between the sections. It enables each section to appoint its own officers, to protect its own interests, to regulate its own concerns. It is fair and equal in its operations. With it, no section can have any excuse for dissatisfaction. I pledge the united support of the South to the Union, if it is adopted.

The latter branch of the amendment looks to the annual distribution of the net proceeds of the sales of the public lands among the several States. This was one of the favorite ideas of HENRY CLAY. His argument upon this subject, to my mind, was always conclusive. Will the party which has adopted his principles repudiate this, or will its members put their feet down firmly and give it their support?

I have watched the operations of this Government with great interest and care, and I have noticed that every approach toward making each source of revenue or expenditure separate and independent of all others, tended to the profit and advantage of the Government, and increased the chances of securing honorable and honest agents to transact its business. A marked instance of this will be found in the administration of the affairs of the Post

Office Department. And here I cannot refrain from relating an anecdote which is strongly in point, and which forms one of the pleasantest recollections of my own connection with the administration of the General Government.

Upon a certain occasion I called my cabinet together. Sad complaints had been made concerning the administration of several of the Departments, and the press had not failed to predict heavy losses to the Government through the dishonesty and the defalcations of its agents. I determined that I would know what the facts were, and I directed all the departments to furnish me, by a certain day, with a correct and accurate list of all their defaulting employés, and on the same day I summoned my cabinet to consider these reports. The lists came in from the several Departments, and I assure the Conference that they were formidable enough to give ample occasion for anxiety. But the list from the Department of the Post Office was not forthcoming. My friend, Governor WICKLIFFE, was at that time at the head of that Department. The day of the cabinet meeting arrived. We were all assembled but the Postmaster General. We waited for a long time for him and for his report. At length he came, bringing his report with him, but with the marks of great care and anxiety upon his brow. *He had discovered a defalcation* in his Department. He had been occupied for a long time in tracing it out, but he had at length succeeded. He came to announce to the President that the postmaster of a certain "Cross Roads" in Kentucky had absconded, and defrauded the Government out of the sum of *fifteen dollars*! and worst of all, his bail *had run away with him*!!

This is only one of the many proofs which my own experience would furnish of the propriety, if not the necessity of keeping each Department of the Government by itself—of not connecting it with others, and of making the agents of each Department responsible to itself alone. Carry this idea into practice in all the Departments of the Government, and a better class of agents would be secured, and the loss by defaulters would be much lessened.

The enormous increase of the expenditures of the General Government might, by the same process, be prevented. How does it happen that in a time of peace these expenses have risen from twenty-three millions of dollars up to seventy or eighty millions? In the same proportion, the sum to which

they will reach in another decade will be frightful! It is high time that a stop was put to this lavish expenditure, and especially to the losses by dishonest agents. The plan here proposed will give you a starting point. The proceeds of the vast domain of the public lands are now so mingled with the other expenditures of the Government, that no one can tell what becomes of them. They are now common plunder. Divide them among the States, and they will be saved—they will be applied to some worthy object, and you will have adopted a principle which, after a little time, under any honest administration, will be applied to the other Departments of the Government. I trust the whole amendment may be adopted. As the amendment may be divided into two parts—one relating to appointments to office, and the other to the public domain—I would ask that the vote may be taken upon each proposition separately.

The vote was then taken upon the first portion of the amendment proposed by Mr. SEDDON, with the following result:

AYES.—Maryland, Virginia, North Carolina, Kentucky, and Missouri—5.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Tennessee, Ohio, Indiana, Illinois, and Iowa—14.

And the amendment was rejected.

Mr. JOHNSON:—I cannot concur in the vote just given by Maryland. I desire to have my dissent recorded.

Mr. CRISFIELD:—I dissent, also, from the vote of Maryland.

President TYLER:—The last part of the amendment will be considered as withdrawn.

Mr. McCURDY:—I move to amend the substitute proposed by Mr. FRANKLIN, by adding thereto the following words:

"*Provided*, That nothing in this article contained shall be so construed as to carry any law of involuntary servitude into such Territory."

Mr. GUTHRIE:—I hope we shall reject all such amendments. I consider this simply procrastination.

Mr. JOHNSON, of Missouri:—I wish to raise a point, a question of order. This conflicts directly with the sense of the substitute proposed. We ought not to entertain it.

The vote was taken upon the amendment proposed by Mr. McCurdy, with the following result:

Ayes.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, and Iowa—7.

Noes.—Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, Indiana, and Illinois—13.

And the amendment was rejected.

Mr. ORTH:—I dissent from the vote of Indiana.

Mr. RUFFIN:—I rise to inquire whether it will now be in order to offer a substitute? I have one which I wish at the proper time to present.

The PRESIDENT:—The question is now upon the adoption of a substitute —that offered by the gentleman from Pennsylvania—to the first section of the article reported by the committee. I do not think any other substitute is in order at the present time.

Mr. CHASE:—I hope that this vote may be postponed, and I will briefly state the reason why. I am informed that a delegation from the State of Kansas has arrived during the day, and that their credentials are now in the hands of the appropriate committee. That committee has not yet reported, and cannot until they have a meeting after our adjournment. The credentials of three of these delegates have been presented by myself but a few minutes since. The Committee on Credentials, I am informed, will not report until Monday. I wish the youngest State in the Union to express her opinion upon this motion. I therefore move an adjournment.

Mr. EWING:—I do not think any delay is necessary. We can let them vote on Monday.

Mr. SUMMERS:—I only wish to say a word of explanation in behalf of the Committee on Credentials. The delay in the case of Kansas is not the fault

of that committee. The delegates themselves think it better that the report should not be made until all the delegates arrive who are expected. The committee can report at any time.

The vote was taken on the motion to adjourn, with the following result:

AYES.—Maine, Massachusetts, Connecticut, New York, and Indiana—5.

NOES.—New Hampshire, Vermont, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, and Missouri—12.

So the motion to adjourn was negatived.

The PRESIDENT:—The question will now be taken upon the substitute of the gentleman from Pennsylvania (Mr. FRANKLIN), offered for the first section of the article reported by the committee.

Which vote being taken, resulted as follows:

AYES.—Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Kentucky, Ohio, Indiana, and Illinois—14.

NOES.—Virginia, North Carolina, Tennessee, and Missouri—4.

And the substitute was agreed to.

Mr. FIELD:—There seems to be a misapprehension as to the proper time for offering substitutes for the whole report of the committee. I shall act upon the understanding that the proper time to offer them will be when we have gone through with the report of the committee. If I am wrong I wish to be corrected now.

Mr. LOGAN:—I am informed that Mr. LINCOLN, the President-elect, has arrived in this city. I feel certain that the Conference would desire to treat him with the same measure of respect which it has extended to the present incumbent of that high office. I therefore move that the President of this Convention be requested to call upon the President-elect of the United States, and inform him that its members would be pleased to wait upon him

in a body at such time as will suit his convenience, and that this Convention be advised of the result.

The motion of Mr. LOGAN was agreed to unanimously.

Mr. WILMOT:—I move an adjournment to half-past seven o'clock this evening.

The motion was agreed to, and the Conference adjourned.

EVENING SESSION—SIXTEENTH DAY.

WASHINGTON, SATURDAY, *February 23d, 1861.*

THE Conference was called to order by the President, at half-past seven o'clock.

The PRESIDENT:—I have addressed a note to the President-elect, announcing the desire of the Conference to offer their respects to him in a body, at seven and one-half o'clock this evening, or at such other time as would be agreeable to him. I have received his reply, stating that he will be pleased to receive the members of this body at nine o'clock this evening, or at any other time which may suit their convenience.

The Conference then proceeded to the order of the day, being the consideration of the second article of the section reported by the committee.

Mr. GUTHRIE:—I move to strike out the second article, and to insert the following in its place:

"Territory may be acquired for naval and commercial stations and transit routes, and by discovery, and for no other purposes, without the concurrence of four-fifths of the Senate."

It is generally conceded that under our present Constitution the United States have no power to acquire territory for coaling or naval stations, within the country of a foreign power. It was the committee's intention to

remedy this defect by the present section. But as it stands, I do not like it. The idea is somewhat awkwardly expressed. I wish to have the enabling power conferred in direct terms.

Mr. SUMMERS:—I would ask to interrupt the order of business for a moment, in order to make a report from the Committee on Credentials, in the Kansas case. The defect adverted to in the case of Mr. STONE, has been supplied to the satisfaction of the committee, and Messrs. CONWAY, EWING, and ADAMS, have also presented themselves as delegates from the State of Kansas, with proper credentials. It has not been our practice heretofore to admit members by a formal vote, nor do I see any necessity for making the case of Kansas an exception. The committee would suggest that the clerk enter the names of these gentlemen upon the roll of delegates, unless objection is made.

The PRESIDENT:—The Secretary will make the entry, as no objection is made.

Mr. SUMMERS:—Some days ago I introduced into the Conference, and caused to be printed, a substitute which I proposed to offer for the second section of the committee's article. I offer it now, as follows:

"No territory shall be acquired by the United States without the concurrence of a majority of all the Senators from States which allow involuntary servitude, and a majority of all the Senators from States which prohibit that relation; nor shall territory be acquired by treaty, unless the votes of a majority of the Senators from each class of States hereinbefore mentioned, be cast as a part of the two-thirds majority necessary to the satisfaction of such treaty."

I do not propose to occupy time in discussing it, but I ask a minute or two to explain its provisions. The second section of the article proposed by the committee, requires that a treaty under which territory or commercial or naval stations is acquired, should require four-fifths of the Senate for its ratification. This, I think, is an unnecessary restriction upon the treaty-making power. Occasion may arise when it would not be advisable to wait for the exercise of this power at all. The question of acquiring territory may arise under circumstances when delay would be fatal. Suppose our title to an island in the Arctic Ocean, or a point upon the shore, by discovery or

otherwise, which might be settled by prompt action! There might be no national authority with which we could treat for its acquisition. I think it would be hazardous to provide that in no event should territory be acquired except by treaty. The case I have supposed has no relation whatever to the case of an ordinary acquisition of territory by treaty with a recognized foreign power.

But the question of slavery always arises when the subject of acquiring territory is mentioned. This clause would fix the *status*, would put it in the power of either class of States to prevent the acquisition, but it would not permit a small number of States to do it. To leave it where a *majority* of the Senators of both sections could control the subject, would seem to me the mode of settlement least objectionable. The ratification would require two-thirds of the Senate, like all treaties, and these two-thirds would include a majority of both sections.

Objection will be made to this classification of the States. I do not like it myself, but there it no way to avoid it. I have adopted the language of the Ordinance of 1787. There can be no very sound objection to the use of these terms. The objection is rather sentimental than otherwise.

The amendment I offer ought to satisfy the South, and I think it will. The South asks for these provisions because they settle all questions about our present territory, and prevent questions arising over that we may acquire hereafter. They will give to both sides equality of power. But voting is far more important now than speaking. I will consume no more time.

Mr. GUTHRIE:—The gentleman from Virginia desires to try his motion. For the present, I will withdraw mine.

Mr. FIELD:—I have only a word to say on this subject. There are very grave objections to this classification of sections. I will not repeat them here. I supposed the sense of the Conference had been expressed against it.

But I wish to inquire why this second section is necessary at all? It came up in the committee rather by accident than otherwise. I do not think any one of the committee intended to make it one of the subjects of our action, and the section was finally presented by a small majority.

Let us leave this subject where the Constitution leaves it. We can now acquire territory by discovery or by treaty. So far the Constitution has operated satisfactorily. The country owes much of its greatness to this very provision of the Constitution. No grievance to the South, assuredly, has been caused by it. I am much averse to any alteration.

Mr. BARRINGER:—I think, after some reflection, that this amendment is of much more importance than many of us have supposed. I shall vote for it, because I do not wish to have too many limitations placed upon the power of the Government in relation to the acquisition of territory. We know how difficult it is to change our fundamental law. Very few amendments to the Constitution have been made since the death of WASHINGTON. We are now establishing our fundamental law for ages to come. Is there upon the face of the civilized earth a nation with such a limitation upon the power of acquiring territory as this original article proposes? Its adoption would place us at the feet of foreign nations.

In war, conquest is one means of indemnity—often the best and only one. We must look to the acquisition of future territory; we must make our settlement with that in view.

Reference has been made here to the seceded States, and some hard words have been used toward them. This is not the place for such words. What is the condition of these States now? They say they are out of the Union. We say, No! The question between us may be decided by the Courts; it may be decided by the sword. But we all want them back; we would place no restrictions upon their return. They will only come back by treaty. Unless you adopt this amendment, the section proposed will be applicable to their case, and a mere fraction could keep them out of the Union forever.

In regard to the subject of slavery, what we want is security for the future. That we can arrange. In my opinion you will never get back the seceded States, without you give them some hope of the acquisition of future territory. They know that when slavery is gathered into a *cul-de-sac*, and surrounded by a wall of free States, it is destroyed. Slavery must have expansion. It must expand by the acquisition of territory which now we do not own. The seceded States will never yield this point—will never come back to a Government which gives no chance for the expansion of their

principal institution. They will insist upon equity, upon the same rights with you in the common territory, and the same prospect, of acquiring foreign territory that you have. If you are not prepared to grant all this, do not waste your time in thought about the return of the seceded States.

Mr. RANDOLPH:—New Jersey voted to make the first section of the article reported applicable to future territory, not because she wishes to acquire new territory, but because she knows that it will be acquired; and she believes all questions raised here can be settled now, in regard to it, better than they can be hereafter. These questions have raised a ferment in the nation; we would settle them any way. We should have voted for these restrictions upon the power of acquiring territory; and still we cannot shut our eyes to the fact that in a few years new territory must be acquired. Look at Sonora, at all Mexico; they furnish the reason for our action. An effort will be made, perhaps, to secure the new territory by treaty. Better get it in that way than by conquest.

Personally, I would oppose any farther acquisitions. We need no more territory, and yet I know that more will be acquired. The North wishes it more than the South. In the end, the North will insist that we should have Cuba. What is the sentiment of our commercial cities now?

I think we ought to surround this power of acquisition by some judicious restrictions; not make them too strong, or the country will break over, and not regard them. What restriction would not have been broken down, when the question came up in relation to Texas? We must anticipate occasions of the same kind. I am inclined to vote for the substitute of the gentleman from Virginia. At all events let us adopt some limitations. If not these, then such as are contained in the original article.

Mr. JOHNSON, of Maryland:—I propose to amend the substitute offered by the gentleman from Virginia, by inserting after the words "United States," the words "except by discovery, and for naval and commercial depots and transit routes."

There is now a law, the constitutionality of which has not been doubted, providing for the acquisition of territory by discovery. But the Court, in the Dred Scott case, decided that territory could not be acquired, except as preliminary to the formation of a State. This difficulty should be obviated. I

think the amendment I propose will do it. If we adopt the proposition of Mr. SUMMERS, we cut off the power of acquiring territory for transit routes, &c., except by treaty. I think my amendment will make the section more satisfactory to the South.

Mr. SUMMERS:—I will accept the amendment, and treat it as a part of my substitute.

Mr. BROCKENBROUGH:—I feel a deep solicitude in this subject. We are here for the purpose of settling a great difficulty. Instead of settling it, we shall add to it by placing these unnecessary obstructions in the way of acquiring territory in future. Would not the South be safer by the adoption of this guarantee? It is the only one, aside from the first section, which gives the South a grain of power. We cannot go on with things as they are—only seven States to contend with all the rest of the nation. We must all desire that the seceded States should return to the Union. How are they to come back? By treaty, or by the sword? Who will not prefer to win them back by adopting principles in our amendments which will make it for their interest to return? If the amendment is adopted, no future territory will be acquired without the consent of a majority of Senators on both sides of the line. Reject this, and I have not the slightest hope of ever seeing the seceded States again in the Union. I believe this amendment will meet the wishes of a large majority of the people of Virginia.

The vote upon the adoption of the substitute proposed by Mr. SUMMERS resulted as follows:

AYES.—Rhode Island, New Jersey, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, and Missouri—9.

NOES.—Maine, Vermont, Massachusetts, Connecticut, New York, Pennsylvania, Indiana, Illinois, Iowa, and Kansas—10.

And the amendment was lost.

Mr. GUTHRIE:—I will now renew my proposition, and ask a vote upon it by States.

The vote upon the substitute offered by Mr. GUTHRIE, for the section of the article reported by the committee, resulted as follows:

AYES.—New Hampshire, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Tennessee, Kentucky, and Ohio—10.

NOES.—Maine, Vermont, Massachusetts, New York, Virginia, North Carolina, Missouri, Illinois, Indiana, and Iowa—10.

And the amendment was lost.

Mr. PRICE dissented from the vote of New Jersey, and Mr. BARRINGER from the vote of North Carolina.

Mr. WICKLIFFE:—As the hour named for the call upon the President-elect is approaching, I move that a committee of three members be appointed by the President to make arrangements for the introduction of the members of the Conference.

The motion of Mr. WICKLIFFE was agreed to, and the President appointed Messrs. WICKLIFFE, FIELD, and CHASE, as the committee.

Mr. McKENNAN:—I move a reconsideration of the vote of the Conference rejecting the substitute offered by the gentleman from Virginia. I am not at all certain that we may not think it advisable to adopt that amendment.

The order of the day was now suspended, and the committee appointed to wait upon the President-elect, reported that they had performed that duty, and that the President-elect would be pleased to receive the members of the Conference in his parlors in Willard's Hotel, at the present time.

For the purpose of waiting on the President, on motion of Mr. EWING, the Conference adjourned until the 25th inst., at ten o'clock A.M.

SEVENTEENTH DAY.

WASHINGTON, MONDAY, *February 25th, 1861.*

THE Convention was called to order at ten o'clock, pursuant to adjournment, by President TYLER, and prayer was offered by Rev. Dr. SMITH.

The Journal of Saturday was read.

Mr. HACKLEMAN:—The Delegates from the State of Indiana desire that the vote of that State upon the proposition of amendment offered by the gentleman from Iowa (Mr. CURTIS), on Friday last, may be recorded. The vote was taken on Saturday, and Indiana desires to record her vote against said proposition.

The Conference granted the leave asked, and the vote of Indiana was accordingly entered upon the Journal.

The PRESIDENT:—There have been transmitted to me the proceedings of a meeting of the Democrats of Pennsylvania, in which are contained certain resolutions relating to the matters now before us. I am informed that the meeting was one of the largest ever held in that State. The usual course would be to enter them upon the record, but in this instance I would suggest the propriety of having them read. However, the Conference will take such order upon them as it thinks proper.

Mr. POLLOCK:—The policy of the Conference from the beginning has been not to receive or consider resolutions of a partisan character. That decision was made on one of the early days of our session, upon a series of resolutions adopted by a convention held in New Haven, Connecticut, which were presented by Mr. CLAY. I think we had better pass over the subject informally, and I would call for the order of the day.

Mr. MOREHEAD, of Kentucky:—I think the resolutions had better be referred to the Committee on Credentials.

Mr. CLAY:—I quite approved of the course taken by the Conference of the resolutions which were sent to me for presentation. I hope we will pursue the same course now. I move that these resolutions be entered upon the Journal as received, and that they be laid on the table.

The motion of Mr. CLAY was agreed to, and the resolutions were laid on the table.

Mr. SMITH, of New York:—I would inquire whether any action has been taken under the order of the Conference for the printing of the Journal from day to day. It is very important that we have these Journals, that we may know exactly what has been done. No gentleman can carry all our proceedings in his memory.

The Secretary made a statement to the effect that he had not found time fully to complete the Journal, or to arrange for its being printed under the rule requiring that secrecy should be preserved; that the Mayor of Washington had proposed to have the printing done under a supervision which would secure its non-publication by the press, and that various reasons existed why the order of the Conference had not been complied with.

Mr. SMITH:—Then I hope the order will be complied with to-day. It is very important that each member should have a copy of our daily Journal. I certainly expected one this morning. I will not make a motion now, but if these copies are not furnished, I shall move the appointment of a committee to secure their future publication.

Mr. DENT:—There was a vote passed upon this subject. It may have been in the absence of the Secretary.

The PRESIDENT:—The Conference is informed that the Journal shall be published as soon as possible.

Mr. BROCKENBROUGH:—I have two amendments which I shall offer. At present I desire to have them laid on the table and printed.[4]

The PRESIDENT:—The Conference will now proceed to the consideration of the order of the day, which is the motion to reconsider the vote rejecting

the substitute offered by Mr. SUMMERS, for the second section of the articles of amendment reported by the committee.

Mr. McKENNAN:—At the request of one of my colleagues I would ask a postponement of the vote upon my motion of reconsideration for the present. It will produce no injurious result, and I think myself we had better hold this amendment subject to the future action of the Conference.

Mr. SUMMERS:—I will not withhold my consent to the postponement. But I hope the members of this Conference will consider my amendment, and give it their attention when it comes up again.

Mr. GUTHRIE:—If we pass Mr. SUMMERS' amendment, we should pass by the consideration of the whole section. I think that is the better way. Let us now proceed to the consideration of the third section in the article of amendment proposed by the committee.

The PRESIDENT:—Such will be taken as the pleasure of the Conference.

The third section was read.

The PRESIDENT:—The third section is open to propositions of amendment.

Mr. GUTHRIE:—I move to amend this section by striking out the words "by land, sea, or river," occurring after the words "or transportation."

Mr. GUTHRIE's motion was adopted without a division.

Mr. GUTHRIE:—I now move to insert after the words "during transportation," the words "by sea or river."

Which motion was also agreed to without a division.

Mr. HITCHCOCK:—I now move to amend the third section by striking out all after the word "give," in the second line thereof, and inserting as follows:

"to Congress power to regulate, abolish, or control, within any State, the relations established or recognized by the laws thereof, touching persons held to service or labor therein."

SECTION 4. Congress shall have no power to discharge any person held to service or labor in the District of Columbia, under the laws thereof, from such service or labor, or to impair any rights pertaining to that relation, under the laws now in force within the said District, while such relations shall exist in the State of Maryland, without the consent of said State, and of those to whom the service or labor is due, or making them just compensation therefor; nor the power to prohibit or interfere with members of Congress and officers of the Federal Government whose duties require them to be in said District, from bringing with them, for personal service only, retaining, and taking away persons so held to service or labor, nor the power to impair or abolish the relations of persons owing service or labor in places under the exclusive jurisdiction of the United States, within those States and Territories where such relations are established or recognized by law.

SECTION 5. Congress shall have no power to prohibit the removal or transportation of persons held to service or labor in any State or Territory of the United States to any State or Territory thereof where the same obligation or liability to labor or service is established or recognized by law; and the right during such transportation, by sea or river, of touching at ports, shores, or landings, and of landing in case of distress, shall exist; nor shall the Congress have power to authorize any higher rate of taxation on persons held to service or labor than on land.

Although it may not be strictly in order, yet, as a part of my plan, I wish to bring forward a substitute which I shall offer to the seventh section of the committee's article, which, if adopted, should be numbered

SECTION 9. Congress shall provide by law, that in all cases where the Marshal, or other officer whose duty it shall be to arrest any fugitive from service or labor, shall be prevented from so doing by violence of a mob or riotous assemblage; or where, after such arrest, such fugitive shall be rescued by like violence, and the party to whom such service or labor is due shall thereby be deprived of the same, the United States shall pay to such party the full value of such service or labor.

I offer these in separate sections, in order not only that the vote may be taken upon each one separately here, but also when the same questions

come before the people. The first section of my amendment, as I understand from every quarter, sets all opposition at rest; all are willing to agree to it. This may be adopted and the others rejected, which could not be done if the original section was adopted. The other sections conform to the language of our present Constitution, and for that reason I think they will meet with more favor. Each subject is thus made to stand on its own merits.

The PRESIDENT:—The question will be taken upon each section of the substitute proposed.

Mr. JAMES:—I propose the following as a substitute for the first section of the amendment offered by Mr. HITCHCOCK. It is, I believe, the same as that proposed in Congress by the Committee of Thirteen. I understand, also, that the Committee of the House of Representatives are about to substitute it for what is known as the ADAMS Proposition. We all have the same purpose in view, to negative in express terms the right of Congress to interfere with the institution of slavery within the States. I present the amendment because I think it expresses the purpose in better language.

SECTION 1. No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.

Mr. CHASE:—This amendment would be limited in its application to the States. Congress would still have power in this respect over Territories.

Mr. GUTHRIE:—The report of the committee has been agreed upon after much discussion, and printed. We all understand it, and I hope we shall adhere to it without any alteration. If we begin to adopt these amendments no one can tell where they will carry us.

Mr. JAMES:—My proposition is offered as an amendment to that offered by Mr. HITCHCOCK.

Mr. GUTHRIE:—So I understand; but his amendment is proposed as a substitute for the third section of the article reported by the committee. I object to the whole of it.

Mr. RANDOLPH:—Do I understand that the question now is upon substituting Mr. HITCHCOCK's amendment for the committee's report.

Mr. JAMES:—No. It is upon substituting my proposition for the first section of Mr. HITCHCOCK's amendment.

The vote upon the amendment offered by Mr. JAMES resulted as follows:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, and Indiana—7.

NOES.—Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, Illinois, and Kansas—13.

And the amendment was lost.

Mr. WOOD:—I must enter my dissent from the vote of Illinois.

Mr. FOWLER:—I have an amendment which I offer to the substitute proposed by Mr. HITCHCOCK—

Mr. RANDOLPH:—I object to it as out of order. Let us take the vote upon the various sections of Mr. HITCHCOCK's proposition. If they are rejected, then these amendments may all be moved to the committee's report.

The PRESIDENT:—I have already decided that the substitute is open to amendment.

Mr. RANDOLPH:—Then I will appeal from the decision of the Chair.

The PRESIDENT:—I will state the ground of my decision. It is true, as claimed by the gentleman from New Jersey, that if the propositions of Mr. HITCHCOCK are *rejected* these amendments may be moved to the sections reported by the committee. If, on the contrary, they are *adopted*, or either of them, so far as they are adopted they must stand as the order of the Conference, and are no longer subject to amendment. I understand the Parliamentary rule in such a case to be well settled.

A somewhat confused debate here arose, when Mr. RANDOLPH withdrew his appeal from the decision of the chair.

Mr. BALDWIN:—I move to amend the proposition of the gentleman from Ohio, by striking out the words "nor shall Congress have the power to authorize any higher rate of taxation on persons held to service or labor, than on land." I do not think these words are appropriate in a provision of the Constitution.

Mr. HITCHCOCK:—I supposed the Conference would understand my purpose. It was to substitute my three sections for the third section of the committee's report. I did not suppose this series of amendments would be offered. For the present, I will withdraw my amendments.

Mr. HARRIS:—The gentleman forgets that if we once adopt them, they are no longer subject to amendment.

Mr. BRONSON:—I wish to make a suggestion. I don't know but Parliamentarians would call it a point of order. Now let us go on and decide whether we will, or will not, adopt the third section as reported by the committee.

Mr. SEDDON:—I have several amendments which I am constrained to offer to this third section. My State would think me remiss if I did not offer them. I move, first, to insert after the words "State or Territory of the United States," the words "or obstruct, hinder, prevent, or abolish."

By the section as reported by the committee, Congress is prohibited from controlling or abolishing slavery in any State or Territory. This amendment which I propose will prevent any action in relation to it—in aid of it, or otherwise. The Territorial Legislature will always be the creature of Congress, and under the committee's section it might act upon the subject of slavery. I understand that the purpose of the committee was to prevent Congress from abolishing slavery in the Territories, but not to prevent the Territorial Legislature from acting in aid of it. My amendment will secure slavery from all interference. That is what we want.

Mr. GUTHRIE:—The first section of the report covers this. The amendment, I think, is unnecessary.

Mr. SEDDON:—I think the first section, properly construed, would prevent the Territorial Legislature from enacting a law in aid of slavery, even if the whole people of the Territory desired it.

Mr. GUTHRIE:—I do not desire to go over these questions again. If the Conference intends to come to any conclusion at all, I hope it will vote down all these amendments.

Mr. SEDDON:—I call for a vote by States.

Mr. WOOD:—I move that the amendment be laid on the table.

Mr. BALDWIN:—Which motion is in order—mine or that of the gentleman from Virginia?

The PRESIDENT:—The gentleman from Ohio having withdrawn his amendment, the proposal of the gentleman from Connecticut is no longer before the Conference. The question is upon the motion of the gentleman from Virginia to amend the third section of the article reported by the committee.

The vote upon the amendment proposed by Mr. SEDDON resulted as follows:

AYES.—Maryland, Virginia, North Carolina, Tennessee, Kentucky, and Missouri—6.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Ohio, Indiana, Illinois, and Kentucky—14.

And the amendment was not adopted.

Mr. SEDDON:—I now move to amend the third section reported by the committee, by striking out the words "City of Washington," and inserting in their place the words "District of Columbia."

The motion of Mr. SEDDON was agreed to without a division.

Mr. WICKLIFFE:—I do not see why this privilege of bringing their slaves into the District should be limited to members of Congress.

Mr. GUTHRIE:—It is not. The expression is "representatives and *others*."

Mr. SEDDON:—I now propose to amend the same section by inserting after the words "without the consent of Maryland" the words "and

Virginia." I think slavery ought not to be destroyed in the District of Columbia without the consent both of Maryland and Virginia. If there is any reason for requiring the consent of one State, the same reason exists as to the other. This amendment will make the section much more acceptable to the slaveholding States.

Mr. GUTHRIE:—The committee did not require the assent of Virginia, because no part of the present District came from Virginia. We thought it unnecessary.

Mr. DENT:—Maryland and Virginia originally joined in the cession of the District to the United States. Afterwards that portion which came from her was re-ceded to Virginia. But this question is not one of territory alone. The policy and interest of the two States are intimately connected. It would be far more satisfactory to both these States, and to the South, if the assent of Virginia was required before Congress could abolish slavery in the District. Still Maryland does not insist upon it.

Mr. EWING:—I can see no necessity for, or propriety in, the amendment. We might as well require the consent of North Carolina or any of the other slave States. Virginia owns none of the District. She has no right to interfere.

The amendment proposed by Mr. SEDDON was rejected by the following vote:

AYES.—Maryland, Virginia, North Carolina, Tennessee, and Missouri—5.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Kentucky, Ohio, Indiana, Illinois, and Kansas—14.

Mr. SEDDON:—My next proposition is to amend the third section by inserting after the words "landing in case of distress, shall exist," the words "and if the transportation be by sea, the right of property in the person held to service or labor shall be protected by the Federal Government as other property."

We claim that our property in slaves shall be recognized by the Union just like any other property—that no unjust or improper distinction shall be

made. When we trust it to the perils of the seas, we wish to have it protected by the Federal Government.

Mr. WICKLIFFE:—I would inquire of the gentleman from Virginia whether it has not already been decided that this species of property is as much entitled to Federal protection as any other. I refer to the "Creole" case. The British Government made compensation for this species of property in that case. This was done upon the award of the commissioners pursuant to the decision of the umpire.

Mr. SEDDON:—Yes! But on the express ground that slavery was recognized in the islands. Express notice was given, that when the emancipation policy was adopted, the same principles would not be recognized. We are now removing doubts. We wish to have these matters no longer involved in uncertainty. We insist upon having these provisions in the Constitution.

Mr. RUFFIN:—I wish to say a word on this subject, much as I regret the consumption of time. I am willing to leave this question where it is now; and my reason is this: If we put this into the Constitution, the question may be raised, whether if foreign nations should interfere with this kind of property on the high seas, the Government would not be bound to consider it a cause of war. We ought not to bind ourselves to go to war. War should always depend upon considerations of policy. We should raise a thousand troublesome questions by putting these words "shall be protected" into the Constitution. The matter is well enough as it is. Our rights in this respect are well enough protected by the ordinary course of national diplomacy. I would not be willing to put into the Constitution language which would embarrass us hereafter.

Mr. SEDDON:—I will frankly say that I think slave property upon every ground is as well entitled to the national protection as any other species of property.

Mr. BARRINGER:—This amendment brings up the very gist of the matter. The question of the right of our property to Federal protection is now an open one. In the case of the Creole it was settled by negotiation, and not by the courts. The question so often hinted at and suggested in this Conference is now fairly brought up for decision. Governor CHASE struck at the very

root of the matter the other day, when he said that slavery was an *abnormal* condition. He laid down the opinion of the North. He is a statesman and a lawyer. He says that slavery cannot exist anywhere until it is established or authorized by law. This is the Northern idea, and it is a technical one. I hate technicalities almost as bad as I do sectionalism. The North deals in both. I regret to speak in these terms of the North, but I must if I speak truth. Now, I will lay down what is the opinion of the South upon the subject. We say that the right to hold and use slave property, always, everywhere, exists until it is prohibited by law. We say that it is a natural right, which grows out of the very necessities of society. We hold that the condition of slavery is a normal condition—not local at all; that it is found everywhere, except where it is forbidden by law. We claim that the right to hold slaves is a natural right, recognized by the law of nations, and of the world. I am quite aware that the North does not agree with our opinion.

Mr. VANDEVER:—I would ask whether this normal condition is confined to the blacks, or does it extend to all races?

Mr. BARRINGER:—Most assuredly it is not confined to a single race. It extends to all races. Slavery of all races exists even in Europe.

Mr. FIELD:—Not now!

Mr. BARRINGER:—Perhaps not now, and why? For the reason that it has been abolished by law, as in the recent case of Russia. Slavery once existed in the Northern States. By law it was also abolished in those States. We say that when slave property is on the high seas it ought to be protected—the rights of the owner ought to be protected.

This question came up in the case of the "Amistead." Mr. ADAMS claimed that although these slaves were recognized by the laws of Spain as property, yet, when once upon the high seas, they were, by the law of nations, *free*, and these slaves have never been paid for to this day.

This amendment is highly important to the South. The concession we ask is no greater than has been made before. In the treaties of 1783 and 1815, slaves were to be protected as property.

Mr. WICKLIFFE:—I do not wish to nullify the action, or change the course of our Government on this question. Slaves upon the high seas have always

been recognized as property. Look at the treaty of 1815. That recognized slaves as property, and those which were taken from the District were paid for. ADAMS, of Massachusetts, took the same ground now taken by the North. The Government took the opposite ground. The question was ultimately referred to the Emperor of Russia, who decided that property in slaves must be recognized by the law of nations, and sustained our view. Take the "Creole" case also. But I will not go over the ground. The "Amistead" case stood upon grounds which were entirely different.

But it is not necessary to put this amendment into the Constitution. The rights of the South in this respect are well enough protected now.

Mr. GRANGER:—I regret that the distinguished gentleman from Virginia has again raised a question which was decided against him by a large majority in the Conference a few days ago.

Mr. SEDDON:—The gentleman is quite correct. The principle must be the same whether applied to the Territories or to the high seas.

Mr. GRANGER:—It is claimed by the South that slaves are property everywhere. Why, then, name slave property more than any other species in the Constitution?

Mr. BARRINGER:—We say that slaves are *both* persons and property.

Mr. GRANGER:—It has always been the course of the Government to pay for slaves taken on the high seas. The gentleman has referred to the "Amistead" case as having been decided against the southern claim. I present the "Amistead" case as a perfect answer to the miserable calumnies which have been disseminated against that Court. The Judges in that case were unanimous with a single exception, and he was a Judge from a free State. We of the North upon these national questions are prepared to go with you to the extreme verge of right and loyalty.

Mr. MOREHEAD, of North Carolina:—I have no desire to complicate these questions of international law. The treaties of 1783 and 1815 were participated in by JAY and the elder ADAMS. They expressly provided for the payment for slaves like other property. This is plain English, and settles the question so far as the North is concerned. I am for letting it alone where it is.

Mr. CRISFIELD:—I am not able to support this proposition of the gentleman from Virginia. I consider the right of property in slaves, in the slave States, and in the territory south of 36° 30′, as fully recognized and established in the report of the majority of the committee. In this very clause this property is expressly admitted, and Congress is prohibited from interfering with it. This is enough—it is all that should be done. We have come here to settle our domestic troubles. The report of the committee recognizes and affirms these rights of the South which have heretofore been denied or doubted. I think their report gives us all the assurance we need. We were not sent here to engraft new principles into our foreign policy, and I will not consent to enter upon that business. We have got this right of property specifically recognized, and no administration hereafter will refuse to carry out the plain provisions of the Constitution.

Mr. SEDDON:—Where in the article do you find this right recognized? It simply prohibits Congress from interfering with slavery within certain limits. Nothing beyond that.

Mr. CRISFIELD:—I find the recognition pervading the whole report. The right of transportation, for instance, is secured. Does not that involve, of necessity, a recognition of the right of property? I am sure the South is safe in leaving this question where the report leaves it.

Mr. HOUSTON:—We feel disposed to adhere firmly to the report of the committee. We know the arduous labor they have bestowed upon the subject, and feel that we ought to be satisfied with the result. We do not wish to have our friends put us in a false position. We shall vote against the amendment of the gentleman from Virginia, not because we do not think it is right on principle, but because we think it is unnecessary. The right of property in slaves is protected now wherever that property goes.

Mr. BARRINGER:—I admit that the policy of the Government hitherto has been as the gentlemen claim. If the South could have been satisfied with that, we should never have been sent here—this Convention would never have been called. But we have come together for the reason that we fear the established policy of the Government will be changed by the party now coming into power. We ask for assurances that the old policy should be

continued; and we wish to have the obligation to continue it, written down in the bond.

The Chair restated the question, and Mr. SEDDON called for a vote by States.

The vote upon Mr. SEDDON's amendment resulted as follows:

AYES.—Virginia, Tennessee, North Carolina, and Missouri—4.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Kentucky, Ohio, Indiana, Illinois, Iowa, and Kansas—17.

And the amendment was lost.

Messrs. BUTLER and CLAY, of Kentucky; Messrs. DONIPHAN and JOHNSON, of Missouri; Messrs. HOWARD and DENT, of Maryland, dissented from the votes of their respective States.

Mr. SEDDON:—I now move the following amendment of the same third section. After the words "in case of distress, shall exist," insert the following:

"And the rights of transit by persons holding those of the African race to labor or service, in and through the States not recognizing the relations of persons held to labor or service, in passing with them from one State or Territory recognizing such relation, to another, shall be secure."

I only wish to say in reference to this amendment that it secures a right specifically referred to in the resolutions of Virginia under which this Conference is called. On that account I feel bound to offer it, but I will not occupy time in its discussion.

Mr. GUTHRIE:—In the early years of our Government this right was extended by courtesy to the slaveholding States. Since these differences have sprung up, in some States it has been denied—in others, the courtesy still exists. We considered this question thoroughly in committee. We did not wish to put any thing into our report that would operate to excite the prejudices of any section against it, and so lessen the chances of its being adopted. We thought it best not to insert such a provision. I am opposed to the amendment.

Mr. SEDDON:—I call a vote by States.

The amendment proposed by Mr. SEDDON was rejected by the following vote:

AYES.—Virginia, North Carolina, Kentucky, and Missouri—4.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Tennessee, Ohio, Indiana, Illinois, Iowa, and Kansas—17.

Mr. SEDDON:—One more amendment. I move to amend the third section as follows: after the words "by the laws thereof touching," insert the words "the relations existing between master and slave or."

I shall not detain the Conference for five minutes in the discussion of this amendment. I wish, however, to have the words "master and slave" somewhere inserted in this article, in plain English language, so that the dangerous delusion so prevalent at the North, that the Constitution does not recognize slavery, may be thoroughly and forever removed; so that the Constitution shall, beyond any question, recognize the relation of master and slave; a duplex relation—a relation of person and property. I wish to meet that question fairly and squarely. Let it be thoroughly understood as a relation of person and property. This is what we ask, and this is what we insist upon. Put this into the Constitution, and you take the shortest and the most effective means of settling the question, and of promoting peace and tranquillity. You strike the axe to the very root of bitterness, whence has sprung all our trouble, all our difficulties. I ask a vote by States.

Mr. GUTHRIE:—What I have already said applies with equal force to this amendment. I will not repeat my objections.

The amendment offered by Mr. SEDDON was rejected by the following vote:

AYES.—Virginia, North Carolina, and Missouri—3.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Tennessee, Kentucky, Ohio, Indiana, Illinois, Iowa, and Kansas—18.

Mr. CRISFIELD:—Maryland votes "No," not because she specially objects to the amendment, but she stands by the report of the committee.

Mr. DENT:—I dissent from the vote of Maryland.

Mr. CLAY:—And I from the vote of Kentucky.

Mr. ALEXANDER:—[5]

Mr. HALL, of Vermont:—I move to amend the third section by striking out the word "nor," immediately succeeding the words "persons so bound to labor," and inserting the following:

"But the bringing into said District of persons held to service, for the purpose of being sold, or placed in depot to be afterwards transferred to any other place to be sold as merchandise, is forever prohibited, and Congress may pass all necessary laws to make this prohibition effectual; nor shall Congress have."

It is well known that much of the agitation upon the question of slavery has formerly arisen from the existence of the slave-trade in the District of Columbia. Since the prohibition of 1850, the public mind has been much more quiet, so far as this subject is concerned. I suppose the committee did not intend to change the law of 1850, but I fear their action will not be so understood at the North. I propose to make the matter clear. [Mr. HALL here read the section of the Act of 1850 referring to this subject.] My amendment puts the language of this act into the Constitution. My only purpose is, to have this question left in exactly its present position. Without the amendment, I fear it will be claimed that the article restores the slave-trade in this District. Nothing would more effectually destroy the article at the North.

Mr. WHITE:—The language of the report is clear. It gives no right to sell slaves in the District.

Mr. HALL:—I wish to be understood. The article prohibits Congress from interfering with slavery. *Ergo*, it will be claimed they cannot prohibit the exercise of any of its functions. The construction, to say the very least, will be doubtful. It should not be left in doubt.

Mr. NOYES:—The slave-trade in the District of Columbia has always been a subject of great dissatisfaction. I don't know that it is considered of much importance in the South, but at the North it always has been. Ten years ago it was abolished by act of Congress. I fear that unless the amendment of the gentleman from Vermont is adopted, the effect of the committee's report will be to restore the slave-trade in the District. The section reported by the committee permits any person to bring his slaves into the District; to retain them there as long as he chooses, and to take them away. It recognizes the right of absolute dominion. It secures it effectually. It imposes upon the soil of the District the right of holding, retaining, and taking away the slaves by the owner himself, his agent or assignee. The slave-trade, in my judgment, is thus restored.

Mr. GUTHRIE:—I am satisfied that the article reported by the committee is not susceptible of misconstruction, and I hope we shall not mar the report by adopting the amendment. Our intention was only to permit public officers to bring their servants here.

Mr. AMES:—Two words will cure all this difficulty. The insertion of the words "for personal service only."

Mr. GUTHRIE:—We have no intention of reviving the slave-trade in the District. I have no more to say.

Mr. DODGE:—I hope this section will not be left in doubt. When I first read it I said to myself, "This thing will never do; it will bring the slave-trade back to the District."

Mr. AMES:—Will the gentleman from Vermont accept my amendment?

Mr. HALL:—No. I cannot accept it. I offer the amendment in good faith, for I believe it necessary.

Mr. MOREHEAD, of North Carolina:—Cannot we avoid the verbiage of the amendment?

Mr. EWING:—I shall vote against the amendment of the gentleman from Vermont, so that I can vote for that proposed by Mr. AMES.

The vote upon Mr. HALL's amendment being taken by States, resulted as follows:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, Ohio, Indiana, Illinois, Iowa, and Kansas—11.

NOES.—Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, and Missouri—10.

And the amendment was adopted.

Messrs. HOPPIN and BROWNE, of Rhode Island, dissented from the vote of that State.

Mr. McCURDY:—I move to amend the original article of the committee's report by the addition of this proviso. My object is to prevent the sale of slaves in the waters of New York or any other port:

"*Provided*, That nothing in this section shall be so construed as to prevent any States in which involuntary servitude is prohibited, from restraining by law the transfer of such persons, or of any right or interest in their services, from one individual to another, within the limits of such State."

Mr. GUTHRIE:—I insist there is not the slightest necessity for this amendment. I hope gentlemen will stop interposing these useless propositions; they confound the sense of the article, and we are guarding against questions which by no possibility can arise.

The vote was then taken on the amendment of Mr. MCCURDY, and resulted as follows:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, Ohio, Indiana, Illinois, Iowa, and Kansas—11.

NOES.—Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, and Missouri—10.

And the amendment was agreed to.

Messrs. LOGAN and PALMER, of Illinois, dissented from the vote of that State.

Mr. HOWARD:—I would ask the gentleman from Connecticut if he ever knew or heard of a case where a slave was sold in a free State?

Mr. McCURDY:—I do not intend to argue that question; but as I am appealed to, although the proviso is adopted, I will state the grounds on which it rests.

Mr. CLAY:—I wish to know whether the object of the amendment is to prevent the making of contracts connected with the purchase or sale of slaves in the free States?

Mr. McCURDY:—My object is apparent from the amendment. It explains itself. I wish to prohibit any transactions concerning the purchase or sale of slaves, either within the free States or the navigable waters connected therewith, or under free State jurisdiction. If there were no such prohibition, a cargo of slaves might be brought from the coast of Africa into the port of New York, and transferred there to parties residing in the slave States. The free States have a right to direct what shall, and what shall not be a subject of commerce within their limits. I presume it is not intended that the Constitution shall prohibit the exercise of this right. I desire not to leave this open to construction, but to make the section declare that no such intention exists.

Mr. GUTHRIE:—I am now satisfied that we shall get nothing here that is satisfactory to the people of the south side of the river. We are continually waylaid by suspicions, which are unjust, unfounded, and ought not to exist. If this class of amendments is to be adopted, I cannot go on, with respect to myself or the Convention. I feel now, since this amendment is adopted, that my mission here is ended.

Mr. REID:—I move to insert at the end of the third article reported by the committee these words: "Persons of the African race shall not be deemed citizens, or permitted to exercise the right of suffrage, in the election of federal officers."

Mr. GUTHRIE:—This is worse than ever, and it comes from the South too.

Mr. REID:—I will withdraw it then.

Mr. WICKLIFFE:—I ask the unanimous consent of the Conference to move the adoption of the previous question. We may as well come to the point now as ever. There is no use of discussing this question any longer. I move the previous question upon the report.

Objections and cries of "No, no," were made by several members.

Mr. WICKLIFFE:—I will withdraw the motion.

Mr. TURNER:—I think it would be very unreasonable for any gentleman to expect that we were to get through with the questions presented by this report without the exercise of mutual forbearance. The adoption of an amendment implies no disrespect to the committee. No member of the committee should take it in that sense. I will move a reconsideration of the vote by which the last amendment was adopted. I do not think we had better take the vote now, but pass the subject for the present.

The PRESIDENT:—It can be passed by common consent.

The vote was reconsidered without a division, and the immediate consideration of the question passed.

Mr. HITCHCOCK:—I now renew the offer of my substitute for the third section of the article reported by the committee.

Mr. FIELD:—I thought when the motion to reconsider the vote upon Mr. McCURDY's amendment was agreed to, it was understood that the consideration of the whole section was to be passed for the present. My vote upon that amendment was given deliberately, and I have no idea that this Convention is to break up because a vote is passed in it which is distasteful to any man, State, or delegation.

Mr. HITCHCOCK:—I think I must insist upon the consideration of my substitute.

Mr. BROWNE:—I move to lay the substitute proposed by the gentleman from Ohio on the table. If that motion is carried, I do not understand that the effect of it is to lay the report of the committee on the table.

Mr. SMITH:—I rise to a question of order. I think the question now should be on Mr. McCURDY's amendment. I ask for information. I do not quite see

how that amendment can be informally passed over without at the same time passing the consideration of the whole article.

The PRESIDENT:—It was passed by universal consent.

Mr. CHASE:—As I understand it, the gentleman from Illinois made the motion that the vote be reconsidered, and the consideration of the amendment passed for the present, and this was agreed to by the Conference unanimously.

The motion of Mr. BROWNE to lay the motion of Mr. HITCHCOCK on the table, was agreed to without a division.

Mr. BALDWIN:—I move to strike out these words in the third section: "Nor shall Congress have power to authorize any higher rate of taxation on persons bound to labor than on land." I have already stated that I think this language singularly inappropriate to a provision of the Constitution. The Constitution already prohibits such distinctions in the laying of taxes, and, therefore, there is no necessity for the adoption of this clause. But I have another and more important objection to it; it contains and proposes to place in the Constitution the distinct recognition of the right of property in slaves. This recognition was carefully avoided in the Convention which framed the Constitution, and the North always has been, and always will be, opposed to any such recognition. Place it there, and your article will never be adopted in any of the free States.

Mr. WICKLIFFE:—The first statutes passed by Congress on this subject recognized the right to tax slaves. This implied the right to hold slaves. This recognition of the right of taxation was made in express terms. The gentleman has forgotten the history of the legislation on this subject. The object of the committee is to prevent any possibility that those who come after us should make any distinction between these classes of property in levying taxes. We do not seek a recognition of the right of property in slaves in this; that right is already recognized to our satisfaction in the Constitution.

Mr. TUCK:—I understand the gentleman from Kentucky, and I think he is right. If we adopt the article at all we ought to retain this language.

The vote was taken by States on the amendment proposed by Mr. BALDWIN, with the following result:

AYES.—Maine, Massachusetts, and Connecticut—3.

NOES.—New Hampshire, Vermont, New York, Ohio, Indiana, Illinois, Iowa, Kansas, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, and Missouri—18.

Mr. PRATT dissented from the vote of Connecticut.

Messrs. NOYES and SMITH also dissented from the vote of New York.

Mr. FOWLER:—I move to strike out the words "without the consent of Maryland," immediately following the words "service in the District of Columbia."

I can see no necessity for requiring the consent of Maryland to the abolition of slavery in the District. There is no more reason for it than for requiring the consent of Maine, or any other State. By the cession of the District to the United States Maryland has parted with all power over it, and the exclusive power of legislation is given to Congress. The District has become the common property of the Union as much as any of the Territories, and ought to be controlled in the same way.

Mr. CRISFIELD:—I hope this amendment will not prevail. The District is almost surrounded by the Territory of Maryland. The abolition of slavery in it would be very destructive to our interests and property. To convert the District into free territory would offer a direct invitation to our slaves to abscond and go into the District. Even if the rendition clause of the Constitution was faithfully observed and carried out, it would involve us in much expense and difficulty. If we are required to maintain faith with the Government, the Government must keep faith with us.

Mr. FOWLER:—I did not suppose my motion would meet with such serious objections. If they exist I will withdraw it.

Mr. BATES:—I have an amendment to propose, which I think will improve the language of the section, and make it more consonant with that used in the Constitution. I move to amend the third section by striking out the word "bound" wherever it occurs therein, and inserting in its place the word

"held;" also to insert after the words "to labor" wherever they occur, the words "or service."

The amendments proposed by Mr. BATES were adopted without a division.

Mr. CARRUTHERS:—I propose to amend the section as it stands after the adoption of the amendments of Mr. BATES, by inserting between the words "or" and "service" where they occur in that connection, the word "involuntary."

Mr. EWING:—I had rather leave out the word "involuntary;" it would look better. As the section now stands, both voluntary and involuntary service are included.

Mr. CARRUTHERS:—By the insertion of the words "service" in Mr. BATES' amendment, one portion of my purpose is accomplished. I will withdraw my motion.

Mr. GROESBECK:—I would ask if it is now in order to move a substitute for the whole section. I have one which meets my wishes, and which, I think, will meet the views of, and be acceptable to, the Conference.

Mr. CRISFIELD:—I do not think it is in order to offer a substitute at the present time.

Mr. GROESBECK:—Then I will call it a motion to strike out and insert, which, certainly, is in order. I, therefore, move to strike out the whole of the third section and insert the following:

SECTION 3. Congress shall have no power to abolish or control within any State the relations established or recognized by the laws thereof respecting persons held to service or labor therein.

SECTION 4. Congress shall have no power to legislate respecting the relation of service or labor in places under its exclusive jurisdiction, but within States where that relation is established or recognized, and while it continues, without the consent of such States; nor abolish or impair such relation in the District of Columbia, without the consent of such States; nor abolish or impair such relation in the District of Columbia, without the

consent of Maryland, and compensation to persons to whom such service or labor is due.

SECTION 5. Congress shall have no power to prohibit the removal from any State or Territory of persons held to service or labor therein, to any other State or Territory in which persons are so held; and the right during removal of touching at ports, shores, and landings, and of landing in case of distress, shall exist, but not the right of transit in or through any State or Territory without its consent. No higher rate of taxation shall be imposed on persons so held than on land.

Three objects are sought to be obtained by the third section as proposed by the committee: one is, the declaration that Congress has no power over slavery in the States; the second, that Congress shall not legislate respecting slavery in territory under its jurisdiction, but within the limits of States, without the consent of such States, nor abolish slavery in the District without the consent of Maryland; the third concerns the subject of the removal of slaves from place to place. It is desirable that these three subjects should be so presented that one or more of them may be adopted, and the others rejected; a purpose that cannot be accomplished if they are all embraced in the same section. My substitute is plain and simple, and I think covers the whole ground.

Mr. ROMAN:—Has not the gentleman entirely left out the provision relative to bringing slaves into the District of Columbia?

Mr. GROESBECK:—I have, because I believe it entirely unnecessary. Cannot the South take a proposition that is fair? A slave within the District cannot be taken from the owner under any authority of Congress, unless the owner receives full compensation. Compensation would in all cases be an equivalent for the slave in the District, or elsewhere. Under the Constitution, slavery cannot be abolished without compensation, except by the consent of all parties interested in the subject. It is not pretended that Congress has a right to abolish slavery anywhere without making compensation to the owner.

Mr. SEDDON:—The owner should always have compensation, it is true; but his right in this respect is based upon the right of property in slaves. It is not true that compensation is in all cases an equivalent for the slave. An

owner should be free to determine for himself the question whether he will part with his property upon receiving suitable compensation. Under the gentleman's proposition this right would be exercised by Congress and not by the owner. But there is a farther, and still greater objection to the proposition: The North denies the right of property in slaves, and would deny compensation also, unless compelled to make it under the Constitution. The North holding slavery to be unjust and unrighteous, would desire to abolish the institution without paying for it.

Mr. GROESBECK:—I am willing to amend Section 4 of the substitute I offer, by denying to Congress the power to abolish the relation without making compensation, and the section may be thus considered.

Mr. DODGE:—I wish to support the proposition of Mr. GROESBECK; and let me say one thing farther: our words should be plain and simple; we should use language which common men can understand, and which does not require to be construed by lawyers. Above all, let us have some confidence in each other.

Mr. BARRINGER:—There is another entire and important omission in Mr. GROESBECK's proposition: there is no provision whatever for the Territories.

Mr. DENT:—I think the Conference had much better adhere to the section reported by the committee as it has been already amended. We have all read and studied that section. We understand it. A State that will not adopt the whole of the section will not adopt any part of it, and so there is no use in severing the subjects provided for. I am opposed to the adoption of the substitute. We understand the original article better than we can any other.

Mr. WILMOT:—I think the original proposition the best; the word "regulate" has been struck out of it, leaving only the words "impair or abolish."

Mr. McCURDY:—I ask leave to revive my motion. I regret having withdrawn it. I think I have the right to renew it now.

The PRESIDENT (Mr. ALEXANDER in the chair):—The motion of the gentleman from Connecticut is out of order.

Mr. CRISFIELD:—I understand we are now considering the amendment offered by the gentleman from Ohio (Mr. GROESBECK). If so, I move to insert in his proposition after the word "abolish" the words "or impair."

Mr. GROESBECK:—I think the amendment improves it. I will accept it.

Mr. CHASE:—There is, certainly, a misunderstanding as to the effect of the vote laying the amendment offered by Mr. HITCHCOCK upon the table: it was offered as a substitute to the third section; if it did not carry the whole section to the table, then motions to amend that section are in order. In that view, I think Mr. MCCURDY's motion is in order either way: to amend the article proposed by the committee, or to amend the amendment of Mr. GROESBECK.

Mr. RANDOLPH:—I think Mr. MCCURDY's motion is entirely out of order; it has once been passed by informally.

Mr. CLEVELAND:—Is it not in order at any time to make a motion which will render the proposed substitute more perfect?

Mr. McCURDY:—I do not wish my proposition ruled out upon any technical construction of rules. I will now move it as an addition to the third section.

Mr. FOWLER:—I move to reconsider the vote adopting the motion proposed by the gentleman from Vermont (Mr. HALL).

Mr. FIELD:—I oppose the motion. The amendment is both proper and necessary. It can certainly do no harm to the South; and if the South wishes to be fair, it will not object to it.

Mr. CHITTENDEN:—I oppose the reconsideration of the vote adopting Mr. HALL's amendment, and I will state very shortly the reason why. If the doctrine is to be established here, that the report of the committee is too sacred to be touched—too perfect to be made subject to amendment—let us know it. It will relieve myself, and I think many others, from farther attendance here; and I wish to say now, that if we are to sit here, such considerations must not be presented in future.

Mr. FOWLER:—I will withdraw my motion.

Mr. FRELINGHUYSEN:—I certainly wish some one would renew the motion to reconsider the vote upon Mr. HALL's amendment. I do not like to do it myself, but I think if that amendment were reconsidered, we would fix upon some terms that would be satisfactory to all sides.

Mr. AMES:—I do not see the necessity for adopting Mr. MCCURDY's proposition. I think it amounts to nothing. It is simply a prohibition in the Constitution against the exercise of a right which no one wishes to exercise. I oppose it because it is unnecessary.

Mr. McCURDY:—I certainly do not wish to insist upon an unnecessary amendment. If the third section, as reported by the committee, is adopted, it declares that the right of transportation, &c., *shall exist*. Under this, if no amendment is adopted, slaves may be bought and sold in any of the waters of the free States.

Mr. CRISFIELD:—What difficulty or damage does the gentleman propose to obviate by his amendment?

The PRESIDENT:—The Chair has already decided that the proposition of Mr. MCCURDY is not in order.

Mr. CHASE appealed from the decision of the Chair, and upon the appeal the decision was sustained.

Mr. FIELD:—I understand this decision cuts off both the amendments offered by Mr. HALL and Mr. MCCURDY; that compels us to vote against the proposition of Mr. GROESBECK.

Mr. CHITTENDEN:—The amendment offered by my colleague, Mr. HALL, has been accepted. It stands as the order of the Conference, and cannot be rescinded except by a vote. I sustain the decision of the Chair, because, by every rule of parliamentary law, it was correct. But one thing farther. It is now perfectly in order to move Mr. MCCURDY's proposition, or any other, as an *addition*.

The PRESIDENT:—Most clearly so.

Mr. CRISFIELD:—I do not discover any particular objection to the amendment of Mr. GROESBECK. If it had been reported by the committee, I

should have preferred it; but the South is willing to take the section as it stands, and prefers the original to any substitute.

Mr. NOYES:—I am against the substitute, for it destroys the effect of the amendments offered by Messrs. HALL and MCCURDY.

The vote was then taken upon Mr. GROESBECK's amendment, and resulted as follows:

AYES.—New Hampshire, Rhode Island, Connecticut, Pennsylvania, Delaware, Ohio, and Indiana—7.

NOES.—Maine, Vermont, Massachusetts, New York, New Jersey, Maryland, Virginia, North Carolina, Tennessee, Missouri, Illinois, and Kansas—12.

And it was rejected.

Mr. GUTHRIE:—I feel that my mission here is ended, and that I may as well withdraw from the Conference. I seem to be unable to impress gentlemen with the necessity of accomplishing any thing. The report of the committee is not satisfactory to the South; it is even doubtful whether they will adopt it; certainly they will not, if it is cut to pieces by amendments. I may be compelled to sacrifice my property, or go with the secessionists. At my time of life, I do not wish to do either.

Mr. McCURDY:—I regret that my amendment produces so much feeling, but I think, at all events, we should prevent the sale of slaves in the free States; it should be prevented beyond any possibility. I renew the offer of my amendment.

Mr. EWING:—If the laws of New York will permit the sale of slaves within the limits of that State, then we should prohibit the sale in the Constitution as proposed; but so long as that State has power to pass a law prohibiting it, there is no necessity for the amendment. The owner is only permitted to touch with his slaves, under certain circumstances, at the ports of free States.

Mr. RUFFIN:—It is impossible that slaves can be sold in a free State under the section reported by the committee. We propose to give the right of touching at those ports as a privilege, but we give no right of sale there. The

laws of a free State could not be evaded in this way. Each State is supreme within its own limits; that supremacy would not be aided by this proviso.

Mr. TURNER:—Suppose a slave owner is compelled to stop at the port of Cairo, through stress of weather or any other cause, and he dies there, are his slaves set free by his death? Does not the law of actual domicil prevail? I think they will be regarded as slaves, and that under this provision they might be administered upon and sold as a part of his estate.

Mr. POLLOCK:—I think we may obviate all difficulty by inserting after the words "landing in case of distress," the words "but not for traffic or sale."

Mr. TUCK:—I am in favor of the amendment proposed by the gentleman from Pennsylvania. It is not proper or best to encumber these propositions with amendments that are not necessary.

Mr. LOGAN:—Every State has the right to regulate transit within its own limits to suit itself. The proposed amendment gives no rights except such as are expressly named: "a right, during transportation, of touching at the ports, and of landing in case of distress." The right of the State to regulate transit is left unimpaired.

Mr. HOWARD:—There is one principle of law which will settle this question at once: property that is held under State laws must be transferred by the operation of State laws alone. Slaves are held and transferred by the specific laws of the States in which they are held.

Mr. PALMER:—The right of sale cannot possibly arise out of the right to touch during transportation at a port, or the right to land in case of distress. I cannot see the slightest occasion or necessity for the adoption of Mr. McCurdy's amendment.

Mr. McCurdy's amendment was rejected by the following vote:

Ayes.—Maine, Vermont, Massachusetts, Connecticut, New York, Indiana, and Iowa—7.

Noes.—New Hampshire, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, Illinois, and Kansas—14.

Mr. POLLOCK's amendment was then adopted without a division.

Mr. VANDEVER:—I wish to propose an amendment by way of proviso:

"*Provided* nothing herein contained shall be so construed as to prevent any State from prohibiting the introduction as merchandise of persons held to service or labor, or to prevent such State from prohibiting the transit of persons so held to service or labor through its limits."

Mr. FIELD:—This does not cover Mr. MCCURDY's proposition at all. Is there any secret purpose here to bring into the Constitution a provision which will permit the sale of slaves in free States? If there is not, why not say plainly that the States shall have the exclusive right to determine who shall and who shall not cross its borders, and what shall be the subject of sale or traffic within them?

Mr. GUTHRIE:—The States have all the powers which are not expressly delegated under the Constitution to be exercised by Congress. Congress has no power, except such as are expressly conferred upon them. The power to prohibit the sale of slaves rests somewhere. It has not been conferred upon Congress; it must remain in the State.

Mr. SMITH:—The argument of the gentleman from Kentucky seems to me very inconsistent with his report in other respects.

Mr. HOWARD:—The Border States are trying to get back the seceded States. We hope they will come back. We expect the adoption of this report to offer a strong inducement to them to return to the Union. It will not offer such inducement if its general effect is ruined by amendments.

The vote upon Mr. VANDEVER's amendment resulted as follows:

AYES.—Maine, Vermont, Massachusetts, Connecticut, New York, Indiana, and Iowa—7.

NOES.—New Hampshire, Rhode Island, New Jersey, Pennsylvania. Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, Illinois, and Kansas—14.

So the amendment was not agreed to.

Mr. CLAY:—I have already stated that the State of Kentucky is prepared to adopt the CRITTENDEN amendment; that amendment will be satisfactory to the Border States. The longer we remain here the more I become satisfied that the CRITTENDEN amendment will meet with more general favor than any other; therefore I ask the consent of the Conference to introduce the CRITTENDEN amendment as a substitute for the committee's report.

The consent of the Conference was not given to Mr. CLAY's proposition.

Mr. GROESBECK:—I move to amend the third section by inserting after the words "in case of distress shall exist," the words "but not the right of transit in any other State or Territory without its consent."

We must certainly do something to cover this difficulty; if we omit the subject entirely, we shall leave much opportunity for cavil on this question when the question goes to the people.

Mr. RUFFIN:—I move to amend the amendment by substituting in place of the words "without its consent," the words "against its dissent."

Mr. GROESBECK:—I will accept the amendment.

The amendment of Mr. GROESBECK was agreed to by the following vote:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, and Ohio—10.

NOES.—Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, and Illinois—8.

Mr. ALEXANDER, of New Jersey, dissented from the vote of that State.

Mr. GRANGER moved that when the Conference adjourn it adjourn to half-past seven o'clock this evening.

The vote upon Mr. GRANGER's motion was taken by States, and resulted as follows:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, Pennsylvania, Tennessee, Ohio, Indiana, Illinois, Iowa, and Kansas—13.

NOES.—Rhode Island, New Jersey, Delaware, Maryland, Kentucky, and Missouri—6.

So the motion was adopted.

On motion of Mr. CHASE the Conference adjourned.

EVENING SESSION—SEVENTEENTH DAY.

WASHINGTON, MONDAY, *February 25th, 1861.*

THE Conference was called to order at half-past seven o'clock, Mr. ALEXANDER in the chair.

Mr. SMITH, of New York:—I move that a committee of two be appointed by the PRESIDENT to arrange for the printing of the Journal.

The motion of Mr. SMITH was adopted, and the PRESIDENT appointed as such committee, Mr. SMITH, of New York, and Mr. HOWARD, of Maryland.

The Conference then proceeded to the consideration of the order of the day, being the third section of the article reported by the committee.

Mr. HITCHCOCK:—I move to amend the third section by striking out the words "or Territory of the United States," occurring after the words "within any State."

I think we shall make the amendment more satisfactory by limiting the prohibition to States alone; still leaving the power in Congress to be exercised in conformity with the other provisions that regulate slavery in the Territories.

Mr. GUTHRIE:—I have the same objection to this as to other amendments. It may not be important, but I do not want to commence by adopting amendments at all.

The question was taken upon the amendment proposed by Mr. HITCHCOCK, and was agreed to by the following vote:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, Pennsylvania, Ohio, Indiana, and Kansas—10.

NOES.—Rhode Island, New Jersey, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, and Missouri—9.

Mr. SUMMERS:—I now desire to call up for consideration the amendment proposed by myself on the evening of the 23d instant. The state of the case is this: Mr. JOHNSON, of Maryland, moved an amendment to my proposition, which was accepted; my amendment was then rejected by a vote of the Conference, and on the 25th the Conference reconsidered the vote by which the amendment was rejected. I will not now repeat what I said, when the amendment was offered, in favor of its adoption. I would only call the attention of gentlemen to the remarks I then made, and say in addition, that I earnestly hope the Conference will now adopt the amendment. It will make the proposition much more acceptable to the South, and, certainly, not more objectionable to the North. The amendment is offered to the second section, and is as follows:

"No territory shall be acquired by the United States, except by discovery, and for naval and commercial stations, depots and transit routes, without the concurrence of a majority of all the Senators from States which allow involuntary servitude, and a majority of all the Senators from States which prohibit that relation; nor shall territory be acquired by treaty, unless the votes of a majority of the Senators from each class of States hereinbefore mentioned, be cast as a part of the two-thirds majority necessary to the ratification of such treaty."

The amendment of Mr. SUMMERS was adopted by the following vote:

AYES.—New Hampshire, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, and Ohio—12.

NOES.—Maine, Massachusetts, Connecticut, Indiana, Illinois, and Kansas—6.

The PRESIDENT:—No further amendment being offered to the second and third sections, the Conference will proceed to the consideration of the fourth section of the report, or any amendments proposed to that section.

None being proposed, the Conference proceeded to the fifth section.

Mr. SEDDON:—I move to strike out the whole of the section. It has been heretofore stated, on behalf of the North, when this section was under consideration, that its adoption was not desirable, inasmuch as existing laws, properly enforced, amount to a sufficient prohibition of the slave-trade. If the North does not desire it, the South does not. I hope the Conference will consent to strike it out.

Mr. GUTHRIE:—I think it very important to retain this section; it can, certainly, do no harm. We all agree, North and South, that the foreign slave-trade should not be revived.

The amendment offered by Mr. SEDDON was rejected by the following vote:

AYES.—Virginia, North Carolina, Kentucky, and Missouri—4.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Tennessee, Ohio, Indiana, Illinois, Iowa, and Kansas—17.

Mr. BRADFORD:—I move to amend the fifth section by inserting after the words "slave-trade," the words "by citizens of the United States."

In proposing amendments to the Constitution, it seems to me improper that we should attempt to bind any but our own citizens. The adoption of the section in this form would seem to imply that we undertook to prohibit the slave-trade in other countries and among citizens of other countries. I desire to see it prohibited, but wish to have the constitutional provision expressed in appropriate terms.

Mr. CROWNINSHIELD:—I object to this amendment. It would nullify the operation of the section entirely. There are in the United States thousands of persons who are not citizens, but who, under such a provision of the Constitution, would revive the slave-trade and infuse into it a vigor which it never before possessed. It would be better to have no section at all than to permit such an amendment as this. The amendment can bear but one construction. It is intended to prohibit the slave-trade by our own citizens, and expressly to permit it by those who are not citizens.

Mr. COALTER:—I am in favor of the amendment.

Mr. BRADFORD:—I do not desire to embarrass the action of the Conference, and I will withdraw the amendment.

Mr. JAMES:—I move to amend this section by striking out the following words: "from places beyond the limits thereof."

The object of this amendment is apparent, and does not need explanation.

The amendment of Mr. JAMES was agreed to by the following vote:

AYES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Tennessee, Kentucky, Ohio, Illinois, Indiana, and Kansas—17.

NOES.—Virginia, North Carolina, and Missouri—3.

Mr. MOREHEAD, of North Carolina:—I move that the vote just passed striking out the words "from places beyond the present limits thereof," be rescinded.

I think the action of the Convention in passing this vote was hasty, and not taken upon due consideration. It may be an important question to determine, what are "the present limits thereof." Upon one construction it might prohibit the bringing of slaves from the States which have seceded and left the Union; upon another construction, which assumes that these are still in the Union and does not recognize their secession, it would not cut off the trade between those States and the others. I do not like to have such a question raised.

Mr. BACKUS:—I am against this reconsideration. So far as I am concerned, I do not propose, in this Conference, to recognize the secession of the States at all. I deny the legal power of a State to withdraw itself from the Union without the consent of the others. And beyond this, I do not think the question is raised as the gentleman asserts.

Mr. RUFFIN:—I think the clause is better as it is. By striking out the words "from beyond the present limits thereof," we do not establish any territorial limitation. And whether these States come back or not, no question of territory is raised. But if this reconsideration is carried, and the seceding

States do not return to the Union, they will retaliate upon us. In the event of their continued secession we cannot get back from those States those of our slaves who are now temporarily there. We may wish to bring back those slaves, and some of our people may wish to carry ours there.

Mr. GRANGER:—I hope this vote will not be reconsidered. The argument of Judge RUFFIN is conclusive.

Mr. COALTER:—This is likely to be a troublesome question any way. Why not leave it as we have to leave many others—to the discretion of Congress? We certainly do not wish to adopt a provision which will cut off the traffic in slaves between the Gulf States and the others. Nobody is in favor of that, and I am at a loss how to manage this question. The negroes are a portion of the families of Southern men. They are regarded as such in all the transactions of life. Those families may at times become separated. A portion of them may now be in the seceded States, and a portion farther North. Again, it often happens that during one season of the year the planter, with his family and slaves, lives upon the plantation in the Gulf States; and at another season, removes with his family and slaves to a plantation farther North. We do not wish to obstruct a relation or proceeding of this kind. This is not a mere matter of dollars and cents. It is one involving the happiness of families. The blacks themselves are interested in it. I think it better to let the section stand as it does, and to leave the whole matter to the discretion of Congress.

Mr. GRANGER:—I have always stood up against all the societies and organizations which have been established at the North to carry on crusades against slavery. My position in that respect is still unchanged. I hold that the people of the free States have nothing to do with slavery; that they are not responsible for it, and that it is their duty to let it alone. At the same time I have just as steadily opposed the slave-trade. I think it inhuman and atrocious, and I am the last man that would consent to its restoration. This section as it stands, in my judgment, cannot be improved. I think we had better leave it, and not raise these troublesome questions which will inevitably be suggested if these words are restored.

Mr. MOREHEAD:—This is a matter which requires some reflection, and, on the whole, I am inclined, for the present, to withdraw my proposition.

Mr. SEDDON:—I do not like this plan of legislating in the Constitution. The Constitution ought to be an instrument defining and limiting the powers of Congress. We had better leave to Congress, or rather, to assign to Congress the power to exercise this prohibition. I, therefore, move to amend by inserting at the commencement of the section these words: "The Congress shall have power to prohibit," and to strike out at the end of the section the words "are forever prohibited."

Mr. ALLEN:—This would be a most effectual way of reviving the slave-trade. It would remove the constitutional prohibition, and permit Congress to prohibit or permit it, as that body may choose. Would that ever hereafter be considered a crime which Congress had power to permit? No. I cannot conceive it possible that any State should seriously wish to see a traffic resumed which has been stigmatized by the whole civilized world as worse than piracy. This is a question which I would not leave to Congress. We know how immensely profitable this trade is—that fortunes are made by a single successful voyage. Don't let such an inducement to corruption creep into our Constitution.

Mr. COALTER:—I am in favor of this amendment, not because I am in favor of the slave-trade, but because such a section is out of place in the Constitution. The Constitution is a bill of rights, an instrument which defines and settles the rights of citizens. It is not a law. I have no fear that if we leave this to Congress the slave-trade will be revived.

Mr. DONIPHAN:—I cannot agree with my colleague. I am opposed to the foreign slave-trade in every form. I would not even make a treaty with a nation or a State that would permit it. If the seceded States are to be regarded out of the Union, I would not treat with them; I would not invest Congress with such a dangerous power. Nothing will suit me but an unqualified prohibition of this trade in the Constitution itself.

Mr. HOUSTON:—The gentleman from Missouri has expressed the views of Delaware. His argument is conclusive.

Mr. HOWARD:—The intervention of Congress will be necessary whether this amendment passes or not. The section as adopted makes no provision for the punishment of any one who violates it. If a vessel should be seized while engaged in the trade, this section does not provide for her forfeiture

or condemnation, or the punishment of her officers or owners. The section would be inoperative without the action of Congress. Why not let Congress have all the power?

Mr. DODGE:—Congress will declare the punishment.

Mr. SEDDON:—If you cut off the slave with the seceded States, they will do the same with you. I think the Border States should at all events adopt the amendment.

The Conference refused to agree to the amendment of Mr. SEDDON by the following vote:

AYES.—Maryland, Virginia, North Carolina, Tennessee, and Missouri—5.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Kentucky, Ohio, Indiana, Illinois, Iowa, and Kansas—16.

Messrs. JOHNSON and DONIPHAN, of Missouri, dissented from the vote of that State.

Mr. MOREHEAD:—I move to strike out the whole of this section, and insert a new one of the following tenor: "The foreign slave-trade is hereby forever prohibited; and it shall be the duty of Congress to pass laws to prevent the importation of slaves into the United States and their Territories, from places beyond the limits thereof."

Mr. WICKLIFFE:—I like the amendment proposed better than the original, but I wish to suggest an amendment to it myself.

We are aware that certain countries which are much exercised over the criminality of slavery and the slave-trade, have recently adopted a system, the horrors of which are not surpassed by those of the middle passage. I refer to the importation of coolies and other persons from China and the East. In my judgment, this is the slave-trade in one of its worst forms. I think if we prevent the importation of slaves at all, the provision ought to be made to cover such a case. I therefore move to amend the proposition of Mr. MOREHEAD, by inserting after the words "importation of slaves," the words "or coolies, or persons held to service or labor."

Mr. MOREHEAD:—I accept the amendment of Mr. WICKLIFFE, and should have inserted it myself had it occurred to me. My proposition as it now stands, covers both the points here made; it declares the entire prohibition of the slave-trade, and it makes it also the duty of Congress to pass laws effectually to prevent it.

The amendment offered by Mr. MOREHEAD was agreed to by the following vote:

AYES.—Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, Indiana, and Illinois—11.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, New Jersey, and Kansas—8.

Mr. HOPPIN, of Rhode Island, Messrs. ORTH and ELLIS, of Indiana, and Mr. STOCKTON, of New Jersey, dissented from the votes of their respective States.

Mr. CROWNINSHIELD:—I move to strike out the whole section. I had rather have no section at all, and no provision upon the subject, than such a one as we have now adopted. The requisition upon Congress making it their duty to enact laws, will be considered as a necessary one; the consequence which must result is, that until Congress legislates, there is no law against the importation of slaves.

The motion of Mr. CROWNINSHIELD was rejected by the following vote:

AYES.—Massachusetts, Virginia, and Tennessee—3.

NOES.—Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, Kentucky, Missouri, Ohio, Illinois, Indiana, Iowa, and Kansas—18.

The PRESIDENT:—The Conference will now proceed to the consideration of the sixth section.

No amendment being offered thereto, the Conference proceeded to the seventh section.

Mr. TURNER:—I move to strike out the whole of the seventh section, and insert in lieu thereof the following:

"Congress shall provide by law for securing to the citizens of each State the privileges and immunities of citizens of the several States."

The seventh section, as it now stands, will encounter more serious objection at the North than all the remaining portion of the article. It is objectionable for many reasons: it looks to the actual exercise of violence and intimidation by mobs and unlawful assemblies at the North. Although such may have occurred in one or two sections only, generally the provisions of the fugitive slave law have been observed and carried out. The whole subject is very distasteful to the North. I think if we keep it out of the article, and in its place secure that respect for the privileges of citizens in the various States, to which, indeed, under the Constitution, they are entitled, we shall do much better.

Mr. LOGAN:—There are various reasons peculiar to some of the free States why this provision should not be adopted. The laws of several of the Western States do not recognize negroes as citizens. I move to amend the amendment proposed by my colleague, by inserting the words "free white" before the word "citizens."

The amendment offered by Mr. LOGAN was adopted by the following vote:

AYES.—New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Indiana, and Illinois—10.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, and Iowa—8.

Mr. ORTH, of Indiana, dissented from the vote of his State.

Mr. TURNER:—I suppose the purpose of my colleague has been attained. If there is a delegation willing to make such a distinction in the Constitution, they will, of course, support the amendment as it is now amended.

The vote was then taken upon the amendment, as amended, with the following result:

AYES.—None.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, and Indiana —18.

Mr. WILMOT:—If the seventh section is adopted, I think the North should have some compensation therefor. I think citizens of the North have as much occasion for complaint on account of the action of mobs and riotous assemblies in the slave States, as the slave States have of the occurrence of those mobs and assemblies in the North. I therefore move the following as an addition to the seventh section:

"And Congress shall farther provide by law, that the United States shall make full compensation to a citizen of any State, who, in any other State, shall suffer by reason of violence or intimidation from mobs and riotous assemblies, in his person or property, or in the deprivation, by violence, of his rights secured by this Constitution."

Mr. GUTHRIE:—I am opposed to this amendment upon the general principles I have so often stated. I oppose it for another reason. I am not in favor of an amendment which encourages mobs and riots at the North, and I will not consent to one which, like this, encourages seditious speeches at the South.

Mr. WILMOT:—Such is not the effect of my amendment. It does not protect a man in making seditious speeches in the slave States. It only secures to the citizen his rights without regard to the State to which he belongs. We have a provision of the Constitution on that subject now, but it is not effective.

Mr. COALTER:—I am in favor of the amendment. There is great necessity for it.

Mr. SEDDON:—I think gentlemen entirely misconstrue the intent and purpose of the present provision of the Constitution on that subject. It grows out of and rests upon that provision which requires the return of fugitive slaves. It imposes an obligation upon Congress to secure to the owner, when he pursues his slave into a free State, the right which he enjoys as a citizen

of his own State. In all other respects it is unnecessary. If a man is injured in his person or his property, he has his redress in the State courts; or if he is a foreigner or a citizen of another State, he may go into the Federal courts and get his redress there. In this respect the citizens of both sections are amply protected.

Mr. STEPHENS:—I earnestly hope this amendment may be rejected. We have come here to arrange old difficulties, not to make new ones. Adopt this, and you lay the foundation stone of disunion. It is an encouragement to seditious speeches and purposes. The clause is well enough as it is. We do not wish to encourage men to come among us and excite discontent among our slaves. We will not permit them to do it. Our safety requires that we should not. Our own citizens do not connive at the escape of slaves. None do it who have any business in our States. We are here for peace. When half a dozen States are out, whose return we wish to secure, shall we put such a clause as this into the Constitution? Do it, and a half dozen others will follow. I am not at all sure that the report of the majority, if adopted, will satisfy my State. It certainly will not if it is mangled and frittered away. I have not occupied time in making speeches here. I say to you gentlemen, beware! If I thought the spirit of the North was truly represented in this Conference, I would go home and advise my State to secede; and if she did not, I would abandon her forever.

Mr. RUFFIN:—I am opposed to the amendment because I think it unnecessary, and because it opens a new and very serious controversy. The rights of Northern men are fully protected now. There is not a court in the South in which a Northern citizen cannot find a lawyer to advocate his cause. If he is poor, he may even sue *in forma pauperis*, and incur no liability even for costs.

Mr. WILMOT:—I am claiming no more than I have a right to claim under the decision of the Supreme Court. That court, in the case of Prigg *vs.* The State of Pennsylvania, decided that the Constitution imposes the duty upon Congress of carrying this provision into effect. I insist upon making it plain. Rights upon both sides are sought to be protected by this article. They are correlative.

Mr. LOGAN favored and Mr. EWING opposed the amendment, in a few brief remarks.

Mr. ORTH:—I do not think we shall accomplish much by protracting our present session longer. I move that the Conference adjourn, and ask a vote by States.

The Conference refused to adjourn, by the following vote:

AYES.—Maine, Connecticut, New York, Indiana, Illinois, Iowa, and Kansas —7.

NOES.—New Hampshire, Vermont, Massachusetts, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, and Ohio—14.

The PRESIDENT:—The question recurs upon the amendment of the gentleman from Pennsylvania.

The vote upon the question of agreeing to the motion of Mr. WILMOT, resulted as follows:

AYES.—Maine, New York, Indiana, Vermont, Massachusetts, Pennsylvania, Illinois, and Iowa—8.

NOES.—Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, and Ohio—11.

And the motion was rejected.

Mr. BARRINGER:—I now move to amend the seventh section, by adding thereto the following words:

"And in all cases in which the United States shall pay for such fugitive, Congress shall also provide for the collection by the United States of the amount so paid, with interest, from the county, city, or town in which such arrest shall have been prevented, or rescue made."

I am certain that no objection can be made to the equity of this amendment. If a municipal corporation shall permit the rights of a slave owner to be disregarded by the rescue of a slave, it not only fails to perform its duty under the Constitution, but becomes an active participant in the crime. Shall the consequences of its own fault be visited upon the people of the whole country? Those who acknowledge and carry out their obligations under the Constitution, as well as those who do not? This would inflict a punishment upon the innocent for the crime of the guilty. It is not right to leave it in that way. It would present an inducement to these violations of law which the provision is intended to prevent. We ought to make the guilty party pay the penalty.

Mr. HACKLEMAN:—If such a proposition were to come from a free State, the mover would be charged with attempting to destroy all hope that the committee's report could be adopted by the people. However, if the friends of the report are willing to adopt it, I do not know that I ought to object. It places the Government in a position where it is bound under the Constitution to prosecute a municipal corporation for the acts of its individual members. It is certainly novel, and introduces a new system into the jurisprudence of the country. Is the mover serious in his proposition?

Mr. BARRINGER:—I am certainly serious. I would like to hear some substantial argument against my motion.

The question being taken on the amendment of Mr. BARRINGER, resulted as follows:

AYES.—Virginia, North Carolina, and Kansas—3.

NOES.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Iowa—17.

And the amendment was rejected.

Mr. DENT:—I wish to enter my dissent from the vote of Maryland. I consider the amendment as eminently just and proper.

Mr. CLAY:—I dissent from the vote of Kentucky.

Mr. FRELINGHUYSEN:—I have an amendment which I intend to offer at some time, and I may as well propose it now. The people of the free States have complained, and not without good reason, that one clause in the Constitution is not carried into effect in some of the slaveholding States. Their complaints are similar to those made on the part of the South, which it is the purpose of the seventh section to remove. If there have been instances at the North where mobs and riotous assemblies have obstructed the administration of justice in the case of fugitive slaves, so there have been instances at the South where mobs and riots have disregarded the rights of citizens of Northern States. I propose to deal fairly by all sections. Let us remove both causes of complaint. I move to amend the seventh section by adding thereto the following words:

"Congress shall provide by law for securing to the citizens of each State the privileges and immunities of citizens in the several States."

Mr. GUTHRIE:—I repeat my objection to all these amendments. If our work here is to have any efficacy, we must adhere to the report. Why bring in another bone of contention?

Mr. ORTH:—Will you not extend the same protection to free citizens which you do to slaveholders?

The question was taken on the motion of Mr. FRELINGHUYSEN, with the following result:

AYES.—Connecticut, Delaware, Indiana, Illinois, Iowa, Maine, Massachusetts, Maryland, New Jersey, New York, New Hampshire, Ohio, Pennsylvania, Rhode Island, Vermont, and Kansas—16.

NOES.—Kentucky, Missouri, North Carolina, Tennessee, and Virginia—4.

So the amendment was adopted.

Mr. ROMAN dissented from the vote of Maryland.

Mr. AMES:—I move an amendment which will make the section more explicit. I move to strike out the word "force," and to insert instead thereof the words "violence or intimidation."

The motion was agreed to without objection.

Mr. ORTH:—I move to amend the seventh section by adding at the close thereof the following words:

"And such fugitives, after such payment, shall then be discharged from such service."

I am opposed to this whole business of making compensation for fugitive slaves; but if this section is to be adopted, and the Government pays the owner the whole value of the fugitive, upon every principle of equity and justice the fugitive should be discharged, and the master should have no right to reduce him again to slavery. You make the measure of the owner's damages in such a case the value of the slave. Do you intend, after he has

secured that, he shall still have the right of capture—that after the damages have been fully paid, he may still call on the courts of law for the slave's surrender? This would be a double compensation indeed. I shall insist upon this amendment, and ask a vote by States.

Mr. ROMAN:—I have not hitherto addressed the Conference, but I should do myself injustice if I remained silent any longer. I came here in good faith, encouraged with the hope that this Conference would do something which would indicate a purpose to protect and acknowledge the rights of the slaveholding States. I have patiently attended your sittings, and little by little that hope has faded, until to-night it has almost passed away. What good can come of these deliberations, when upon every question which is presented the lines of sectionalism are tightly drawn, and with one or two exceptions every northern State is arrayed against us? Suppose these proposals of amendment as reported by the committee are adopted, there is evidently a purpose manifested here by a large delegation from the free States, to prevent their adoption by the people. I know the opposition which in any event will be arrayed against them. It is an opposition which nothing but unanimity among the moderate conservative men of the country can overcome. Believe it or not, gentlemen, I assure you we are in earnest, in our determination to have our rights under the Constitution defined and guaranteed. Our safety, as well as our self-respect, requires this. I have not been satisfied with the majority report, but if I had been disposed to accept it—if the South would accept it now, you will not concede even that. You insist upon weakening its provisions by amendments, and by amendments which are insulting to us.

It is now seriously proposed under the Constitution, by an express provision, to deprive us of our property in slaves against our consent, and to emancipate them by making compensation. What other effect can be given to such an amendment? One of our slaves escapes into a free State. He is arrested by the marshal and discharged by a mob. Does this act discharge him from his service? Does this lawless violence make him free? And if the town or city where the mob occurs is made to pay a slight penalty, does this also divest the owner of his right? This is nothing but an inducement to mobs and riots. Pass this provision, and no fugitive slave will ever again be returned from a free State. There will always be abolitionists enough to pay for a slave, and this payment will set the slave free, and will constitute the

only penalty for this violence. For one, I would prefer to have no provision at all on the subject than to have one encumbered with such an amendment.

I have but little more to say. If the peace of this country is to be hereafter established on a permanent basis, and the Union is to be preserved, you, gentlemen of the North, must recognize our rights, and cease to interfere with them. You have nothing to do with this question of slavery. It is an institution of our own. If it is a crime, we are responsible for it, and will bear the responsibility. We have never interfered with your institutions. You must now let us alone.

Mr. ORTH:—The objection of the gentleman from Maryland may be answered in a word. It is for the owner to elect whether or not to accept compensation and set his slave free. If he still chooses to pursue him, he need not accept compensation; but if he does not, and receives payment for him, the slave should go free. As to mobs and riots, we punish men at the North who engage in them.

Mr. CRISFIELD:—I entirely agree with my colleague in this respect. We could not accept the section if such an amendment was adopted. The report of the committee is the very least that will satisfy our people. Do not destroy it by such amendments as these.

The vote was then taken upon the amendment proposed by Mr. ORTH, with the following result:

AYES.—Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Ohio, Pennsylvania, and Kansas—10.

NOES.—Connecticut, Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Rhode Island, Tennessee, Vermont, and Virginia—11.

And the amendment was rejected.

Mr. CLAY:—I move to amend the report by adding a section to be numbered Section 8, as follows:

"The second paragraph of the second section of fourth article of the Constitution shall be so construed that no State shall have the power to

consider and determine what is treason, felony, or crime, in another State; but that a person charged in any State with treason, felony, or crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

I do not think discussion necessary upon such an amendment as this. It is well known to the Conference that great difficulties have been found to exist in carrying into effect this provision of the Constitution. So far as the slave States are concerned, it is a perfect nullity. Unless it is amended it may as well be stricken from the instrument. I believe the tenor of the decisions at the North has been to permit the executive upon whom the requisition is made, to determine whether the offence charged is a crime under the law of the State to which the person charged has fled. If it is a crime, the fugitive is delivered up. If not a crime in that sense, he is discharged. The decisions of the courts have been to the same effect; whenever the fugitive has been brought upon *habeas corpus*, the decision has been the same. It is obvious that under this construction of the Constitution no fugitive will be hereafter returned for an offence in which the question of slavery is involved. This is only one of the many evasions of the Constitution which have been practised in the free States. I deem the amendment very important.

Mr. BRONSON:—The gentleman from Kentucky is entirely mistaken in his statement of the decisions of the northern courts or northern governors. The decisions are uniform so far as I know, that where the offence charged is either a crime at common law, or under the statutes of the State from which the fugitive has fled, he has been delivered up.

Mr. CLAY:—Did not the Executive of New York refuse to deliver up a fugitive on the demand of the Governor of Virginia?

Mr. BRONSON:—In that case I think there was no evidence that the offence charged was a crime under the statutes of Virginia, and it certainly was not at common law.

The vote was taken upon Mr. CLAY's amendment, and resulted as follows:

AYES.—Kentucky, Missouri, North Carolina, Tennessee, and Virginia—5.

NOES.—Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Massachusetts, Maryland, New Jersey, New York, New Hampshire, Ohio, Pennsylvania, Rhode Island, Vermont, and Kansas—16.

And the amendment was rejected.

And on motion, at two o'clock A.M., the Conference adjourned.

EIGHTEENTH DAY.

WASHINGTON, TUESDAY, *February 26th, 1861.*

THE Conference, pursuant to adjournment, was called to order at eleven o'clock.

Prayer was offered by Rev. Dr. GURLEY.

The PRESIDENT informed the Conference that in consequence of the length of the Journal of yesterday, the Secretary had not been able to write it out, and that it would be necessary to omit the reading thereof this morning.

Mr. McCURDY:—There was a vote taken in the confusion near the close of the session last evening, in which Connecticut, according to the minutes of the Secretary, appears to have voted in the negative. It was upon the amendment of Mr. ORTH, declaring that the slave should be free whenever his master had accepted payment for him. On that amendment the vote of Connecticut was Yea. As the vote is recorded Nay by mistake, I move to reconsider the vote by which the amendment was rejected.

Mr. BRONSON:—The motion to reconsider is not necessary. Connecticut can record her vote as she wishes to have it stand. It will not change the result.

The PRESIDENT:—I think the motion is in order, if made by Connecticut.

Mr. BATTELL:—I will move to reconsider. I voted with the majority.

Mr. MOREHEAD, of North Carolina:—No individual delegate can make such a motion. States vote here, not individuals. I submit that the motion is out of order, unless made by a majority of the delegation.

Mr. BALDWIN:—The question is not complicated at all; neither is the motion out of order. A majority of the delegation from Connecticut cast the vote of that State in favor of Mr. ORTH's amendment. By mistake that vote

was recorded against the amendment. The same majority whose vote is made to do them injustice by a mistake for which its members are not responsible, now moves to reconsider the vote.

The question was then taken upon Mr. McCurdy's motion, and resulted as follows:

Ayes.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Ohio, Vermont and Kansas—11.

Noes.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Pennsylvania, Rhode Island, Tennessee, and Virginia—10.

And the motion prevailed, and the vote was reconsidered.

The PRESIDENT:—The question now recurs upon the amendment offered by Mr. Orth. On this amendment the vote will be taken by States.

Mr. WHITE:—I consider this amendment as entirely unnecessary. The result which it seeks to attain is only the announcement of a well-understood provision of the common law. By the common law, if an action is brought for a trespass, and judgment recovered for that trespass, and the damages under that judgment paid, the property which is the subject of the action, and which may have originally been wrongfully taken, becomes transferred; the damages take the place of the property, the defendant has paid for his wrongful act, or, in other words, has paid for the property. The same principle applies to the case of the fugitive slave who is rescued from the custody of the law, when his owner has consented to accept payment for him. The legal right of the owner in the slave is satisfied by such payment; the money takes the place of the slave. But if this were not so, we ought not to encumber the Constitution with such provisions. Congress will undoubtedly make the proper provision both for the protection of the slave and his master. Congress will not permit payment to be made for a slave, and then suffer him to go back to bondage. This would be both unlawful and unjust. I can see no necessity for adopting the amendment.

Mr. ORTH:—I understand there is some difference of opinion between members of the Conference as to the effect of the phraseology of my amendment. I will change that phraseology, and make the amendment read as follows:

"And such fugitive, after the master has been paid therefor, shall be discharged from such service."

Mr. MOREHEAD, of Kentucky:—I am opposed to this amendment upon every ground. I would rather see some direct scheme of emancipation adopted and inserted in the Constitution. Adopt this amendment, and the result is inevitable. It would amount to emancipation upon the largest possible scale. Our slaves would escape, you would rescue and pay for them, and that would be the end of them. Why not leave it to Congress to pass the necessary laws upon this subject? The adoption of this amendment would destroy all hope that our labors would be acceptable to the South. I say again, we had better establish emancipation at once.

Mr. DENT:—If this amendment is to be adopted, I hope we shall at the same time reconsider the vote by which we rejected the amendment of the gentleman from North Carolina, requiring the payment by the county, city, or town wherein the slave is rescued from the custody of the law. This provision would make the General Government pay for the crimes of a few citizens in one section. In that case the General Government ought to own the negro. It has paid for him, and the property in him ought to be transferred.

Mr. WILMOT:—There is nothing in this. We do not wish to have the Government own the negro. It is bad enough to have individuals own slaves. We do not propose to turn the Government into an extensive slave owner.

But let me ask the gentleman seriously, who is to own the negro, in such a case, after he has been paid for? Certainly not the former owner, because his right is gone. This amendment only states a conclusion of law; the right of the owner being gone, the negro is free.

Mr. CHASE:—I think a single word will settle this. By the Constitution as it now stands, the escaped fugitive is not discharged from service or labor. The original section, as proposed, requires that the slave should be paid for, when he is rescued. Now, he might be rescued three or four times. Shall he be paid for as often? Do gentlemen claim that his owner shall receive compensation more than once? I cannot see why gentlemen interested in slavery should object to this amendment.

Mr. RIVES:—I think if gentlemen would look at this proposition seriously, there would be no difference of opinion among us. Such a proposition would foist into the Constitution a most injurious, pernicious, and troublesome doctrine. By the most ultra abolitionists of the free States the power of emancipating our slaves has been disclaimed. From the organization of the Government, no such right has been claimed by any respectable party or body of men. The question arose in the first Congress, I think, upon the petition of the Quakers of Pennsylvania. It was decided almost unanimously against the power, even when exercised by Congress. But there is no need of multiplying or citing precedents. From that time to this, no political party has claimed the power of emancipation. Such is the universal doctrine now.

The right to abolish slavery in the District of Columbia is now claimed by some. I think that is the doctrine of Mr. CHASE. But upon what argument is it founded? Simply this: That the States, by the act of cession, have surrendered this power to Congress. This is the only argument I have ever heard in favor of the right, even in the District.

But this amendment proposes a most comprehensive scheme of emancipation. It accomplishes emancipation in every one of the slave States. It amounts to forcible emancipation upon the principle of compensation.

The point has been well stated by gentlemen who have preceded me. Place this in the Constitution, and there is an end of returning fugitives. The very courts will act upon it. They will say that if any one will come forward and pay the value of a slave when arrested, all the requirements of the Constitution are satisfied, and he shall go free.

What is the object of our Conference? Why are we here? We are here to bury out of sight all the causes of our difference and trouble. And yet you propose to insert a new principle into our fundamental law, which, however you may look upon it, will be regarded at the South as totally inconsistent with our independence. Our people will not consent to it.

There is another view which I would suggest. This is eminently a matter of legislative regulation. If the slave is paid for, Congress will at once recognize the impropriety and injustice of permitting the owner to receive

payment for, and also receive his slave. Congress may say with great propriety that the owner shall give a bond to return the money upon the restoration of his slave. I hope no principle will be implanted in the Constitution which will be more troublesome—more productive of difficulties than any which has heretofore been made the subject of discussion.

Mr. EWING:—If we do any thing of this kind, perhaps we had better say that if the owner accepts compensation for his slave, he shall execute a deed of manumission. This will make it a matter of consent on the part of the owner. Put the amendment in that form and I will vote for it.

Mr. COALTER:—This amendment would offer a most powerful inducement to our slaves to run away. It would be dangerous in the extreme. When a fugitive has been paid for, and thus emancipated, he can come back and settle by the side of his master. What effect would that have upon the rest of his slaves? Would they not attempt the same thing? It may be said that the States can pass laws which will prevent their return. But this power will not be exercised. I know many free negroes in the slave States who are respectable persons, who own property, and have their social and domestic ties. These examples are bad. A fugitive who has been set free is not a safe man to return and settle as a free negro among those who were his co-slaves.

Mr. BROCKENBROUGH:—By this amendment you are inaugurating a system of covert emancipation to which the South can never submit. We protest against its adoption. The argument upon which you seek to sustain it is a false one. How can the owner receive the full value of his rescued slave when he himself, as a citizen and tax-payer, pays a part of the price?

Mr. MOREHEAD, of North Carolina:—I move to amend this amendment by adding thereto these words:

"And the negro when thus emancipated shall not be permitted to leave the State in which the emancipation takes place."

We know from past experience what the abolitionists of the free States would do under such a provision as this in the Constitution. There will be an underground railroad line along every principal route of travel. There

will be depots all along these lines. Canoes will be furnished to ferry negroes over the Potomac and Ohio. JOHN BROWN & CO. will stand ready to kill the master the very moment he crosses the line in pursuit of his slave. What officer at the North will dare to arrest the slave when JOHN BROWN pikes are stacked up in every little village? If arrested, there will be organizations formed to rescue him, and you may as well let the "nigger" go free at once. You are opening up the greatest scheme of emancipation ever devised.

Mr. BACKUS:—I move to amend the amendment proposed by Mr. ORTH by the substitution of the following:

"And the acceptance of such payment shall preclude the owner from further claim to said fugitive."

It is claimed that this is a scheme of emancipation. It is nothing of the sort. It is not intended that the owner shall be obliged to accept compensation for his slave. That is left optional with him. He may take it or not as he likes. The effect of accepting compensation would be just the same as if he sold his slave to the North. The gentleman from Virginia raises a curious objection; that the owner does not receive a full compensation because he pays a portion of it himself. Well, I suppose the owner would pay the one hundred and thirty-millionth part of the price! Does not the same objection lay against the payment of any tax whatever? It is asked, Does this payment transfer the legal title to the slave? Well, it probably goes to the party who pays for it. If the payment is made in a free State, where slavery is not tolerated, the title would not pass at all. I submit to our friends from the South, whether they wish to have the Government become a slave-trader, to set it up as a huckster of slaves in the shambles. My amendment imposes the responsibility upon Congress. I have no doubt Congress will legislate properly upon the subject.

Now let me say one word to gentlemen, friends of the South, in all kindness. I have appreciated your position, and it has influenced my action. I have not refused to give you any reasonable guarantees, and I shall not refuse them. But I submit to you, whether it is in good taste for you to declare that, if we do not yield all these little points to you, the Government is to be broken up; that that is the only alternative?

Mr. GUTHRIE:—I hope this amendment will be adopted. As a Southern man, I declare that it is acceptable to me. Let us adopt it, and end the matter. [Cries of "Agreed."]

Mr. JOHNSON, of Missouri:—I have a very serious objection to putting any bid in the Constitution to induce slaves to run away. I firmly believe that if this amendment should ever become a part of the Constitution, it would lead to the ultimate extinction of slavery. The State of Missouri is surrounded on three sides by free States. When one of our slaves escapes and crosses the border, he finds himself at once among a people, some of whom will vindicate his freedom with their lives. I am willing to leave this whole subject to Congress. Congress will not permit the owner to get his money, and also retain his slave. In the name of God I ask that no such provision may be put into the Constitution!

Mr. MOREHEAD:—I will agree to this. The difference between the two is as wide as the poles.

The vote was then taken upon the amendment as amended, and resulted as follows:

AYES.—Connecticut, Delaware, Illinois, Iowa, Kentucky, Maine, Massachusetts, Maryland, New Jersey, New York, North Carolina, New Hampshire, Ohio, Pennsylvania, Rhode Island, Tennessee, and Vermont—17.

NOES.—Indiana, Missouri, and Virginia—3.

So the amendment was agreed to.

Messrs. CLAY, of Kentucky, DENT and ROMAN, of Maryland, STEPHENS and TOTTEN, of Tennessee, dissented from the votes of their respective States.

Mr. BRONSON:—It is evident under the rules, as they now stand, that this debate is not to close within a month. I move to amend the rules as follows:

"Before reaching the final question on the plan to be submitted to Congress, no member shall be allowed to speak more than three minutes on any proposition."

Mr. SEDDON:—I rise to a question of order. I submit that the motion of the gentleman from New York is not in order.

Mr. GUTHRIE:—I move to lay the amendment on the table.

The motion of Mr. GUTHRIE prevailed without a division.

Mr. FIELD:—I move to add an additional section to the report, as follows:

SECTION 8. The Union of the States under the Constitution is indissoluble, and no State can secede from the Union, or nullify an act of Congress, or absolve its citizens from their paramount obligation of obedience to the Constitution and laws of the United States.

In offering this amendment as an additional section, I propose very briefly to state the reasons for its adoption. I shall not anticipate any of the objections that may be urged against it, for, as I understand the rule, I shall have the right to speak in reply. I will only state one or two arguments in favor of the article.

We have been discussing the means of removing the symptoms of the disease called secession. This amendment attacks the disease itself. The doctrines of CALHOUN, originated and advocated by him, have now been taken up by his followers, who are striking at the very foundation of our Government. The doctrine of the North is, that no State can secede from the Union. This amendment asserts that doctrine. Before we begin to amend, we ought to know whether we have any Constitution to amend. The people of my section wish to know whether we can compel obedience of a State, if every man in it undertakes to refuse obedience. They believe that power to exist in the Constitution now. If there is any doubt about it, they wish that power distinctly asserted.

Mr. EWING:—I move to lay the amendment on the table at present, without affecting the section of the report under consideration.

Mr. FIELD:—This motion is debatable.

Mr. FRELINGHUYSEN:—I submit that the motion of the gentleman from New York is not an amendment; that it is an addition, and may be laid on the table without affecting the remainder of the report.

Mr. BRONSON:—We have now gone through with the propositions, and are ready to take a final vote upon them. Mr. FIELD's amendment is properly an addition, and relates entirely to other subjects. Laying that on the table does not carry the whole subject there.

The motion of Mr. EWING prevailed by the following vote: Ayes, 11; Noes, 10.[6]

Messrs. MEREDITH, WILMOT, and CHASE dissented from the votes of their respective States.

Mr. FIELD:—I now offer it as an amendment to the 7th section.

Mr. BRONSON:—I rise to a point of order. My colleague has proposed this amendment as an additional section, and it has been laid upon the table. He now proposes to put the same thing in another place. That is certainly not in order.

Mr. FIELD:—I now offer it distinctly as an amendment to the 7th section, to avoid the quibbling by which a direct vote was avoided before. It may as well be understood that other than slave States have certain rights upon this floor, and that those rights will be asserted. I wish gentlemen to understand that I shall resist, as well as I may, every attempt to avoid or dodge this question.

The PRESIDENT:—In the opinion of the Chair it is not in order.

Mr. FIELD:—Then I offer one-half the amendment as follows: "The Union of the States, under the Constitution, is indissoluble."

Mr. WICKLIFFE:—Is it necessary to put this into the Constitution? Does not the gentleman think the Constitution prohibits secession now? If so, let him offer a resolution to that effect, and I will vote for it.

Mr. DENT:—I rise to a point of order. The amendment is not germane to the section.

The PRESIDENT:—That is entirely a matter of opinion. The Chair cannot rule out an amendment on that ground.

Mr. FIELD:—If gentlemen will give us a square vote on my proposition, I will not debate it.

Mr. GUTHRIE:—I believe every word that is stated in that proposition. It is all in the Constitution now; but the South thinks differently, and this is one of the great obstructions in our path. There is not a man here who does not believe that this provision is already in the Constitution. I hope, therefore, that we shall vote at once, and vote it down.

Mr. EWING:—The amendment proposed, implies the existence of the right of secession, under the present Constitution. I do not believe in that, and shall therefore vote against it.

Mr. FIELD:—I desire to obtain a clear vote upon this question, and not have it pass off upon any technical points. I will withdraw my amendment, and now move to amend the 7th section by striking out the whole of it, and inserting in its place the following:

"No State shall withdraw from the Union without the consent of all the States, given in a Convention of the States, convened in pursuance of an act passed by two-thirds of each House of Congress."

Mr. GOODRICH:—I do not quite like the language of the amendment, for it might seem to give the implication of a right to secede. I move the following as a substitute:

"And no State can secede from the Union, or nullify an act of Congress, or absolve its citizens from their paramount obligations of obedience to the Constitution and laws of the United States."

Mr. MOREHEAD, of North Carolina:—There is no objection on my part against the gentleman from New York taking any course he pleases, and as much time as he likes; but I should regret extremely to have this amendment adopted, and to have the Constitution made practically to assert a right of secession. I have denied that right always in my State, in public and in private. I am aware that on this point I differ from the general sentiment of the South, and I hold there is no right of secession, and on the part of the General Government no right of coercion. I claim that a State has no right to secede, because that right is not found in the Constitution, and the theory of the Constitution is against it.

The PRESIDENT:—I think the amendment of Mr. GOODRICH is not in order.

Mr. FIELD:—As suggested by a friend, I will modify my motion, and state it in this way, which certainly will avoid all these objections:

"It is declared to be the true intent and meaning of the present Constitution, that the Union of the States under it is indissoluble."

Mr. COALTER:—Does the gentleman mean this as a substitute for the entire report of the committee, for all that we have hitherto done?

Mr. FIELD:—Certainly not.

Mr. COALTER:—We have not met here for any such purpose as that indicated in the present amendment. We are not here to discuss the question of secession. We are here because the Border States are alarmed for their own safety. We wish them to remain in the Union. The purpose of our consultations is to make an arrangement under which they can stay in the Union. If we do not confine ourselves to that purpose, and leave these questions alone, our differences may be submitted to a greater than any human judge. I hope, in Heaven's name, they will not be submitted to the arbitrament of battle. No practical good whatever can come from debating this amendment. I move to lay it on the table; but if that motion will have the effect to carry the whole report on the table, I will not make it.

Mr. CRISFIELD:—I shall vote against this amendment. I believe the Constitution is endowed with sufficient authority to accomplish its own preservation, and to carry into execution its own laws; and, believing so, I deny the right of secession, but the right of revolution is a natural right possessed by every people. They may revolutionize their governments when they become oppressive. The Constitution was adopted as the logical consequence of this idea. There is no use now in discussing the abstract question of secession. We must treat the present condition of the Gulf States as a revolution in fact accomplished. We must meet them fairly. I vote against this amendment, and wish to stand right upon the record. If the history of this Convention is to be written, I do not wish to be handed down to posterity as one who favors the right of secession, which I believe to be a radical error.

Mr. WILMOT:—Pennsylvania is agreed in principle upon the doctrine of this amendment. I believe the whole North agrees also that the right of secession cannot be conceded, but my colleagues and myself differ essentially as to the manner in which we shall make our doctrine most effective. I think the true way is, to vote for this plain proposition, and not vote against it.

Now, all the North agrees that there is no right under the Constitution to interfere with slavery where it exists. No one has ever asserted such right, or believed in it. We are now asked to give a declaratory provision on that subject—to give it in order to quiet the slave States. One of my colleagues —Mr. POLLOCK—was willing to give that declaratory clause, which was necessary. I went with him in that; I now ask him to go with me, not against a mere shadow, but against what is the doctrine of a large portion of the people of the slave States; a doctrine of that proportion which proposes to overthrow the Constitution of the country. It is a demoralizing doctrine. My colleague proposes to vote against it. Did my colleague believe that any one proposed to interfere with slavery in the States?

Mr. POLLOCK:—No, I do not believe there was any such intention entertained by any considerable party. But there was an apprehension upon this subject in the slave States, caused by the action of a few radical men at the North. I was willing to vote for a declaratory resolution to quiet that apprehension.

Mr. WILMOT:—This amendment points to something more than an apprehension. It deals with an existing fact. Seven States have already gone out of the Union, asserting that the principal allegiance of their people is to the State, and not to the General Government. I think it high time that the Constitution was made unequivocal upon this subject of secession.

Mr. PRICE:—I occupy even a few minutes of time with much reluctance. Time is precious to us—too precious to be used in debate. I believe in the doctrine of the gentleman from New York. That is the doctrine of my State; but I believe in a great many other things which it is not necessary to insert in the Constitution. We came here to treat a fact, a great fact. There is a Southern Confederacy—there is a President DAVIS—there is a Government organized within the Union hostile to the United States. I came here, as the

gentleman from Illinois has said, to act as if I had never given a vote or united with a political party. I say, with my colleague, that when the country is in danger my political robes hang loosely upon my shoulders.

There is an element in this Conference which, from the first day of our session, has opposed any action. Its policy has been to distract and divide our counsels, to put off every thing, to prevent all action. How different this is from what I expected when I came here. Shall we sit here debating abstract questions when State after State is seceding? I hope not. I trust the patriotic spirit which animates a majority of this Conference will to-day send forth a proposition which will restore peace to the country. We all agree to the principle contained in this amendment; but if we adopt it and make it a part of the Constitution, we could never, under it, bring back the seceded States. They will not admit the principle. What is to be gained, then, by adopting it? Why will gentlemen insist upon propositions which will nullify our action? New Jersey occupies high constitutional ground. She is ready to do any thing that is fair, and she goes for these propositions of the majority because they are fair. She will adopt these, and I believe every State will adopt them—New York as quickly as any. I do not think the gentleman properly represents the wishes of his constituents. He misrepresents them. Let us act, then, promptly, and act now. Every moment is precious. I know the trembling anxiety with which the country is awaiting our action. Do not let us sit here like the great Belshazzar till the handwriting appears on the wall. Let us set our faces against delay. Let us put down with an indignant rebuke every attempt to demoralize our action or destroy its effect.

Mr. BUCKNER:—I move to amend the amendment of Mr. FIELD, by adding the following:

"But this declaration shall not be construed so as to give the Federal Government power or authority to coerce or to make war directly or indirectly upon a State, on account of a failure to comply with its obligations."

Mr. FRELINGHUYSEN:—I hope the gentleman from New York will withdraw his resolution. The view of this Convention is against secession, and we all know that the Union of the States under the Constitution is

indissoluble. We know just as well that it is not necessary to assert this principle now. It is not expedient to assert it. We want to get back the seceded States. If we are earnest in this, is it best to call them traitors? I ask the gentleman whether the rejection of his proposition will not tend to weaken the Government and the Union? It will stand as a naked vote of rejection; the reasons why we vote against it will not go before the world.

Mr. BRONSON:—With the exception of a few minutes between eleven and twelve o'clock, a few nights since, I have not occupied the time or attention of the Conference. I will not now occupy but a few minutes. I came here to do something. I supposed we could accomplish something. We learned very soon after our arrival here that my colleague was opposed to any amendment of the Constitution. The same is true of several of my colleagues; perhaps a majority of them are here to do nothing. I supposed that something ought to be done to quiet the country. Instead of that an amendment is now offered asserting that we do not believe in the right of secession, that we do believe that these States which have seceded have done wrong. Suppose we do not believe in secession, what relevance has that to the present subject? Such an amendment may be used to delay or embarrass our action. There are a good many ways to defeat the project, a good many ways to suppress secession. My colleague looks to force alone. He proposes to bring back the seceded States by force. I contemplate the use of force in this connection with horror. It can never be used successfully.

We are here to agree upon something which will give peace to the country. Our committee has submitted a report which they think will accomplish that. My colleagues are skilful; they know how many ways there are to accomplish their purposes. One way to defeat any action here is by making long speeches, by loading down the propositions of amendment to the Constitution with other amendments, which will make the whole thing offensive to the country.

I stand here for my country. I would leave politics and political parties in the back ground. I would vote for nothing here which is not pertinent to the Constitution, and which will not help us in our attempts to quiet the apprehensions of our fellow-citizens. My colleague now brings forward a proposition which may be true in itself, but it is not pertinent and amounts

to nothing. I am sorry he is not in his seat to hear what I have to say. He shot his arrow, and, I understand, has left for New York.

I am ready to vote down his proposition. I wish to see it voted down. I am prepared to take all the consequences of voting it down, here and elsewhere. But I have drawn an amendment myself which I offer in lieu of his. Permit me to read it:

"While we do not recognize the constitutional right of any State to secede from the Union, we are deeply impressed by the fact that this Government is not maintained by force, but by unity of origin and interest, inducing fraternal feelings between the people of different sections of the country; and our labors have been directed to the end of giving a new assurance to our brethren, North, South, East, and West, of our determination to stand firmly by all the compromises of the Constitution."

I think we can vote for this amendment. It denies the right of secession as explicitly as the amendment of my colleague. But it has no coercion about it, and it asserts, as I understand it, the true principle upon which our Government is founded. I offer it as an expression of my own views. I have sat here for eight or ten days and have voted, except in a few instances, with the delegation from my own State. There is a bare majority of that delegation against the propositions of the committee. That majority ordinarily casts the vote of our State. I cannot express my views by my votes, and for that reason I undertake to express them in this amendment.

Mr. KING:—Like my colleague, I have taken but little part in the discussions in this Conference. I cannot be justly charged with having occupied time unnecessarily, as I have spoken on but one occasion, and then very briefly. I would not speak now if I did not sincerely believe this amendment to be eminently proper for the consideration of this body.

Myself and the majority of my colleagues differ from the majority of the Conference. That difference is an honest difference of opinion. It is based upon principle. If we consulted policy only, it would give us pleasure to yield to the wishes of the majority. But our first duty is to our constituents, and we must represent their opinions here. We should do it because our opinions coincide with theirs; and it was because we entertained these opinions that we were selected to represent New York in this body. When we are called upon to vote, we shall vote to carry out those opinions; and even when we differ from some of our colleagues, we are entitled to the same consideration from this body that they are. We do not intend to be driven from our position by threats or by intimidation. We believe that it is eminently proper for this Conference to express its decided convictions upon the question of secession. We are told here that secession is a fact.

Then let us deal with it as such. I go for the enforcement of the laws passed in pursuance of the Constitution. I will never give up the idea that this is a Government of the people, and possessing within itself the power of enforcing its own decrees. This I shall never do. This Conference could perform no nobler act than that of sending to the country the announcement that the union of the States under the Constitution is indissoluble, and that secession is but another term for rebellion.

The gentleman from New Jersey says we misrepresent our constituents. How does he know that? Who gave him the right to place himself between our constituents and ourselves—to sit in judgment upon us? He will find that statement a very adventurous one. I should know something about New York and the people of New York. I have lived in that State all my life. I have been honored by the confidence and support of my fellow-citizens. Let me assure the gentleman that I know the people of that State far better than he. We will undertake to answer to our constituents; let him answer to his.

I will occupy no farther time. I wish to live in peace and harmony with our brethren in the slave States. But I wish to put upon the record here a statement of the fact that this is a Government of the people, and not a compact of States.

Mr. PALMER:—It is no part of my business or duty to vindicate the motives or conduct of the gentleman from New York, who is charged by one of his colleagues with interposing his amendment only for the purpose of delay. But that amendment meets my approval, and will have my support without regard to such imputations. Of what consequence are the gentleman's motives to us if his motion is right and proper? Are we to be gravely told that secession and treason are not proper subjects for our consideration? To be told this when every mail that comes to us from the South is loaded with both these crimes? Sir, we have commenced wrong. The first thing we ought to have done was to declare that these were crimes, and that we would not negotiate with those who denied the authority of the Government, and claimed to have thrown off their allegiance to it. Far better would it be for the country if, instead of debating the question of slavery in reference to our Territories, we had set to work to strengthen the hands of the Government, and to put down the treason which threatens its existence.

You, gentlemen of the slave States, say that we of the North use fair words, that we promise fairly, but you insist that you will not rely upon our promises, and you demand our bond as security that we will keep them. I return the statement to you with interest. You, gentlemen, talk fairly also—give us your bond! You have been talking fairly for the last dozen or twenty years, and yet this treason, black as night, has been plotted among you, and twelve years ago one of your statesmen predicted the very state of things which now exists. I am willing to give bonds, but I want our action in this respect to be reciprocal. I want your bond against secession, and I ask it because seven States in sympathy with you have undertaken to set up an independent Government—have placed over it a military chieftain who asserts that we, the people of the United States, are foreigners, and must be treated with as a foreign nation.

You charged JOHN BROWN with treason. You convicted and executed him; and yet among you are thousands of men guilty of treason, beside which that of JOHN BROWN was paltry and insignificant. If we are to act at all, gentlemen, we must act upon reciprocal terms. I am willing to make every reasonable concession. Will you do the same? Will you, gentlemen of the South, declare that you will stand by the Union, and brand secession as treasonable? If you will, you must vote for this amendment.

Mr. HOWARD:—I am sure no member of this Conference could have listened to the remarks of the two gentlemen who have last spoken without the deepest regret. It has been intimated here that Maryland will secede unless she secures these guarantees. I do not know whether she will or not. I know there is danger that she will.

I agree that there is no *right* of secession. I think that secession is revolution. But the right of revolution always exists. It has always been maintained by statesmen North and South. It was admitted by WEBSTER in his reply to HAYNE. I would read a quotation from his speech if time was not so valuable.

Yes, gentlemen, we are all in danger. The storm is raging; Virginia has hung her flag at half-mast as a signal of distress. If Virginia secedes our State will go with her, hand in hand, with Providence as our guide. This is not

intended as a threat. GOD forbid! It is a truth which we cannot and ought not to conceal.

Why will not New York and Massachusetts for once be magnanimous? Why will they not follow the glorious example of Rhode Island? If they will, I should still have hope. But if those two great States are against us, I can see nothing but gloom in the future.

Mr. SMITH:—I hope the true state of the question will not be lost sight of. The first question is on the motion of the gentleman from Missouri, to amend the proposition of my colleague. On that I rise to a point of order. The motion of the gentleman from Missouri is a distinct proposition, and inconsistent with that offered by Mr. FIELD.

The PRESIDENT:—I do not think the point of order is well taken.

The question upon agreeing to the amendment of Mr. BUCKNER was then taken by States, with the following result:

AYES.—Delaware, Maryland, Missouri, North Carolina, and Virginia—5.

NOES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New Jersey, New York, New Hampshire, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, and Kansas—15.

So the amendment was lost.

Mr. BRONSON:—My motion is now in order as an amendment. I insist that the question should be taken upon its adoption.

Mr. WICKLIFFE:—Does the gentleman propose to put this into the Constitution? If the gentleman wishes to publish it as his speech, I will agree to it.

The question on the adoption of Mr. BRONSON's motion was taken *viva voce*, and the amendment was rejected.

The PRESIDENT:—The question now recurs on the amendment offered by the gentleman from New York—Mr. FIELD.

Mr. RIVES:—I hope the Conference will pardon me for saying a few words upon this motion. I feel so sensibly the gravity of the consequences involved in the result of this vote, that I ask for a few minutes only in which to beseech the Conference not to act now upon a mere abstraction.

Gentlemen, what have we come here for? We have come at a time when the Government of our country is in great peril; and after a long session of diligent labor, and when we are just upon the point of arriving at the satisfactory adjustment of our differences, we have these abstract questions thrust upon us. They do not belong here. They ought not to be considered here. They would better befit a debating society than an assembly of statesmen met to consider constitutional questions. The gentleman (Governor KING) of New York announces his theory that this is a Government of the people and not a compact of the States. While I should agree with him upon his conclusions, we should differ widely as to the premises from which they are derived. It is a compact. All the authorities say so; and like any other compact, it is one from which each independent party may withdraw.

Now, what is this proposed amendment but an abstraction? In theory, the union of the States under the Constitution is indissoluble. But how is it in fact? It is now a fact that the Union is disrupted, is dissolved, because certain of the States composing it have withdrawn. But this is no time to discuss these questions. While we are talking about abstractions, we are wasting our time. I do not propose to enlarge upon the observations I have already submitted. But I beseech you, one and all, recognizing every member of the Conference as a brother of a common family, that now, after the labor of three weeks, and upon the very verge of adjustment, you should not destroy all we have done by interposing questions of this kind. Do not let us be seen engaged in the idle labor of Sisyphus. Do not let us now, just as we are about placing on the top of the mountain the block of constitutional adjustment, suffer that block to rebound. Dismiss the amendment with, I pray you earnestly, all questions of this sort, and let us proceed to the practical matters involved in the report, and its adoption.

Mr. NOYES:—If my colleague who offered this amendment, was not at this time absent, I should not address the Conference at all. I should like, however, to know what possible dangerous consequence we may anticipate

from the adoption of this clause. Whether this Union is a compact of the States or a Government of the people, is equally unimportant in this connection. In either case it is not to be broken up at pleasure. If it is claimed either that the right exists already—if it is apprehended that the people themselves may assert the right to overthrow the Constitution and destroy the Government at pleasure—we should not, by all means, pass this amendment.

The slave power has now had possession of the Government in all for more than fifty years. A President has been elected belonging to the opposing party. For that cause alone, and without claiming or assigning any other, the slave States, under the powerful protection of Virginia, have come here for guarantees. We are told, over and over again, that seven States have left the Union. There is a fact with which we have to deal. On our side, we are merely dealing with apprehensions. If you have a right to guarantees to quiet your apprehensions, have we not a right to insist that secession shall be put down and condemned by an explicit clause of the Constitution? It is this claim of the right of secession which has brought all the trouble upon the country. We are right in our claim that it should be dealt with in this Conference. If we, as delegates, should prove faithless to our trust, should yield you all the guarantees you ask, and should insist upon nothing on our side, such action would not avail you any thing.

The North and the people of the North must be satisfied upon this point. Much has been said here about the right of revolution. I do not propose to discuss that right. At all events that is not a right which depends upon the Constitution, or grows out of it. If it exists at all, it is higher than, and above all Constitutions. The statement in this amendment does not controvert the right of revolution. It is simply a statement that *the Union of the States, under the Constitution, is indissoluble*. I regard the adoption of this amendment as both expedient and essential.

Mr. TURNER, of Illinois:—I do not think this amendment very important either way. If this is intended as a mere declaration of the purposes of the Constitution, it may be well enough. But will the assertion that such is the purpose of the Constitution preserve that instrument and the Government under it? No, sir. We may call spirits from the vasty deep; but the question is, will they come?

If the right of secession exists at all, it is not confined to the South. If it is conceded at all, it must be conceded in much broader terms—in terms that are common to all the States. This amendment secures to the States no practical benefit. I protest against being bound to harmonize on all abstract questions. This is an abstraction. Gentlemen schooled in deduction could spend weeks in argument over it.

The vote was taken upon the amendment proposed by Mr. FIELD, and resulted as follows:

AYES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Vermont, and Kansas—10.

NOES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia—11.

So the amendment was disagreed to.

Mr. GUTHRIE:—I now submit that we ought to take the vote on the substitute proposed by the gentleman from Connecticut. I trust we are through with speeches, and hope we shall now get to some result. We may as well vote upon all these propositions within the next hour.

Mr. SOMES:—I desire to move an amendment by adding the following, to be numbered

SECTION 8. "That the freedom of speech, or of the press, shall not be abridged; but that the people of any Territory of the United States shall be left perfectly free to discuss the subject of slavery."

Mr. BRONSON:—I move to lay that amendment on the table.

Mr. SOMES:—Is not that motion debatable?

The PRESIDENT:—It is not debatable.

The motion to lay the amendment offered by Mr. SOMES upon the table, prevailed by the following vote:

AYES.—Delaware, Indiana, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, and

Kansas—13.

NOES.—Connecticut, Illinois, Iowa, Maine, and Vermont—5.

Thus the amendment was laid upon the table.

Mr. VANDEVER:—I move to amend the report by the addition of the following section:

"The navigation of the Mississippi River shall remain free to the people of each and all the States; and Congress shall provide by law for the protection of commerce on said river against all interference, foreign or domestic."

The importance of this proposition can be seen at once. It is one in which the whole country is interested, especially that portion of it in which I reside, which is drained by the upper waters of the Mississippi and Missouri. On this subject we have our apprehensions, and they are better founded, too, than any which I have heard from the South. We believe that our right to the navigation of this great national highway is imperilled. I submit whether we are to be cavalierly treated in this matter, and whether a subject of so much importance is to be laid upon the table? We may at all events, with perfect propriety, go this far, and make it, under the Constitution, the duty of Congress to protect the free navigation of the Mississippi River by law. We want it understood that the navigation of that river should be free and unobstructed, and that the faith of the nation is pledged to enforce that right. HENRY CLAY once stated that nothing upon earth could induce him to agree to any thing that should impede the free navigation of that river. I assert and repeat his declaration. We of the Northwest ask that this right should be guaranteed to us.

Mr. CRISFIELD:—I am as anxious for the free navigation of the Mississippi River as the gentleman. I wish simply to say that it is made the duty of the people of Iowa, and of other States bounded by this river, to protect that right of navigation. But the amendment is not germane to the report of the committee. I move to lay it on the table.

The motion of Mr. CRISFIELD prevailed by the following vote:

AYES.—Delaware, Indiana, Kentucky, Maryland, Missouri, New Jersey, North Carolina, New Hampshire, Ohio, Pennsylvania, Rhode Island,

Tennessee, Vermont, and Virginia—14.

NOES.—Connecticut, Illinois, Iowa, Maine, Massachusetts, and New York —6.

So the amendment was laid on the table.

Mr. BALDWIN:—I move that my substitute be taken up, and ask that it may be read.

It was read as follows:

Whereas unhappy differences exist, which have alienated from each other portions of the people of the United States, to such an extent as seriously to disturb the peace of the nation and impair the regular and efficient action of the Government within the sphere of its constitutional powers and duties;

And whereas, the Legislature of the State of Kentucky has made application to Congress to call a Convention for proposing amendments to the Constitution of the United States;

And whereas, it is believed to be the opinion of the people of other States that amendments to the Constitution are, or may become, necessary to secure to the people of the United States, of every section, the full and equal enjoyment of their rights and liberties, so far as the same may depend for their security and protection on the powers granted to or withheld from the General Government in pursuance of the national purposes for which it was ordained and established:

This Convention does therefore recommend to the several States to unite with Kentucky in her application to Congress to call a Convention for proposing amendments to the Constitution of the United States, to be submitted to the Legislatures of the several States, or to Conventions therein, for ratification, as the one or the other mode of ratification may be proposed by Congress, in accordance with the provision in the fifth article of the Constitution.

I propose to avail myself of the privilege of a short reply to the arguments against my proposition; and in order that I may occupy as little time as possible, I have reduced my reply to writing. At the risk of repeating some

of the remarks I made at the opening of the discussion, I wish to recur to the facts on which my report is based.

The resolution which I have moved to substitute, recommends to the several States to unite with Kentucky in her application for the calling of a Convention for proposing amendments to the Constitution.

On the 28th day of January, seven days before the assembling of this Conference Convention, the Governor of Kentucky transmitted to the President of the United States the joint resolutions of the General Assembly of that Commonwealth, "recommending a call for a Convention of the United States," with a request that the President would lay the same before Congress; and on the 5th of February, the day after the assembling of this Convention, they were, by a special message of the President, communicated to Congress, with the expression of great satisfaction in the performance of that duty, and of confidence that Congress would bestow upon those resolutions the careful consideration due to the distinguished and patriotic source from which they proceeded, as well as to the great importance of the subject which they involve. The resolution requesting the call of a Convention I have already read to the Conference.

There are, sir, but two modes provided by the people of the United States for altering the fundamental law of their Government, both of which are specified in the fifth article of the Constitution:

1. Congress, whenever two-thirds of both houses *shall deem it necessary*, shall PROPOSE amendments to the Constitution; or,

2. On the application of the Legislatures of two-thirds of the several States, shall *call a Convention* for PROPOSING *amendments*, which, in either case, shall be valid as part of the Constitution, when *ratified* by the Legislatures, or by Conventions in *three-fourths* of the States.

The first mode is recommended by the majority of the committee, in the expectation that Congress, by a two-thirds vote of both houses, will propose, on the request of this Convention, for ratification by the States, the several amendments they have reported.

The second mode is the one proposed by the Legislature of Kentucky, and which, in accordance therewith, I have moved to substitute for the

recommendation of the committee.

There are now but few days remaining before the termination of the functions of the present Congress. If it were within the fair scope and interest of the constitutional provision that Congress should act, in the proposing of amendments, on the recommendation of this Conference Convention, no one, I think, can reasonably expect them to consider and deliberately act on such recommendation during the few remaining days of the present Congress. Other questions, of engrossing interest, now pending before them, and the acts of necessary legislation at the close of the session, will prevent it. It must, therefore, go over to the next Congress. Assuming that during the term of that Congress the amendments recommended by this Convention shall, by two-thirds of both houses, be *deemed necessary*, and be proposed to the States for ratification; there would probably be no earlier final action by the requisite number of States, than in the mode proposed by Kentucky, and recommended by the resolution which I have moved to substitute for the mode of amendment reported by the committee. But the great objection, in my mind, to the mode of amendment contemplated by the majority report, is that it is not in accordance with either the letter or the spirit of the Constitution. The people of the United States intended, when they adopted the Constitution under which we have for more than seventy years enjoyed a higher degree of prosperity than has fallen to the lot of any other people, that it should remain in full force and unchanged, except in one of the two modes prescribed in that sacred instrument for its own amendment.

It is a Constitution which binds the people of every State, as the supreme law of the land, until it can be changed by the action, in the first instance, of those who are *sworn* to support it. No amendments can, consistently with the letter or the spirit of the Constitution, be *proposed* by Congress, unless two-thirds of both houses, acting under the responsibility of their official oaths, shall "*deem* them *necessary*." No interference or pressure by any extraneous body unknown to the Constitution, was contemplated, or can be allowed with safety to the people, to impair the exercise of this function under all the responsibilities and official sanctions that properly appertain to it. The judgment of two-thirds of both houses of Congress in regard to the *necessity* of the amendments, must precede their proposal to the States for *ratification*.

The Government of the United States, in its sphere of duties, is supreme. The State Governments, when they consented to its formation by the people of the United States, surrendered so much of their separate sovereignties as was essential to its strength and efficiency. To that extent we became one people. This Government, for all *national* purposes, took the place of the State Governments, as well in regard to the *paramount allegiance* as to the duty of protection of the people of every State in the enjoyment of all their federal rights. Its powers can neither be enlarged nor diminished, except in the *constitutional* mode, without violating the rights of the States as well as of the people.

Any attempt from without, by combinations and associations not responsible to the people, to *coerce* or overawe Congress, or in any way to impair the free and *deliberate* exercise of its judgment in *proposing* amendments "as deemed *necessary*" by Congress, is a palpable violation of the privileges of the people. They elected the members of the House of Representatives with the intention that they should freely and deliberately, under their official oaths, propose amendments, or not, to the Constitution, as *they* might *deem necessary*, and not at the dictation of *States even*, who cannot themselves propose amendments, but can only require of Congress to call a Convention of *all the States* for that purpose. Much less can a convention of delegates from the Legislatures, or the Executive of a part only of the States—a body unknown to, and unauthorized by, the Constitution—assume to exercise, or dictate to Congress the exercise of this high prerogative.

We do not represent the people of the United States. This Government, for every purpose for which it was established, is a separate, and in some sense a foreign government to the States. It operates directly on the people, and is itself their true protector in all their Federal rights.

Any number of States, less than two-thirds, have no more right to call into action the power of Congress either to call a Convention, or to propose amendments, than the individual members of their Legislatures in their private capacities; and Congress might as well, and probably would, treat our interference with their official duties as an *usurpation*; as much so as if we should seek to interfere with the appropriate duties of the Legislatures of Virginia or Massachusetts. And, sir, I cannot but regard it, so far as the *free*

action of Congress should be influenced by the recommendations of this body, as in the nature of a *revolutionary proceeding* for which there is no sufficient cause or justification. Sir, all the States are not here represented. All have not even had an opportunity to be here. And yet we are endeavoring to influence the action of Congress in a manner which may deeply affect their interests. If, under any circumstances, a body so convened, would have a right to act upon Congress, by the expression of our opinions as a Convention of States, ought not all to have an opportunity to participate in our deliberations? Most certainly they ought.

But it is said some of the States are threatening to secede from the Union; others have seceded, and must be induced to come back, by the speedy action of Congress on the amendments recommended by the committee. Does the *Constitution* authorize amendments under such circumstances, with *less care* and deliberation than in time of peace and tranquillity?

This Government, sir, cannot recognize the fact that *States* have seceded. It is not a Government over *States*, but over the *people* of the United States, irrespective of the State in which they live. This Government, and not the States, protects them in their Federal rights, and requires allegiance and obedience from the people in every State, to the Constitution and laws of the United States as the supreme law of the land, any thing in the laws or ordinances of any State to the contrary notwithstanding. It is the *people* and not the States that are governed by that law, within the sphere of its constitutional operation.

I have said that the course proposed by the majority of the committee is, in my judgment, not only against the letter, but the spirit of the Constitution. The State of Kentucky, ever patriotic and conservative, must have so regarded it, when, instead of asking Congress to propose the amendments they desired, they requested their sister States to unite with them in an application in the mode prescribed by the Constitution to Congress to call a Convention for that purpose.

Our fathers, who framed that Constitution, and the people of the United States, who ratified it, set it forth in the preamble as their first great purpose "to form a more perfect Union." They intended to establish thereby a Government of perpetual obligation and of self-sustaining vigor. They did

not contemplate the necessity of amendments for any other causes than such as, after calm, deliberate, undisturbed consideration should be judged necessary. They did not intend that it should be exposed to the danger of hasty action under the influence of excited passions or timid and groundless apprehension. They would not trust the entire people even with the right of amendment, except in the mode prescribed, with all the delays incident to that mode; and then only by the action, in every stage of the proceeding, of persons bound by solemn oath to support it.

The Constitution, in prescribing the modes of proposing amendments, endeavored to provide against irregular combination of a part only of the States to effect them. Hence it prohibited all agreements or compacts between the States; and it made no provision for the recognition of any action by a convention, except when called on the recommendation of two-thirds of the States applying to Congress, by separate action of their Legislatures, for that purpose.

Any interference with the duty of Congress by such a body as we are, representing only a portion of the States in any form, and some of us only the executives of the States from which we come, would be as much at variance with the Constitution as with the counsel of that illustrious American—I will not say Virginian—for WASHINGTON belonged to his whole country—in the Farewell Address which he dedicated to the people of the United States on his retirement from the public service, and which ought to be cherished in the heart of every patriot. In addition to what I have already read from that address let me read this passage:

"All obstructions to the execution of the laws, all *combinations* and *associations* under whatever plausible character, with the *real design to direct, control, counteract*, or *awe* the regular deliberation and action of the *constituted authorities*, are destructive to this fundamental rule, and of fatal tendency."

Let me read it again. "All obstructions," &c. "All combinations," &c.

This address is replete with words of true wisdom. Let us heed them; for they are eminently adapted to the present occasion. There is no exigency which should be allowed to overawe Congress in the performance of its constitutional duties. No State intervention, no combination or association

of representatives of States in a manner unknown to the Constitution, can be recognized as authoritative by those to whom, on their own responsibility, the people of the United States have conferred their national interests and the guardianship of their fundamental law. "We owe," in the language of the illustrious statesman of Kentucky, "*a paramount* allegiance to the Government of the United States—a subordinate one to our State."

Sir, while I am willing to perform all my constitutional duties—all my fraternal duties toward the people of every section of our common country, I, for one, feel bound to abstain from any encroachment on the duties which the Constitution of my country has delegated to others to be performed, in the modes, and with the responsibilities, which the *people* for their own security have deemed it proper to prescribe.

With these opinions, I should be unfaithful to my own convictions of duty, and recreant to the trust which has devolved on me as a citizen of the United States, and by inheritance from an ancestor who took a part in the deliberations of the Convention which framed our Constitution, and to whose public services, you, sir, so kindly alluded at the opening of the Conference, were I to unite with the majority of the committee in urging upon Congress the amendments they have proposed.

Entertaining as I do for the members of the committee who have concurred in that report a profound respect, it has been with a feeling of unaffected diffidence and self-distrust that I have ventured to express my sentiments on this occasion. But as I must act on my own convictions of duty, which are in harmony with those of my associates from Connecticut, so far as in the brief period which has elapsed since the report was submitted I have had opportunity to ascertain them, I felt bound to make known to the Convention the reasons which will govern my action.[7]

The vote was then taken by States on the substitute proposed by Mr. BALDWIN, and the substitute was rejected by the following vote:

AYES.—Connecticut, Illinois, Iowa, Maine, Massachusetts, New York, New Hampshire, and Vermont—8.

NOES.—Delaware, Indiana, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, and

Kansas—13.

So the amendment was not agreed to.

The following gentlemen disagreed to the vote of their respective States:

Mr. BRONSON, of New York; Mr. GRANGER, of New York; Mr. DODGE, of New York; Mr. CORNING, of New York; Mr. ORTH, of Indiana; Mr. HACKLEMAN, of Indiana.

Mr. SEDDON:—I suppose it is now in order for me to move my substitute for the report of the majority of the committee.

Mr. TUCK:—I also have a substitute to offer. I shall not discuss it.

Mr. SEDDON:—The substitute which I propose embodies the CRITTENDEN resolutions, with the modifications suggested by Virginia. These are principally confined to the first section, which is made to apply to our future as well as our present territory. I have modified the form of the substitute in several particulars, and now offer it without farther introduction. These are the amendments which I understand the delegation from Virginia is instructed to insist upon:

JOINT RESOLUTIONS

PROPOSING CERTAIN AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

WHEREAS, serious and alarming dissensions have arisen between the Northern and Southern States, concerning the rights and security of the rights of the slaveholding States, and especially their rights in the common territory of the United States; and whereas, it is eminently desirable and proper that those dissensions, which now threaten the very existence of this Union, should be permanently quieted and settled by constitutional provisions, which shall do equal justice to all sections, and thereby restore to the people that peace and good will which ought to prevail between all the citizens of the United States: therefore,

Resolved, by this Convention, that the following articles are hereby approved and submitted to the Congress of the United States, with the request that they may, by the requisite constitutional majority of two-thirds, be recommended to the respective States of the Union, to be, when ratified by conventions of three-fourths of the States, valid and operative as amendments of the Constitution of the Union.

ARTICLE 1. In all the territory of the United States now held or hereafter acquired, situate north of latitude 36° 30′, slavery or involuntary servitude, except as a punishment for crime, is prohibited, while such territory shall remain under territorial government. In all the territory now or hereafter acquired south of said line of latitude, slavery of the African race is hereby recognized as existing, and shall not be interfered with by Congress; but shall be protected as property by all the departments of the territorial government during its continuance; and when any territory, north or south of said line, within such boundaries as Congress may prescribe, shall contain the population requisite for a member of Congress, according to the then federal ratio of representation of the people of the United States, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without slavery, as the constitution of such new State may provide.

ARTICLE 2. Congress shall have no power to abolish slavery in places under its exclusive jurisdiction, and situate within the limits of States that permit the holding of slaves.

ARTICLE 3. Congress shall have no power to abolish slavery within the District of Columbia, so long as it exists in the adjoining States of Virginia and Maryland, or either, nor without the consent of the free white inhabitants, nor without just compensation first made to such owners of slaves as do not consent to such abolishment. Nor shall Congress at any time prohibit officers of the Federal Government or members of Congress, whose duties require them to be in said District, from bringing with them their slaves and holding them, as such, during the time their duties may require them to remain there, and afterwards taking them from the District.

ARTICLE 4. Congress shall have no power to prohibit or hinder the transportation of slaves from one State to another, or to a Territory in which

slaves are by law permitted to be held, whether that transportation be by land, navigable rivers, or by the sea. And if such transportation be by sea, the slaves shall be protected as property by the Federal Government. And the right of transit by the owners with their slaves in passing to or from one slaveholding State or Territory to another, between and through the non-slaveholding States and Territories, shall be protected. And in imposing direct taxes pursuant to the Constitution, Congress shall have no power to impose on slaves a higher rate of tax than on land, according to their just value.

ARTICLE 5. That in addition to the provisions of the third paragraph of the second section of the fourth article of the Constitution of the United States, Congress shall provide by law, that the United States shall pay to the owner who shall apply for it, the full value of his fugitive slave, in all cases, when the marshal, or other officer, whose duty it was to arrest said fugitive, was prevented from so doing by violence or intimidation, or when, after arrest, said fugitive was rescued by force, and the owner thereby prevented and obstructed in the pursuit of his remedy for the recovery of his fugitive slave, under the said clause of the Constitution and the laws made in pursuance thereof. And in all such cases, when the United States shall pay for such fugitive, they shall reimburse themselves by imposing and collecting a tax on the county or city in which said violence, intimidation, or rescue was committed, equal in amount to the sum paid by them, with the addition of interest and the costs of collection; and the said county or city, after it has paid said amount to the United States, may, for its indemnity, sue and recover from the wrong-doers, or rescuers, by whom the owner was prevented from the recovery of his fugitive slave, in like manner as the owner himself might have sued and recovered.

ARTICLE 6. No future amendment of the Constitution shall affect the five preceding articles, nor the third paragraph of the second section of the first article of the Constitution, nor the third paragraph of the second section of the fourth article of said Constitution, and no amendment shall be made to the Constitution which will authorize or give to Congress any power to abolish or interfere with slavery in any of the States by whose laws it is or may be allowed or permitted.

ARTICLE 7. SEC. 1. The elective franchise and the right to hold office, whether Federal, State, territorial, or municipal, shall not be exercised by persons who are, in whole or in part, of the African race.

And whereas, also, besides those causes of dissension embraced in the foregoing amendments proposed to the Constitution of the United States, there are others which come within the jurisdiction of Congress, and may be remedied by its legislative power: and whereas it is the desire of this Convention, as far as its influence may extend, to remove all just cause for the popular discontent and agitation which now disturb the peace of the country, and threaten the stability of its institutions: Therefore,

1. *Resolved*, That the laws now in force for the recovery of fugitive slaves are in strict pursuance of the plain and mandatory provisions of the Constitution, and have been sanctioned as valid and constitutional by the judgment of the Supreme Court of the United States; that the slaveholding States are entitled to the faithful observance and execution of those laws, and that they ought not to be repealed or so modified or changed as to impair their efficiency; and that laws ought to be made for the punishment of those who attempt, by rescue of the slave or other illegal means, to hinder or defeat the due execution of said laws.

2. That all State laws which conflict with the fugitive slave acts, or any other constitutional acts of Congress, or which, in their operation, impede, hinder, or delay the free course and due execution of any of said acts, are null and void by the plain provisions of the Constitution of the United States. Yet those State laws, void as they are, have given color to practices, and led to consequences which have obstructed the due administration and execution of acts of Congress, and especially the acts for the delivery of fugitive slaves, and have thereby contributed much to the discord and commotion now prevailing. This Convention, therefore, in the present perilous juncture, does not deem it improper, respectfully and earnestly, to recommend the repeal of those laws to the several States which have enacted them, or such legislative corrections or explanations of them as may prevent their being used or perverted to such mischievous purposes.

3. That the act of the eighteenth of September, eighteen hundred and fifty, commonly called the fugitive slave law, ought to be so amended as to make

the fee of the commissioner, mentioned in the eighth section of the act, equal in amount, in the cases decided by him, whether his decision be in favor of or against the claimant. And to avoid misconstruction, the last clause of the fifth section of said act, which authorizes the person holding a warrant for the arrest or detention of a fugitive slave to summon to his aid the *posse comitatus*, and which declares it to be the duty of all good citizens to assist him in its execution, ought to be so amended as to expressly limit the authority and duty to cases in which there shall be resistance, or danger of resistance or rescue.

4. That the laws for the suppression of the African slave-trade, and especially those prohibiting the importation of slaves into the United States, ought to be made effectual, and ought to be thoroughly executed, and all further enactments necessary to those ends ought to be promptly made.

The substitute offered by Mr. SEDDON was rejected by the following vote:

AYES.—Kentucky, Missouri, North Carolina, and Virginia—4.

NOES.—Connecticut, Delaware, Illinois, Indiana, Maine, Massachusetts, Maryland, New Jersey, New York, New Hampshire, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, and Kansas—16.

Mr. DENT dissented from the vote of Maryland.

Mr. HOUSTON:—I wish to explain the vote of Delaware. She has endorsed the CRITTENDEN resolutions. She would accept the mode of adjustment proposed by the gentleman from Virginia. She has adhered to her opinions as long as she thinks it fit or expedient to do so. Under these circumstances Delaware feels it her duty to vote for the report of the majority. As we desire to harmonize conflicting opinions, and to arrive at a fair settlement, we have voted against Mr. SEDDON's amendment.

Mr. CRISFIELD:—Like Delaware, Maryland prefers the CRITTENDEN plan of adjustment. That we think is now impossible. But that plan does not differ very widely from the report of the majority. Certainly not enough to warrant us in risking the Union, when we can get the one and cannot have the other. For this reason Maryland votes "No" on Mr. SEDDON's proposition.

Mr. CLAY:—I gave notice some days ago that I should offer as a substitute the CRITTENDEN resolutions—pure and undefiled—without the crossing of a "t" or the dotting of an "i." I now offer them as follows, and demand a vote by States:

WHEREAS, the Union is in danger; and owing to the unhappy divisions existing in Congress, it would be difficult, if not impossible, for that body to concur, in both its branches, by the requisite majority, so as to enable it either to adopt such measures of legislation, or to recommend to the States such amendments to the Constitution as are deemed necessary and proper to avert that danger; and whereas, in so great an emergency, the opinion and judgment of the people ought to be heard, and would be the best and surest guide to their representatives: Therefore,

Resolved, That provision ought to be made by law, without delay, for taking the sense of the people, and submitting to their vote the following

resolutions as the basis for the final and permanent settlement of those disputes that now disturb the peace of the country and threaten the existence of the Union.

And that whereas serious and alarming dissensions have arisen between the Northern and Southern States, concerning the rights and security of the rights of the slaveholding States, and especially their rights in the common territory of the United States; and whereas, it is eminently desirable and proper that those dissensions, which now threaten the very existence of this Union, should be permanently quieted and settled by constitutional provisions, which shall do equal justice to all sections, and thereby restore to the people that peace and good will which ought to prevail between all the citizens of the United States: Therefore,

Resolved, That the following articles be, and hereby are, proposed and submitted as amendments to the Constitution of the United States, which shall be valid to all intents and purposes as part of said Constitution, when ratified by conventions of three-fourths of the several States:

ARTICLE 1. In all the territory of the United States now held or hereafter acquired, situate north of latitude 36° 30′, slavery or involuntary servitude, except as a punishment for crime, is prohibited, while such territory shall remain under territorial government. In all the territory south of said line of latitude, slavery of the African race is hereby recognized as existing, and shall not be interfered with by Congress; but shall be protected as property by all the departments of the territorial government during its continuance; and when any Territory, north or south of said line, within such boundaries as Congress may prescribe, shall contain the population requisite for a member of Congress, according to the then Federal ratio of representation of the people of the United States, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without slavery, as the constitution of such new States may provide.

ARTICLE 2. Congress shall have no power to abolish slavery in places under its exclusive jurisdiction, and situate within the limits of States that permit the holding of slaves.

ARTICLE 3. Congress shall have no power to abolish slavery within the District of Columbia, so long as it exists in the adjoining States of Virginia and Maryland, or either, nor without the consent of the inhabitants, nor without just compensation first made to such owners of slaves as do not consent to such abolishment. Nor shall Congress at any time prohibit officers of the Federal Government or members of Congress, whose duties require them to be in said District, from bringing with them their slaves, and holding them, as such, during the time their duties may require them to remain there, and afterwards taking them from the District.

ARTICLE 4. Congress shall have no power to prohibit or hinder the transportation of slaves from one State to another, or to a Territory in which slaves are by law permitted to be held, whether that transportation be by land, navigable rivers, or by the sea; and the right of transit by the owners with their slaves in passing to or from one slaveholding State or Territory to another, between and through the non-slaveholding States and Territories, shall be protected.

ARTICLE 5. That, in addition to the provisions of the third paragraph of the second section of the fourth article of the Constitution of the United States, Congress shall have power to provide by law, and it shall be its duty so to provide, that the United States shall pay to the owner who shall apply for it, the full value of his fugitive slave in all cases, when the marshal or other officer whose duty it was to arrest said fugitive was prevented from so doing by violence or intimidation, or when, after arrest, said fugitive was rescued by force, and the owner thereby prevented and obstructed in the pursuit of his remedy for the recovery of his fugitive slave, under the said clause of the Constitution and the laws made in pursuance thereof. And in all such cases, when the United States shall pay for such fugitive, they shall have the power to reimburse themselves by imposing and collecting a tax on the county or city in which said violence, intimidation, or rescue was committed, equal in amount to the sum paid by them, with the addition of interest and the costs of collection; and the said county or city, after it has paid said amount to the United States, may, for its indemnity, sue and recover from the wrong-doers, or rescuers, by whom the owner was prevented from the recovery of his fugitive slave, in like manner as the owner himself might have sued and recovered.

ARTICLE 6. No future amendment of the Constitution shall affect the five preceding articles, nor the third paragraph of the second section of the first article of the Constitution, nor the third paragraph of the second section of the fourth article of said Constitution; and no amendment shall be made to the Constitution which will authorize or give to Congress any power to abolish or interfere with slavery in any of the States by whose laws it is or may be allowed or permitted.

ARTICLE 7. SEC. 1. The elective franchise, and the right to hold office, whether federal, State, territorial, or municipal, shall not be exercised by persons who are, in whole or in part, of the African race.

SEC. 2. The United States shall have power to acquire, from time to time, districts of country in Africa and South America, for the colonization, at expense of the Federal Treasury, of such free negroes and mulattoes as the several States may wish to have removed from their limits and from the District of Columbia, and such other places as may be under the jurisdiction of Congress.

And whereas, also, besides those causes of dissension embraced in the foregoing amendments proposed to the Constitution of the United States, there are others which come within the jurisdiction of Congress, and may be remedied by its legitimate power; and whereas it is the desire of this Convention, as far as its influence may extend, to remove all just cause for the popular discontent and agitation which now disturb the peace of the country, and threaten the stability of its institutions: Therefore,

1. *Resolved*, That the laws now in force for the recovery of fugitive slaves are in strict pursuance of the plain and mandatory provisions of the Constitution, and have been sanctioned as valid and constitutional by the judgment of the Supreme Court of the United States; that the slaveholding States are entitled to the faithful observance and execution of those laws, and that they ought not to be repealed or so modified or changed as to impair their efficiency; and that laws ought to be made for the punishment of those who attempt, by rescue of the slave or other illegal means, to hinder of defeat the due execution of said laws.

2. That all State laws which conflict with the fugitive slave acts, or any other constitutional acts of Congress, or which in their operation impede,

hinder, or delay the free course and due execution of any of said acts, are null and void by the plain provisions of the Constitution of the United States. Yet those State laws, void as they are, have given color to practices, and led to consequences which have obstructed the due administration and execution of acts of Congress, and especially the acts for the delivery of fugitive slaves, and have thereby contributed much to the discord and commotion now prevailing. This Convention, therefore, in the present perilous juncture, does not deem it improper, respectfully and earnestly, to recommend the repeal of those laws to the several States which have enacted them, or such legislative corrections or explanations of them, as may prevent their being used or perverted to such mischievous purposes.

3. That the act of the eighteenth of September, eighteen hundred and fifty, commonly called the fugitive slave law, ought to be so amended as to make the fee of the commissioner, mentioned in the eighth section of the act, equal in amount, in the cases decided by him, whether his decision be in favor of or against the claimant. And to avoid misconstruction, the last clause of the fifth section of said act, which authorizes the person holding a warrant for the arrest or detention of a fugitive slave to summon to his aid the *posse comitatus*, and which declares it to be the duty of all good citizens to assist him in its execution, ought to be so amended as to expressly limit the authority and duty to cases in which there shall be resistance, or danger of resistance or rescue.

4. That the laws for the suppression of the African slave-trade, and especially those prohibiting the importation of slaves into the United States, ought to be made effectual, and ought to be thoroughly executed, and all further enactments necessary to those ends ought to be promptly made.

The question on agreeing to said amendment resulted in the following vote:

AYES.—Kentucky, Missouri, North Carolina, Tennessee, and Virginia—5.

NOES.—Connecticut, Delaware, Illinois, Indiana, Maine, Massachusetts, Maryland, New Jersey, New York, New Hampshire, Ohio, Pennsylvania, Rhode Island, and Vermont—14.

So the amendment was not agreed to.

Mr. DENT:—I desire to dissent from the vote of Maryland.

Mr. EWING:—I desire to record the vote of Kansas in the negative.

The PRESIDENT:—Leave will be given unless objection is made.

Mr. TUCK:—I hold in my hand a substitute which I propose to offer for the report of the committee. I know all the delegates have made up their minds how to vote, and what to vote for. Argument now will amount to but little. But I submit this as indicating to a certain extent the views of the minority here. I shall make no farther remarks, but shall pass it to the Secretary, and I hope the Conference will be patient for five minutes while it is read.

The proposition of Mr. TUCK was read as follows:

TO THE PEOPLE OF THE UNITED STATES:

On the 4th day of February, 1861, in compliance with the invitation of the State of Virginia, commissioners from several other States met the commissioners of that State in Conference Convention, in the City of Washington. From time to time, commissioners from other States appeared, appointed as were those who first appeared, some by the Legislatures, and some by the Governors of their respective States, until, on the 23d instant, twenty-one States were then represented. The Convention thus constituted claims no authority under the Constitution and laws; but deeply impressed with a sense of existing dissensions and dangers, proceeded to a careful consideration of them and their appropriate remedies, and having brought their deliberations to a close, now submit the result to the judgment of their fellow-citizens.

We recognize and deplore the divisions and distractions which now afflict our country, interrupt its prosperity, disturb its peace, and endanger the Union of the States; but we repel the conclusion, that any alienations or dissensions exist which are irreconcilable, which justify attempts at revolution, or which the patriotism and fraternal sentiments of the people, and the interests and honor of the whole nation, will not overcome.

In a country embracing the central and most important portion of a continent, among a people now numbering over thirty millions, diversities of opinion inevitably exist; and rivalries, intensified at times by local interests and sectional attachments, must often occur; yet we do not doubt that the theory of our Government is the best which is possible for this

nation, that the Union of the States is of vital importance, and that the Constitution, which expresses the combined wisdom of the illustrious founders of the Government, is still the palladium of our liberties, adequate to every emergency, and justly entitled to the support of every good citizen.

It embraces in its provisions and spirit, all the defence and protection which any section of the country can rightfully demand or honorably concede.

Adopted with primary reference to the wants of five millions of people, but with the wisest reference to future expansion and development, it has carried us onward with a rapid increase of numbers, an accumulation of wealth, and a degree of happiness and general prosperity never attained by any other nation.

Whatever branch of industry, or whatever staple production, shall become, in the possible changes of the future, the leading interests of the country, thereby creating unforeseen complications or new conflicts of opinion and interest, the Constitution of the United States, properly understood and fairly enforced, is equal to every exigency, a shield and defence to all, in every time of need. If, however, by reason of a change in circumstances, or for any cause, a portion of the people believe they ought to have their rights more exactly defined or more fully explained in the Constitution, it is their duty, in accordance with its provisions, to seek a remedy by way of amendment to that instrument; and it is the duty of all the States to concur in such amendments as may be found necessary to insure equal and exact justice to all.

In order, therefore, to announce to the country the sentiments of this Convention, respecting not only the remedy which should be sought for existing discontents, but also to communicate to the public what we believe to be the patriotic sentiment of the country, we adopt the following resolutions:

1st. *Resolved*, That this Convention recognize the well-understood proposition that the Constitution of the United States gives no power to Congress, or any branch of the Federal Government, to interfere in any manner with slavery in any of the States; and we are assured by abundant testimony, that neither of the great political organizations existing in the country contemplates a violation of the spirit of the Constitution in this

regard, or the procuring of any amendment thereof, by which Congress, or any department of the General Government, shall ever have jurisdiction over slavery in any of the States.

2d. *Resolved*, That the Constitution was ordained and established, as set forth in the preamble, by the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity; and when the people of any State are not in full enjoyment of all the benefits intended to be secured to them by the Constitution, or their rights under it are disregarded, their tranquillity disturbed, their prosperity retarded, or their liberty imperilled by the people of any other State, full and adequate redress can and ought to be provided for such grievances.

3d. *Resolved*, That the Constitution of the United States, and the acts of Congress in pursuance thereof, are the supreme law of the land, to which every citizen owes faithful obedience; and it is therefore respectfully recommended to the Legislatures of the several States to consider impartially whatever complaints may be made of acts as inconsistent therewith, by sister States or their citizens, and carefully revise their statutes, in view of such complaints, and to repeal whatever provisions may be found to be in contravention of that supreme law.

4th. *Resolved*, That this Convention recommend to the Legislatures of the several States of the Union to follow the example of the Legislatures of the States of Kentucky and of Illinois, in applying to Congress to call a Convention for the proposing of amendments to the Constitution of the United States, pursuant to the fifth article thereof.

Mr. CHASE:—I have not thought it best to occupy much of the time of the Convention in discussing the propositions presented for its decision. I have indeed been impressed with an idea that a decision upon these propositions just now may be premature.

I have already stated to the Conference that the delegates from Ohio act under resolutions of the General Assembly of that State, one of which requires them to use their influence in procuring an adjournment of this body to the 4th of April next. It is the wish of that State that opportunity

may be given for full consideration of any constitutional amendment that may be proposed here, and especially to avoid precipitate action under apprehensions of resistance to the inauguration of Mr. LINCOLN on the 4th of next month.

I have already submitted resolutions in accordance with the views of the Legislature, and intended, at the proper time, to ask a vote upon the proposed adjournment. On consultation with my colleagues, however, I find a majority of them averse to postponement; and, in view of the fact that the resolution of the Legislature is not imperative in its terms, and especially in consideration of the assurances constantly given here by delegates from slaveholding States that, whatever may be the result of our deliberations, no obstruction or hindrance will be opposed to the inauguration of Mr. LINCOLN, I have determined to forbear urging a vote.

Upon the respective merits of the propositions of the committee, and the proposed amendments, I have not much to say. But what I do say will be said in all seriousness.

I do not approve the confident pledges made here of favorable action by the people of either section, or of any State, upon whatever propositions may receive the sanction of this Conference. The people of the free States, so far as my observation goes, do not commit their right of judgment to anybody. They generally exercise it themselves, and be assured they will exercise it freely upon any proposition coming from this body. Whatever our actions may be here, every proposition to amend the Constitution must come before the people. They will discuss it, and must adopt it before it can become a part of the fundamental law. Dismiss, then, the idea that all that is necessary to secure amendments acceptable to a particular interest or section is to secure for them the sanction of a majority in this hall.

The result of the national canvass which recently terminated in the election of Mr. LINCOLN has been spoken of by some as the effect of a sudden impulse, or of some irregular excitement of the popular mind; and it has been somewhat confidently asserted that, upon reflection and consideration, the hastily-formed opinions which brought about that election will be changed. It has been said, also, that subordinate questions of local and temporary character have augmented the Republican vote, and secured a

majority which could not have been obtained upon the national questions involved in the respective platforms of the parties which divide the country.

I cannot take this view of the result of the Presidential election. I believe, and the belief amounts to absolute conviction, that the election must be regarded as the triumph of principles cherished in the hearts of the people of the free States. These principles, it is true, were originally asserted by a small party only. But, after years of discussion, they have, by their own value, their own intrinsic soundness, obtained the deliberate and unalterable sanction of the people's judgment.

Chief among these principles is the restriction of slavery within State limits; *not* war upon slavery within those limits, but fixed opposition to its extension beyond them. Mr. LINCOLN was the candidate of the people opposed to the extension of slavery. We have elected him. After many years of earnest advocacy and of severe trial, we have achieved the triumph of that principle. By a fair and unquestionable majority we have secured that triumph. Do you think we, who represent this majority, will throw it away? Do you think the people would sustain us if we undertook to throw it away? I must speak to you plainly, gentlemen of the South; it is not in my heart to deceive you. I therefore tell you explicitly that if we of the North and West would consent to throw away all that has been gained in the recent triumph of our principles, the people would not sustain us, and so the consent would avail you nothing. And I must tell you farther, that under no inducements whatever will we consent to surrender a principle which we believe to be so sound and so important as that of restricting slavery within State limits.

There are some things, however, which I think the people are willing to do. In all my relations with them, and these relations have been somewhat intimate, I have never discovered any desire or inclination on the part of any considerable number, to interfere with the institution of slavery within the States where it exists. I do not believe that any such desire anywhere prevails. All your rights have been respected and enforced by the people of the free States. More than this: even your claims have been enforced, under repulsive circumstances, and, in my judgment, beyond right and beyond constitutional obligation. When and where have the people of the free States, in their representatives, refused you any right? When and where have they refused to confer with you frankly and candidly when you

imagined your rights to be in danger? They have been, and still are, patient and forbearing. They do not believe that you need any new constitutional guarantees. You have guarantees enough in their voluntary action. But, since you think differently, they send us hither to meet you, to confer with you, to consider the questions which threaten the Union, to discuss them freely and decide them fairly.

Now, gentlemen, what do we ask of you? Do we ask any thing unreasonable in the amendment which has been submitted? We simply ask that you say to your people that we of the free States have no purpose, and never had any purpose, to infringe the rights of the slave States, or of any citizen of the slave States. And that our devotion to the Government and the Constitution is not inferior to that of any portion of the American people. By uniting with us in the declaration we propose, you tell your people at home that no considerable party, that no considerable number of persons, in the free States, has any wish or purpose to interfere with slavery in the States where it exists, or with any of your rights under the Constitution. You can say this with absolute truth, and with entire confidence. In all the action of the delegates who favor this amendment, in all our private consultations, every heart has been animated by a most anxious desire to maintain the Union and preserve the harmony of the Republic. No word has been uttered indicating the slightest wish to avoid any obligation of the Constitution, or to deprive you of any right under it. All concur in desiring to give effect to the Constitution and the laws passed in pursuance of it. The same sentiments animate the people of the free States. Congress has declared, with the almost unanimous concurrence of the members from the free States, against national interference with slavery in the slave States. The Chicago Convention most emphatically asserted the same doctrine. It has been reiterated over and over again by the Legislatures of the free States, and by great and small conventions of their people. Is it, then, too much to ask you to unite with us in a declaration that all fears of aggression entertained by your people are groundless? Such a declaration will go far to insure peace; why not make it?

You profess to be satisfied with slavery, as it is and where it is. You think the institution just and beneficial. The very able gentleman from Virginia (Mr. SEDDON), who commands the respect of all by the frankness and sincerity of his speech, has said that he believes slavery to be the condition

in which the African is to be educated up to freedom. He does not believe in perpetual slavery. He believes the time will come when the slave, through the beneficent influences of the circumstances which surround him, will rise in intelligence, capacity, and character, to the dignity of a freeman, and will be free.

We cannot agree with you, and therefore do not propose to allow slavery where we are responsible for it, outside of your State limits, and under National jurisdiction. But we do not mean to interfere with it at all within State limits. So far as we are concerned, you can work out your experiment there in peace. We shall rejoice if no evil comes from it to you or yours. [Mr. CHASE's time having expired, he was unanimously invited to proceed.]

Aside from the Territorial question—the question of slavery outside of the slave States—I know of but one serious difficulty. I refer to the question concerning fugitives from service. The clause in the Constitution concerning this class of persons is regarded by almost all men, North and South, as a stipulation for the surrender to their masters of slaves escaping into free States. The people of the free States, however, who believe that slaveholding is wrong, cannot and will not aid in the reclamation, and the stipulation becomes therefore a dead letter. You complain of bad faith, and the complaint is retorted by denunciations of the cruelty which would drag back to bondage the poor slave who has escaped from it. You, thinking slavery right, claim the fulfilment of the stipulation; we, thinking slavery wrong, cannot fulfil the stipulation without consciousness of participation in wrong. Here is a real difficulty, but it seems to me not insuperable. It will not do for us to say to you, in justification of non-performance, "the stipulation is immoral, and therefore we cannot execute it;" for you deny the immorality, and we cannot assume to judge for you.

On the other hand, you ought not to exact from us the literal performance of the stipulation when you know that we cannot perform it without conscious culpability. A true solution of the difficulty seems to be attainable by regarding it as a simple case where a contract, from changed circumstances, cannot be fulfilled exactly as made. A court of equity in such a case decrees execution as near as may be. It requires the party who cannot perform to make compensation for non-performance. Why cannot the same principle be applied to the rendition of fugitives from service? We cannot surrender

—but we can compensate. Why not, then, avoid all difficulties on all sides, and show respectively good faith and good will by providing and accepting compensation where masters reclaim escaping servants and prove their right of reclamation under the Constitution? Instead of a judgment for rendition, let there be a judgment for compensation, determined by the true value of the services, and let the same judgment assure freedom to the fugitive. The cost to the National Treasury would be as nothing in comparison with the evils of discord and strife. All parties would be gainers.

What I have just said is, indeed, not exactly to the point of the present discussion. But I refer to this matter to show how easily the greatest difficulties may be adjusted if approached in a truly just, generous, and patriotic spirit.

I refer to it also in order to show you that, if we do not concede all your wishes, it is because our ideas of justice, duty, and honor forbid, and not because we cherish any hostile or aggressive sentiments. We will go as far as we can to meet you—come you also as far as you can to meet us. Join at least in the declaration we propose. Your people have confidence in you. They will believe you. The declaration, made with substantial unanimity by this Conference, will tranquillize public sentiment, and give a chance for reason to resume its sway, and patriotic counsels to gain a hearing.

Do you say that after all what we propose embodies no substantial guarantees of immunity to slavery through the perversion of Federal powers? We reply that we think the Constitution as it stands, interpreted honestly and executed faithfully, is sufficient for all practical purposes; and that you will find all desirable security in the legislation or non-legislation of Congress. If you think otherwise, we are ready to join you in recommending a National Convention to propose amendments to the Constitution in the regular and legitimate way. Kentucky, a slave State, has proposed such a Convention; Illinois, a free State, has joined in the proposition. Join us, then, in recommending such a Convention, and assure us that you will abide by its decision. We will join you and give a similar assurance.

This, gentlemen, is the proposition we make you to-day. It is embodied in the amendment just submitted. Is it not a fair proposition? It is a plain

declaration of facts which cannot reasonably be questioned, and a plain submission of all disputed questions to the only proper tribunal for the settlement of such questions—that of the American people, acting through a National Convention.

The only alternative to this proposition is the proposition that the present Congress be called upon to submit to the States a thirteenth article embodying the amendments recommended by the committee. In order to the submission of these amendments to the States by Congress, a two-thirds vote in each House is necessary. That, I venture to say, cannot be obtained. Were it otherwise, who can assure you that the new article will obtain the sanction of three-fourths of the States, without which it is a nullity? As a measure to defeat all adjustment, I can understand this proposition. As a measure of pacification, I do not understand it. There is, in my judgment, no peace in it. Gentlemen here, of patriotism and intelligence, think otherwise. I am sorry that I cannot agree with them.

Gentlemen say, if this proposition cannot prevail, every slave State will secede; or, as some prefer to phrase it, will resort to revolution. I forbear to discuss eventualities. I must say, however, and say plainly, that considerations such as these will not move me from my recognized duty to my country and its Constitution. And let me say for the people of the free States, that they are a thoughtful people, and are much in earnest in this business. They do not delegate their right of private judgment. They love their institutions and the Union. They will not surrender the one nor give up the other without great struggles and great sacrifices. Upon the question of the maintenance of an unbroken Union and a whole country they never were, and it is my firm conviction they never will be divided. Gentlemen who think they will be, even in the worst contingency, will, I think, be disappointed. If forced to the last extremity, the people will meet the issue as they best may; but be assured they will meet it with no discordant councils.

Gentlemen, Mr. LINCOLN will be inaugurated on the 4th of March. He will take an oath to protect and defend the Constitution of the United States—of the whole—of all the United States. That oath will bind him to take care that the laws be faithfully executed throughout the United States. Will secession absolve him from that oath? Will it diminish, by one jot or tittle,

its awful obligation? Will attempted revolution do more than secession? And if not—and the oath and the obligation remain—and the President does his duty and undertakes to enforce the laws, and secession or revolution resists, what then? War! Civil war!

Mr. President, let us not rush headlong into that unfathomable gulf. Let us not tempt this unutterable woe. We offer you a plain and honorable mode of adjusting all difficulties. It is a mode which, we believe, will receive the sanction of the people. We pledge ourselves here that we will do all in our power to obtain their sanction for it. Is it too much to ask you, gentlemen of the South, to meet us on this honorable and practicable ground? Will you not, at least, concede this to the country?

The question on agreeing to said amendment resulted in the following vote:

AYES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, and Vermont—9.

NOES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia—11.

So the amendment was not agreed to.

Mr. WILMOT:—I wish now to offer an amendment which embraces an unconditional proposition for the call of a Convention.

Mr. BRONSON:—This has been voted down already.

Mr. WICKLIFFE:—What changes do you gentlemen from Pennsylvania and Ohio wish to make in the report of the committee? Would you adopt that report in a General Convention?

The PRESIDENT:—The Chair rules that the amendment offered by the gentleman from Pennsylvania is not in order.

Messrs. WILMOT, CHASE, CORNING, and BRONSON then entered their dissents from their respective States upon the substitute offered by Mr. TUCK.

Mr. WICKLIFFE:—I hope now that we may be permitted to take the vote at once upon the report of the majority.

Mr. REID:—Before this vote is taken, I deem it my duty to myself and my State to make a remark.

I came here disposed to agree upon terms that would be mutually satisfactory to both sections of the Union. I would agree to any fair terms now, but the propositions contained in the report of the majority, as that report now stands, can never receive my assent. I cannot recommend them to Congress or to the people of my own State. They do not settle the material questions involved; they contain no sufficient guarantees for the rights of the South. Therefore, in good faith to the Conference and to the country, I here state that I cannot and will not agree to them.

Mr. CLEVELAND:—If the gentlemen from the South, after we have yielded so much as we have, assert that these propositions will not be satisfactory to the slave States, I, for one, will not degrade myself by voting for them.

Mr. WICKLIFFE:—I insist now upon taking the vote.

The PRESIDENT:—The rules of the Conference do not require the vote to be taken upon this proposition by sections.

Mr. WICKLIFFE:—We have not heretofore adhered to the rules. Let us vote then on the whole as a proposition, and not by sections.

Mr. SEDDON:—I think we should take the vote by sections. It is certainly within the discretion of the President to rule that the vote may be so taken. The rules do not apply to an article which is composed of many sections. We certainly should vote upon them separately.

Mr. BROCKENBROUGH:—I desire now to get the amendment which I have proposed once more before the Conference. I move to amend by adding to the first section a clause which shall provide that

"The rights of the slave States shall be protected by all the departments of the territorial government during its continuance."

By the section as it now stands, the rights of the North are absolute; those of the South should be equally clear. It is true that the section contains a distinct recognition of the relation of master and slave, but this recognition

is in negative terms. It is certainly the duty of the territorial legislature and government to protect these rights wherever they are invaded. If this is so, why not declare it in the provision?

Mr. WILMOT:—I desire to ask whether this proposition is in order.

Mr. BROCKENBROUGH:—I insist that it is. I assert the existence of certain rights, and I want these rights protected under the Constitution. Rights without remedies are anomalies of which the law knows nothing.

Mr. WILMOT:—I feel constrained to oppose any amendment of this kind.

The PRESIDENT:—The Chair is inclined to rule this amendment as not in order.

Mr. RUFFIN:—Before the final vote is taken, I wish to say a word by way of explanation. My colleague says he cannot vote for the report of the committee because he does not approve the whole of it. I do not like the first article, but the report as a whole is a great improvement upon the Constitution as it now stands. I think the report ought to go before the people. If we can secure what the report proposes, we are certainly no worse off. I wish to submit it to my people, and thus have them to judge for themselves whether they will adopt it.

Mr. MOREHEAD, of North Carolina:—I would not say a word were it not for the words that have fallen from my colleague—Governor REID. I came here to try to save the Union. I have labored hard to that end. I hope and believe the report of the majority, if adopted, will save the Union. I wish to carry these propositions before the people. I believe that the people of North Carolina and of the Union will adopt them. Give us an opportunity to appeal to the generosity of the people of the whole Union. Certainly no Southern man can object to submitting these propositions to the popular vote.

Mr. LOOMIS:—I am content to vote for the first article.

Mr. CARRUTHERS:—I only desire to say for my State that if you will give us these propositions, Tennessee will adopt them, and it will sink secession beyond any hope of resurrection.

Mr. BARRINGER:—I cannot say that I am gratified with the display which I have just witnessed in these appeals from the Conference to the people. We come here to deal with facts, not theories. I do not speak with the confidence of some with respect to the action of some of the people. I know the people of the South, and I tell you this hollow compromise will never satisfy them, nor will it bring back the seceded States. We are acting for the people who are not here. We are their delegates that have come here, not to demand indemnity for the past, but security for the future. This is my opinion. You will see whether I am right or not. We could stand upon the CRITTENDEN proposition or the Virginia alternative. With Virginia in our favor we could have stood upon either. You, gentlemen of the North, might as well have consented to either as to the report which is now presented. I desire the preservation of the Union; I would go for this scheme if that would accomplish it. But it will not. There is great force in the statement of the gentleman from Ohio, Mr. CHASE, in which he says there is no importance to a scheme which goes from this Conference to the States only by a majority of one or two States. If one or two States only, which are here, reject this compromise, it will be rejected entirely. Once more I say it would have been better for all to have stood upon the Virginia alternative.

Mr. STOCKTON:—I have not much to say, sir. I rise with a sadness which almost prevents my utterance. I was born at Princeton. My heart has always beat for the Union. I have heard these discussions with pain from the commencement. Shall we deliberate over any proposition which shall save the Union? The country is in jeopardy. We are called upon to save it. New Jersey and Delaware came here for that purpose, and no other. They have laid aside every other motive; they have yielded every thing to the general good of the country.

The report of the majority of the committee meets their concurrence. Republicans and Democrats alike, have dropped their opinions, for politics should always disappear in the presence of a great question like this. Politics should not be thought of in view of the question of disunion. By what measure of execration will posterity judge a man who contributed toward the dissolution of the Union? Shall we stand here and higgle about terms when the roar of the tornado is heard that threatens to sweep our Government from the face of the earth? Believe me, sir, this is a question of peace or war.

In the days of Rome, Curtius threw himself into the chasm when told by the oracle that the sacrifice of his life would save his country. Alas! is there no Curtius here? The alternative is a dreadful one to contemplate if we cannot adopt these propositions and secure peace. It is useless to attempt to dwarf this movement of the South by the name of treason. Call it by what name you will, it is a revolution, and this is a right which the people of this country have derived in common from their ancestors.

Mr. GUTHRIE:—I now move that we proceed to take the vote, and propose to take it upon the first section of the report of the majority.

Mr. ELLIS:—I move so to amend the rule that when the report is taken up each section and each distinct proposition shall be voted on separately.

The PRESIDENT:—I think this motion is out of order, and the question will be taken on the motion of the gentleman from Kentucky for the adoption of the first section, which the Secretary will now read.

SECTION 1. In all the present territory of the United States north of the parallel of 36° 30′ of north latitude, involuntary servitude, except in punishment of crime, is prohibited. In all the present territory south of that line, the status of persons held to involuntary service or labor, as it now exists, shall not be changed; nor shall any law be passed by Congress or the Territorial Legislature to hinder or prevent the taking of such persons from any of the States of this Union to said territory, nor to impair the rights arising from said relation; but the same shall be subject to judicial cognizance in the Federal courts, according to the course of the common law. When any Territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population equal to that required for a member of Congress, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary servitude, as the Constitution of such State may provide.

The question on agreeing to said section resulted as follows—Indiana declining to vote:

AYES.—Delaware, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania, Rhode Island, and Tennessee—8.

NOES.—Connecticut, Illinois, Iowa, Maine, Massachusetts, Missouri, New York, North Carolina, New Hampshire, Vermont, and Virginia—11.

And the section was not agreed to.

The following gentlemen dissented from the votes of their respective States: Mr. RUFFIN and Mr. MOREHEAD, of North Carolina; Mr. TOTTEN, of Tennessee; Mr. COALTER and Mr. HOUGH, of Missouri; Mr. BRONSON, Mr. CORNING, Mr. DODGE, Mr. WOOL, and Mr. GRANGER, of New York; Mr. MEREDITH and Mr. WILMOT, of Pennsylvania; Mr. RIVES and Mr. SUMMERS, of Virginia; Mr. CLAY and Mr. BUTLER, of Kentucky; and Mr. LOGAN, of Illinois.

The vote was taken in the midst of much partially suppressed excitement, and the announcement of the vote of different States occasioned many sharp remarks of dissent or approval. After the vote was announced, for some minutes no motion was made, and the delegates engaged in an informal conversation.

Mr. TURNER finally moved a reconsideration of the vote.

Mr. GRANGER:—To say that I am disappointed by the result of this vote, would fail to do justice to my feelings. I move that the Conference adjourn until half-past seven o'clock this evening. I think it well for those gentlemen from the slave States especially, who have by their votes defeated the compromise we have labored so long and so earnestly to secure, to take a little time for consideration. Gentlemen we have yielded much to your fears, much to your apprehensions; we have gone to the very verge of propriety in giving our assent to the committee's report. We have incurred the censure of some of our own people, but we were willing to take the risk of all this censure in order to allay your apprehensions. We expected you to meet us in the path of compromise. Instead of that you reject and spurn our propositions. Take time, gentlemen, for reflection. Beware how you spurn this report, and incur the awful responsibility which will follow. Reject it, and if the country is plunged in war, and the Union endangered, you are the men who will be held responsible.

Mr. President, I have been deeply pained at the manner in which some gentlemen have here spoken of the possible dissolution of this Government.

When, perchance, the rude hand of violence shall here have seized upon the muniments and archives of our country's history; when all the monuments of art that time and treasure may here have gathered, shall be destroyed; when these proud domes shall totter to their fall, and the rank grass wave around their mouldering columns; when the very name of WASHINGTON, instead of stirring the blood to patriotic action, shall be a byeword and a reproach—then will this people feel what was the value of the Union!

The motion to reconsider was then adopted by a vote of 14 ayes to 5 noes, and the Conference adjourned to seven o'clock and thirty minutes this evening.

EVENING SESSION—EIGHTEENTH DAY.

WASHINGTON, TUESDAY, *February 26th, 1861.*

THE Conference was called to order pursuant to adjournment by the President.

Mr. WICKLIFFE:—I hope after some of the informal consultations which have been held since the adjournment of the Conference this afternoon, that we may yet be able to bring our minds together, and to adopt the propositions recommended by the committee. It is, however, certain that the vote had better not be taken this evening. I therefore move an adjournment until ten o'clock to-morrow morning.

The motion to adjourn was agreed to; ayes 17, noes 3, and the Conference adjourned.

NINETEENTH DAY.

WASHINGTON, WEDNESDAY, *February 27th, 1861.*

THE Conference assembled pursuant to adjournment, and was called to order by President TYLER. Prayer was offered by Rev. Dr. GURLEY.

The PRESIDENT:—The Conference will now proceed to the consideration of the order of the day, the proposals of amendment to the Constitution reported by the majority of the committee.

Mr. GUTHRIE:—I suppose, under the rules which the Conference has adopted, discussion of these proposals is no longer in order. I hope now the Conference will proceed to the vote. The opinions of each delegation are undoubtedly fixed, and cannot be changed by farther argument.

I move you, sir, the adoption of the first section of the report as amended, which I ask to have read by the Secretary.

The section was read by the Secretary, as follows:

SECTION 1. In all the present territory of the United States north of the parallel of 36° 30′ of north latitude, involuntary servitude, except in punishment of crime, is prohibited. In all the present territory south of that line, the status of persons held to involuntary service or labor, as it now exists, shall not be changed; nor shall any law be passed by Congress or the Territorial Legislature to hinder or prevent the taking of such persons from any of the States of this Union to said territory, nor to impair the rights arising from said relation; but the same shall be subject to judicial cognizance in the Federal courts, according to the course of the common law. When any Territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population equal to that required for a member of Congress, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary servitude, as the Constitution of such State may provide.

The vote upon said section resulted as follows:

AYES.—Delaware, Illinois, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania, Rhode Island, and Tennessee—9.

NOES.—Connecticut, Iowa, Maine, Massachusetts, North Carolina, New Hampshire, Vermont, and Virginia—8.

So the section was adopted.

The vote of New York being called, Mr. KING, temporary Chairman of the delegation, said:

The question arises concerning the vote of New York. Mr. FIELD, one of the delegates from this State, is necessarily absent from the Conference, having left to attend to the argument of a cause in the Supreme Court noted for argument this morning. It is his understanding, and with him that of a majority of the delegation, that the vote of New York is to be cast against this section, and the whole report. Under these circumstances I propose to give the vote of New York as it would be given if Mr. FIELD was present.

Mr. CORNING:—I object to this. The vote of that State should be given as the majority of the commissioners present decide. And I think this is a

matter for the delegation, and that the Conference has nothing to do with it.

The PRESIDENT:—An absent member cannot participate in the control of a vote except by general leave of the Convention.

Mr. KING:—If Mr. FIELD is not to be taken into the account, the vote of New York upon this section is divided.[8]

Mr. EWING:—The vote of Kansas is also divided.

Mr. HACKLEMAN:—The vote of Indiana is divided. The commissioners of Indiana were appointed by virtue of resolutions passed by the Legislature of that State, which require them to report to the Legislature any proposition before voting for it finally, so as to commit the State either for or against it. It is impossible, under the circumstances, to submit this proposition of amendment to the Legislature of Indiana for approval or rejection. Indiana, therefore, declines to vote.

Mr. SLAUGHTER:—As the delegation from Indiana declines to cast its vote, I desire to have my individual vote entered in the affirmative upon this section.

Mr. ELLIS:—For the same reason I desire to have my vote entered in the negative.

The following gentlemen dissented from the vote of their respective States: Mr. CLAY and Mr. MOREHEAD, of Kentucky; Mr. RUFFIN and Mr. MOREHEAD, of North Carolina; Mr. MEREDITH and Mr. WILMOT, of Pennsylvania; Mr. TOTTEN, of Tennessee; Mr. COOK, of Illinois; Mr. RIVES and Mr. SUMMERS, of Virginia; and Mr. CHASE and Mr. WOLCOTT, of Ohio.

Mr. GUTHRIE:—I move the adoption of the second section of the report as amended, and ask that it may be read.

The Secretary read it as follows:

SECTION 2. No territory shall be acquired by the United States, except by discovery, and for naval and commercial stations, depots, and transit routes, without the concurrence of a majority of all the Senators from States which allow involuntary servitude, and a majority of all the Senators from States which prohibit that relation; nor shall territory be acquired by treaty, unless

the votes of a majority of the Senators from each class of States hereinbefore mentioned be cast as a part of the two-thirds majority necessary to the ratification of such treaty.

The vote on the adoption of section two was taken, and resulted as follows:

AYES.—Delaware, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia—11.

NOES.—Connecticut, Illinois, Iowa, Maine, Massachusetts, North Carolina, New Hampshire, and Vermont—8.

New York and Kansas were divided.

So the section was adopted.

The following gentlemen dissented from the vote of their States: Mr. MEREDITH and Mr. WILMOT, of Pennsylvania; Mr. RUFFIN and Mr. MOREHEAD, of North Carolina; Mr TYLER, of Virginia; Mr. CLAY, of Kentucky; and Mr. HACKLEMAN and Mr. ORTH, of Indiana.

Mr. GUTHRIE:—I now move the adoption of the third section of the report as amended, and request that it may be read.

The Secretary proceeded to read as follows:

SECTION 3. Neither the Constitution nor any amendment thereof shall be construed to give Congress power to regulate, abolish, or control, within any State, the relation established or recognized by the laws thereof touching persons held to labor or involuntary service therein, nor to interfere with or abolish involuntary service in the District of Columbia without the consent of Maryland and without the consent of the owners, or making the owners who do not consent just compensation; nor the power to interfere with or prohibit representatives and others from bringing with them to the District of Columbia, retaining and taking away, persons so held to labor or service; nor the power to interfere with or abolish involuntary service in places under the exclusive jurisdiction of the United States within those States and Territories where the same is established or recognized; nor the power to prohibit the removal or transportation of persons held to labor or involuntary service in any State or Territory of the United States to any

other State or Territory thereof, where it is established or recognized by law or usage; and the right during transportation, by sea or river, of touching at ports, shores, and landings, and of landing in case of distress, shall exist; but not the right of transit in or through any State or Territory, or of sale or traffic, against the laws thereof. Nor shall Congress have power to authorize any higher rate of taxation on persons held to labor or service than on land.

The bringing into the District of Columbia of persons held to labor or service for sale, or placing them in depots to be afterwards transferred to other places for sale as merchandise, is prohibited.

The question on the adoption of said section resulted in the following vote:

AYES.—Delaware, Illinois, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia —12.

NOES.—Connecticut, Indiana, Iowa, Maine, Massachusetts, New Hampshire, and Vermont—7.

New York and Kansas were divided.

So the section was adopted.

The following gentlemen dissented from the vote of their States: Mr. CLAY, of Kentucky; Mr. COOK, of Illinois; Mr. SLAUGHTER, of Indiana; and Mr. CHASE, and Mr. WOLCOTT, of Ohio.

Mr. GUTHRIE:—I move the adoption of the fourth section of the report as amended.

And the Secretary read it as follows:

SECTION 4. The third paragraph of the second section of the fourth article of the Constitution shall not be construed to prevent any of the States, by appropriate legislation, and through the action of their judicial and ministerial officers, from enforcing the delivery of fugitives from labor to the person to whom such service or labor is due.

The question on the adoption of said section resulted in the following vote:

AYES.—Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, and Virginia—15.

NOES.—Iowa, Maine, Massachusetts, and New Hampshire—4.

New York and Kansas were divided.

And the section was adopted.

The following gentlemen dissented from the vote of their respective States: Mr. BALDWIN, of Connecticut; Mr. HACKLEMAN and Mr. ORTH, of Indiana; and Mr. CHASE and Mr. WOLCOTT, of Ohio.

Mr. GUTHRIE:—I now move the adoption of the fifth section of the report as amended.

It was read by the Secretary as follows:

SECTION 5. The foreign slave-trade is hereby forever prohibited; and it shall be the duty of Congress to pass laws to prevent the importation of slaves, coolies, or persons held to service or labor, into the United States and the Territories from places beyond the limits thereof.

The vote on the adoption of this section resulted as follows:

AYES.—Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, New York, New Hampshire, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, and Kansas—16.

NOES.—Iowa, Maine, Massachusetts, North Carolina, and Virginia—5.

So this section was adopted.

The following gentlemen dissented from the vote of their respective States: Mr. BALDWIN, of Connecticut; Mr. CLAY, of Kentucky; Mr. RUFFIN and Mr. MOREHEAD, of North Carolina; Mr. WOLCOTT and Mr. CHASE, of Ohio; and Mr. HACKLEMAN and Mr. ORTH, of Indiana.

Mr. GUTHRIE:—I move the adoption of the sixth section of the report as amended, and desire that the Secretary may read that also.

The Secretary read as follows:

SECTION 6. The first, third, and fifth sections, together with this section of these amendments, and the third paragraph of the second section of the first article of the Constitution, and the third paragraph of the second section of the fourth article thereof, shall not be amended or abolished without the consent of all the States.

The vote on the adoption of this section stood as follows:

AYES.—Delaware, Illinois, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, Rhode Island, Tennessee, and Kansas—11.

NOES.—Connecticut, Indiana, Iowa, Maine, Massachusetts, North Carolina, New Hampshire, Vermont, and Virginia—9.

The State of New York was divided.

And this section was adopted.

The following gentlemen dissented from the vote of their States:—Mr. RUFFIN and Mr. MOREHEAD, of North Carolina; Mr. CHASE and Mr. WOLCOTT, of Ohio; Mr. COOK, of Illinois; and Mr. SUMMERS and Mr. RIVES, of Virginia.

Mr. GUTHRIE:—I move the adoption of the seventh section of the report, as amended.

The Secretary read as follows:

SECTION 7. Congress shall provide by law that the United States shall pay to the owner the full value of his fugitive from labor, in all cases where the marshal, or other officer, whose duty it was to arrest such fugitive, was prevented from so doing by violence or intimidation from mobs or riotous assemblages, or when, after arrest, such fugitive was rescued by like violence or intimidation, and the owner thereby deprived of the same; and the acceptance of such payment shall preclude the owner from further claim to such fugitive. Congress shall provide by law for securing to the citizens of each State the privileges and immunities of citizens in the several States.

The vote on the adoption of this section was as follows:

AYES.—Delaware, Illinois, Indiana, Kentucky, Maryland, New Jersey, New Hampshire, Ohio, Pennsylvania, Rhode Island, Tennessee, and Kansas—12.

NOES.—Connecticut, Iowa, Maine, Missouri, North Carolina, Vermont, and Virginia—7.

The vote of New York was divided.

So this last section was also adopted.

The following gentlemen dissented from the vote of their respective States: —Mr. RUFFIN and Mr. MOREHEAD, of North Carolina; Mr. TOTTEN of Tennessee; Mr. HACKLEMAN and Mr. ORTH, of Indiana; and Mr. CHASE and Mr. WOLCOTT, of Ohio.

Mr. CHASE:—The sections which have been adopted severally, as a whole may not be acceptable to a majority of the Conference. They have been adopted by different votes and different majorities. I think a vote should be taken upon them collectively, in order that we may know whether, as a single proposition, they meet the approbation of the Conference. I move that a vote be taken upon the several sections as a whole.

The PRESIDENT:—It is the opinion of the Chair that this motion is not in order. Each section, when once approved by a majority of votes, stands as the order of the Conference. These sections have been severally taken up, amended, and adopted, and no further vote is necessary or proper, except by way of reconsideration.

Mr. CHASE:—I think the motion an important one, and with all deference, appeal from the decision of the Chair to the Conference.

The PRESIDENT:—The question is, Shall the decision of the Chair stand as the order of the Conference?

Mr. CHASE:—As I have no wish except to secure a fair vote, and the opinion of the Chair may be technically correct, I will withdraw my appeal.

Mr. FRANKLIN:—Having adopted the report of the committee, I think now there should be an expression of the Conference upon the question of secession. I therefore move the adoption of the following resolution:

Resolved, As the sense of this Convention, that the highest political duty of every citizen of the United States is his allegiance to the Federal Government created by the Constitution of the United States, and that no State of this Union has any constitutional right to secede therefrom, or to absolve the citizens of such State from their allegiance to the Government of the United States.

Mr. BARRINGER:—I move to lay that resolution on the table. This is a Convention to propose amendments to the Constitution, not to make commentaries upon that instrument.

Mr. CLEVELAND:—I ask a vote by States.

The question was taken by States, and resulted as follows:

AYES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Tennessee, and Virginia—9.

NOES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Pennsylvania, Rhode Island, Vermont, and Kansas —12.

And the Convention refused to lay the resolution upon the table.

Mr. COALTER:—I offer the following amendment: strike out all after the word resolve, and insert as follows:

"The term of office of all Presidents and Vice-Presidents of the United States, hereafter elected, shall be six years; and any person once elected to either of said offices shall ever after be ineligible to the same office."

The amendment of Mr. COALTER was rejected by a *viva voce* vote.

Mr. SEDDON:—I now move to amend by striking out all after the word "resolved" in Mr. FRANKLIN's resolution, and insert a series of amendments hitherto proposed by myself, as follows:

To secure concert and promote harmony between the slaveholding and non-slaveholding sections of the Union, the assent of the majority of the Senators from the slaveholding States, and of the majority of the Senators from the non-slaveholding States, shall be requisite to the validity of all

action of the Senate, on which the ayes and noes may be called by five Senators.

And on a written declaration, signed and presented for record on the Journal of the Senate by a majority of the Senators from either the non-slaveholding or slaveholding States, of their want of confidence in any officer or appointee of the Executive, exercising functions exclusively or continuously within the class of States, or any of them, which the signers represent, then such officer shall be removed by the Executive; and if not removed at the expiration of ten days from the presentation of such declaration, the office shall be deemed vacant, and open to new appointment.

The connection of every State with the Union is recognized as depending on the continuing assent of its people, and compulsion shall in no case, nor under any form, be attempted by the Government of the Union against a State acting in its collective or organic capacity. Any State, by the action of a convention of its people, assembled pursuant to a law of its legislature, is held entitled to dissolve its relation to the Federal Government, and withdraw from the Union; and, on due notice given of such withdrawal to the Executive of the Union, he shall appoint two commissioners, to meet two commissioners to be appointed by the Governor of the State, who, with the aid, if needed from the disagreement of the commissioners, of an umpire, to be selected by a majority of them, shall equitably adjudicate and determine finally a partition of the rights and obligations of the withdrawing State; and such adjudication and partition being accomplished, the withdrawal of such State shall be recognized by the Executive, and announced by public proclamation to the world.

But such withdrawing State shall not afterwards be readmitted into the Union without the assent of two-thirds of the States constituting the Union at the time of the proposed readmission.

I desire to get these amendments on the Journal. It is my duty to offer them, and I wish the Journal to show that I have performed that duty.

Mr. FRANKLIN:—I then move to lay the amendment on the table, and to give the gentleman leave to have it inserted in the Journal. That will accomplish his purpose.

The question was taken on the motion to lay the amendment on the table, and resulted in an affirmative vote.

Mr. RUFFIN:—I regard the mission of this Convention as now performed, and I hope we shall take up no new questions, which can only distract and divide us. I therefore move to postpone the consideration of this resolution indefinitely.

The question was taken on Mr. RUFFIN's motion, with the following result:—

AYES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Rhode Island, Tennessee, and Virginia—10.

NOES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, and Pennsylvania—7.

The vote of New York was divided.

Messrs. DUNCAN and AMES dissented from the vote of Rhode Island.

Mr. GUTHRIE:—It will be necessary that this proposition be presented to Congress in an authentic form, and I suppose it will not be necessary for the Convention to continue its sessions until this presentation is made. I therefore offer the following preamble:

TO THE CONGRESS OF THE UNITED STATES:

The Convention assembled upon the invitation of the State of Virginia to adjust the unhappy differences which now disturb the peace of the Union and threaten its continuance, make known to the Congress of the United States that their body convened in the city of Washington on the 4th instant, and continued in session until the 27th.

There were in the body, when action was taken upon that which is here submitted, one hundred and thirty-three commissioners, representing the following States: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, Indiana, Illinois, Iowa, and Kansas.

They have approved what is herewith submitted, and respectfully request that your honorable body will submit it to conventions in the States as an article of amendment to the Constitution of the United States.

Mr. RANDOLPH:—I move the adoption of the preamble, and that the same, with the propositions already adopted, be authenticated by the present Secretary, and that all be presented by the President of this Convention to the Senate and House of Representatives, with a respectful request for their passage.

This motion was agreed to.

Mr. BARRINGER:—As the labors of the Convention are now closed, I presume there is no occasion for continuing the injunction of secrecy. As notes of the proceedings have been taken with a view, I presume, to publication, I now move that the injunction of secrecy against speaking of the action of the Convention, or the publication of its proceedings, be removed.

The motion of Mr. BARRINGER was agreed to by a *viva voce* vote.

Mr. JOHNSON:—I desire here to have printed in the Journal the following resolution.

Leave was granted to Mr. JOHNSON as requested, and his resolution was as follows:

Resolved, That while the adoption, by the States of South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas, of ordinances declaring the dissolution of their relation with the Union, is an event deeply to be deplored; and while abstaining from any judgment on their conduct, we would express the earnest hope that they may soon see cause to resume their honored places in this Confederacy of States; yet to the end that such return may be facilitated, and from the conviction that the Union being formed by the assent of the people of the respective States, and being compatible only with freedom, and the republican institutions guaranteed to each, cannot and ought not to be maintained by force, we deprecate any effort by the Federal Government to coerce in any form the said States to reunion or submission, as tending to irreparable breach, and

leading to incalculable ills; and we earnestly invoke the abstinence from all counsels or measures of compulsion toward them.

Mr. POLLOCK:—The Committee on Finance have made an examination of the expenses which have been incurred for printing, stationery, &c., by the Conference. It has been, already stated that the expense of printing the Journal is met by the city of Washington. The additional expense incurred amounts to $735. If this is equally apportioned among the States represented it will amount to $35 each. It is for the Conference to decide in what manner the assessment shall be made.

Mr. BROWNE:—I offer the following resolution:

Resolved, That the report of the committee be received and accepted; that the committee be continued, and requested to make the necessary disbursements; and that the States now pay over the sum assessed to the chairman.

And the resolution was unanimously adopted.

Mr. LOOMIS:—I take great pleasure in presenting to the Conference the following letter, which has been addressed by the proprietors of the hall to the Secretary. I ask that the letter may be read, and I also offer the following resolution.

The letter was read, as follows:

CRAFTS J. WRIGHT, ESQ.,
Secretary Conference Convention:

SIR:—Please inform the Convention that we have tendered, free of charge, the use of our Hall and lights, which they have occupied. We hope the use may be sanctified by restoring peace to the Union.

We are, respectfully, &c.,

J.C. & H.A. WILLARD.

February 23d, 1861.

And the resolution, which was unanimously adopted, was as follows:

Resolved, That the thanks of this Convention are justly due, and are hereby given, to the Messrs. Willard, for the liberal and generous tender, free of charge, of the use of the Hall and the lights, for the purposes expressed in their letter to the Secretary; and that the Secretary be requested to communicate to them a copy of this resolution.

Mr. DODGE offered the following resolution, and that, too, was unanimously agreed to:

Resolved, That the thanks of this Convention are justly due and hereby given to the Mayor and Council of the city of Washington, for their kindness and liberality to the members of this Convention, in defraying so large an amount of their expenses for printing and stationery, and also for the officers to protect this hall and the members from intrusion whilst in session, and that the Secretary be requested to communicate the same to said parties.

On motion of Mr. RANDOLPH, the thanks of the Conference were tendered to the clergymen of the city for their services during the Conference.

The thanks of the Conference were also presented to the Secretary and his assistants.

Mr. EWING:—I move the adoption of the following:

Resolved, That the thanks of this Convention be tendered to the President, for the dignified and impartial manner in which he has presided over the deliberations of this body.

The resolution being seconded by Mr. HACKLEMAN, it was unanimously adopted; whereupon President TYLER addressed the Conference as follows:

"GENTLEMEN OF THE CONFERENCE:

"The labors of this Convention are drawing to a close. Before we separate never in this world to meet again, I am much pleased that the resolution you have just adopted gives me an opportunity of uttering a few words of congratulation and farewell.

"We came together at a most important and critical time. One of the oldest members of the American Union, a commonwealth which had contributed

its full share to the honor and glory of the nation—having as great interests at stake as any other member of the sisterhood of States—summoned you here to consider new additions to our Constitution, which the experience of near three-quarters of a century had taught us were required. I expected from the first that you would approach the consideration of the new and important questions which must arise here, with that patriotism and intelligence which belongs to the descendants of the patriots of the Revolution and the statesmen of the Convention of 1787. I have not been disappointed. In the whole course of a public life, much longer than usually falls to the lot of man, I have been associated with many bodies of my fellow-citizens, convened for legislative or other purposes, but I here declare that it has never been my good fortune to meet with an association of more intelligent, thoughtful, or patriotic men, than that over which I have been here called to preside. I cannot but hope and believe that the blessing of GOD will follow and rest upon the result of your labors, and that such result will bring to our country that quiet and peace which every patriotic heart so earnestly desires. I thank you most sincerely for that kindness and partiality on your part which induced you to call me to the honorable position of your presiding officer, and for the courtesy so uniformly extended in the discharge of the responsible duties of that position.

"Gentlemen, farewell! I go to finish the work you have assigned me, of presenting your recommendations to the two Houses of Congress, and to ask those bodies to lay your proposals of amendment before the people of the American Union. Although these proposals are not in all respects what I could have desired—although I should have preferred the adoption of those recommended by the Legislature of Virginia, because I know they would have been acceptable to my own constituents, still it is my duty to give them my official approval and support. It is not to be expected that entire unanimity of opinion should exist among the representatives of so large a population, and so many diversified interests, as now comprise the Republic of the United States. It is probable that the result to which you have arrived is the best that under all the circumstances could be expected. So far as in me lies, therefore, I shall recommend its adoption.

"May you have a happy and safe return to your constituents and your families! May you all inculcate among your people a spirit of mutual forbearance and concession; and may GOD protect our country and the

Union of these States, which was committed to us as the blood-bought legacy of our heroic ancestors!"

Mr. WICKLIFFE:—I move that the Convention do now adjourn, its labors having come to an end; and I would suggest that the delegates meet informally and take leave of each other at three o'clock this afternoon.

Mr. BROWNE moved that the Conference adjourn without day, and his motion was adopted by the following vote:

AYES.—Delaware, Illinois, Kentucky, Maryland, New Jersey, Ohio, Rhode Island, Tennessee, and Vermont—9.

NOES.—Connecticut, Indiana, Missouri, North Carolina, and Pennsylvania —5.

And the Conference adjourned without day.

APPENDIX.

No. I.

BEFORE the final vote was taken upon the proposals of amendment to the Constitution of the United States, reported by the General Committee of which Mr. GUTHRIE was Chairman, and the votes upon the various substitutes offered for such proposals, there were *twenty-one* States represented in the Conference.

Maine and Iowa were represented by their respective Congressional delegations; Tennessee, Ohio, Kentucky, Indiana, Delaware, Illinois, New Jersey, New York, Pennsylvania, Massachusetts, Rhode Island, and Missouri, by delegates appointed by their respective Legislatures, under joint resolutions which are here inserted; New Hampshire, Vermont, Connecticut, Maryland, North Carolina, Indiana, and Kansas, by delegates appointed by their respective Governors.

The resolutions of Virginia originated the call for the Conference.

Michigan, Wisconsin, Minnesota, California, and Oregon were not represented. South Carolina, Florida, Georgia, Alabama, Mississippi, Arkansas, and Texas had passed ordinances of secession previous to the meeting of the Conference. Messrs. BENJAMIN and SLIDELL, the Senators from Louisiana, withdrew from the Senate of the United States before the proposed amendments to the Constitution were reported to the Conference.

The following resolutions of their respective States were presented by the delegates to the Committee on Credentials, and were ordered by the Conference to be printed, on the motion of Mr. CHASE.[9]

TENNESSEE.

RESOLUTIONS *proposing amendments to the Constitution of the United States.*

Resolved by the General Assembly of the State of Tennessee, That a Convention of delegates from all the slaveholding States should assemble at Nashville, Tennessee, or such other place as a majority of the States coöperating may designate, on the fourth day of February, 1861, to digest and define a basis upon which, if possible, the Federal Union and the constitutional rights of the slave States may be perpetuated and preserved.

Resolved, That the General Assembly of the State of Tennessee appoint a number of delegates to said Convention, of our ablest and wisest men, equal to our whole delegation in Congress; and that the Governor of Tennessee immediately furnish copies of these resolutions to the Governors of the slaveholding States, and urge the participation of such States in said Convention.

Resolved, That in the opinion of this General Assembly, such plan of adjustment should embrace the following propositions as amendments to the Constitution of the United States:

1. A declaratory amendment that African slaves, as held under the institutions of the slaveholding States, shall be recognized as property, and entitled to the *status* of other property, in the States where slavery exists, in all places within the exclusive jurisdiction of Congress in the slave States, in all the Territories south of 36° 30′; in the District of Columbia; in transit; and whilst temporarily sojourning with the owner in the non-slaveholding States and Territories north of 36° 30′, and when fugitives from the owner, in the several places above named, as well as in all places in the exclusive jurisdiction of Congress in the non-slaveholding States.

2. That all the territory now owned, or which may be hereafter acquired by the United States south of the parallel of 36° 30′; African slavery shall be recognized as existing, and be protected by all the departments of the Federal and Territorial Governments, and in all north of that line, now owned, or to be acquired, it shall not be recognized as existing; and whenever States formed out of any of said territory south of said line, having a population equal to that of a congressional district, shall apply for admission into the Union, the same shall be admitted as slave States, whilst

States north of the line, formed out of said territory, and having a population equal to a Congressional district, shall be admitted without slavery; but the States formed out of said territory north and south having been admitted as members of the Union, shall have all the powers over the institution of slavery possessed by the other States of the Union.

3. Congress shall have no power to abolish slavery in places under its exclusive jurisdiction, and situate within the limits of States that permit the holding of slaves.

4. Congress shall have no power to abolish slavery within the District of Columbia, as long as it exists in the adjoining States of Virginia and Maryland, or either, nor without the consent of the inhabitants, nor without just compensation made to such owners of slaves as do not consent to such abolishment. Nor shall Congress at any time prohibit the officers of the Federal Government or members of Congress whose duties require them to be in said District, from bringing with them their slaves, and holding them as such, during the time their duties may require them to remain there, and afterwards take them from the District.

5. Congress shall have no power to prohibit or hinder the transportation of slaves from one State to another, or the Territory in which slaves are by law permitted to be held, whether that transportation be by land, navigable rivers, or by seas.

6. In addition to the fugitive slave clause, provide that when a slave has been demanded of the Executive authority of the State to which he has fled, if he is not delivered, and the owner permitted to carry him out of the State in peace, the State so failing to deliver, shall pay to the owner the value of such slave, and such damages as he may have sustained in attempting to reclaim his slave, and secure his right of action in the Supreme Court of the United States, with execution against the property of such State and the individuals thereof.

7. No future amendment of the Constitution shall affect the six preceding articles, nor the third paragraph of the second section of the first article of the Constitution, nor the third paragraph of the second section of the fourth article of the Constitution; and no amendments shall be made to the Constitution which will authorize or give to Congress any power to abolish

or interfere with slavery in any of the States by whose laws it is, or may be allowed or permitted.

8. That slave property shall be rendered secure in transit through, or whilst temporarily sojourning in, non-slaveholding States or Territories, or in the District of Columbia.

9. An amendment to the effect that all fugitives are to be deemed those offending the laws within the jurisdiction of the State, and who escape therefrom to other States; and that it is the duty of each State to suppress armed invasion of another State.

Resolved, That said Convention of the slaveholding States having agreed upon a basis of adjustment satisfactory to themselves, should, in the opinion of this General Assembly, refer it to a Convention of all the States, slaveholding and non-slaveholding, in the manner following:

It should invite all States friendly to such plan of adjustment, to elect delegates in such manner as to reflect the popular will, to assemble in a Constitutional Convention of all the States North and South, to be held at Richmond, Virginia, on the —— day of February, 1861, to revise and perfect such plan of adjustment, for its reference for final ratification and adoption by a Convention of the States respectively.

Resolved, That should a plan of adjustment, satisfactory to the South, not be acceded to by a requisite number of States to perfect amendments to the Constitution of the United States, it is the opinion of this General Assembly that the slaveholding States should adopt for themselves the Constitution of the United States, with such amendments as may be satisfactory to the slaveholding States, and that they should invite into the Union with them all States of the North which are willing to abide such amended Constitution and frame of Government, severing at once all connections with States refusing such reasonable guarantees to our future safety; such renewed conditions of Federal Union being first submitted for ratification to Convention of all the States respectively.

Resolved, That the Governor of the State of Tennessee furnish copies of these resolutions immediately to the Governors of the non-slaveholding States.

OHIO.

JOINT RESOLUTIONS *of the General Assembly of the State of Ohio, relative to the appointment of Commissioners to the Convention to meet in Washington on the 4th of February, proximo. Passed, January 30, 1861.*

WHEREAS, The Commonwealth of Virginia has appointed five Commissioners to meet in the City of Washington on the fourth day of February next, with similar Commissioners from other States, and after full and free conference to agree, if practicable, upon some adjustment of the unhappy difficulties now dividing our country, which may be alike satisfactory and honorable to the States concerned; therefore be it

Resolved, by the General Assembly of the State of Ohio, That the Governor, by and with the advice and consent of the Senate, be and he is hereby authorized and empowered to appoint five Commissioners to represent the State of Ohio in said Conference.

Resolved, That while we are not prepared to assent to the terms of settlement proposed by Virginia, and are fully satisfied that the Constitution of the United States as it is, if fairly interpreted and obeyed by all sections of our country, contains ample provisions within itself for the correction of all evils complained, yet a disposition to reciprocate the patriotic spirit of a sister State, and a sincere desire to have harmoniously adjusted all differences between us, induce us to favor the appointment of the Commission as requested.

Resolved, That the Governor be requested to transmit without delay a copy of these Resolutions to each of the Commissioners to be appointed as aforesaid, to the end that they may repair to the City of Washington, on the day hereinbefore named, to meet such Commissioners as may be appointed by any of the States in accordance with the aforesaid propositions of Virginia.

Resolved, That in the opinion of this General Assembly, it will be wise and expedient to adjourn the proposed Convention to a later day, and that the Commissioners to be appointed as aforesaid, are requested to use their influence in procuring an adjournment to the fourth day of April next.

KENTUCKY.

RESOLUTIONS *appointing Commissioners to attend a Conference at Washington City, February 4th, in accordance with the invitation of the Virginia Legislature.*

WHEREAS, The General Assembly of Virginia, with a view to make an effort to preserve the Union and the Constitution in the spirit in which they were established by the Fathers of the Republic, have, by resolution, invited all the States who are willing to unite with her in an earnest effort to adjust the present unhappy controversies, to appoint Commissioners to meet on the 4th of February next, to consider, and if practicable, agree upon some suitable adjustment—

Resolved, That we heartily accept the invitation of our Old Mother Virginia, and that the following six Commissioners, viz.: Wm. O. Butler, James B. Clay, Joshua F. Bell, C.S. Morehead, James Guthrie, and Chas. A. Wickliffe, be appointed to represent the State of Kentucky in the contemplated Convention, whose duty it shall be to repair to the City of Washington, on the day designated, to meet such Commissioners as may be appointed by any of the States in accordance with the foregoing invitation.

Resolved, That if said Commissioners shall agree upon any plan of adjustment requiring amendments to the Federal Constitution, they be requested to communicate the proposed amendments to Congress, for the purpose of having the same submitted by that body, according to the forms of the Constitution, to the several States for ratification.

Resolved, That if said Commissioners cannot agree on an adjustment, or if agreeing, Congress shall refuse to submit for ratification such amendments as they may propose, the Commissioners of this State shall immediately communicate the result to the Executive of this Commonwealth, to be by him laid before this General Assembly.

Resolved, That in the opinion of the General Assembly of Kentucky, the propositions embraced in the resolutions presented to the Senate of the United States by the Hon. JOHN J. CRITTENDEN, so construed, that the first article proposed as an amendment to the Constitution of the United States shall apply to all the territory of the United States now held or hereafter

acquired south of latitude 36° 30′, and provide that slavery of the African race shall be effectually protected as property therein during the continuance of the Territorial Government; and the fourth article shall secure to the owners of slaves the right of transit with their slaves between and through the non-slaveholding States and Territories, constitute the basis of such an adjustment of the unhappy controversy which now divides the States of this Confederacy, as would be acceptable to the people of this Commonwealth.

Resolved, That the Governor be, and he is hereby requested to communicate information of the foregoing appointment to the Commissioners above named, at as early a day as practicable, and that he also communicate copies of the foregoing resolutions to the Executive of the respective States.

INDIANA.

A JOINT RESOLUTION *authorizing the Governor to appoint Commissioners to meet those sent by other States in Convention on the state of the Union.*

WHEREAS, The State of Virginia has transmitted to this State resolutions adopted by her General Assembly, inviting all such States as are willing to unite with her in an earnest effort to adjust the unhappy controversies, in the spirit in which the Constitution was originally formed, to send Commissioners to meet those appointed by that State in Convention, to be held in the City of Washington, on the fourth day of February next, to consider, and if possible, to agree upon some suitable adjustment.

And whereas, some of the States to which invitations were extended by the State of Virginia have already responded and appointed their Commissioners; therefore,

Resolved, by the General Assembly of the State of Indiana, That we accept the invitation of the State of Virginia, in the true spirit of fraternal feeling, and that the Governor of the State is hereby directed and empowered to appoint five Commissioners to meet the Commissioners appointed by our sister States, to consult upon the unhappy differences now dividing the country; but the said Commissioners shall take no action that will commit

this State until *nineteen* of the States are represented, nor without first having communicated with this General Assembly in regard to such action, and having received the authority of the same so to commit the State.

Resolved, That while we are not prepared to assent to the terms of settlement proposed by the State of Virginia, and are fully satisfied that the Constitution, if fairly interpreted and obeyed, contains ample provisions within itself for the correction of the evils complained of; still, with a disposition to reciprocate the patriotic desire of the State of Virginia, and to have harmoniously adjusted all differences existing between the States of the Union, this General Assembly is induced to respond to the invitation of Virginia, by the appointment of the Commissioners herein provided for; but as the time fixed for the Convention to assemble is so near at hand that the States cannot all be represented, it is expected that the Commissioners on behalf of this State will insist that the Convention adjourn until such time as the States shall have an opportunity of being represented.

Resolved, That his Excellency, the Governor, be requested to transmit copies of these resolutions to the Executives of each of the States of the Union.

DELAWARE.

JOINT RESOLUTIONS *appointing Commissioners.*

WHEREAS, The State of Virginia has recommended the holding of a Convention of Delegates from all the States of the Union, at the City of Washington, on the fourth day of February next, for the purpose of taking into consideration and perfecting some plan of adjusting the matters in controversy now so unhappily subsisting in the family of States, and has appointed five Commissioners to represent the people of that Commonwealth in said Convention; and

Whereas, the people of the State of Delaware regard the preservation of the Union as paramount to any political consideration, and are fixed in their determination that Delaware, the first to adopt the Federal Constitution, will be the last to do any act tending to destroy the integrity of the Union; therefore,

Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the Hon. George B. Rodney, Daniel M. Bates, Esq., Dr. Henry Ridgely, Hon. John W. Houston, and William Cannon, Esq., be, and they are hereby appointed Commissioners, on behalf of the State of Delaware, to represent the people of said State in the Convention to be held at Washington, on the fourth day of February next.

Resolved, That in the opinion of this General Assembly, the people of Delaware are thoroughly devoted to the perpetuity of the Union, and that the Commissioners appointed by the foregoing resolution are expected to emulate the example set by the immortal patriots who framed the Federal Constitution, by sacrificing all minor considerations upon the altar of the Union.

Resolved, further, That it shall be the duty of the Secretary of State to furnish a copy of the above preamble and resolutions to each of the Commissioners herein and hereby appointed, duly attested under the great seal of the State.

Resolved, further, That immediately upon the adoption of the foregoing preamble and resolutions, it shall be the duty of the Clerk of the House to transmit to the Secretary of State a copy thereof, certified by him; and when the Secretary of State shall have received said copy so certified, it shall be evidence that said preamble and resolutions were duly adopted by this General Assembly.

ILLINOIS.

WHEREAS, resolutions of the State of Virginia have been communicated to the General Assembly of this State, proposing the appointment of Commissioners by the several States to meet in Convention, on the fourth day of February, A.D. 1861, at Washington.

Resolved by the Senate, the House of Representatives concurring herein, That with the earnest desire for the return of harmony and kind relations among all our sister States, and out of respect to the Commonwealth of Virginia, the Governor of this State be requested to appoint five

Commissioners on the part of the State of Illinois, to confer and consult with the Commissioners of other States who shall meet at Washington: *Provided*, That said Commissioners shall at all times be subject to the control of the General Assembly of the State of Illinois.

Resolved, That the appointment of Commissioners by the State of Illinois, in response to the invitation of the State of Virginia, is *not* an expression of opinion on the part of this State that any amendment of the Federal Constitution is requisite to secure to the people of the slaveholding States adequate guarantees for the security of their rights, nor an approval of the basis of settlement of our difficulties proposed by the State of Virginia, but it is an expression of our willingness to unite with the State of Virginia in an earnest effort to adjust the present unhappy controversies in the spirit in which the Constitution was originally formed, and consistently with its principles.

Resolved, That while we are willing to appoint Commissioners to meet in convention with those of other States for consultation upon matters which at present distract our harmony as a nation, we also insist that the appropriate and constitutional method of considering and acting upon the grievances complained of by our sister States, would be by the call of a Convention for the amendment of the Constitution in the manner contemplated by the fifth article of that instrument; and if the States deeming themselves aggrieved, shall request Congress to call such Convention, the Legislature of Illinois will and does concur in such call.

NEW JERSEY.

JOINT RESOLUTIONS *in relation to the Union of the States.*

WHEREAS, the people of New Jersey, conforming to the opinion of "the Father of his Country," consider the unity of the Government, which constitutes the people of the United States one people, a main pillar in the edifice of their independence, the support of their tranquillity at home and peace abroad, of their prosperity, and of that liberty which they so highly prize; and properly estimating the immense value of their National Union to their individual happiness, they cherish a cordial, habitual, and immovable

attachment to it as the palladium of their political safety and prosperity; therefore,

1. *Be it resolved by the Senate and General Assembly of the State of New Jersey*, That it is the duty of every good citizen, in all suitable and proper ways, to stand by and sustain the Union of the States as transmitted to us by our fathers.

2. *And be it resolved*, That the Government of the United States is a National Government, and the Union it was designed to perfect is not a mere compact or league; and that the Constitution was adopted in a spirit of mutual compromise and concession by the people of the United States, and can only be preserved by the constant recognition of that spirit.

3. *And be it resolved*, That however undoubted may be the right of the General Government to maintain its authority and enforce its laws over all parts of the country, it is equally certain that forbearance and compromise are indispensable at this crisis to the perpetuity of the Union, and that it is the dictate of reason, wisdom, and patriotism, peacefully to adjust whatever differences exist between the different sections of the country.

4. *And be it resolved*, That the resolutions and propositions submitted to the Senate of the United States by the Honorable John J. Crittenden, of Kentucky, for the compromise of the questions in dispute between the people of the northern and of the southern States, or any other constitutional method that will permanently settle the question of slavery, will be acceptable to the people of the State of New Jersey, and the Senators and Representatives in Congress from New Jersey be requested and earnestly urged to support those resolutions and propositions.

5. *And be it resolved*, That as the Union of the States is in imminent danger unless the remedies before suggested be speedily adopted, then, as a last resort, the State of New Jersey hereby makes application, according to the terms of the Constitution, of the Congress of the United States, to call a Convention (of the United States) to propose amendments to said Constitution.

6. *And be it resolved*, That such of the States as have in force laws which interfere with the constitutional rights of citizens of the other States, either

in regard to their persons or property, or which militate against the just construction of that part of the Constitution that provides that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," are earnestly urged and requested, for the sake of peace and the Union, to repeal all such laws.

7. *And be it resolved*, That his Excellency Charles S. Olden, Peter D. Vroom, Robert F. Stockton, Benjamin Williamson, Joseph F. Randolph, Frederick T. Frelinghuysen, Rodman M. Price, William O. Alexander, and Thomas J. Stryker, be appointed Commissioners to confer with Congress and our sister States, and urge upon them the importance of carrying into effect the principles and objects of the foregoing resolutions.

8. *And be it resolved*, That the Commissioners above named, in addition to their other powers, be authorized to meet with those now or hereafter to be appointed by our sister State of Virginia, and such Commissioners of other States as have been, or may be hereafter appointed, to meet at Washington on the fourth day of February next.

9. *And be it resolved*, That copies of the foregoing resolutions be sent to the President of the Senate and Speaker of the House of Representatives of the United States, and to the Senators and Representatives in Congress from New Jersey, and to the Governors of the several States.

NEW YORK.

CONCURRENT RESOLUTIONS *appointing Commissioners from this State to meet Commissioners from other States at Washington, on invitation of Virginia.*

WHEREAS, the State of Virginia, by resolutions of her General Assembly, passed the 19th instant, has invited such of the slaveholding and non-slaveholding States as are willing to unite with her, to meet at Washington, on the fourth of February next, to consider, and, if practicable, agree on some suitable adjustment of our national difficulties; and whereas, the people of New York, while they hold the opinion that the Constitution of the United States, as it is, contains all needful guarantees for the rights of the States, are nevertheless ready, at all times, to confer with their brethren

upon all alleged grievances; and to do all that can justly be required of them to allay discontent; therefore

Resolved, That David Dudley Field, William Curtis Noyes, James S. Wadsworth, James O. Smith, Amaziah B. James, Erastus Corning, Addison Gardiner, Greene O. Bronson, William E. Dodge, Ex-Governor John A. King, and Major-General John E. Wool, be and are hereby appointed Commissioners, on the part of this State, to meet Commissioners from other States, in the City of Washington, on the fourth day of February next, or so soon thereafter as Commissioners shall be appointed by a majority of the States of the Union, to confer with them upon the complaints of any part of the country, and to suggest such remedies therefor as to them shall seem fit and proper; but the said Commissioners shall at all times be subject to the control of this Legislature, and shall cast five votes to be determined by a majority of their number.

Resolved, That in thus acceding to the request of Virginia, it is not to be understood that this Legislature approves of the propositions submitted by the General Assembly of that State, or concedes the propriety of their adoption by the proposed Convention. But while adhering to the position she has heretofore occupied, New York will not reject an invitation to a conference, which, by bringing together the men of both sections, holds out the possibility of an honorable settlement of our national difficulties, and the restoration of peace and harmony to the country.

Resolved, That the Governor be requested to transmit a copy of the foregoing resolutions to the Executive of the several States, and also to the President of the United States, and to inform the Commissioners without delay of their appointment.

Resolved, That the foregoing resolutions be transmitted to the honorable the Senate, with a request that they concur therein.

PENNSYLVANIA.

RESOLUTIONS *to appoint Commissioners to a Convention of the States.*

WHEREAS, the Legislature of the State of Virginia has invited a meeting of Commissioners from the several States of this Union, to be held in the City of Washington, on the fourth day of February next, to consider, and if practicable, agree upon some suitable adjustment of the unhappy differences which now disturb the business of the country and threaten the dissolution of this Union:

And whereas, in the opinion of this Legislature, no reasonable cause exists for this extraordinary excitement which now pervades some of the States, in relation to their domestic institutions, and while Pennsylvania still adheres to, and cannot surrender the principles which she has always entertained on the subject of slavery, this Legislature is willing to accept the invitation of Virginia, and unite with her in an earnest effort to restore the peace of the country, by such means as may be consistent with the principles upon which the Constitution is founded; therefore,

Resolved by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, That the invitation of the Legislature of Virginia to her sister States, for the appointment of Commissioners to meet in the City of Washington, on the fourth of February next, be and the same is hereby accepted; and that the Governor be, and he is hereby authorized to appoint seven Commissioners for the State of Pennsylvania, whose duty it shall be to repair to the City of Washington on the day designated, to meet such Commissioners as may be appointed by any other States which have not authorized or sanctioned the seizure of the forts, arsenals, or other property of the United States, to consider, and if possible, to agree upon suitable measures for the prompt and final settlement of the difficulties which now exist: *Provided*, That the said Commissioners shall be subject, in all their proceedings, to the instructions of this Legislature.

Resolved, That in the opinion of this Legislature, the people of Pennsylvania do not desire any alteration or amendment of the Constitution of the United States, and any recommendation from this body to that effect, while it does not come within its appropriate and legitimate duties, would not meet with their approval; that Pennsylvania will cordially unite with the other States of the Union in the adoption of any proper constitutional measures adequate to guarantee and secure a more strict and faithful

observance of the second section of the fourth article of the Constitution of the United States, which provides, among other things, that "the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States," and that no person held to service or labor in one State under the law thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on the claim of the party to whom such service or labor may be due.

MASSACHUSETTS.

RESOLVE *for the appointment of Commissioners to attend a Convention to be held in the City of Washington.*

WHEREAS, the Commonwealth of Massachusetts is desirous of a full and free conference with the General Government, and with any or all of the other States of the Union, at any time and on every occasion when such conference may promote the welfare of the country; and whereas, questions of grave moment have arisen touching the powers of the Government and the relations between the different States of the Union; and whereas, the State of Virginia has expressed a desire to meet her sister States in Convention at Washington; therefore,

Resolved, That the Governor of this Commonwealth, by and with the advice and consent of the Council, be and he hereby is authorized to appoint seven persons as Commissioners, to proceed to Washington to confer with the General Government, or with the separate States, or with any association of delegates from such States, and to report their doings to the Legislature at its present session; it being expressly declared that their acts shall be at all times under the control, and subject to the approval or rejection of the Legislature.

RHODE ISLAND.

WHEREAS, the General Assembly of the Commonwealth of Virginia, on the 19th day of January inst., adopted resolutions inviting the sister States of this Union to appoint Commissioners to meet on the fourth day of February

next, in the City of Washington, to consider the practicability of agreeing on terms of adjustment of our present national troubles:

Resolved, That the Governor be, and he is hereby authorized to appoint five Commissioners, on the part of this State, to meet such Commissioners as may be appointed by other States, in the City of Washington, on the fourth day of February next, to consider and, if practicable, agree upon some amicable adjustment of the present unhappy national difficulties, upon the basis and in the spirit of the Constitution of the United States.

MISSOURI.

JOINT RESOLUTION *to appoint Commissioners.*

Resolved by the House of Representatives, the Senate concurring therein, That Waldo P. Johnson, John D. Coalter, A.W. Doniphan, Harrison Hough, and A.H. Buckner be appointed Commissioners on the part of the State of Missouri, to meet Commissioners from Virginia, and other States, in Convention at Washington City, on the 4th of February, 1861, to endeavor to agree upon some plan of adjustment of existing difficulties, so as to preserve or to reconstruct the Union of these States, and to secure the honor and equal rights of the slaveholding States. Said Commissioners shall always be under the control of the General Assembly, except when the State Convention shall be in session, during which time they shall be under the control of the Convention.

No. II.

The following is a corrected list of the Delegates to the Conference, with their respective post office address.

MAINE.—William P. Fessenden, *Biddeford*; Lot M. Morrill; Daniel E. Somes, *Biddeford*; John J. Perry, *Oxford*; Ezra B. French, *Damariscotta*; Freeman H. Morse, *Bath*; Stephen Coburn; Stephen C. Foster, *Pembroke*.

NEW HAMPSHIRE.—Amos Tuck, *Exeter*; Levi Chamberlain; Asa Fowler, *Concord*.

VERMONT.—Hiland Hall, *North Bennington*; Levi Underwood, *Burlington*; H. Henry Baxter, *Rutland*; L.E. Chittenden, *Burlington*; B.D. Harris, *Brattleboro'*.

MASSACHUSETTS.—John Z. Goodrich, *Stockbridge*; Charles Allen, *Worcester*; George S. Boutwell, *Groton*; Theophilus P. Chandler, *Boston*; Francis B. Crowninshield, *Boston*; John M. Forbes, *Salem*; Richard P. Waters, *Salem*.

RHODE ISLAND.—Samuel Ames, *Providence*; Alexander Duncan, *Providence*; William W. Hoppin, *Providence*; George H. Browne, *Providence*; Samuel G. Arnold, *Providence*.

CONNECTICUT.—Roger S. Baldwin, *Windham*; Chauncey F. Cleveland; Charles J. McCurdy, *Lyme*; James T. Pratt; Robbins Battell; Amos S. Treat, *Bridgeport*.

NEW YORK.—David Dudley Field, *New York*; William Curtis Noyes, *New York*; James S. Wadsworth, *Geneseo*; James C. Smith, *Canandaigua*; Amaziah B. James, *Ogdensburg*; Erastus Corning, *Albany*; Francis Granger, *Canandaigua*; Greene C. Bronson, *New York*; William E. Dodge, *New York*; John A. King, *Jamaica*; John E. Wool, *Troy*.

NEW JERSEY.—Charles S. Olden, *Princeton*; Peter D. Vroom, *Trenton*; Robert F. Stockton, *Princeton*; Benjamin Williamson, *Elizabeth*; Joseph F. Randolph, *Trenton*; Frederick T. Frelinghuysen, *Newark*; Rodman M. Price,

Harrison, Hudson Co.; William C. Alexander, *P.O., 92 Broadway, N.Y.*; Thomas J. Stryker, *Trenton*.

PENNSYLVANIA.—James Pollock, *Milton*; William M. Meredith, *Philadelphia*; David Wilmot, *Towanda*; A.W. Loomis, *Pittsburg*; Thomas E. Franklin, *Lancaster*; William McKennan, *Washington*; Thomas White, *Indiana*.

DELAWARE.—George B. Rodney, *Newcastle*; Daniel M. Bates, *Wilmington*; Henry Ridgely, *Dover*; John W. Houston, *Milford*; William Cannon, *Bridgeville*.

MARYLAND.—John F. Dent, *Milestown*; Reverdy Johnson, *Baltimore*; John W. Crisfield, *Princess Ann*; Augustus W. Bradford, *Govanstown*; William T. Goldsborough, *Cambridge*; J. Dixon Roman, *Hagerstown*; Benjamin C. Howard, *Catonsville*.

VIRGINIA.—John Tyler, *Sherwood Forest*; William C. Rives; John W. Brockenbrough, *Lexington*; George W. Summers, *Kanawha C.H.*; James A. Seddon, *Goochland*.

NORTH CAROLINA.—George Davis, *Wilmington*; Thomas Ruffin, *Graham*; David S. Reid, *Pleasantville*; D.M. Barringer, *Raleigh*; J.M. Morehead, *Greenboro'*.

TENNESSEE.—Samuel Milligan, *Greenville*; Josiah M. Anderson, *Walnut Valley*; Robert L. Carruthers, *Lebanon*; Thomas Martin, *Pulaski*; Isaac R. Hawkins, *Huntington*; A.W.O. Totten, *Jackson*; R.J. McKinney, *Knoxville*; Alvin Cullom, *Livingston*; William P. Hickerson, *Manchester*; George W. Jones, *Fayetteville*; F.K. Zollicoffer, *Nashville*; William H. Stephens, *Jackson*.

KENTUCKY.—William O. Butler, *Carrollton*; James B. Clay, *Ashland*; Joshua F. Bell, *Danville*; Charles S. Morehead, *Louisville*; James Guthrie, *Louisville*; Charles A. Wickliffe, *Bardstown*.

MISSOURI.—John D. Coalter, *St. Louis*; Alexander W. Doniphan, *Liberty*; Waldo P. Johnson, *Osceola*; Aylett H. Buckner, *Bowling Green*; Harrison Hough, *Charleston*.

OHIO.—Salmon P. Chase, *Columbus*; William S. Groesbeck, *Cincinnati*; Franklin T. Backus, *Cleveland*; Reuben Hitchcock, *Cleveland*; Thomas Ewing, *Lancaster*; V.B. Horton, *Pomeroy*; C.P. Wolcott, *Akron*.

INDIANA.—Caleb B. Smith, *Indianapolis*; Pleasant A. Hackleman, *Rushville*; Godlove S. Orth, *Lafayette*; E.W.H. Ellis, *Goshen*; Thomas C. Slaughter, *Corydon*.

ILLINOIS.—John Wood, *Quincy*; Stephen T. Logan, *Springfield*; John M. Palmer, *Carlinville*; Burton C. Cook, *Ottowa*; Thomas J. Turner, *Freeport*.

IOWA.—James Harlan, *Mt. Pleasant*; James W. Grimes, *Burlington*; Samuel H. Curtis, *Keokuk*; William Vandever, *Dubuque*.

KANSAS.—Thomas Ewing, jr., *Leavenworth*; J.C. Stone, *Leavenworth*; H.J. Adams, *Leavenworth*; M.F. Conway, *Lawrence*.

No. III.

In the United States Senate, February 27th, 1861, while the Army Appropriation bill was under consideration, proceedings relating to the Peace Conference were opened as follows:

Mr. POWELL:—Is it in order to move to postpone this bill and take up another?

The PRESIDING OFFICER:—The Chair believes it is in order.

Mr. POWELL:—I move to postpone the Army bill for the purpose of taking up the resolutions to amend the Constitution proposed by my colleague. For several weeks Senators have declined to make an effort to call up the propositions of my colleague, for the reason that certain Peace Commissioners were in session in this capital, convened at the call of the State of Virginia. I am confident now that that Commission, or Peace Congress, or Conference, or whatever you may call it, will not accomplish any thing. Indeed, certain facts have fallen under my notice, that cause me to believe that it has been the fixed purpose of certain Republicans that that

Conference should not accomplish any thing. I believe, sir, that certain commissioners from States of this Union have been brought into that Conference for the purpose of preventing them from agreeing on any thing. I have thought that for some time past. A friend sent to me yesterday the Detroit *Free Press*, containing two letters from the distinguished Senators from the State of Michigan to their Governor, which, I think, clearly and fully establish the fact that the Republicans, a portion of them at least, instead of sending commissioners to that Conference with a view to inaugurate something that would compromise the difficulties by which we are surrounded, and save this country from ruin, have absolutely been engaged in the work of sending delegates there to prevent that commission from doing any thing. I send this paper to the desk, and ask the Secretary to read these letters.

The Secretary read as follows:

WASHINGTON, *February 15th, 1861.*

DEAR SIR: When Virginia proposed a Convention in Washington, in reference to the disturbed condition of the country, I regarded it as another effort to debauch the public mind, and a step toward obtaining that concession which the imperious slave power so insolently demands. I have no doubt at present but that was the design. I was therefore pleased that the Legislature of Michigan was not disposed to put herself in a position to be controlled by such influences.

The Convention has met here, and within a few days the aspect of things has materially changed. Every free State, I think, except Michigan and Wisconsin, is represented; and we have been assured by friends upon whom we can rely, that if those two States should send delegations of true, unflinching men, there would probably be a majority in favor of the Constitution as it is, who would frown down rebellion by the enforcement of laws. These friends have urged us to recommend the appointment of delegates from our State; and, in compliance with their request, Mr. CHANDLER and myself telegraphed to you last night. It cannot be doubted that the recommendations of this Convention will have a very considerable influence upon the public mind, and upon the action of Congress.

I have a great disinclination to any interference with what should properly be submitted to the wisdom and discretion of the Legislature, in which I place great reliance; but I hope I shall be pardoned for suggesting that it may be justifiable and proper, by any honorable means, to avert the lasting disgrace which will attach to a free people who, by the peaceful exercise of the ballot, have just released themselves from the tyranny of slavery, if they should now succumb to treasonable threats, and again submit to a degrading thraldom. If it should be deemed proper to send delegates, I think, if they could be here by the 20th, it would be in time.

I have the honor, with much respect, to be truly yours,

K.S. BINGHAM.

To his Excellency Governor BLAIR.

Mr. FESSENDEN:—I submit whether it is in order to go into a discussion on this motion. If so, I suppose this must be regarded as a part of the speech.

The PRESIDING OFFICER:—The Chair understood the discussion to be in order. It was certainly not objected to at the time the Senator commenced.

Mr. FESSENDEN:—It is not too late to raise the point.

The PRESIDING OFFICER:—The motion is to lay aside one bill and take up other business; and the Chair understood the Senator from Kentucky to be giving his reasons why he wished that to be done.

Mr. FESSENDEN:—If it is in order, of course I cannot object to it; but I raise that question.

The PRESIDING OFFICER:—The Senator from Maine raises the question whether this debate is in order.

Mr. POWELL:—There was no objection to my proceeding, and I suppose I have a right to go on. I wish the letters read as part of my speech.

Mr. FESSENDEN:—There is no objection to reading them.

The PRESIDING OFFICER:—The Chair has decided that the Senator from Kentucky is in order.

Mr. POWELL:—I have not yielded, except for the purpose of reading these letters.

The PRESIDING OFFICER:—Is an appeal taken from the decision of the Chair?

Mr. FESSENDEN:—I take no appeal.

The Secretary read as follows:

WASHINGTON, *February 11th, 1861.*

MY DEAR GOVERNOR: Governor BINGHAM and myself telegraphed you on Saturday, at the request of Massachusetts and New York, to send delegates to the Peace or Compromise Congress. They admit that we were right and that they were wrong; that no Republican State should have sent delegates; but they are here and cannot get away. Ohio, Indiana, and Rhode Island are caving in, and there is danger of Illinois; and now they beg us, for God's sake, to come to their rescue, and save the Republican party from rupture. I hope you will send *stiff-backed* men, or none. The whole thing was gotten up against my judgment and advice, and will end in thin smoke. Still, I hope as a matter of courtesy to some of our erring brethren, that you will send the delegates.

Truly your friend,

Z. CHANDLER.

His Excellency AUSTIN BLAIR.

P.S.—Some of the manufacturing States think that a fight would be awful. Without a little blood-letting this Union will not, in my estimation, be worth a rush.

Mr. POWELL:—I think it evident from these letters, that there is, and has been, a fixed purpose in certain quarters, that the Peace Conference should do nothing. Indeed, it seems, from the letter of the Senator from Michigan [Mr. CHANDLER], that while he opposed any Republican State going into

this Conference, yet, as some of them were there, and Indiana, and Illinois, and Ohio, and Rhode Island were about to cave in, on the advice of Massachusetts and New York he asked Michigan to come in and relieve them, and save the Republican party from rupture. Is it possible that the Republican party is to be saved, even if the Union be destroyed? It is very evident that those "stiff-backed" gentlemen were to be sent here in order to prevent any compromise being presented. The object, then, as I stated, on the part of certain members on the other side of the Chamber, has been to send delegates to the Conference for the purpose of preventing any compromise measures being proposed by that body. They desire, in the language of these letters, to save their party from destruction. They say that if the Conference should agree on any thing, it would have a demoralizing effect upon the people, and upon the two Houses of Congress. In one word, it will have the effect to make a rupture in the Republican party, which, in the estimation of the Senators, is higher, holier, and better, it seems, than the Union.

In consequence of this fact being apparent, that it is not the design or the intention that the Peace Conference should do any thing, I think we should not wait for it any longer, but the Senate should proceed at once to the consideration of the amendments to the Constitution proposed by my colleague. I think we had better be engaged in that work—one that is calculated, if the propositions of my colleague should pass, in my opinion, to save the country from further disintegration. I think we had better be at that, than be appropriating money to support an Army that is to be engaged, it seems, in the work of blood-letting. The Senator from Michigan thinks the Government is not worth a rush until it shall have drawn a little blood. I hope my motion will prevail, and that we shall lay this bill aside and proceed to the consideration of the measures proposed by my colleague.

Mr. CHANDLER:—The Senator from Kentucky has read what purports to be a short note that I sent the other day to the Governor of Michigan. Whether it is a correct copy or not, I cannot say; I kept no copy of it, nor do I care.

Mr. POWELL:—If the Senator will allow me one word, I will state to the Senate that, when I received this paper, yesterday—

Mr. CHANDLER:—I was about to state that.

Mr. POWELL:—I asked both the Senators if the letters were right. They told me they kept no copies, but they believed they were substantially so.

Mr. CHANDLER:—I was going to say that. Now, sir, I desire to answer the Senator from Kentucky, and to set myself right on this question—(my position from the first has been well known upon this question, and upon most others)—but, at the earnest solicitation of the Senator from Maine, who has charge of this bill, I will forego the response which I intended to make, and which I shall make to the Senator from Kentucky, for the present, for the purpose of going on and disposing of the Army appropriation bill. At another day I propose to give my views more at large upon these compromise measures, that the Senator from Kentucky seems so anxious to take up at this time. I am as anxious as he is to go into that discussion. I am anxious to go into it. It is a question that ought to be discussed. It is a question in which the people of Michigan take a deep interest. They are opposed to all compromises; they do not believe that any compromise is necessary; nor do I. They are prepared to stand by the Constitution of the United States as it is; to stand by the Government as it is; ay, sir, to stand by it to blood, if necessary.

Mr. POWELL:—I ask for the yeas and nays on my motion.

The yeas and nays were ordered.

Mr. MASON:—I ask the general permission of the Senate to give notice that at three o'clock I shall move to go into executive session; and if it is not agreed to, I shall then ask that the galleries may be cleared, for the purpose of disclosing what I consider ought to be passed on in executive session.

Mr. JOHNSON, of Tennessee:—If I can obtain the attention of the Senator from Kentucky, I wish to make a suggestion. Those resolutions, as I understood, went over until last Monday at one o'clock, and were then to be taken up and considered. I do not know whether the motion was made in that way, or whether it was an informal understanding that they should be taken up last Monday for consideration; but as the Army bill is now under consideration, and the time is growing short, would it not be better to have a night session, and postpone the subject until seven o'clock this evening, and

let it be taken up at that time; and then let this other bill go on to-day? Those who want to make speeches on those resolutions could do it to-night; we should thus save time and expedite business.

Mr. FESSENDEN:—I think the Senator from Virginia has given an additional very good reason for taking up the Army bill, and going through with it; and not postponing it for speeches at the present time.

The question being taken by yeas and nays, resulted—yeas 17, nays 27; as follows:

YEAS.—Messrs. Bayard, Bigler, Bragg, Bright, Clingman, Douglas, Fitch, Gwin, Hunter, Johnson of Tennessee, Kennedy, Lane, Latham, Mason, Polk, Powell, and Rice—17.

NAYS.—Messrs. Anthony, Baker, Bingham, Cameron, Chandler, Clark, Collamer, Dixon, Doolittle, Durkee, Fessenden, Foot, Foster, Grimes, Hale, Harlan, King, Morrill, Pearce, Seward, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, and Wilson—27.

So the motion to postpone the Army bill, in order to take up the resolutions of Mr. CRITTENDEN, was not agreed to.

Subsequently the following action, by the Senate, was taken on the report of the Peace Conference.

The VICE-PRESIDENT:—The Chair has received a communication from Ex-President TYLER, as President of the Conference which has been recently sitting in this city, which he will lay before the Senate; and also the proceedings of that body.

The Secretary read the communication, as follows:

To the Senate of the United States:

I am instructed, as the presiding officer of the Convention, composed of Commissioners appointed by twenty-one States, now in session in this city to deliberate upon the present unhappy condition of the country, to present to your honorable body the accompanying request and proposed amendment.

JOHN TYLER,

President of the Convention.

WASHINGTON, D.C., *February 27, 1861*.

To the Congress of the United States:

The Convention assembled, upon the invitation of the State of Virginia, to adjust the unhappy differences which now disturb the peace of the Union, and threaten its continuance, make known to the Congress of the United States that their body convened in the City of Washington on the fourth instant, and continued in session until the twenty-seventh.

There were in the body, when action was taken upon that which is here submitted, one hundred and thirty-three Commissioners, representing the following States: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, Indiana, Illinois, Iowa, *Wisconsin*, and Kansas. They have approved what is herewith submitted, and respectfully request that your honorable body will submit it to conventions in the States as article *thirteen* of the amendments to the Constitution of the United States.

Attest: J. HENRY PULESTON,

Secretary.

ARTICLE XIII.

SEC. 1. In all the present territory of the United States north of the parallel of 36° 30′ of north latitude, involuntary servitude, except in punishment of crime, is prohibited. In all the present territory south of that line, the *status*

of persons held to involuntary service or labor, as it now exists, shall not be changed; nor shall any law be passed by Congress or the Territorial Legislature to hinder or prevent the taking of such persons from any of the States of this Union to said territory, nor to impair the rights arising from said relation; but the same shall be subject to judicial cognizance in the Federal courts, according to the course of the common law. When any Territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population equal to that required for a member of Congress, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary servitude, as the constitution of such State may provide.

SEC. 2. No territory shall be acquired by the United States, except by discovery and for naval and commercial stations, depots, and transit routes, without the concurrence of a majority of all the Senators from States which allow involuntary servitude, and a majority of all the Senators from States which prohibit that relation; nor shall territory be acquired by treaty, unless the votes of a majority of the Senators from each class of States hereinbefore mentioned be cast as a part of the two thirds majority necessary to the ratification of such treaty.

SEC. 3. Neither the constitution, nor any amendment thereof, shall be construed to give Congress power to regulate, abolish, or control, within any State, the relation established or recognized by the laws thereof touching persons held to labor or involuntary service therein, nor to interfere with or abolish involuntary service in the District of Columbia without the consent of Maryland and without the consent of the owners, or making the owners who do not consent just compensation; nor the power to interfere with or prohibit Representatives and others from bringing with them to the District of Columbia, retaining, and taking away, persons so held to labor or service; nor the power to interfere with or abolish involuntary service in places under the exclusive jurisdiction of the United States within those States and Territories where the same is established or recognized; nor the power to prohibit the removal or transportation of persons held to labor or involuntary service in any State or Territory of the United States to any other State or Territory thereof where it is established or recognized by law or usage, and the right during transportation, by sea or river, of touching at ports, shores, and landings, and of landing in case of

distress, shall exist; but not the right of transit in or through any State or Territory, or of sale or traffic, against the laws thereof. Nor shall Congress have power to authorize any higher rate of taxation on persons held to labor or service than on land. The bringing into the District of Columbia of persons held to labor or service, for sale, or placing them in depots to be afterwards transferred to other places for sale as merchandise, is prohibited.

SEC. 4. The third paragraph of the second section of the fourth article of the Constitution shall not be construed to prevent any of the States, by appropriate legislation, and through the action of their judicial and ministerial officers, from enforcing the delivery of fugitives from labor to the person to whom such service or labor is due.

SEC. 5. The foreign slave-trade is hereby forever prohibited; and it shall be the duty of Congress to pass laws to prevent the importation of slaves, coolies, or persons held to service or labor, into the United States and the Territories from places beyond the limits thereof.

SEC. 6. The first, third, and fifth sections, together with this section of those amendments, and the third paragraph of the second section of the first article of the Constitution, and the third paragraph of the second section of the fourth article thereof, shall not be amended or abolished without the consent of all the States.

SEC. 7. Congress shall provide by law that the United States shall pay to the owner the full value of his fugitive from labor, in all cases where the marshal, or other officer, whose duty it was to arrest such fugitive, was prevented from so doing by violence or intimidation from mobs or riotous assemblages, or when, after arrest, such fugitive was rescued by like violence or intimidation, and the owner thereby deprived of the same; and the acceptance of such payment shall preclude the owner from further claim to such fugitive. Congress shall provide by law for securing to the citizens of each State the privileges and immunities of citizens in the several States.

Mr. MASON:—I suppose the proper disposition is to have it printed.

Mr. CRITTENDEN:—There is nothing to print.

Mr. GREEN:—And refer it to the Committee for the District of Columbia. I think that is about right.

Mr. CRITTENDEN:—I move that it be referred to a select committee, with instructions to report to-morrow morning.

Mr. MASON:—We ought certainly to have it printed.

Mr. DOUGLAS:—It can be printed in the mean time.

Mr. FESSENDEN:—We should have time to look at it.

The VICE-PRESIDENT:—It is moved that the communication be printed and referred to a select committee, with instructions to report to-morrow morning.

Mr. BIGLER:—I would be glad to make a suggestion to the Senator from Kentucky, that he name in addition an hour to-morrow at which the consideration of the report shall be in order, or else a single objection will throw it over to the next day.

Mr. CRITTENDEN:—Well, to-morrow at twelve o'clock, I would say. ["One."] I move one o'clock.

Mr. BIGLER:—With instructions to the committee to report to-morrow morning, and that the report be the special order at one o'clock?

Mr. CRITTENDEN:—Yes, sir.

The VICE-PRESIDENT:—Does the Senator indicate the number of the committee?

Mr. GREEN:—Seventeen.

Mr. DOUGLAS:—Five is enough.

Mr. CRITTENDEN:—A committee of five; no more.

Mr. COLLAMER:—I would suggest to gentlemen not only that it be made the order of the day for twelve o'clock to-morrow, but that it be adopted by three-fourths of the States the next day. [Laughter.]

The VICE-PRESIDENT:—It is moved and seconded that the communication be printed and referred to a select committee of five members, to report to-morrow at one o'clock.

Mr. HALE:—I ask for a division of the question.

The VICE-PRESIDENT:—The first question will be on printing.

The motion to print was agreed to.

The VICE-PRESIDENT:—The next question is that the communication be referred to a select committee of five, with instructions to report to-morrow at one o'clock.

Mr. HALE:—I ask for a division of that.

The VICE-PRESIDENT:—How would it be divided?

Mr. HALE:—The motion to refer to a select committee is one proposition, and the instructions are another.

The VICE-PRESIDENT:—That is the form in which the Senator wants it divided?

Mr. HALE:—Yes, sir.

Mr. BIGLER:—As the Chair states the proposition, it does not reach the object which the Senator from Kentucky had in view. The instructions should be that the committee report to-morrow morning, and that the report shall be the special order at one o'clock. Unless that is done, one objection will put it over.

The VICE-PRESIDENT:—The Senator from New Hampshire asks for a division of the question, and it is susceptible of division. The first question is on referring the communication to a special committee of five.

The motion was agreed to.

The VICE-PRESIDENT:—The next branch of the proposition is that that committee be instructed to report to-morrow morning, and that their report be made the special order for to-morrow at one o'clock.

Mr. HALE:—On that, I should like to have the yeas and nays.

The yeas and nays were ordered.

The VICE-PRESIDENT:—The question is upon directing the committee to report to-morrow morning, and that the report be made the special order for to-morrow at one o'clock.

The Secretary proceeded to call the roll.

Mr. CLINGMAN:—Though I am utterly opposed to the proposition, I am willing to give it the direction its friends desire, and I vote "yea."

Mr. LATHAM:—I desire to change my vote. I have no confidence in this thing, and I fear it will be an unnecessary consumption of time; but I yield to the judgment of my political associates and I vote "yea."

The result was announced—yeas 26, nays 21; as follows:

YEAS.—Messrs. Anthony, Baker, Bayard, Bigler, Bragg, Bright, Clingman, Crittenden, Dixon, Douglas, Fitch, Foster, Gwin, Hunter, Johnson of Tennessee, Kennedy, Lane, Latham, Mason, Nicholson, Pearce, Polk, Powell, Rice, Sebastian, and Thomson—26.

NAYS.—Messrs. Bingham, Chandler, Clark, Collamer, Doolittle, Durkee, Fessenden, Foot, Green, Grimes, Hale, Harlan, King, Morrill, Seward, Simmons, Sumner, Ten Eyck, Trumbull, Wade, and Wilson—21.

So the motion was agreed to.

Mr. CRITTENDEN:—I move that the committee be appointed by the Chair.

The motion was agreed to; and Mr. CRITTENDEN, Mr. BIGLER, Mr. THOMSON, Mr. SEWARD, and Mr. TRUMBULL, were appointed the committee.

On the 28th of February the committee so appointed, presented to the Senate the following report, and the following action was taken thereon:

Mr. CRITTENDEN:—The select committee, to whom was referred the communication received yesterday from the Convention assembled in this place, commonly called the Peace Convention, with instructions to report by twelve o'clock to-day, have had the subject under consideration, and have directed me to make the following report—

Mr. HALE:—I object to its consideration to-day.

The PRESIDING OFFICER (Mr. FITCH in the chair):—Objection being made, it cannot be considered until one o'clock, but it will be read.

The Secretary read the joint resolution reported by Mr. CRITTENDEN (S. No. 70), proposing certain amendments to the Constitution of the United States, as follows:

JOINT RESOLUTION ***proposing certain amendments to the Constitution of the United States.***

WHEREAS Commissioners, appointed on the invitation of the State of Virginia, by the following States, respectively: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, Missouri, Ohio, Indiana, Illinois, Iowa, Wisconsin, and Kansas, have met in Convention at the City of Washington, for the purpose of considering the distracted and perilous condition of the country, and proposing measures for the preservation of the peace, the safety of the people, and the security of the Union, and having performed that duty, and communicated to Congress the result of their deliberations, with a request and recommendation on the part and in the name of said States, that the following be proposed to the several States as amendments to the Constitution of the United States, according to the fifth article of said instrument, namely: [See article preceding.]

Mr. SEWARD:—Mr. President—

Mr. GWIN:—I think I am on the floor.

Mr. SEWARD:—I desire to speak a word from the committee touching the present report.

Mr. GWIN:—Certainly.

Mr. HALE:—I object to its present consideration.

Mr. SEWARD:—I am not proposing to consider it.

Mr. BIGLER:—The Senator from New Hampshire has no right to make the objection.

Mr. SEWARD:—I am not proposing to consider it at the present moment; but I am desirous of making an explanation from the committee, touching the report made by the Senator from Kentucky. The honorable Senator from Illinois [Mr. TRUMBULL], and myself, constituted a minority of the committee. We dissent from the report, and we proposed in committee to submit a substitute. The majority held that, for some reason, sufficient in their estimation, we were not entitled to submit a minority report. I therefore ask leave of the Senate to introduce a joint resolution in my own name, and in which the honorable Senator from Illinois authorized me to say that he concurs with me, and which I ask unanimous consent to have read and printed; and it will be the subject of consideration at such time hereafter as the Senate shall choose to hear it, either in connection with the other or not.

Mr. MASON:—Is it in the form of a report?

Mr. SEWARD:—No; it is not insisted on in that form; it is submitted on my own behalf. I desire that it may be read for information and printed, subject to the future action of the Senate.

The proposition of Mr. SEWARD was read, as follows:

A joint resolution concerning a National Convention to propose amendments to the Constitution of the United States.

WHEREAS, The Legislatures of the States of Kentucky, New Jersey, and Illinois, have applied to Congress to call a Convention for proposing amendments to the Constitution of the United States: Therefore,

Be it Resolved, &c., That the Legislatures of the other States be invited to take the subject into consideration, and to express their will on that subject to Congress, in pursuance of the fifth article of the Constitution.

Mr. BIGLER:—I desire to make—

The PRESIDING OFFICER:—The Senator from California was on the floor. No action is now requested on the paper just offered, only a motion to print. Shall the paper be printed?

Mr. HALE:—Was it read for information?

The PRESIDING OFFICER:—For information only.

Mr. SEWARD:—I move that it be printed.

The PRESIDING OFFICER:—The Chair hears no objection.

Mr. BIGLER:—I desire to make a remark in reference to the question of order made by the Senator from New Hampshire. The Senator objects to the consideration of the report to-day. Yesterday, when the Senator from Kentucky made the motion, I insisted on further moving that the report of the committee should be the special order at one o'clock to-day.

The PRESIDING OFFICER:—That is the record.

Mr. BIGLER:—That instruction was offered, and therefore the Senator's objection will not apply.

Mr. HALE:—Therefore it will.

Mr. SEWARD:—I insist on the motion to print.

The PRESIDING OFFICER:—The Senator from California is on the floor. The Senator from New Hampshire having objected to the present consideration of the resolution reported by the Senator from Kentucky, for the time being it cannot be considered.

Mr. SEWARD:—Will the Senator from California allow the question to be put on my motion to print?

The PRESIDING OFFICER:-The Chair heard no objection to that; and it was ordered.

Mr. DOOLITTLE:—The Senator from California will allow me to say a single word. I observe that, in this report, the State of Wisconsin is mentioned as having sent delegates to this Convention, commonly denominated the Peace Convention. That is a mistake. I desire, also, to give notice that when this subject shall come up for consideration, I shall offer as an amendment to the first section of article thirteen, as proposed, the following proviso:

Provided, however (and this section shall take effect upon the express condition), That no State, or any part thereof, heretofore admitted, or hereafter to be admitted, into the Union, shall have power to withdraw from the jurisdiction of the United States; and that this Constitution, and all laws passed in pursuance thereof, shall be the supreme law of the land therein, any thing contained in any constitution, act, or ordinance of any State Legislature or Convention to the contrary notwithstanding.

The section will then read as follows:

SEC. 1. In all the present territory of the United States north of the parallel of 36° 30′ of north latitude, involuntary servitude, except in punishment of crime, is prohibited. In all the present territory south of that line, the *status* of persons held to involuntary service or labor, as it now exists, shall not be changed; nor shall any law be passed by Congress or the Territorial Legislature to hinder or prevent the taking of such persons from any of the States of the Union to said territory, nor to impair the rights arising from the said relation; but the same shall be subject to judicial cognizance in the Federal courts, according to the course of the common law. When any Territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population equal to that required for a member of Congress, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary servitude, as the Constitution of such State may provide; *Provided, however* (and this section shall take effect upon the express condition), That no State, nor any part thereof, heretofore admitted, or hereafter to be admitted into the Union, shall have power to withdraw from the jurisdiction of the United States; and that the Constitution, and all laws passed in pursuance thereof, shall be the supreme law of the land therein, any thing contained in any constitution, act, or ordinance, of any State Legislature or Convention to the contrary notwithstanding.

And I desire that that amendment, which I now send to the Chair, may be printed.

The PRESIDING OFFICER:—Is there any objection to printing the paper which the Senator has just read? The Chair hears no objection.

The same day the Report of the Peace Conference was called up for consideration, when Senator HALE objected to the consideration of the report. Considerable discussion then ensued, in which Messrs. HALE, BIGLER, TRUMBULL, CRITTENDEN, and DIXON participated. This discussion related merely to the question, whether under the rules of the Senate the Report of the Peace Conference could at this time be taken up. The merits of the report were not considered, and for that reason it is not deemed necessary to report the proceedings of the Senate in this respect. The joint rules of the two Houses were suspended in order that another subject might be taken up, and no decision was had upon the question, whether the Report of the Peace Conference at this time should be considered.

The allotted time having been consumed in this discussion, the Senate proceeded to the consideration and disposal of several orders of the day. On the first of March it resumed action on the Report of the Peace Conference.

The PRESIDING OFFICER (Mr. FITCH):—It is the duty of the Chair to announce the special order of the day, being the joint resolution (S. No. 70) proposing certain amendments to the Constitution of the United States.

Mr. DOUGLAS:—I ask that the resolutions from the House of Representatives, in regard to amendments of the Constitution, be laid before the Senate, in order that they may be considered at the same time.

The PRESIDING OFFICER:—The Chair will lay before the Senate a joint resolution from the House of Representatives.

The joint resolution (H.R. No. 80) to amend the Constitution of the United States, was read the first time by its title.

Mr. DOUGLAS:—I ask that that be made the special order at the same time, in connection with the joint resolution reported by the Senator from Kentucky.

Mr. MASON:—I have looked at that joint resolution, and it certainly ought to be committed to a committee to correct its English. It is unintelligible.

Mr. DOUGLAS:—My object is merely to have it considered at the same time with the other.

The PRESIDING OFFICER:—The joint resolution will have its second reading.

The joint resolution (H.R. No. 80) was read a second time by its title.

The PRESIDING OFFICER:—It is now the subject of any motion that may be made in regard to it.

Mr. DOUGLAS:—I move that it be made the special order in connection with the joint resolution reported by the Senator from Kentucky.

Mr. CLARK:—How does that happen to be in order here when there is a special order called up?

The PRESIDING OFFICER:—It is not in order to consider it, except by unanimous consent.

Mr. CLARK, Mr. BINGHAM, and Mr. SUMNER:—I object.

The PRESIDING OFFICER:—The special order is before the Senate.

Mr. DOUGLAS:—I ask that the other resolutions which have come from the House of Representatives, be read. There are two of them, I believe.

The House joint resolutions (No. 64) declaratory of the opinion of Congress in regard to certain, questions now agitating the country, and of measures calculated to reconcile existing differences, were read the first time by the title.

The PRESIDING OFFICER:—The second reading—

Mr. CHANDLER and others:—I object.

The PRESIDING OFFICER:—Is objection made?

Mr. CHANDLER:—I withdraw my objection.

Mr. SUMNER:—I object.

The PRESIDING OFFICER:—Objection being made, it cannot be read the second time.

Mr. SIMMONS:—It passed the other House unanimously. There can be no objection, I think.

Mr. CLARK:—We have another subject up.

The PRESIDING OFFICER:—The special order is before the Senate. The question is on the second reading.

The joint resolution (S. No. 70) proposing certain amendments to the Constitution of the United States, was read the second time, and considered as in Committee of the Whole.

Mr. PUGH:—Let the resolution be read, not the proposition itself, but the formal part, the introduction.

Mr. HUNTER:—Is that open to amendment now?

The PRESIDING OFFICER:—It is in Committee of the Whole, and open to amendment. The reading of the formal part of the joint resolution is called for.

The Secretary read it.

Mr. SEWARD:—I offer the following as a substitute:

Strike out all after the word "whereas," in the preamble, to the end of the resolution, and insert:

The Legislatures of the States of Kentucky, New Jersey, and Illinois, have applied to Congress to call a Convention for proposing amendments to the Constitution of the United States; Therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Legislatures of the other States be invited to take the subject of such a Convention into consideration, and to express their will on that subject to Congress, in pursuance of the fifth article of the Constitution.

The PRESIDING OFFICER:—The Chair understands that a proviso was offered to the matter that the Senator from New York proposes to strike out. The vote will first be taken on the proviso offered by the Senator from Wisconsin [Mr. DOOLITTLE], to insert at the end of section one of article thirteen:

Provided, however (and this section shall take effect upon the express condition), That no State, nor any part thereof, heretofore admitted, or hereafter to be admitted into the Union, shall have power to withdraw from the jurisdiction of the United States; and that this Constitution, and all laws passed in pursuance thereof, shall be the supreme law of the land, any thing contained in any constitution, act, or ordinance of any State Legislature or Convention to the contrary notwithstanding.

Mr. HUNTER:—I believe that the amendment of the Senator from Wisconsin is not pending.

The PRESIDING OFFICER:—The Senator from Wisconsin proposes that as a proviso to the matter which the Senator from New York moves to strike out; and the question must first be taken on that.

Mr. HUNTER:—I did not know that that was before the Senate.

Mr. BIGLER:—He only gave notice of it.

Mr. HUNTER:—I thought the Senator from Wisconsin only gave notice that he would offer it.

The PRESIDING OFFICER:—The Chair may have misunderstood the Senator's motion at the time. He called for the printing of it; but if that is the understanding of the Senate—

Mr. SEWARD:—What does the record say?

The PRESIDING OFFICER:—The Chair understands that the record presents it as "intended to be offered."

Mr. SEWARD:—Then the question is on the substitute. I ask that the question be taken.

Mr. HUNTER:—I have an amendment to submit. I propose to amend the first section of the proposition before us, by inserting in lieu of it the first article of what are called the CRITTENDEN resolutions. I move to strike out the first article of the peace propositions, and to insert:

That in all the territory of the United States now held, or hereafter acquired, situate north of latitude 36° 30′, slavery or involuntary servitude, except as a punishment for crime, is prohibited while such territory shall remain under territorial government. In all the territory south of said line of latitude, slavery of the African race is hereby recognized as existing, and shall not be interfered with by Congress; but shall be protected as property by all the departments of the territorial government during its continuance; and when any Territory, north or south of said line, within such boundaries as Congress may prescribe, shall contain the population requisite for a member of Congress, according to the then Federal ratio of representation of the people of the United States, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without slavery, as the constitution of such new State may provide.

Mr. COLLAMER:—I rise to a question of order. It will be observed that this paper is before us under a recital that, whereas these propositions of amendment have been presented by the Commissioners, as they are called, from the several States—naming them—who have asked Congress to submit them, therefore we propose to submit them to the States. The whole proceeding is based and predicated on this recital. I say that it cannot be amended. If it were amended, it would cease to be the application of that

body which the recital States. I therefore object to any amendments, except a substitute; perhaps a substitute may be offered striking out the recital and all; but an amendment to it is out of order, in my view.

Mr. HUNTER:—In regard to the question of order, I understand that the recital is the recital of the committee, and that the question before us is on these propositions for amending the Constitution of the United States, which are to be treated as a bill. If so, each section is subject to amendment as a bill would be subject to amendment. It was my purpose to offer the entire series of what are called the CRITTENDEN resolutions, as an amendment to these, and I still intend to offer them, section by section; but I was prevented from offering them in that form, because the Senator from New York got the floor first, and offered his proposition as a substitute. I therefore could not raise the question which I desired to raise, except by offering the amendments, section by section, in order to perfect the original proposition. I submit that it is in order.

Mr. COLLAMER:—I submit, still, my question of order, suggesting to gentlemen that if we make any amendment, we must strike out the recital.

Mr. BIGLER:—I do not see that any ordinary question of order can be raised in this case; but I do think there is a consideration much more grave, and that is the question whether we will treat the series of resolutions presented here by this Peace Congress as a proposition which we ought either to accept or reject. I was one of those in the select committee who took that position. It was manifestly intended that we should accept the entire programme, or reject it. Therefore I was unwilling; and we decided to consider no question of amendment—

Mr. HUNTER:—That is not a question of order, but of propriety. It would be an argument against any amendment.

Mr. BIGLER:—I have said it was no ordinary question of rules; but that there was a far graver question of propriety. I agree with the Senator in that view; and I rose for the purpose of alluding to the view taken of this subject by the select committee. The Senator from New York desired the leave of the committee to report his proposition as a substitute; but the majority of the committee held that the resolutions had not been committed to us for the purpose of considering them and changing them, or substituting something

else, but simply to attach to them the formal resolution to present them as amendments to the Constitution for the ratification of the States. For that reason we proposed no amendment; and the Senator from New York yesterday offered his substitute on his own responsibility, because, as I understood him, of the view taken by the committee. Now, sir, I still entertain the view that, while the Senate have a clear right unquestionably to change these resolutions, and to change the resolution of submission to make it conform to any thing we may do, we ought to consider these resolutions sent here by this Peace Conference as a whole, and accept them or reject them; but there can be no question of ordinary rule raised as to the right to offer an amendment; there is a greater, a graver question of propriety as to how they shall be treated.

Mr. SEWARD:—It is not merely a question of form or order, but the proposition of the Senator from Virginia would change the whole character of the transaction. This joint resolution is one single, complete proposition. It is one act. It begins with a declaration by Congress, that "whereas Commissioners, appointed on the invitation of the State of Virginia," have performed a certain duty confided to them, "and communicated to Congress the result of their deliberations, with a request and recommendation on the part and in the name of said States"—of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and the rest of the States represented in the Convention—"the following"—nothing different, nothing originating in Congress, nothing originating anywhere else, but—"the following be proposed to the several States as amendments to the Constitution of the United States, according to the fifth article of said instrument." Now, if we should adopt this whole transaction, we should simply do this: we should submit these amendments to the people of the United States for their acceptance, for the reason that the Peace Convention, as it is called, has considered upon the subject, and thought it grave enough to solicit us to invest it with the legislative or congressional sanction, and so submit it to the Legislatures and conventions of the States; but whenever you have made a single alteration in it, such as is proposed now by the Senator from Virginia, it is not, then, the proposition of the States "of Maine, New Hampshire, Vermont, Massachusetts," or any other States; but it is a recommendation of the Congress of the United States. The whole character is changed. The Convention is swept out of existence in the history of

Congress. The resolutions then adopted become the deliberate conviction of the majority of the Congress of the United States, who substitute their own judgment, and their own wisdom, and their own will, for the wishes, the opinions, respectfully submitted to them by the representatives of those States, and take the responsibility of saying that this is what the Peace Convention should have submitted, instead of the proposition which they have sent here.

Mr. HUNTER:—I wish to make a suggestion in regard to the real position of this question, as it now appears before us. The arguments that have been urged by the Senator from Pennsylvania and the Senator from New York might very well be brought up against the propriety of adopting the amendment; but, so far as the question itself stands, it is only brought before us by a report of our committee. The Peace Conference had no power to present questions or make communications to us; but they having made a communication, and we, having respect for that body, agreed to take it up, and we referred their proposition to a committee. The only authority which we have now for considering it in the Senate, is on the recommendation of our committee. This proposition stands here as a recommendation of that committee to alter the Constitution, as proposed by this Conference. It being their recommendation in regard to the alteration of the Constitution, under our rules it stands like a bill; and I have a right to move to amend it, section by section; and in doing so, I should be pursuing the method taken by the Peace Conference, as I understand, for I am told they never took a vote on it as a whole, but voted on it proposition by proposition; and in fact, the majority who passed the propositions were composed of different States, and they never did take a vote on the articles as a whole.

Now, I am proposing to amend this as it comes up, proposition by proposition; and if it would be in order for me to make such a motion, supposing that this proposition had originated with a committee of this body, who had made a report proposing such amendments to the Constitution, I should have a right to make it now, for it is only in that way that it appears legally before us. I say, then, so far as the question of order is concerned, it seems to me that I have clearly a right to do it. I would be willing, in order to get rid of the question of order, to move to strike out the preamble too; but in my opinion it stands before us as a bill would stand. I

may amend the particular sections. I am not proposing by this amendment to perfect the whole proposition, but a part of it; and if I should succeed in that, I can then go back, and move to amend the preamble.

So far as the question of order is concerned, I cannot see how it is that I am out of order. There may be a question of propriety. Those who believe that this proposition is one that ought to be accepted as a whole, and ought to be accepted because it comes from this body, eminently respectable, as we all acknowledge it to be, may say that we ought not to amend it; not that we have not the power, but that we ought not to amend it. Those of us, however, who think as I do, that it is a proposition not to be accepted; that it is a proposition highly dangerous, and one which will give rise to great difficulties, on the other hand, may think it eminently proper to amend it. I, thinking in that way, avail myself of what I suppose my parliamentary right, to offer an amendment; and it is upon that question of parliamentary right alone, as I understand, that the Chair is to determine.

Mr. TRUMBULL:—Mr. President, it seems to me very clear that, as a question of order, this proposition does not stand in any respect different from any other. Suppose an individual Senator had thought proper to propose amendments to the Constitution; that they had been referred to a committee; and the committee had approved them: what would it have done? Precisely what this committee has done. It would have reported back the proposition, with a resolution in conformity with that clause of the Constitution which points out the mode of its amendment. The fact that this proposition was adopted by gentlemen from various States does not alter it at all. It comes here as a mere petition. However respectable and dignified the Convention may have been which arrived at these conclusions; however much weight their conclusions may be entitled to in the country, they come here simply as petitioners—in that light, and none other—asking Congress to submit certain resolutions to the States of the Union to be adopted or not as portions of the fundamental law, and, unquestionably, any Senator has a right to propose an amendment in the same way as if they were introduced by an individual Senator. Can it be possible that if I draw up a series of propositions as amendments to the Constitution of the United States, and a select committee thinks proper to recommend them to this body, the hands of the body are tied up, and it must take them, word for word, and letter for letter, as I have drawn them? The question is, whether it is proper to do this;

whether the respect due the Peace Convention should not deter gentlemen from offering amendments, is a question we are not discussing. The point is one of order; and as a question of order, I was astonished when the Senator from Pennsylvania first suggested it.

Mr. BIGLER:—I suggested no question of order.

Mr. TRUMBULL:—I did understand the Senator from Pennsylvania to say, that that was the view he took in committee in response to what was said by the Senator from Vermont, and it was to that I alluded when I said I was astonished at the ground he took, that the committee could not amend these propositions, or that any other person could not move to amend them.

Mr. BIGLER:—The Senator from Vermont made a distinct point of order; but I did not sustain the Senator's views on the point of order. On the other hand, so far from that, I stated distinctly, that there could be no ordinary question of order under the rule; but a question of propriety, a question as to the consideration that was to be attached to this proposition of the Peace Convention; that the select committee, or a majority, at least, were under the impression that it was expected we would treat it as a whole, and accept it or reject it. That is what I said. I have no doubt whatever of the right of a Senator on this floor to move to amend this resolution. But, sir, I cannot agree with the Senator from Illinois by any means, that this proposition should be treated as the mere report of a committee or the proposition of an individual Senator. Who supposes that twenty States would have sent commissioners here to consider this great question and suggest to Congress —

Mr. TRUMBULL:—The Senator from Pennsylvania, I see, is misunderstanding me. I said, as a question of order, it was to be treated the same as if offered by an individual Senator; that however much respect we might have for it, as coming from the source it did, yet, as a question of order, there was no difference in the rules.

Mr. BIGLER:—I did not understand the Senator as placing entire stress on the question of order. I have been endeavoring to take this question away from the rules, to set it above the rules, and I say that we ought to consider it without reference to the rules. If it be that this programme is not acceptable to the Senate, let it be rejected. What I supposed was intended

from the beginning was, that whatever they sent here was to be considered as an entirety—accepted or rejected. I was about to remark, who supposes that twenty States would have sent commissioners to prepare a programme of peace for the consideration of Congress, if they had supposed that immediately the peculiar views of each member of Congress would be set up in opposition to them?

Mr. President, a single remark in relation to what fell from the Senator from New York, and I shall have done. The Senator from New York alludes to the terms of the preamble, that, for the reason that these commissioners agreed, therefore these propositions are submitted as amendments to the Constitution. I do not wish to be understood as regarding it in that light. I do not think it is the right of Congress to submit propositions of amendment of the Constitution because they come from any source. The spirit of the Constitution is, that Congress will submit amendments to the Constitution; because Congress approves those amendments, and it would be a reason why I should vote for or against them, whether I approved them or not. If, as a whole, I could vote for them, I would vote for them; if, as a whole, I could not, I would vote against them. That does not affect the question whether, under all the circumstances, and solemn surroundings, the labor which has been bestowed, and the character of the men that have presented this paper, we should consider it as an entirety, or attempt to cut it up by piecemeal, by which neither they, nor the public, will ever ascertain what the judgment of Congress was on the results of their labor. That is what I say.

Mr. SEWARD:—The honorable Senator may very naturally and very properly take the ground that he would not vote, and that Congress ought not to vote, for submitting this proposition to the people, for the reason assigned in the paper before us. I have not any disposition to quarrel with him about it. I might take the same view, and say that I would not submit to the people a proposition which was futile, which was frivolous. That is not what I was speaking to. What I was speaking to was, the character of this proposition; and this is a proposition just to this effect, logically and technically expressed: that whereas these commissioners appointed by the States have met, consulted, considered, and adopted that resolution, therefore, for that reason, independent of every thing else, Congress submits it to the States.

Mr. PUGH:—I want to make an appeal to the friends of some proposition of peace. This is the last day of the session but one, and we have not made the progress of one line. We have gone into an eternal discussion about questions of order, and that, too, in defiance of the rule of the Senate. I insist that the question shall be decided without further debate.

The PRESIDING OFFICER (Mr. FITCH):—It is not for the Chair to decide any question of propriety, except as an individual Senator. As Presiding Officer, he does not deem the question of order, made by the Senator from Vermont, to be well taken. The joint resolution differs in no respect from other resolutions, and is open to amendment, and is before the Senate, as in Committee of the Whole, for that purpose. The question is on agreeing to the amendment which has been offered by the Senator from Virginia.

Mr. HUNTER:—Mr. President, I have offered this amendment, as the first of a series which I shall offer, for the purpose of carrying out the will of my State, as it has been expressed through its Legislature; and I might say there are other Senators similarly situated, for there are other States which have declared a disposition to settle upon the basis of what are called the CRITTENDEN resolutions. That is the first reason which prompts me; and to me it is imperative, because the Legislature of the State which I have the honor in part to represent, has declared that this is the basis upon which it would settle, and intimated that it would not take less than they propose by way of security for the South. I have also another reason. I have examined this proposition of the Peace Conference—

Mr. WADE:—Will the Senator let us hear it read? We do not understand what his proposition is.

Mr. HUNTER:—My proposition is the first article from the CRITTENDEN amendments, in regard to the territorial adjustment.

Mr. WADE:—We understand that.

Mr. HUNTER:—After as careful an examination as I have been able to give this proposition from the Peace Conference since it was printed, that is to say, within the last day or two, I have come to the conclusion that it would not only make a great many more difficulties than it would remove, if it should be adopted as an amendment to the Constitution, but that it would

place the South—the slaveholding States—in a far worse position than they now occupy under the present Constitution, with the Dred Scott decision as its exposition.

Mr. CLARK:—Will the Senator from Virginia allow me to make a suggestion?

Mr. HUNTER:—Certainly.

Mr. CLARK:—I understand him to say he proposes to offer the several propositions of the CRITTENDEN amendment one after the other.

Mr. HUNTER:—Yes, sir.

Mr. CLARK:—Then I suggest, as that is the intention of the Senator, that unanimous consent be given to move them as one amendment, so that we may have them all up for discussion, if any one chooses to discuss them, at the same time.

Mr. HUNTER:—I have no objection to that, if it is the general wish. I was saying, Mr. President, when I was interrupted, that after as careful an examination as I was able to give this peace proposition, since it was printed, I came to the conclusion that it would put the southern States in a far worse position than they now occupy under the present Constitution, and with the Dred Scott decision. Under that Constitution, and with the Dred Scott decision, they had a right, as the court has decided, to carry their slaves into any Territory of the United States. That is a right which has been adjudicated to them by a solemn decision of the Supreme Court; and it is to be remembered that this right has not only been accorded to them by the decision of the court, but by the action of the several branches of the Federal Government. That is their present state of things under the present Constitution of the United States with regard to the territorial question. In what position, then, does this proposed territorial adjustment place them? Why, sir, it excludes them; it puts the WILMOT proviso on all territory north of 36° 30′; and south of 36° 30′ it gives them the privilege of another lawsuit, in order to try their right and title to enter the territory with their slaves. What are the words of this proposed amendment of the Constitution?

"In all the present territory south of that line, the *status* of persons hold to involuntary service or labor, as it now exists, shall not be changed; nor shall any law be passed by Congress or the Territorial Legislature to hinder or prevent the taking of such persons from any of the States of this Union to said territory, nor to impair the rights arising from said relation; but the same shall be subject to judicial cognizance in the Federal courts, according to the course of the common law."

"In all the present territory south of that line, the *status* of persons held to involuntary servitude or labor, as it now exists, shall not be changed." What is the meaning of that word "*status*"? What is the *status*? The word *status* may be applied to different things; there may be a local *status* or a political *status*. In some countries a slave may hold property, and, in a certain form, sue; in others, he cannot. Or it may be the social and legal relation, that of the slave to his master, which constitutes the *status* that is referred to; and I presume it is that which it is declared shall not be changed. But, sir, shall not be changed by whom? By Congress? It does not say so. By the Territorial Legislature? It does not say so in terms. Does it mean that it shall not be changed by Congress or by the government of the Territory? Does it mean that it shall not be changed at all by anybody? Does it mean the master shall not emancipate him if he chooses? Is it an absolute prohibition of any change of the *status* of the slave, of any sort or description?

These are the terms which we are obliged to resort to in order to escape from the manly declaration of the CRITTENDEN resolution, that south of that line slavery shall be recognized and protected. It was eminently proper, as we excluded them north of it, that our institutions should be recognized and protected south of that line. That, sir, was plain English; that everybody could understand; but here we are interpolating law Latin into the Constitution; this word "*status*" is introduced; and who is to determine what the *status* was? I thought it had been considered a march forward, a step of progress, an evidence of improvement in English legislation, when it abandoned Norman French and law Latin, and resorted to the mother tongue; and especially it should be so, when we are making constitutions for American people of English descent, and who speak the English tongue. A constitution is for the millions, and the millions should be able to understand it.

But, Mr. President, let us proceed a little further. This whole matter is to be subject to judicial cognizance in the Federal courts, according to the course of common law. That embraces the right of the master to his slave as a matter of cognizance under the common law before the courts; because what do they mean by the *status* of all persons held to involuntary servitude or labor? They mean rightfully held. They do not mean if a man is kidnapped and held illegally to involuntary service or labor that he is always to be so held. It means that the *status* of persons who are rightfully and legally held shall not be changed; and who is to determine that? The courts are to determine it according to the common law. That is to be determined by judges who are to be appointed from a party, and by a party who believe that there cannot be property in man; by a party who believe that, in the Somerset case, Lord MANSFIELD has laid down the common law properly; by a party who will probably believe that the decision of the English courts, in regard to the slave ANDERSON, that it was no murder for a slave when escaping to kill his master, was a correct exposition of the common law.

How, then, do we stand? Why, sir, in relation to our right to slaves, we have to try that right before judges who are thus appointed, and appointed from a party who we know entertain these opinions. Why, sir, you might poll that party through the whole United States, and I would venture any thing upon the assertion that you cannot get one in a hundred thousand who would not deny that there could be property in man, especially under the common law. We thus lose the advantage of the Dred Scott decision. According to the Dred Scott decision, we can carry them into the territory of the United States and hold them, and it is decided that there is property in slaves—decided under the Constitution. The court maintain that the Constitution recognizes it. It is upon constitutional ground that we have made our claims, and so far, it is upon this that we have fought and won the battle, not upon common law; and now we are to abandon the advantages that we have got from that ground of title under the Dred Scott decision, and go into court and try a case that has been already decided in our favor; and under the common law, try it before judges who are to be selected by a party entertaining such opinions as I have just described; and I am sorry to say, without appeal to the Supreme Court; because, in the territorial bills which have been lately passed, that right has been taken from us. My friend from

North Carolina will be kind enough to read an article in the Chicago platform, showing what is held on that subject by those who wield the power of this Government.

Mr. CLINGMAN read, as follows:

Eighth. "That the normal condition of all the territory of the United States is that of freedom; that as our republican fathers, when they had abolished slavery in all our national territory, ordained that 'no person should be deprived of life, liberty, or property, without due process of law,' it becomes our duty, by legislation, whenever such legislation is necessary, to maintain this provision of the Constitution against all attempts to violate it; and we deny the authority of Congress, of a Territorial Legislature, or of any individuals, to give legal existence to slavery in any Territory of the United States."

Mr. HUNTER:—Thus much, Mr. President, in regard to the *status*; and it is to be observed that the same word is used in reference to persons who are now held to involuntary servitude in the Territories and to those whom we are to have the right to take into the Territories from the States recognizing slavery. So that we submit this question of our right to slaves, when it reaches the Territories, to be tried under the common law, by courts appointed by the party entertaining the opinions I have described, and that without appeal. This is in regard to the Territories which we now own. What is the settlement provided for in regard to territory hereafter to be acquired? Here it is, in the third section:

SECTION 3. Neither the Constitution, nor any amendment thereof, shall be construed to give Congress power to regulate, abolish, or control, within any State, the relation established or recognized by the laws thereof touching persons held to labor or involuntary service therein, nor to interfere with or abolish involuntary service in the District of Columbia without the consent of Maryland, and without the consent of the owners, or making the owners who do not consent just compensation; nor the power to interfere with or prohibit Representatives and others from bringing with them, to the District of Columbia, retaining and taking away, persons so held to labor or service; nor the power to interfere with or abolish involuntary service in places under the exclusive jurisdiction of the United

States within those States and Territories where the same is established or recognized.

That is, they shall not prohibit it as to future acquired territory, where it is established or recognized. Will not the inference be claimed from such an expression, that where it is not established and not recognized, they may prohibit it? Will it not be said that the expression of one exception to the power of Congress to prohibit slavery in the Territories excludes the idea of an exception to that power when slavery is not recognized in the Territories?

Mr. COLLAMER:—If the gentleman will indulge me a moment, I desire to say that is a section declaring that Congress shall not abolish slavery in the dock-yards, &c., in the States where it is recognized. There is nothing in it about future acquired territory.

Mr. HUNTER:—This third section applies not only to present but to future acquired territory. It is not confined, like the first section, to the territory at present acquired. It is not confined to dock-yards and arsenals in the Territories and States. If the Senator will examine it, he will find that it is applied to all places where the United States have exclusive jurisdiction. "Exclusive jurisdiction" is the word. Will it not be claimed that they have exclusive jurisdiction in the Territories of the United States? Will not those who have the power to construe, and carry out their construction, so construe it? Will they not say it is a prohibition to Congress to prohibit slavery where it is recognized in the Territories or States, but not a denial of the right to prohibit slavery in Territories where it is not recognized by law, although that Territory may be vacant and uninhabited?

Mr. COLLAMER:—That clause of the section is, that Congress shall not have power—

"To interfere with or abolish involuntary service in places under the exclusive jurisdiction of the United States within those States and Territories where the same is established or recognized."

That, so far as I have read, is confined only to where they have local jurisdiction in the States holding slaves.

Mr. HUNTER:—I thought so at first myself; but the Senator will find, on a further examination, I think, that he is mistaken. They shall not prohibit it wherever they have exclusive jurisdiction in places where slavery "is established or recognized." It is not confined to dock-yards, forts, and arsenals. Why should it be in the Territories? They have exclusive jurisdiction over the whole. There is reason for confining it to dock-yards in the States; but there is no reason for confining it to dock-yards, &c., in the Territories. But that is not the construction which will be given; the construction given to it will be, that they shall not prohibit it where they have exclusive jurisdiction, if it is recognized in such places; but if it be not recognized in such places, where they have exclusive jurisdiction, I say the inference will be drawn, plausibly, if not justly, that they shall have power to prohibit; and I say if this be so, then it is a power (so far as Mexican territories are concerned, if there should be any acquisition there) by which the South will be forever estopped; because there the Mexicans have abolished slavery, and there, under this clause giving in that territory exclusive jurisdiction, the party now controlling the Government would claim the right to prohibit it. And what a difference between our position then and our position now under the decision of the Supreme Court! Under the decision of that court, all the people of all the States have a right to go into the common territory with their institutions. It belongs to all in common, and Congress cannot prohibit them from taking their property there.

I say that those who have the power to carry out any construction they choose to give, would be interested in putting upon it the construction which I fear; and it would be difficult to raise an argument which they would deem conclusive against it. But take it the other way; suppose that the Senator from Vermont is right in his first supposition, that it was only meant to be applied to forts, arsenals, and dock-yards, then I ask what settlement does this proposition give us in regard to future acquired territories; what earthly settlement is it? We have all the old difficulties to encounter that we have to meet now, every one of them. We not only have all the old difficulties to encounter, but the slaveholder would have an additional obstacle which this first clause would put in his way. It requires that the right to slaves in the present territory shall be tried by the common law, and it might be said in court that the inferences drawn heretofore from

those provisions of the Constitution recognizing slavery were to be overruled by the fact that the people in their latest action—by way of constitutional amendment—had introduced another rule in order to determine the *status* of those held to involuntary service or labor, and the consequence of that would be that the South never could acquire another foot of territory; that is, the few southern States who are left in the Union.

I am told that here is a provision that you cannot acquire territory except by the assent of a majority of the Senators from both sections. Does any man believe that the North, with its eighteen, soon to be twenty, or thirty, non-slaveholding States, would allow a majority of six, or seven, or eight slave States, that are now attached to them, to prevent them from acquiring any territory hereafter? Would they agree to such an amendment, in the first instance; and if they did, how long before they would change this restriction in the Constitution? Indeed, it is hardly to be supposed that they will agree to it in the first instance, so far as it regards the acquisition of territory; but of what avail would it be to the South? There is but one conceivable acquisition—I speak of possible things, and I hope gentlemen will not understand me as coveting my neighbor's goods, or desiring to lay violent hands on the property of any other States or nations—but, if things should so happen that we could rightfully acquire Cuba, under my view of the probable construction to be given to this clause, and because slavery there is recognized, Congress might be prevented from prohibiting it; but, everywhere else, the South would be shut out and excluded.

Then, sir, what would be its position? It would be prevented from acquiring any territory under this Government as an outlet for its slaves; and the only chance of securing that necessity of its condition would be to quit this Union and join the Southern Confederacy, which can acquire territory. It would be an inducement to disunion so strong as would almost force them to it.

Let us go a little further. Here is another clause holding out the same temptation:

"The foreign slave-trade is hereby forever prohibited, and it shall be the *duty* of Congress to pass laws to prevent the importation of slaves, coolies,

or persons held to service or labor, into the United States and the Territories from places beyond the limits thereof."

This is to be the duty of Congress. As it now stands, it is in the power of Congress. When it was merely given as a power to Congress, was there a failure to execute that power? Do we not know that every State in the present Confederation has desired to suppress the African slave-trade? Some do it from sentiment and principle; some from interest; but there is a controlling motive with each and all of them. It is safe enough to leave it where it stood, giving Congress the power merely. Here you make it their duty. Suppose this case: the States that have left us have set up another Government, another Confederation; under this clause you forbid us to buy their slaves, to interchange and trade in slaves with them: what will be the consequence? They will exclude us from selling our slaves in their territory, and where then do we stand? If you should think it prudent, if you should think it politic, you would have no means, under this proposed amendment, of allowing that to be done between these two coterminous countries. Though it would be to the advantage of both Confederacies that there should be this interchange, you preclude Congress from allowing it; and then where would that place the border slave States? They would not be able to sell their slaves in the States further South; and if they carried them there, they would have to emigrate with them. You would thus prevent Congress from adopting a regulation which would make it possible for them to remain in this Union with safety, with advantage, to themselves. Why was this put in? Why not have left it where it stood, giving Congress the power, when we all know that there is no State in the present Confederation that would not exercise that power for the purpose of suppressing the slave-trade from Africa? This probably would constitute the only exception. Why shut ourselves out from allowing the exception?

But, Mr. President, my desire is to be brief; I do not want to consume the time of the Senate; I am merely endeavoring to state the points of objection as briefly as I can. Here is, at the close of it, another provision which, it seems to me, contains the seeds of civil war; and that is this: "Congress shall provide by law for securing to the citizens of each State the privileges and immunities of citizens in the several States;" that is to say, Congress shall have power to pass laws to force the States to receive those persons whom they have excluded from police considerations—considerations of

domestic safety. Yes, sir, to force the States to receive persons who would be dangerous to their peace; to force upon them, if you will, abolition lecturers; to force upon them persons whom they regard as the most dangerous emissaries that could be sent among them; to enable Congress to obtrude, in fact, into all the business of the States. That was not intended when the Constitution was framed, and never ought to have been. The present provision in regard to the rights of citizens in the several States, I regard as in the nature of an inter-treaty stipulation. It is a duty imposed on each State, for the violation of which there is no remedy; no remedy, unless the State aggrieved may resort sometimes to retaliation.

There are various things of that sort in the Constitution. Duties imposed upon the States, but without a remedy for the failure to execute them. No State shall keep a standing army; but suppose it does: what are you to do? Congress cannot remedy it; and it would not be right to give Congress the power to remedy it. You have to trust something to the sense of right and duty of the States themselves; and so it should be in regard to this matter of citizens. Suppose one State should say that the citizens of another should not sue in its courts; how is Congress to enforce their right? Is Congress to say they shall be allowed to sue, and that the Sheriffs and officers of the State shall execute the process? Is it proposed to allow Congress, by law, to interpose in all these delicate matters? Is it not far better to leave it to the sense of justice of the States—to their sense of duty and of honor? Have we not got along very well while we left it there? If there be any instances in which there have been exceptions, they are instances in which persons have been excluded on account of police considerations, deemed to be dangerous to the safety of the people who excluded them. Is it proposed so to amend the Constitution as to take from the people of the States this right of self-defence?

If we once introduced this as an amendment to the Constitution, what would become of the feeble southern States, six or seven (for Delaware can hardly be considered as a slave State), that would be left? Arkansas may conclude to secede when she shall determine finally upon her position in the Union. What would become of us in the hands of this powerful majority, who would pass what laws they pleased in regard to the introduction of their citizens among us, and the rights of those citizens to do as they pleased after they got there? Is it not obvious that these various changes would lead to

endless discontents, to irreparable breaches between these States? Would you not certainly drive out the Border States? They would say, "If we go south, we ally ourselves to a homogeneous people; we shall have none of these difficulties; we have no reason to fear their citizens; we can grant all these privileges without the least difficulty or danger; we can send our slaves south from a country where they are not profitable, to one where they are; but if we stay here, we are forbidden to do any of these things; if we stay here, we are prevented from ever obtaining any outlet for our slave property." Will you not offer them the highest inducements, nay, will you not make it almost necessary for them to leave you, if you should adopt such a proposition as this?

Nor is that all, Mr. President. Our present Constitution—for I am comparing our position under it with that in which this would place us—in most of its difficult provisions has been expounded—expounded by the action of the State Governments, by the action of all the departments of the Federal Government. We have had legal interpretations in the decisions of the State and Federal courts. We have come almost to a point—indeed, I, who believe that the Dred Scott decision is law, think we have come to a point—where we have a legal exposition on the whole of these matters. Are we to be turned aside from that, to wander into a new sea of doubt and difficulty and ambiguity? No candid man can take this up and say it is not full of double constructions, full of ambiguities, giving ground for new quarrels between the sections, to new constructions of courts, to new lawsuits.

Mr. COLLAMER:—And to be perpetual.

Mr. HUNTER:—Yes, sir; and to be made perpetual. We cannot change them afterwards, if we want to do it. I can conceive nothing that would endanger what is left of this Union so much as the adoption of this proposition, although it has been produced by persons so eminent and so respectable as those who composed the Peace Congress.

I know that this measure does emanate from a body eminently patriotic and wise, entitled to the public deference and affection; and for their work I feel all possible respect. Against that work I will pronounce nothing except what the necessities of the occasion may require. But when the peace, the safety, the rights of the State which I seek to represent—when the peace of the

whole country, as it seems to me, would be so seriously imperilled as it would be if this were adopted, I feel bound by a sense of what I owe to those who sent me here, bound by a sense of what I owe to those who have some respect for my opinions, to express them here on this occasion, and to give briefly the points and the heads upon which I differ from the conclusions of that Congress. Indeed, sir, before taking my seat, I may suggest a doubt whether I am in truth acting against any thing which they have really done. I was informed by a member of that Congress that they never did take a vote upon this proposed article, as a whole.

Mr. DOOLITTLE:—If the Senator will allow me, I beg leave to state that I was informed of the same fact by a distinguished member of the Convention; and I was further informed that the person who claims to be the secretary of the Convention was never elected as such. And there is another fact stated in the preamble that I know is not correctly stated: that the State of Wisconsin was in that Convention, or took any part in it. How many more mistakes there are in the preamble, I am unable to say.

Mr. HUNTER:—I believe it is certain that they never did take a vote on this article as a whole, but upon its separate sections. I think it equally probable that it could not have passed as a whole. That opinion was expressed to me by a member. As it did pass, I think there were three or four States not voting; and the States not voting were supposed to be against it. Under such circumstances, I do not know that this is to be taken as an expression of the will of that Congress. Further: I will say, in regard to myself, that a majority of the members from my own State voted against it, and were very decided in their opposition to it. They believed it was not such a proposition as the South could safely accept; and that majority, I believe, have returned home to express that opinion to the State Convention, and to give their reasons for it. Under all these circumstances, I have thought that I ought to present, as a counter proposition (believing that the people whom I represent cannot and ought not to accept these), resolutions upon which they have said they were willing to settle this controversy. I believe the State of Kentucky has declared the same thing. I understand the State of California has done likewise. I believe, though I may be mistaken, that Tennessee has said the same. The State of North Carolina has made the same declaration unanimously. To the last, I believe I may add Missouri.

Now, I am making a proposition to amend, by inserting the resolutions of the honorable Senator from Kentucky; upon which so many of the border slaveholding States have said they would settle the difference. Why not send them out to the States and the people? We know that some of them would settle on that. Why should we send out such a proposition as this, which there is every reason to believe they will not accept, and which will have the effect of dividing the conservative men of the North? Those northern men who are willing to settle on some proposition that would give satisfaction to the Border States, would just as soon vote for the CRITTENDEN resolutions as for these, and some probably would prefer to do so. They will waste all their strength, and efforts, and energies, in going for a proposition which the South in the end will not accept, or at least which I do not believe they will accept, as there is every reason to suppose they will not accept it. Then, when we know there are propositions upon which so many of the Border States have said they would be willing to settle existing difficulties, why not submit them? I think, under such circumstances, notwithstanding the respect which I feel for the members composing the Peace Congress, my duty to my own State, whose Legislature has spoken in regard to it, and my sympathy with so many of the Southern States who have declared the same opinion, should induce me to present the proposition which they desire instead of one to which none of them have as yet given their adhesion, and to which I have no idea they will ever agree.

Mr. CRITTENDEN:—I suppose, Mr. President, not only out of deference to the Presiding Officer of this body, but because it seems to me to be entirely reasonable, that the decision of the Chair on the question of order which was made as to the admissibility of these amendments, was correct. The question which these amendments present, I think, is a question of consistency or inconsistency with the proceeding in which we are engaged, with the resolutions offered by the Peace Conference; and each member, in deciding ultimately upon the question for or against the proposed amendment, will consider that question of consistency or inconsistency, and regulate his vote accordingly. It is not, perhaps, strictly a question of order, to be decided on the consistency or inconsistency of amendments. So I take it. I am willing it should be decided by this body. Now, what is it? The proposed amendment contravenes the whole nature of the transaction, and changes its character. The representatives of twenty-one or twenty-two

States—we will not make any question about Kansas; whether it be in or not, is not material—the representatives and delegates of over twenty States of the Union have recommended to us the adoption of certain amendments to the Constitution, which they say will arrest the troubles of the country and adjust those great differences which now so much threaten us; and they ask Congress to propose these amendments to the several States, according to the fifth article of the Constitution, for their adoption. These amendments have been submitted to us, and the question is, whether we will submit them to the States or not? That I take to be the specific and solitary question. This imposes no obligation on us to sanction these constitutional amendments by proposing them to the people. We can do as we please upon that point; but what is the question and the only question? It is not whether we ourselves will propose amendments to the Constitution, but whether we will propose to the people the amendments which this Convention has proposed to us. Now, that whole character is effaced, and a new character is given to the transaction, if any one of the amendments proposed by Senators be adopted.

Suppose these same States, by their Legislatures, had respectively recommended to us these particular and specific constitutional amendments, asking us to propose them according to the Constitution: would it have been proper for us then to undertake to amend their resolutions? It would be a different transaction altogether. In the one instance, out of respect to the States, we are proposing their resolutions; in the other case, we are proposing our own to the States. Now, the question here is, whether the resolutions have come to us with a sufficient sanction to constitute in our minds a reason for referring to the States the amendments which the States themselves have asked. That is all. It seems to my mind to be a clear question. They have asked us, they have requested us, to submit their resolutions, and not any others, to the States; and the question is, will we comply with their request, not whether we will fabricate amendments of our own and refer them to the people. They have asked of us to submit their proposals; and the question is, whether we will do it.

This amendment implies, in the first instance, that we will not do that, because the moment we adopt the amendment of the Senator from Virginia, that moment we say in effect, "We will not propose your recommendations to the people; while proposing our own, which we will substitute for yours."

That is passing by this Convention altogether; it is negativing the States represented in it.

If gentlemen take this view it will be a sufficient reason, I trust, in itself, for voting against the proposed amendment. These propositions which the Convention has recommended may be such as we may refuse; it is in our power to refuse; but the question is, whether a recommendation, coming so sanctioned to us, is not, in itself, a sufficient reason why Congress, if disposed to satisfy the people, shall do the small act of presenting this to the people themselves, for their adoption. We may reject it, if we please. The people, when it is sent to them, will, of course, have the power to reject or adopt it. The only question now is, whether we will give the States an opportunity of saying whether this proposition is satisfactory or not.

Sir, I do not wish to occupy time; but I cannot perceive the justice of the criticisms made upon these resolutions of the Convention. They seem to me to be perspicuous and intelligible in every part and in every sentence. I do not see where the difficulty is to arise. Gentlemen need not tell us here, in respect to these resolutions, that a member of the Convention told them thus and so. No matter what a member of the Convention told this one or that one about the votes that were given, it is certified to us, in a formal manner, by the President of the Convention—himself a Virginian, and once a President of the United States—that this is the result of the proceedings of the Convention.

Mr. HUNTER:—If the Senator will allow me, I will state to him how that occurred. It was decided, as it will be seen when we get the Journal, that, according to some rules of the old Convention, they should not vote upon a proposition as a whole, but upon each particular provision. That was the rule of the Convention; and therefore he certified it as the Convention had instructed. The vote was taken only section by section, and the vote was never taken on it as a whole. There is no inconsistency between what I have said, and the certificate of the President of the Convention, because, according to the rules adopted by them, he had to certify it if it was adopted by sections, though it was not voted upon as a whole.

Mr. CRITTENDEN:—I suppose this remark is intended to annul the Convention, and discredit all their proceedings, though the Senate have

received the letter of the President and Secretary as authentic evidence that this does contain the result of the deliberations and the proceedings of the body. I take it so, whatever a discontented member here and there may have said to the contrary notwithstanding. He may have said it all truly, for aught I know, but we must regard this as the authentic act of the Convention; otherwise it was nothing; and it is certified to us by the proper authority as its act, by the President of the Convention, with the request that we shall adopt it. It must have had, in some form or shape, the sanction of a majority of the Convention, or it could not have been so certified to us. How they voted, whether upon parts or the whole, they gave such votes as, they thought were necessary to ascertain the meaning of the body, and the expression of their will and opinion upon the subject. This is what they have done.

I do not stop to inquire whether I like these resolutions better than I do those proposed by myself, or the amendments now offered by the Senator from Virginia. We are near the close of our session. I have looked upon the proceedings of this great and eminent body of men as the best evidence of public opinion outside of this body, and of the wish and will of the States they represent. I am for peace. I am for compromise. I have not an opinion on the subject of what would be best that I would not be perfectly willing to sacrifice to obtain any reasonable measure of pacification that would satisfy the majority. I want to save the country and adjust our present difficulties. [Applause in the galleries.]

The PRESIDING OFFICER (Mr. BRIGHT in the chair) called to order.

Mr. CRITTENDEN:—That is what I want to do. That is the object I am aiming at. I attach no particular importance—I feel, at least, no selfish attachment—to any opinions I may have proclaimed on the subject heretofore. I proclaimed those opinions because I thought them right; but I am ready to sacrifice them, any and every one of them, to any more satisfactory proposition that can be offered. I look upon the resolutions proposed by this Convention as furnishing us, if not the last, the best hope of an adjustment; the best hope for the safety of the people and the preservation of the Government. I will not stop to cavil about the construction of these words; but I see none of the difficulties that suggest themselves to the mind of my friend from Virginia. Look at that third

section, which has been the subject of his particular criticism. Every part and portion of it is a negation of power to Congress, and nothing else; and yet he has argued as if it gave Congress power; as if it conferred more power upon Congress. It leaves to the States all the rights they now have; all the remedies which they now have; and consists merely in a negation of power to Congress. How can that take away the rights of the people? How can that make our condition worse? I cannot possibly see. It is nothing but a negative from beginning to end, and therefore it cannot take away any thing from the people. It may take from Congress, but cannot take away from the States, or the people, any thing. It is a negative in its form and in its language, from beginning to end, that Congress shall have no power to do this, that, or the other. If they have that power under the present Constitution, it is taken away. That is all. It takes away no power from the States. It takes away no rights from individuals. Its simple office is the negation of power to Congress. That is all there is in it; and how, under that, can the gentleman find constructions which are to increase our difficulties and diminish our rights? He says the language will need construction. So does all language need construction. I do not see that this is particularly so.

Now, sir, the Senator offers my own proposition as an amendment to this. I shall vote against my own proposition here; I shall vote for this. [Applause in the galleries.]

Mr. MASON:—I shall be constrained to require that the galleries be cleared, if there be any further demonstrations in that quarter.

Mr. BAKER:—I hope the galleries will not be cleared. The admiration of a noble sentiment is never out of place.

The PRESIDING OFFICER:—There is no motion to clear the galleries.

Mr. CRITTENDEN:—I shall vote for the amendments proposed by the Convention, and there I shall stand. That is the weapon offered now, and placed in my hand, by which, as I suppose, the Union of these States may be preserved; and I will not, out of any selfish preference for my own original opinions on this subject, sacrifice one idea or one particle of that hope. I go for the country; not for this resolution or that resolution, but any resolution, any proposition, that will pacify the country. Therefore, I vote against my own, to give place to a proposition which comes from an

authority much higher than mine—from one hundred and thirty of the most eminent men of this country, out of which number a Senate might be selected that might well compare in point of talent and intellect and ability even with this honorable body. They have recommended this on arduous, laborious consultation with one another; through many difficulties, through many diversities of opinion, they have at last arrived at these conclusions, and sent them to us. Shall any Senator stand upon the little consideration, "this changes my resolution," and shall he compare that little atom of his production with the great end and object proposed to be attained for a whole nation? No, sir; not a moment. I believe our best hope of preservation is in adopting the resolutions proposed by this Convention, and I adhere to them against all amendments.

Mr. President, the only material or substantial change in respect to the first section of this proposed amendment from my first proposition is, that it omits all reference to territory hereafter acquired, limiting our consideration and our settlement to territory which we now have. When I first offered my resolutions, I explained somewhat in reference to that particular provision which related to future territory. I said that I wanted no more territory. Our great trouble now is from the magnitude of the territory which we have already acquired. New Mexico is one of our acquisitions, and what a subject of dispute it has been! I want no more acquisitions. My country is big enough, and great enough. I say that further acquisitions are dangerous. We have found them to be so. Our experience and our reason, then, unite in teaching us "to beware of that sin, ambition." National aggrandizement! I want no more. I proposed that, however, as the idea then was, that we wanted a settlement that was to last forever; to be eternal; to embrace the present and to embrace the future, with all its acquisitions, all its changes. Reflection since, and the arguments of others, I will say, have changed my opinion on that point. If they had not changed it, however, I should be ready here to sacrifice it and give it up, if thereby I could obtain the assent of any respectable portion of my countrymen to the propositions for peace. If we can settle in respect to what we have, in GOD's name let us do it; and if we are to have future acquisitions, let us leave the troubles they may bring upon us to a future day. We have enough for to-day. I do not object, therefore, to the first section of the proposition of the Convention, that it is confined to the territory which we now have. The adjustment which they

have made varies but little in substance in regard to the territorial question, and the question of slavery as connected with it, from my original proposition. South of the line which we propose to establish, 36° 30′, you have no foot of territory left, but what is embraced in the Territory of New Mexico. In New Mexico, by law of the Territory—a constitutional law, a valid law of the Territory—slavery exists as fully and completely as the law can establish it, or has established it.

Now, this proposition is, that the *status* of things shall continue as it is until that Territory becomes a State; and when it becomes a State, let it dispose of the question of slavery as it chooses. There is no ambiguity about this. In substance, though in a different form of words, the same is expressed in my proposition. The proposition of the Convention is the same in substance, only omitting the words—a very proper and a very timely omission—supposed to be offensive in certain parts of the country, and substituting others that are equally well understood in all parts of the country, and which were less offensive to some.

Sir, now is the time for mediation; now is the time for pacification; now is the time to omit every word that can give offence or add to the irritation under which the country is. I desire, by the most moderate terms, by the most unoffending language, to reach some mode of adjustment that can give satisfaction to the whole country and reunite us all.

My friend from Virginia seems to apprehend that under these amendments we shall be worse off in respect to territory hereafter acquired. That is supposed to be sufficiently provided for and secured in the provision, that no future acquisition shall be made, by purchase or by treaty, except that treaty or that purchase be ratified by a majority of the Senators from the slaveholding States, as well as a majority of Senators from the non-slaveholding States. Does not this give the South a safe assurance, an assurance to be relied upon? My friend from Virginia says, however, do we believe the North, with its superior number, would submit to this provision of the Constitution? Why, sir, the Convention have had the caution to make this provision, if I understand them, irrepealable by any future amendment of the Constitution. There it stands, then, in the most solemn form that men can enter into any compact, in the most formal language by any terms that Government can establish, that all are bound by that provision of the

Constitution which requires a majority from each section. When the gentleman asks whether we can believe for a moment that this law will be acquiesced in and adhered to, I say we must to some extent have confidence in one another, or all human society must lose its basis, not merely of government, but its foundation, and all society would be torn up at once by the roots. That confidence is the root of society; it is the root of all the associations of men in public or private life; it is the root and foundation of all government. What more can you have, what better security can you have than written, solemn terms upon any subject which is to regulate government? There is nothing more solemn among men, unless you would require angels to come down and make responses for them. Here you have the very highest security that can be given; and when any gentleman shall say these are not to be relied upon, he says there is no Government that stands upon any foundation that can be relied upon. Such an assertion strikes not at this provision; it strikes at the root of all government. What further security can be had? If our brethren of the other section were willing to give the highest possible security they could, what can they give more? Nothing. This argument, then, can avail nothing.

Mr. President, I have gone perhaps a little further than I ought to have done. It is not now necessary that I should enter into a vindication of every provision of these amendments offered by the Convention. It is sufficient to speak to the amendment which the gentleman has offered. Excluding territory hereafter to be acquired, I think, in substance, we ought to be satisfied with that; I believe that will make peace; I believe that will give substantial security to our rights, and to the rights which the Southern States claim. With that I am satisfied. It is enough for the dreadful occasion. It is the dreadful occasion that I want to get rid of. Rid me of this, rid the nation of this, and I am willing to take my chance for the future and meet the perils of every day that may come. Now is the appointed time upon which our destiny depends. Now is the emergency and exigency upon us. Let us provide for them. Save ourselves now, and trust to posterity and that Providence which has so long and so benignly guided this nation, to keep us from the further difficulties which in our national career may be in our way.

I prefer the propositions which the Convention have made to my own propositions, because I have no hope for my propositions. They have not been so fortunate as to receive the favor of my colleagues of the Senate

from the North, the men whose sanction of them was necessary to give them effect. I transfer all my hopes of peace to these propositions and terms proposed by the Convention representing twenty-odd of the States of this Union—a large majority of all the States. I will not go into particulars about it; but since gentlemen have made some allusion to the out-of-door rumors and reports and sayings in respect to this Convention, I believe that perhaps a majority of those who voted for these amendments were men representing non-slaveholding States. I do not know the fact, and I will not state it, but I am under that impression now, and that impression encourages my hopes that the Senate, rather than see the country fall into ruin, fall into dismemberment, limb from limb, and blood flowing at the plucking out of every limb, will supply the remedy which is proposed. It seems to me proper and just. But little is asked, and great is the reward, and mighty are the consequences that are to flow from it.

Sir, I have occupied more of the time of the Senate on this particular question than I ought to have done.

Mr. MASON:—Mr. President, there is a very grave duty devolving upon the Senate on the proposition which is now before us. We are called upon, pursuant to the Constitution, to propose amendments to the Constitution. The fifth article of the Constitution says this:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution."

Now, sir, I cannot agree, for one, to propose an amendment to this Constitution unless it has the sanction and the approbation of my judgment; and I suppose no other Senator will. I am bound, therefore, by every obligation of faith and honor to my State, when a proposition is submitted to the Senate as one that should be proposed to the States as an amendment to the Constitution, to examine it and understand it, and see it in all its bearings and effects, as far as my intellect will enable me, and to propose it or to withhold it by my vote, as I shall be guided by my judgment. I can see no other position of a Senator.

Now, sir, what are the facts? The country was convulsed by the success in the late presidential election of one of the political parties of the country. The tremor was evinced at once in all the Southern States, in a belief that their existence and their safety was imperilled by that election. Congress met. As was proper and necessary, the very first act in each House was to appoint a committee to take the condition of the country into consideration, and see if, by any mode of amendment to the Constitution, those perils could be avoided. A committee was raised in the collateral branch. A committee was raised in this Senate, I think upon the motion of the honorable Senator from Kentucky, actuated as he always is by principles of the highest patriotism. Those committees met. They remained in anxious deliberation for weeks. What was the result? They were unable to agree. I think the committee came before the Senate and admitted the fact. They could agree upon no form of amendment which they believed would remedy the evils and avert the perils under which the country suffered.

In that state of things, the Legislature of Virginia—my own honored State—having been called into special session on the 19th of January, passed a series of resolutions, one of which recites this:

"That on behalf of the Commonwealth of Virginia, an invitation is hereby extended to all such States, whether slaveholding or non-slaveholding, as are willing to unite with Virginia in an earnest effort to adjust the present unhappy controversies in the spirit in which the Constitution was originally

formed, and consistently with its principles, so as to afford to the people of the slaveholding States adequate guarantees for the security of their rights."

That is the recital of the resolution of the Legislature of Virginia: "to afford to the people of the slaveholding States adequate guarantees for the security of their rights;" and there was a further provision, that, if those States should meet and agree upon any form of adjustment, it should be submitted to Congress. A number of the States—some twenty or twenty-one, it seems—some by their Legislatures, some by their Executives—met the invitation of Virginia, and deputed their commissioners to the conference in Washington, to see if they could agree upon a mode of adjustment. We have the report of that Conference before us now, presented through a committee of this body; and they propose an additional article to the Constitution. Mr. President, the honorable Senator from Kentucky, who has pronounced so deserved a eulogium upon that body, does not exceed me in the respect which I bear to it. If there be one more than another Senator upon whom it would devolve to treat the work of that Convention with peculiar respect, it would devolve upon me and my colleague, because they met at the invitation of my State. I yield to none in the respect which I bear to those gentlemen or to the purity of their motives in the results which they have attained in that Conference; but, sir, I am bound by my obligations to the Constitution, by my honor as a man, by my faith to my own State, to understand what they have done, and to exhibit it either in recommendation or disapproval, as my judgment may dictate. *Nullius addictus jurare in verba magistri.*

I admit no authority to bind my judgment as a representative of one of the States of the Union. I yield my respect to what they have done; but I will scan it, and if, in my honest, unbiased judgment, I cannot recommend it as an amendment to the Constitution, I am bound to withhold that recommendation, and to give the reasons for it.

As I have said, sir, the State of Virginia, finding that Congress was at a loss for a mode of adjustment, invited the States to send commissioners here for this purpose:

"To agree upon something which would afford to the people of the slaveholding States adequate guarantees for the security of their rights."

Virginia knew that, under the Constitution as it was interpreted under the constituted authorities of the country as they have been elected, there was no security for their rights; and it was in the hope of obtaining such a security—Congress failing to agree upon it—that, at her invitation, these gentlemen from the different States met here in conference. I am to look, therefore, to their work, and to see if it affords that security for their rights; and if I am satisfied in my own judgment, as I honestly am—and the reasons for which I am now to announce to the world—that it not only affords no security for the rights of the South, but takes away what little they have, I should be a traitor if I would recommend it as an amendment to the Constitution of the United States.

Now, sir, let us look at it. It is presented as an entire article, to be the thirteenth article, if adopted, of the Constitution. The first section of it relates to the Territories—the great and difficult point of division between the two sections. If that could be overcome—if these rights that are spoken of in the resolutions of Virginia in the Territories could be guaranteed by adequate securities to the slaveholding States—I believe the rest of the path would be smooth. It embraces almost the whole controversy. What securities are provided in the Territories to the slaveholding States by this first section of the thirteenth article? It proposes to divide the present Territories—for it is confined to them—by an east and west line, a parallel of latitude. North of that line, there is a clear cut entirely, unsusceptible of misinterpretation. None can doubt what the condition of servitude is north of that line. It is a clear cut; it is prohibited, and prohibited forever. No interpretation can mistake it; no casuist can doubt upon it; it is a work well done. North of that line involuntary servitude, except for crime, is prohibited. How is it south? My honorable colleague, I think, has well said that, south of that line, for our rights, at best we are remitted to a lawsuit. I will read the language:

"Nor shall any law be passed by Congress or the Territorial Legislature to hinder or prevent the taking of such persons—"

That is, persons held to service—

"from any of the States of this Union to said Territories, nor to impair the rights arising from said relation."

Neither Congress nor the Territorial Legislature has power to interfere with the rights arising from the relation of master and servant, or master and slave. That is the meaning; that is clear. What next?

"But the same—"

The rights resulting from the relation of master and slave—

"shall be subject to judicial cognizance in the Federal courts, according to the course of the common law."

There is the security for the rights of the South. South of that line they are remitted to the courts under the common law. Now, sir, let us examine that. By this section, if it is adopted as an article of the Constitution, the common law, *eo nomine*, is made a part of the Constitution, so far as it affects the relations of master and slave. Now, what is the common law? Who is there upon this floor that will tell me what common law is meant by this section? With all my respect for the thorough knowledge and the legal acquirements of the honorable Senator from Kentucky, I know he cannot tell me what common law is meant by that first section. We know, as jurists, what is meant by the term common law, for it is a technical term. The common law is the law of England, the unwritten law of England, the *lex non scripta*. That is the common law in its legal acceptation. Is it, then, the law of England that is made a part of the Constitution, and to which the master is remitted for the security of his rights between him and his servant? Will any gentleman tell me that it is the common law of England that is to be made a part of the Constitution to which we are to be remitted? If it is the common law of England, is it the common law of England as it stands at this day, on the first of March, 1861?

Mr. CRITTENDEN:—If my friend will allow me, I take it that that term applies only to the remedies known to the common law. The laws of the Territories are to be enforced, and the remedies under them are to be administered according to common law. The master is to have his rights according to the law of the Territory, and to secure those rights according to the common law.

Mr. MASON:—The language of the section is, that neither Congress nor the Territorial Legislature shall interfere to impair the rights arising from

this relation of master and slave; "but the same"—that is, this relation between master and slave—"shall be subject to judicial cognizance in the Federal courts, according to the course of the common law."

Now, the honorable Senator says that means only the remedy of the common law; that you are to take the law of the Territory, whatever it may be, and administer that, by confining it to the remedies known to the common law. I deny the interpretation. The Senator may be right, or I may be right. I say the text does not warrant the interpretation. The text refers to the rights in the relation of master and slave, and says they (those rights) shall be the subject of judicial cognizance, according to the course of common law. Now, I ask, what is the common law that is thus made a part of the Constitution for the subject to which it refers? Is it the law of England? There is no common law, that I am aware of, known to jurists as the law of England. There is no law in the State of Virginia, and, I presume, none in the State of Kentucky, known as common law. The State of Virginia, when it became independent as a colony of Great Britain, adopted and made its own that which before had been the common law of England, and therefore the common law of the colony. The State of Virginia (and I instance that only because I am familiar with it), when it became independent, adopted as its law the common law of England, as that common law stood at the commencement of the fourth year of James I.; and thereby, by statute, made that which had been the common law, the law of Virginia. Now, it is the law of Virginia, not because it is the common law, but because statutes made it the law of Virginia. But is the common law of Virginia, if you will call it by that name, the common law of Kentucky; or is the common law of Kentucky the common law of Missouri; or is the law of those three States, or any other State, now the common law of England? I demand to know, therefore, when we make the common law a part of the Constitution, if this enactment should prevail, what is meant by the common law? To that vague, grand residuum of judicial legislation we are to be remitted for our rights between master and slave, if this is enacted.

Now, sir, suppose it were so: my colleague has well said (and I will not repeat it after him, for I should only weaken it), that there is not one judicial interpreter or expounder of the common law, in any one of the free States, in reference to the relation of master and slave, that does not deny that the master has any property in his slave, at this day and this hour. Why, sir,

what is the pending controversy between the State of Ohio, one of the free States, and the State of Kentucky, one of the slave States—a controversy depending here recently in the Supreme Court? The Governor of Kentucky demanded, under the Constitution, the rendition of a fugitive from justice, who had abducted a slave from Kentucky, and carried him into Ohio. The Governor of Ohio refused the demand, upon the ground that there could be no stealing of a man; that there could be no property in man; and that the slave, being a man, was not a subject of theft, of larceny; and he refused, and refuses up to this day, under the common law, to recognize the existence of property in man.

Now, take the common law of England at this day: here, within the last three or four weeks, the Queen's Bench, in England, has declared as the common law, that if a slave murders his master, or murders the agent of his master, in the attempt to recapture him, he is justified. That is the common law to which we are to be remitted for the rights resulting from the relations of master and slave. Sir, I have looked back a little to see what the common law was in England in this famous Somerset case, I find this in the argument of the counsel there, expounding the common law, which was afterwards sustained by Lord MANSFIELD in his decision:

"But it has been said by great authorities, though slavery, in its full extent, be incompatible with the natural rights of mankind, and the principles of good government, yet a moderate servitude may be tolerated, nay, sometimes must be maintained."

And again:

"There is now, at last, an attempt, and the first yet known, to introduce it [slavery] into England. Long and uninterrupted usage, from the origin of the common law, stands to oppose its revival."

And again:

"A new species has never arisen till now; for had it, remedies and powers there, would have been at law; therefore, the most violent presumption against it, is the silence of the laws, were there nothing more. It is very doubtful whether the laws of England will permit a man to bind himself by

contract to serve for life; certainly will not suffer him to invest another man with despotism, nor prevent his own right to dispose of property."

And again:

"There are very few instances, few, indeed, of decisions as to slaves in this country. Two in Charles II., where it was adjudged trover would lie. Chamberlayne and Perrin, William III., trover brought for taking a negro slave; adjudged it would not lie. 4th Ann., action of trover; judgment by default. On arrest of judgment, resolved that trover would not lie. Such the determinations in all but two cases; and those the earliest, and disallowed by the subsequent decisions. Lord HOLT: 'As soon as a slave enters England he becomes free.'"

In the opinion of the court, of Lord MANSFIELD, as to these principles of common law, that very distinguished and able judge, who made the law, as I understand, for the occasion, but certainly ruled it as the common law, says this:

"The state of slavery is of such a nature that it is incapable of being introduced for any reasons, moral or political; but only by positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory. It's so odious that nothing can be suffered to support it but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England."

I need not go back to authority. We have it abundantly in our own country, in all the free States, so far as I know, without exception. They deny what the amendment of my honorable friend from Kentucky affirms. They deny that there is property in a slave. The amendment of the Senator affirms there is property in a slave. This section is silent, ominously silent, portentously and potentially silent. It is not only silent, Mr. President, but when it refers you to that code of law which is to protect the right of the master to the slave, it refers you to the common law, and the common law to be expounded by the Federal courts, and the common law, which is judicially and historically known to the whole country, to be expounded in all the free States as one that denies that very property which we say must be secured. That is our position under this section. Sir, the State of Virginia has said that

we must have adequate guarantees; and I am asked here to vote away what little guarantees we have. I am asked, almost in the high ethics or morals of revealed religion, when my adversary takes away my cloak, that I shall give him my coat also. I am required to do that by this section. We believe that our rights are secured under the present Constitution; we know that they have been withheld by the political party which has now come into power; we believe that they are insecure unless there are further and adequate guarantees; but, so far from their being proposed by the section before us, in my judgment, what little we have is taken away. Sir, I cannot vote for these propositions. I regret it. I was prepared, whether it had the approval of my judgment or not, to follow the instructions of my State, and to vote for the amendment offered by the honorable Senator from Kentucky after it had been modified, as was required by the resolutions of my State.

The amendment of the Senator from Kentucky was so modified, I do not know whether at the instance of Virginia or not; but it was modified by a vote of this Senate, so as to embrace what was required in the resolutions of Virginia. I am not at liberty to recommend, or, in the language of the Constitution, to propose to the States this section of the thirteenth article; because it not only withholds, but denies by withholding, any security, far less that security which the State of Virginia requires.

There are further provisions in this proposition that are objectionable, one of which was pointed out by my colleague: that which calls upon Congress to legislate on that clause of the Constitution which secures to the citizens of one State all the privileges and immunities of citizens of the several States. I need not say that any legislation on that subject by Congress would be any thing but the messenger of peace to which the honorable Senator from Kentucky looks. Why, sir, it has been found indispensable in slaveholding States, as a part of their police regulations, to punish all persons who were either of the State or otherwise, who tamper with the slaves, who have intercourse with them that is forbidden by law, far more those who preach to them sedition, or insurrection, or revolt; and yet, if we were to be controlled within the body of the State by Federal relations in our interior police, we should be completely at the mercy of the free States.

Mr. President, I should have been certainly gratified, if my honored State of Virginia had been successful in the mediation which she invited of all the

States, with a view to agree upon an adjustment which would guaranty the rights of the South. I deeply deplore, and I doubt not my State will deplore, that that mediation has not been effected. So far from impugning any motives or purpose of that honorable and distinguished body, I doubt not that, in the short time that was allowed to them, they got together the best mode of adjustment which would satisfy their judgment, but which I am sure will not satisfy the judgment of the Southern States, but would place them in still greater peril, if they were to admit that to become a part of the Constitution. I did not intend to do more than state my objections to it as briefly as I could. I have done so temperately and without heat, I regret that I cannot, as one Senator, propose this as an amendment to the Constitution.

Mr. CRITTENDEN:—I wish only to reply for a single moment to the material objection urged by the Senator from Virginia. The portion of the article to which the Senator from Virginia objects, declares that the *status* of persons bound to service and labor shall remain unchanged; that neither Congress nor the Territorial Legislature shall pass any law affecting the relation, or the rights growing out of the relation between master and servant—I do not pretend to recite the exact words; but that is the exact idea —well knowing that, according to the laws of the Territory, the *status* of slavery was fully established, and all the rights of the master in and to his servant established, as they exist in the State of Missouri, or the State of Virginia, by positive law of the Territory. It is therefore equivalent to saying that that law shall stand, when it says that the *status* shall continue unchanged. It then goes on to say (which I admit was altogether unnecessary) that the remedy for the violation of the rights of the master, whatever they might be, shall be had in the Federal courts, and according to the course of the common law. Now, sir, what right does this take away from any slaveholder? That law which secured and gave him a right, is declared to be unchangeable. That law acknowledges his property in any sense in which you please to take it, or in any sense in which it is applicable. It acknowledges it, and gives legal remedies for the violation of it; and in addition to all that, and, as I admit, by a sort of pleonasm of expression, it says that he shall have his remedy in the Federal court, according to the course of the common law.

Mr. MASON:—Will the Senator allow me a moment?

Mr. CRITTENDEN:—Certainly.

Mr. MASON:—With the permission of the Senator I will put this proposition to him: He says that the meaning of the language, "according to the course of the common law," is confined to the remedy. Now, admitting that to be the case, for the sake of the argument, suppose, in one of these Territories, a slave is purloined, seduced, got away; the slave of A gets into the possession of B, and he is there at work for him upon his farm, or in his house, and A brings an action of trover to recover him; that is an action known to the common law; and the decision of the Federal court is, that trover lies only to recover property, and a slave is not property: what is the remedy? That is the decision in England; and I presume it would be the decision in the free States, if the suit were brought.

Mr. CRITTENDEN:—It was to avoid going into definitions of that sort that this language was employed in the amendments of the Convention. They saw and had before them the law of New Mexico, which did acknowledge the existence of this right as fully as it is acknowledged by the law of Virginia. However it may be disputed here, however legal opinions may differ about it, the law of New Mexico established property in slaves; and there the law stands; and the Convention now comes and says that *status* shall remain unchanged.

Mr. BRAGG:—Oh, no.

Mr. CRITTENDEN:—That is the resolution.

Mr. BRAGG:—Will the honorable Senator allow me a word, for I am very anxious to understand it?

Mr. CRITTENDEN:—Certainly.

Mr. BRAGG:—The Senator says it provides that that law, the law of New Mexico, whatever it may be, shall remain unchanged, if I understand him, and that that fixes the *status* of slavery in the Territory. I call the attention of the Senator to the language. I think that only fixes the *status* of persons now in the Territory, and not those to be carried there hereafter—not the *status* of slavery, but the *status* of persons who are there now, held to service or labor, and not the *status* of those who are to be carried there in future. That is provided for in the language which it follows in another part.

Mr. CRITTENDEN:—Here it is, sir:

"In all the present territory south of that line"—

Which I have explained, and which gentlemen admit to be embraced in the Territory of New Mexico—

"the *status* of persons held to involuntary service or labor, as it now exists."

It is not as to such slaves as are now there, but such slavery as now exists.

Mr. BRAGG:—If it said that, I admit that it would cover the *status* of slavery.

Mr. CRITTENDEN:—It does say that. It seems to me that is the only construction that can be given to the language. It could not be intended to confine it to the twenty-six slaves that are now held there, especially when they provided, in a subsequent article, that it shall be lawful for any one to carry slaves there.

Mr. BRAGG:—Will the honorable Senator again allow me to interrupt him?

Mr. CRITTENDEN:—Certainly.

Mr. BRAGG:—I have not the slightest doubt that a great many who voted for the proposition consider it as the Senator does. I have equally as little doubt that others intended it to mean precisely what I have stated. I cannot see, for my life, while they were framing a constitutional provision, why they did not place this matter beyond any sort of doubt. If they intended to recognize slavery, they could have said so in one word. If they intended not to recognize it, they could have said it in another word. If they intended to mystify and leave in doubt, then they have been very successful in accomplishing their purpose.

Mr. CRITTENDEN:—"In all the present territory south of that line, the *status* of persons held to involuntary service or labor, as it now exists;" not as they now exist; not in respect to those that are there now; but part of the same sort of slavery which now exists, shall continue to exist unchanged until the Territory becomes a State; and in the mean time persons shall be admitted to go into that Territory and carry their slaves with them. Now, I

submit it to my honorable friend if it is not entirely improbable that any such construction as he suggests can prevail before any court that seeks to attain the real intention of the parties who made this proposition? It is such slavery as now exists. Persons held to that service—you may carry as many there as you please. Put them both together, and they would read so; and they being in the same instrument, can there be a doubt that ought to alarm us here, that the construction will be given to it which I place upon it, that it was intended not to be confined merely to persons now there and held to servitude, but as well to those who might be carried there hereafter? This is all I will say in reference to that; and I submit it to the candor and the judgment of my honorable friend from North Carolina, in which I have entire confidence, whatever result he may come to, that if we put the two propositions together, all doubt would seem to be removed.

Now, sir, my friend from Virginia will argue this question as if the question of slavery was to be decided according to the course of the common law, and then refers us to the express declarations and decisions as though the common law decided that slavery could not exist. What sort of construction would that make of this provision? Here they have provided that the law establishing slavery shall exist, that the property of the master in him shall be recognized as it is there established by law; and then the gentleman supposes that to be exactly contradictory, to refer to the common law as furnishing the rule of decision, which common law says there can be no property, as he interprets it, in man, and that when trover was brought for a slave—

Mr. MASON:—Not as I interpret it, but as interpreted in England.

Mr. CRITTENDEN:—I know that. He says it may be so interpreted; that when trover was brought for a slave in England, the judges decided there was no property in man. Could the same judges, sitting in a court in New Mexico, have given that decision when the law there established such property? In such a case, their decision must be different. They are referring, according to him, to two contradictory rules: one establishing slavery and acknowledging property in the master, and the other the common law denouncing and deciding against the right of property in man. This could not have been their intention, nor can this be the construction. We cannot consider these gentlemen to have changed their opinion from

one sentence to another, to have left an incongruity and a contradiction expressed upon the face of the same section.

Nor, sir, do they refer—and that is my answer to my friend from Virginia—to the common law as furnishing the rule of decision at all. The proceedings shall be according to the course of the common law; that is all. If any violation is done to the rights of the master, he may sue; and, for his greater security, he may sue in the Federal courts; and, for greater security still, the law shall be administered according to the course of the common law. The common law is referred to as determining the mode of trial. We say according to the course of the civil law, and we say according to the course of the common law. What do we mean? We mean this marked and characteristic and essential difference: the course of the civil law is for the judge, without the intervention of a jury, to decide facts as well as the law. The common law takes away from the judge the power of deciding the facts, and demands a trial by jury. What this convention mean, therefore, by this provision is, that trial shall be by jury, according to the course of the common law. That is the explanation of the difficulty, and thus all doubt is removed. By these plain provisions—plain in themselves, and made plainer still by being taken with the context—they say you shall have your rule of right, according to the law of the Territory, which is in your favor as to the right to hold persons as property; that law shall be your security; you shall have a remedy for any violation of that right in the Federal courts, and you shall have that remedy, not according to the course of the civil law, in which the judge is to decide, who might be against you, but in which a jury shall be called to decide the fact according to the course of the common law. That is the whole of it.

Mr. MASON:—Mr. President—

Mr. POLK:—If the Senator will allow me, before the Senator from Kentucky sits down, I will ask him if the Mexican law establishes slavery, or if it does any thing more than to protect the right of the master to his slave? If that is the only establishment of it, then it is established by implication merely.

Mr. CRITTENDEN:—I really do not know whether the gentleman would consider it as establishing or merely protecting. I do not know that there is a

law in any State of the Union that *eo nomine* establishes slavery; I do not know.

Mr. POLK:—The object of the inquiry was this: it has been contended heretofore that, by the law of Mexico, there could be no slavery there; and then there is another law of New Mexico professing to protect the right of property. I have never seen that New Mexican law.

Mr. CRITTENDEN:—I believe I have answered the gentleman as far as my information extends. I have examined that law. It is as strong in favor of the master as the laws of Kentucky or Missouri. I believe it is the law of Mississippi transcribed literally, *verbatim*. That is my understanding. The law is as complete on the subject as the law of any State that I know of.

Mr. MASON:—Mr. President, if the Senator from Kentucky is right, and, in the interpretation of this section, the courts are necessarily to consider the expression, "according to the course of the common law," to which slaveholders are referred for the enforcing of the relation of master and slave, as referring only to common law remedies, then I am at no loss to conceive, after our experience of judicial interpretation against slavery, by what sort of artificial and sophistic reasoning those judges of the Federal courts may feel themselves bound to withhold the remedy. Why, sir, are we to shut our ears and our eyes against experience passing before us every day? What is the present Constitution? The second section of the fourth article is in these words:

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

That is the text of the Constitution. What is the interpretation in the free States? In the State of Kentucky an African is property, under their laws and usages, and has been so for two hundred years; for it was so when it was a part of Virginia; and did it ever enter into the mind of man to conceive that this plain text of the Constitution would be resisted, upon the ground that property in man was not acknowledged? And yet it is done. If I am not mistaken, the honorable Senator from New York [Mr. SEWARD], not now in his seat, when Governor of New York, made that very question with the

Governor of Virginia; and seeing this, are we to be willingly blind to this as the actual, judicial, and executive interpretation in every thing that affects the question of slavery as it stands in that section, and that, too, while we are seeking equality? Sir, it never entered into the mind of man, at the time this Constitution was formed, to credit that the time could ever come in the relations of these States when a man who fled from the State of Kentucky because he had stolen a negro into the State of Ohio, was screened from the operation of the Constitution, because in Ohio they do not deem a negro to be the subject of property; and yet that is the fact, the very issue now depending between those States; and we are asked to be blind, willingly blind, to all that experience at the very time we are attempting to secure a guarantee for violated rights!

Now, I said, Mr. President, that, if I were to tax my ingenuity, I might find a mode, even if the honorable Senator is right in ascribing to this clause of the section the necessary interpretation that it refers to remedies only. The Senator says the previous part of the section establishes the relation, as he construes it, not directly like the resolution of the honorable Senator which we offer here as an amendment, which establishes directly that there is property in slaves. This does not; but designedly avoids it; not from any improper motive—I do not ascribe that—but it is not only silent, but it avoids the very question. I suppose the honorable Senator is right in saying this language, judicial cognizance, according to the course of the common law, refers only to the remedy. Now, I tax my ingenuity to know how a court, in one of the free States, always leaning, of course, against slavery, would reason out that proposition, whether the remedy could be applied. Suppose an action of trover is brought. The inquiry would be, what is the remedy? We are told this is the remedy for which you are to apply to the law. A remedy is nothing in the world but a redress for wrong. Before you can apply the remedy, therefore, you must ascertain whether a wrong has been committed for which the remedy is adequate. Well, it comes from one side: the wrong was in taking the negro from the possession of the owner, against the local law of the Territory. The answer would be, "that may be true as far as the local law of the Territory is concerned; but here the Constitution adopts the common law as part of its text, and points the judges to the common law, and it applies the remedy." Now, the remedy is redress of the wrong, and we are bound to see that the wrong is one to

which the remedy is applicable. The remedy is to recover property in the possession of one who is not entitled to it, and the common law, which applies that remedy to that wrong, says there is no wrong inflicted by taking the negro from the possession of his owner. It comes to that. It is suggested to me by the honorable Senator from Vermont [Mr. COLLAMER], that the common law, as a remedy, is one applicable to a common-law wrong. I do not say that the reasoning is just; I do not say that it is juridical; but I say, in our experience, we should be willingly blind if we take that for a security which will only be a snare.

Mr. PUGH:—Mr. President, it is very well known to the Senate that I prefer the proposition of the Senator from Kentucky, as a matter of individual choice, to the proposition which is proposed by the Peace Conference. Nevertheless, that Conference having been authorized, if not by Congress, at all events, so far as my State is concerned, by the act of her Legislature; and an overwhelming majority of the commissioners having agreed to this proposition as it stands, I shall hesitate very much in departing from it, whatever might be my individual opinion; but certainly if I thought the two Senators from Virginia had given it a correct interpretation, I should not agree to it. Now, as to this clause, it, in my judgment, had better have been omitted:

"The same shall be subject to judicial cognizance in the Federal courts, according to the course of the common law."

I suggest that the common law is referred to as fixing a right simply. The course of the common law is a phrase defined for more than two hundred years, in Latin, in English, and in Norman French. It means the formula of proceeding. I understood the Senator from Virginia [Mr. MASON] to say that it had been decided in several of the courts that an action of trover could not be brought for a negro slave in England. I think I am familiar with the case. It is reported in Salkeld's Reports, Lord Raymond's Reports, and in the Modern Reports—the same case reported three times; but the same court which decided that trover would not lie, because trover included the idea of property in the man himself, in the same opinion said that trespass on the case would lie for the loss of the service; so that it was all a question of pleading, and no question of right at all. It is within my recollection—and I believe the case was brought to the Supreme Court on a writ of error, and

can be found in Howard's Reports—that a citizen of Kentucky declared in trespass on the case for taking away his slaves, and added two counts in trover. What is trover but an action of trespass on the case? Nothing more; and it never was any thing more. The measure of damages is the same in both actions—the value of the service of the servant; and yet that controversy on mere pleading—which, in nine-tenths of the States of this Union, has ceased to be of any value, because they have a code of procedure, is made a terrific objection here.

Now, sir, I have never read the code of New Mexico, and I do not propose to read it; but it is perfectly understood that that Territorial Legislature, pursuing the privilege, if you call it privilege, conferred by the compromise measures of 1850, has established the relation of master and slave, or master and servant, as perfectly as it is established in any of the fifteen so-called slaveholding States. I do not admire this word "*status*" which we find in the report of the Peace Conference; but as to the meaning of that word, I cannot be in any doubt. It does not refer to any persons in particular; it refers to a legal relation of servitude as between master and servant, and it provides that that relation, or condition, or *status*, shall not be changed; that for all wrongs or controversies arising out of that there shall be a remedy through the Federal judiciary.

I can see why the commission made this distinction. There have been many who have insisted that the Congress of the United States should pass laws for the protection of the right of the master to the services of his slave in a Territory; but it has always been my opinion, that the worst thing the slaveholding States ever could have would be to have that; for there would be a perpetual controversy here from session to session, and from day to day, whether the law went far enough in giving protection or went too far; and they would be remitting their right to the adjudication of the Senators and Representatives from the non-slaveholding States. Others have insisted, as the propositions of my honorable friend from Kentucky provided, that the relation should be protected by the legislation of the territorial authority. I would rather it were so, individually, if they chose to establish it. The peace commission do not want that. They evidently do not want to quarrel with the Territorial Legislatures about the measure of legislation; but they declare the right, and then say that this right shall be enforced in the Federal judiciary according to the course of remedies and forms of the common law.

I do not see how there can be a doubt; and yet, as I have said, it seems to me that a great deal of it is unnecessary verbiage. I do not mean to debate that; I am not one of the peace commissioners; I am not to select my words to express the idea; but I am here; and my State with other States, having appointed commissioners in view of a crisis like this, as they esteem it, and as I esteem it, and they having agreed upon a great variety of propositions, some of which commend themselves to my judgment and some do not; but taking it altogether as one proposition, I am satisfied that I must either vote for all of it, or let all of it fall. I would rather vote for the proposition of my honorable friend from Kentucky. I said that sixty days ago; and I have said it in season and out of season. I have expressed my views frequently. I think the proposition of the commissioners would be better expressed, though it would come to the same thing, in these words: "in all the territory south of that line, it is hereby declared that no law or regulation shall ever be made or have any effect denying or impairing the right of the inhabitants to the service or labor of such persons as were held in that condition in any State of the Union; and thence taken into the said Territory." That would have expressed my idea more clearly, yet I am satisfied with this; it amounts to that. Whether the word "*status*" be good Latin or good English, the meaning is very clear.

I believe I admonished the Senate two hours ago that time was very precious; and I shall not detain them myself.

Mr. BAKER:—Mr. President, I mean to vote for the passage of these proposed amendments, just as they are, without any change; and I propose to give very briefly a few of the reasons which govern my judgment in that act. I will do it as pointedly as I can, and I will certainly do it very briefly.

In the first place, I feel that I am but submitting to the people of the whole country, amendments which they, and they only, can incorporate in the present Constitution; and I do not believe that, in any state of the case, I can do very wrong in doing that; but when I consider the immediate condition of the country, I feel that I am doing very right. Twenty States assemble in what is called the Peace Convention. They recommend to us, in times of great trial and difficulty, the passage of these resolutions. They are eminent men; they are able men; they are—very many of them, at least—great men; they have been selected by the States which they respectively represent,

because of their purity of character and ability. The country is in great trouble. Six States have seceded; and I am told by very many men in whom I have great confidence, that their States are to-day trembling in the balance. I believe it. I am told—and upon that subject I have not yet made up my mind—that the adoption of these measures by the people will heal the differences with the Border States. I do not believe that I can do wrong, therefore, in giving the people of the whole Union a chance to determine these questions.

In the beginning, I voted against the propositions of the distinguished Senator from Kentucky. Even then I did not perceive any great harm in submitting any propositions to the people of the United States which circumstances might appear to render necessary for any good purpose. I refused to vote for them, for two reasons: first, I believed something better might be attained; and second, I did not believe that the people of the States would agree to them. I do not believe that now, and for one simple reason: I think I may consider myself in some respect a representative of the opinion as well as the power of my own people. I am a Republican, a zealous and determined one. I have all my life been of the opinion that Congress ought not to protect slavery, and to extend the dominion of this Government for that purpose or with that possibility. A great many in the North, who are not Republicans, but are what we call DOUGLAS men, have shown, at the last election, under something of trial and sacrifice, that they too, do not believe that the Constitution does or ought to extend slavery. I am not disposed to give up that opinion; I do not believe they are. I was not disposed to give up when six States were in the Union who are now out, as they say; and I am not disposed to give it up yet. Independently of pride of opinion, I do not believe that kind of sacrifice would accomplish any good result.

These are the reasons in brief which induced me to vote with regret against the propositions of the distinguished Senator from Kentucky in the earlier portion of this session. But now, we are within two days of adjournment. Propositions essentially variant in their character to those are submitted here; and I am asked: "Will you, in your representative capacity, submit these to your people for their decision, either to accept or reject?" Now, why not? I need not dwell upon the fact that, while we are a representative, we are at the same time a democratic Government. I will not shut my eyes to the fact that twenty States appeal to us; I will not shut my eyes to the fact

that there is imminent danger of permanent dissolution; I will not shut my eyes to the fact that, though the Republican party is in a constitutional majority, it is not yet, and it never has been, in an actual majority; and I do not believe that it is possible for one-third of the people to coerce the opinion of two-thirds.

Mr. WILKINSON:—I wish to ask the gentleman a question.

Mr. BAKER:—Do, sir.

Mr. WILKINSON:—I understand him as saying that the whole of the twenty States which were assembled in this Peace Convention agreed to this proposition.

Mr. BAKER:—My distinguished friend was writing, instead of listening, when he understood that. I did not mean to say that, and I did not.

Mr. WILKINSON:—I understood the Senator to say that twenty States appealed to us.

Mr. BAKER:—Yes, sir; just as I say that the Government appeals to another Government, I do not say every individual in it; just as I say that Congress appeals to another Government, not every individual member of Congress; but I do say, in the words of the proposition before us, that "they," the Peace Convention, composed of the States recited, "have approved what is herewith submitted, and respectfully request that your honorable body will submit it to conventions in the States, as article thirteen of the amendments to the Constitution of the United States." That is all I said, or, at least, it is all I meant to say.

Now, sir, suppose every argument that the distinguished Senators from Virginia have brought to bear on this proposition was true: what then? Is that any reason why it should not be submitted to the people? Suppose they do not approve of it: what then? It is their business, not ours. Suppose they should: it is a measure of peace, of security, of union. Sir, I know, as you do, many of the members of that Convention. I have acted with them as Whigs in old times, and I wish they could come back. I know they have proved in old times, as they will prove again, that they love this Union to the very depth and core of their hearts. I do not propose to give them up; I do not propose to weaken them; I do admire, with my whole heart, the

sacrifice of opinion which they make, and which is typified by the noble expression of the distinguished Senator from Kentucky to-day. Party or no party, North or no North, I, at least, will meet him half way. My State is very far distant. She had no members in that Convention. I do not know whether she will approve this measure; but I know it will neither hurt that State nor me to give her a chance to determine. I know very well that the Senators from Virginia do not approve it. That is the very reason I do. [Laughter.] If I was sure they would not think me guilty of disrespect, I would remind them of what was said by a distinguished man in old times. Phocion, in the last days of his Republic—and I hope in that respect, at least, there will be no parallel—Phocion was once making a speech to the Athenian people, and something he said excited very great applause. He turned around to gentlemen, friends near him, and said: "What foolish thing have I been saying, that these people praise me?" Sir, if Virginia, represented as she is to-day—not as I believe she really is—but if Virginia, represented as she is here to-day, and as she has been during this session, were to approve these propositions, I should doubt them very much indeed.

I was surprised, however, to hear some things that the distinguished Senator from Virginia—I do not know whether to call him junior or senior—said. I do not mean the Senator who spoke last. He [Mr. HUNTER] says that this proposition here is worse than the old Constitution. If that be really so, what in the world has he been complaining of so bitterly? He tells us, now, that under the old Constitution slavery was secure. Then, why do you grumble? He considers it as secure, not only wherever it is, but wherever it can go—nay, more than that; wherever the Stars and Stripes of the American Republic can float. I have been telling my people that, as a Republican, for a long while, and complaining of the Dred Scott decision; but he says slavery is secured. All the complaint that the other Senator from Virginia [Mr. MASON] makes, is against the decision of the courts in the free States we have been in the habit of making, which he insists are against the decision of the Supreme Court, constituted other than we wished it was. We have been in the habit of believing that one of the great evils we complained of was under the old Constitution, and that a new construction was given to it, alien to the intention, wish, construction, of our fathers; and we have complained that the Supreme Court was so constituted that it could not be reversed. We complained, as partisans, that now this Senate and the

other House were so composed that we had no power in the Government, save through the President. Now, the Senator from Virginia indorses the whole of it, and says they were very well off, and did beautifully. Then why dissolve; why threaten; why make a Peace Conference necessary?

Mr. President, let us be just to these propositions. As a Republican, I give up something when I vote for them; but remember, sir, I am not voting for them now; I am only voting to submit them to my people; and I shall go before them, when the time comes, being governed in my opinion and advice as to whether they shall vote for them or not, as I see that Virginia, Tennessee, Kentucky, North Carolina, and Missouri, by their people, desire. To be frank, sir; if this proposition will suit the Border States, if there will be peace and union, and loyalty and brotherhood, with this, I will vote for it at the polls with all my heart and with all my soul; but if I see that the counsels of the Senators from Virginia shall prevail; if my noble friend from Tennessee [Mr. JOHNSON] shall be overwhelmed; if secession shall still grow in the public mind there; if they are determined, upon artificial causes of complaint, as I believe, still to unite their fate, their destiny, and their hope, with the extremest South, then, perceiving them to be of no avail, I shall refuse them. Therefore, at the polls at last, I shall be governed as an individual citizen by my conviction at the moment of what the ultimate result of these propositions will be; but I am not voting for that to-day. I am saying: "People of the United States, I submit it to you; twenty States demand it; the peace of the country requires it; there is dissolution in the very atmosphere; States have gone off; others threaten; the Queen of England upon her throne declares to the whole world her sympathy with our unfortunate condition; foreign Governments denote that there is danger to-day that the greatest Confederation the world has ever seen is to be parted in pieces, never to be reunited." Now, not what I wish, not what I want, not what I would have, but all that I can get, is before me. I know that I do no harm. If the people of Oregon do not like it, they can easily reject it. If the people of Pennsylvania will not have it, they can easily throw it aside. If they do not believe there is danger of dissolution, if they prefer dissolution, if they think they can compel fifteen States to remain in or come back, or if they believe they will not go out, let them reject it. I repeat again, it is their business, it is not mine.

But, sir, whether I vote for it at the polls or not, in voting for it here it may be said that I give up some of my principles. Mr. President, we sometimes mistake our opinions for our principles. I am appealed to often; it is said to me: "You believed in the Chicago platform." Suppose I did. "Well, this varies from the Chicago platform." Suppose it does. I stand to-day, as I believe, in the presence of greater events than those which attend the making of a President. I stand, as I believe, at least, in the presence of peace and war; and if it were true that I did violate the Chicago platform, the Chicago platform is not a Constitution of the United States to me. If events, if circumstances change, I will violate it, appealing to my conscience, to my country, and to my God, to justify me according to the motive. [Applause in the galleries.]

The PRESIDING OFFICER (Mr. FOSTER in the chair). Order will be preserved in the galleries, or they will be cleared.

Mr. BAKER:—Again, sir, let us see how, as a Republican, I give up any thing. First, suppose I did: I would give up a great deal to preserve a great Government; I would give up a great deal to be able to shake hands with Kentucky and Tennessee as friends for the rest of my life, as I have in all that has gone before. I would not be ashamed to give up. I would not at least be giving up to traitorous secession, such as Louisiana, Mississippi, and South Carolina are guilty of to-day; but I would be giving up to loyal and affectionate brethren, who implore me for the love of a common Union to do something to satisfy the doubts and fears of their people. I can stand that; I will do it.

Again, sir; how much do I give up? I have said, as a Republican, that Congress has the power to prohibit slavery in all the Territories of the United States. I believe it to-day. Talking about giving up, there are a good many other people that give up something here. Gentlemen on the other side, who have been contending that Congress had no power whatever to prohibit slavery, acknowledge that they were mistaken; at any rate they go for it; they do prohibit it by law, by the Constitution itself. Therefore I am not the only one that gives up.

Again: I believe it is wrong, politically wrong—I am not now discussing the social and moral question—but I believe it to be politically very wrong to

establish slavery in the name of freedom. Sir, twelve years ago or more, it was my fortune, perhaps, to wander in a foreign land beneath the Stars and Stripes of my country. I went there, as I think, impelled by motives of patriotism, perhaps having mingled with them not a little desire of adventure, love of change, and that feverish excitement for which we people of this country are always and everywhere remarkable; but I believe, if I know myself, that I did suppose I was doing something to repay the country for much that she had done for me. Sir, often and again, wandering sometimes beneath

"Where Orizaba's purpled summit shone,"

sometimes by the dark pestilential river that marks the boundary between the two countries, often and often have I wondered to myself whether I was wandering and suffering there to spread slavery over an unwilling people. I am not sorry to see that now that is rendered impossible. I am not sorry to see that it is impossible, first, in the course of events; but if it were not so, I know, if these propositions shall pass, that the foul blot of slavery never will be extended over one foot of territory to be stolen or conquered by the people of the United States.

But I am asked, "What do you say about New Mexico?" I will tell you in twenty words. I am an older Republican than many of those I see around me, who vote to-day differently from me; not a better but an older. I voted in 1850, on the floor of the other House, against the compromise measures of that year. I did so, among other reasons, because I was not willing that Utah and New Mexico should become slave or free according to the wishes of their people, believing as I did then (I have changed my opinion in some respects since), that that was not best for the whole country. Contrary to my wishes, those compromise measures prevailed. New Mexico is nominally now, I believe, a slave Territory; that is, to use the words of the distinguished Senator from New York [Mr. SEWARD], there are some twenty slaves in the whole Territory. There they may, they probably will, remain. I submit to my people a proposition, that if they approve it as a compromise, as a concession, for peace for the Union, as it happens that that little Territory includes all that possibly can be slave territory, they will let it alone till the people are able and willing to make their own State constitution. That is all. Do I state it fairly? Does it go beyond that?

First, I contend that I give up but little. I give it up, as I understand, for purposes of freedom; and the distinguished Senators from Virginia agree with me. They say, in substance, that I am getting a great deal more than I give; and I confess, taking that view of the subject, at least in part, I wonder that a good many more of my Republican friends do not go with me.

Again: it is said on the Republican side that we protect slavery. In one sense we do, and in another sense we do not. In the offensive idea to me and to you of protecting slavery, I do no such thing, and I would die first. When the resolutions of the Senator from Kentucky were up the other day, I voted for the amendment of the other Senator from Kentucky [Mr. POWELL], in order to make them clear, to show what I was voting against. I was unwilling that territory hereafter to be acquired should be rendered slave territory; and I put that proposition distinctly in it, in order that when I voted against them, it might be seen why and how I did it. As I have said, this proposition renders that impossible. First, it refers only to the territory we now possess; that is, New Mexico alone. As to the territory north of 36° 30′, I need not speak. We know that God Almighty has registered a decree in Heaven that that shall never be slave. We, on our part, want no WILMOT proviso there; we all agree that we are willing to let it alone. South, there is but the barren Territory of New Mexico. Beyond that, who knows? If we are to acquire it, we are to acquire it by this proposition, by the assent of a majority of the States of both sections and two-thirds of the whole; and I do not know a man living who believes that with that proposition incorporated in the Constitution, slavery is probable, or even possible.

Therefore, Mr. President, I agree that in the compromise I, as a Republican, do give up to that extent, and no more, what I have said; but doing that, I believe that I consecrate all the territory between here and Cape Horn to freedom, with all its blessings, forever and forever.

So far, sir, as the discussion as to the meaning of this phrase about the common law is concerned, I do not care to indulge in it, and for this simple reason: first, according to the legal view of the Senator from Ohio, everybody knows that this expression, "the course of the common law," means the duly established forms of procedure known to the courts; that is all. In the next place, I am not afraid of the common law. I have been reared under it. With all its imperfections, and they are many, I love it. While it

may be an objection to Virginia to quote it, to me it is full of guardianship and blessing. I do not stop to talk about the Somerset case, nor the decision in Salkeld, nor the Modern Reports. It is enough for me that I know, taking the whole proposition together, that slavery is impossible beyond where it now is, and, as a Republican, I can justify myself to my conscience in giving that vote.

Mr. President, I add very few more words. I should have been excessively pleased, as a partisan and a man, if the inauguration of Mr. LINCOLN could be one at which all the States would attend with the old good feeling, and with the old good humor. I have seen six States separate themselves, as they say, from us, and form a new confederacy, with great pain and greater surprise. I cannot shut my eyes, if I would, to the existing state of things. I listen to the warning of my friend from Kentucky. I listen to the warning of my friend from Tennessee. I have been in both States. I know something of their people. I believe that there, even there, the Union is in danger; and I believe if we break up here without some attempt to reconcile them to us, and us to them, many of the predictions of friends and foes as to the danger will be accomplished. I said, in the earlier part of the session—I repeat it—I would yield nothing to secession. When the Representatives from South Carolina and Mississippi and Alabama and Louisiana came here invoking war, telling us that if we did not yield to them they would secede, they would confederate with foreign Governments, they would break this Union, they would hold us as aliens and strangers and enemies, I believed then, as I believe now, that that was too dear a price to pay even for Union and peace; but to-day the case is altered. Virginia, Kentucky, Tennessee, reiterate their love for the Union. They tell us in unmistakable terms that they desire to remain; and in every county, nay, in every township of those States, we have staunch and true and ardent friends who would be willing to seal their devotion to this Union with their blood. It is they to whose appeal I would listen. It is from them that I would take counsel and advice; and when they tell me, "pass these resolutions; they are resolutions of peace; submit them to your people; listen to what ours say in reply; if it appears to you at the polls that these resolutions will produce peace, restore union, create or renew fraternal, kindly feeling, pass them; let us settle this question, and be one people," I agree; with all my heart, I will do it.

Now, as I close, let me ask what evil; who will be hurt? Suppose, when I get home, I find that the Senators from Virginia are on the stump and they are convincing their people that they are a great deal worse off; the more they convince Virginia that she is worse off, the more Pennsylvania and New York will be convinced that they are better off; and every argument they make against it in Virginia will have a twofold weight North and West. I could not make half as good a speech in favor of these propositions of Union, even in Oregon, or California, or Illinois—I speak of the States I know best—as I should make if I were to read their objections to these propositions.

But suppose—which I do not think possible—they could succeed, not only in Virginia (which I do not believe), but in Kentucky and Tennessee; suppose they were to swear, by the throne of God, they would not take them, but would dissolve and go off whether we passed them or not: we could very easily refuse to vote for them and be in as good a condition as we are to-day, and, in the mean time, next Monday, Mr. LINCOLN will be inaugurated. I desire to see around him thronging, nay forming the procession, every augury of hope and peace.

I expect to hear from his lips words of manly trust and confidence in the Union, and of concession, kindness to all its constituent parts. I have hoped that, in response to what he shall say, I shall hear from every part of what is now acknowledged everywhere yet as our Confederacy, a perpetual hymn of hope and praise rising from all parts of the Union; and, above all things else, I have hope and trust in time and patience. Therefore it is that I shall do no harm.

I know that there are very excited feelings upon this subject North and South. I understand that Massachusetts, an honored State—let me say, to qualify what I am going to say, first, that I believe that Massachusetts is the pattern of a community in the world; as well represented here as any State can be; representing herself better than anybody else can do it for her—I know that there are excited feelings in Massachusetts, and I think she has good cause. The act that more than any other else, perhaps, leads to this proposition of a Peace Convention—that "Congress shall provide by law for securing to the citizens of each State the privileges and immunities of citizens in the several States"—was an act which I abhorred and condemned

from the beginning, and which I am not sorry to perceive that Massachusetts remembers now. Many gentlemen on the floor know to what I allude. On the other hand, South Carolina and Louisiana are ferocious for disunion; and I am afraid that their young men do want war. There is not excitement enough on the plantation and the farm, and in the streets of the towns; but they really want contest, excitement, and bloodshed. What they want I do not; I am trying to keep from it. I do not apprehend, therefore, that the sentiments which I have expressed here to-day will meet the approbation of the extreme men upon either side. I have no doubt my republicanism may be doubted. I think I can see in the look of my friend on my left now [Mr. KING] that he has various convictions that I am very far from being sound in the faith. [Laughter.] Sir, it may be. I come from the midst of a people not directly concerned in this controversy; a population about half northern, half southern. We have intermarried together. Our interests, our fears, our hopes, our recollections, are mingled North and South; and I believe I am expressing their opinions—which perhaps form my own—when I say that I can see no possible harm to anybody anywhere in submitting these propositions to the people, who are, and ought to be, sovereign.

Besides, sir, what else can I do? As I sit down, let me ask Senators upon every side, what else can any of us do? Shall we sit here for three months, when petition, resolution, public meeting, speech, acclamation, tumult, is heard, seen, and felt on every side, and do nothing? Shall State after State go out, and not warn us of danger? Shall Senators and Representatives, patriotic, eloquent, venerable, tell us, again and again, of danger in their States, and we condescend to make no reply?

Sir, there is other business to be done here besides the mere ordinary business of the Government; besides the voting of supplies, and the raising of means by which to buy them. We have questions here to-day, as I believe, of peace and war, and I have waited long to see some mode of their solution. I repeat, I go for this proposition, and agree to submit it to the vote of the people, not because I believe it the best that can be done. I believe, however, that, to-day being two days from the close of this session, it is all I can do. When my people ask me, on my return, "Sir, have not States gone out?" I will say, "Yes." "Do not more threaten it?" if that is the word (I trust it is not the best one), I say, "Yes." They say, "Sir, do you believe they will

do it?" "On my honor and on my conscience," I say, "if something is not done, yes." They then ask, "What have you done?" Mr. President, what have we done? I believe that is the question the country will ask of us; and I, for one, will vote for this proposition, that I may be able to respond.

Mr. GREEN:—Mr. President, I regard the consideration of this question as one of the most important which has ever been presented to the Senate since I have been a member of it. The Union is in danger; the fate of the country is at stake; and whatever the Senate or the House of Representatives or Congress combined can do, ought to be done to save the country. I have very little faith or hope, and I would express the reason why. But as little as there is, I will cling to the last remaining straw, and sink with it grasped fast in my hands, if I have no other resource. This country is of too much importance to me, to my family, to my friends, to my State, to my associates everywhere, to give up without a struggle. That struggle may prove to be fruitless; it may prove to be unavailing. The taunts and jeers thrown out are calculated to stir up ire and ill-feeling; I shall pass them by with disregard. I choose to sacrifice my feelings, and to make myself a burnt-offering on the altar, if I can do any thing to save the country.

What, then, shall we do? These propositions, presented by what is called the Peace Conference, are not to be compared to the propositions of the Senator from Kentucky; and I will not vote for a single one of them, while I will vote for his. They amount to a sacrifice of my honor, and a destruction of the rights of my State. I am permitted to say that the representatives from my State in the Peace Conference condemned them all, while they are willing to go for the proposition of the Senator from Kentucky. We cannot stand by this, and we will not.

Let us not deceive each other; let us not undertake to practice a system of deception which will sound pleasant to the ear, but will be bitter to the taste. I will not do it. Here is a positive prohibition of slavery north of 36° 30′, and then a doubtful question whether it is recognized south of 36° 30′. The Senator from Kentucky thinks it is; but I will not act upon a doubt. We have had too many doubts heretofore, and out of those doubts have grown many difficulties. I shall never permit, so far as my action is concerned, another question of doubt.

Mr. CRITTENDEN:—Will the gentleman allow me to interrupt him? Did he understand me as admitting that it was a doubtful recognition of slavery?

Mr. GREEN:—Not at all. I said expressly that the Senator from Kentucky contended that it did amount to a recognition, but others denied it, and that made it a question of doubt. I will not misrepresent anybody if I know it. Now, sir, I will not act upon a question which admits of doubt. We have passed along in our career for so many years that we have arrived at a point when we must understand each other distinctly and unequivocally, and I will not leave a single point open to equivocation. It must be expressly settled, and settled not only in express words, not only in unmistakable language; but I go further than that; it must emanate from the hearts of a people disposed to stand by it; and if they will not stand by it, I will not associate with them.

I want to preserve this Union; I want to maintain the constitutional rights of all classes, North and South; but to give me a mere written guarantee on parchment, and file it in the office of the Secretary of State, with a predetermination in the hearts and minds of the northern people inculcated and instructed to violate it, I cannot live with, and I will not. I would rather go where I naturally belong, with southern men; but if the true-hearted, the patriotic, and the honorable portion of the North will reverse this inculcated spirit of hostility to southern institutions, and bring them up to the mark where they will recognize constitutional guarantees, then I say, "Hail, thou my brother, we can go together;" but never till that comes to pass. We have approached that period in our country's history when there should be no cheating or attempt to cheat. We must understand each other, and make a permanent, lasting Union, or a permanent, lasting, peaceful separation.

This proposition presented by the Peace Conference, as it is called, I think the merest twaddle—and I use the term with entire respect to the members—the merest twaddle that ever was presented to a thinking people. The proposition of the Senator from Kentucky has some sense in it. If he chooses to desert his own, I shall not complain of him; for I know that warm, patriotic impulses move him in all his action; but I cannot accept the other, and I shall vote against every one of its provisions. When it is said to me that the territory south of 36° 30′ has adopted slavery—that New Mexico has—I must reply to Senators that they misunderstand the law. New

Mexico has never adopted slavery. New Mexico has done this: she has provided remedies for redress of wrongs, including wrongs affecting slave property; but she has never established slavery; nor has Utah. Utah has never even recognized it by implication. Utah passed a law of this character: apprentices bound to service for a period of years may be held there; but when their servitude has expired, according to their articles of apprenticeship, they are free; so that the law of Utah absolutely, if it has any effect, prohibits slavery.

Senators overlook these facts. I take the broad and the bold and the unmistakable ground, not that the Constitution establishes slavery anywhere, but that the Constitution, extending over a Territory, will protect me in all my rights not prohibited by a local competent authority; that my rights are to take any property which I own in any part of the Union, Yankee clocks from the North, polar bears from the Rocky Mountains, mules from the Middle States, and slaves from the South; and that, unless there is a competent local authority to prohibit my rights in these respective classes of property, I am to be protected. The second step is that there can be no local authority as long as the territorial condition remains, competent to prohibit slavery in any Territory.

These are my positions; and hence, so far from this extraordinary position that slavery is local being true, the reverse is true. It may be local in the United States, but so far from its being local to the Territory in the United States, the reverse is true. Talk about freedom being national, and slavery local! I have a right to pass through Pennsylvania, and my right of transit is as perfect this day as it was when Pennsylvania was a slave State....

I have been anxious from the beginning of this session to stave off public action, to hold the public pulse still, and give an opportunity for reaction of northern sentiment. I want no reaction south. It has been my only hope, and my last hope, and that hope has failed....

These resolutions are intended to lull old Virginia, Maryland, Missouri, and Kentucky, until we are hand-cuffed and tied fast, and then action is to commence. They are all designed simply to lull us into a fancied security; but if we are wise betimes, and look forward to coming events, we will at once strike the blow, and separate from a Confederation which denies us peace, denies us protection, denies us our constitutional rights, and seek them in some other association of States....

Now, Mr. President, I want all these propositions voted down, and I hope my friend from Kentucky will revive his propositions and bring them up again. There is some vitality in them; there is some point in them; but as for these wishy-washy resolutions, that amount to nothing, it is impossible that any Senator here will, for a moment, entertain the idea of supporting them. The Peace Conference! And the smallest peace that ever I have heard of.

Let the Senator adhere to his original propositions; let the Senator bring them up and press them upon the attention of the Senate. That is as far backing down as I will go. It is a little more than I want; but still, as a last effort to save the Union, I would go that far. Talk about these measures! These measures that have no vitality—these measures that amount to a total surrender of every principle—I never will vote for; and let the consequences of the future be what they may, I stake my faith and reputation upon the vote I intend to cast.

Mr. WADE:—I move that the Senate adjourn.

Mr. LANE:—I hope the Senator will give me the floor before he makes that motion.

Mr. TRUMBULL:—I ask the Senator from Oregon to yield to me a moment.

Mr. LANE:—For a motion to adjourn, I will.

Mr. TRUMBULL:—Yes, sir; I desire the floor with a view to make that motion. It is apparent that no good is to come out of the discussion of the proceedings of this Peace Conference. It is a proposition got up for the purpose of satisfying the Border States; and the Border States, Missouri and Virginia, say they will have none of it. The first section is a proposition establishing slavery—

Mr. MASON:—I rise to a question of order.

The PRESIDING OFFICER:—The Senator from Illinois will pause. The Senator from Virginia rises to a question of order, which he will state.

Mr. MASON:—I understand the motion to adjourn has been made.

Mr. TRUMBULL:—I have not made the motion yet. I stated that I would make that motion, and I was merely going to give the reason. The Senator from Oregon will have the floor to-morrow. I was stating the reason why I should make the motion to adjourn, which I intend to make in the course of a minute, and I merely made that statement to show that there was no object in sitting here and punishing ourselves in regard to resolutions which

manifestly cannot command the assent of this body. I now move that the Senate adjourn.

Mr. DOUGLAS:—I call for the yeas and nays on that motion.

The yeas and nays were ordered.

And the Senate refused to adjourn, and, for special business, the peace propositions were set aside. The same day they were introduced, as follows:

Mr. LANE:—Mr. President, my object in getting the floor, was to give the reason why I cannot vote for the resolution now before the Senate. You are aware, sir, that I did vote for the propositions of the Senator from Kentucky to amend the Constitution, with the hope, if they could be adopted, that peace, perhaps, might be restored to the country; but those propositions have been superseded, and the Senator from Kentucky himself says that he is willing to sacrifice, on the altar of his country, as he terms it, his own propositions, and take the amendments which are proposed to the Constitution presented by the Peace Congress to the Senate. The resolutions proposed by the distinguished Senator from Kentucky were as low down as I could go. They did not secure to every State that right they have under the Constitution, as I understand it; but the resolution now before the Senate, to speak modestly, as I look at it, with all due respect to the great men who met here to consider this matter, who deliberated for many days, and presented this as the result of their deliberations, is a cheat, a deception, a humbug—nothing that any State can take as a final settlement of the questions that are now giving trouble to this country, nothing that can settle permanently those difficulties. We must have something more definite, something more certain, or there can be no Union even of the States that now remain in the Union, as I believe.

Mr. GREEN:—Mr. President—

The PRESIDING OFFICER:—Does the Senator from Oregon give way?

Mr. LANE:—Only for an adjournment.

Mr. GREEN:—I rise to make that motion, that the Senate do now adjourn.

So the motion was agreed to; and the Senate by a vote—23 to 22—adjourned.

March 2d.—Senator LANE having secured the floor, made the following speech on the report of the Peace Conference:

Mr. LANE:—Mr. President, I hope I shall be permitted to proceed without interruption, and I trust not to consume much time. While I had the floor yesterday, I stated some of my objections to the proposed amendments to the Constitution which are now before us. They are: that they do not do justice to the whole country—that they do not do justice to all the States. I have always held that the territory is common property; that it belongs to all the States; that every citizen of every State has an equal right to emigrate to, and settle in, the common Territories; and that any species of property, recognized as such in any State of the Confederacy, should have a like recognition in the Territories, and be guaranteed, protected, and secured in its full integrity, to the owner thereof. That this should be so, was the intent of the revolutionary fathers who shaped and framed the Constitution; and it was this principle, more, perhaps, than any other, which called into being that noble compact, which has so long been a bond of Union and goodness between all the States. It is the very life-blood and vitality of the Constitution. It is the ligament that has held us together heretofore, and which, if cut now, will result only in hopeless and immutable disruption. I have never deviated a single iota from this correct doctrine. Had we lived up to this equitable principle—the foundation upon which the Constitution rests, upon which only this Union can be maintained—we should have had no trouble in this country to-day. It is not my fault that trouble and dissatisfaction prevail; it is not my fault that secession has taken place, and that further secession will take place, unless Congress shall recognize this great principle of justice, of right, and of equality. That is the doctrine upon which this Union rests; and it must be maintained, or the connection will be severed.

While upon this question, Mr. President, I may be permitted to allude to my course in the Senate last session, and I shall do so very briefly, upon a series of resolutions introduced by the Senator from Mississippi [Mr. DAVIS]—a series of resolutions that were considered in this body, after having been previously maturely and deliberately adopted by a caucus composed of the

Democratic Senators, and agreed upon by them, as setting forth the principles necessary to be maintained in order to secure the existence and perpetuity of this Confederacy. It has been charged upon this floor that, on the 25th day of May last, I voted against the right of protection to slave property in the Territories. In order that the Senate may know how I voted, and that I may show you and every other man that I stood then as I stand to-day, and as I have always stood upon this question, I will read some short extracts from the discussion upon this series of resolutions. The fourth resolution was in these words:

"*Resolved*, That neither Congress nor a Territorial Legislature, whether by direct legislation or legislation of an indirect and unfriendly nature, possesses the power to annul or impair the constitutional right of any citizen of the United States to take his slave property into the common Territories, but it is the duty of the Federal Government there to afford for that, as for other species of property, the needful protection; and if experience should at any time prove that the judiciary does not possess power to insure adequate protection, it will then become the duty of Congress to supply such deficiency."

Now mark! this resolution states that all the property of all the people of any State, whether slave or otherwise, has an equal right to protection; and if experience should at any time prove that the courts had not the power to afford that protection, then it was the duty of Congress to enact such laws as were necessary to protect every man in his legal and rightful property, no matter of what description or characteristic. Sir, not long since, upon this floor, a Senator was hardy enough to say that I voted against protecting property in Territories; and he desired to know what had happened that States should be concerned; what had occurred to alarm the States that were seceding from the Union? I will show you, sir, very briefly, what I said upon that question then; and I will repeat it now, for I have never changed my sentiments on this subject. No living man can assert, and in so doing tell the truth, that I ever uttered a word against the equality of the States, and their equal right in the common territory of our common country; and any charge that I voted then to refuse protection to property in the territory *is false*. I have always held that the territory belonged to all; that it was acquired, as I knew, at the expense of the Southern States as well as of the Northern; and upon the battle-fields where I had witnessed the good

conduct of Northern and Southern troops, I found the soldier from the Southern States pouring out his blood as freely, and certainly in very much larger quantity—for there were very many more from the Southern States who participated in the battles of our country in the war which resulted in the acquisition of territory, than there were from the Northern States. Then, so far as the acquisition is concerned, it is joint, and it was for the joint benefit of all portions of the country. Consequently, I have held, and I hold now, that the Territories should be so appropriated. And when those resolutions were up last winter, I said what I will now read:

"I only desire to say, in relation to the series of resolutions, a portion of which I have already voted in favor of, that I shall vote in favor of the rest; for the whole of them together meet with my hearty approbation. They assert the truth; they assert the great principle that the constitutional rights of the States are equal; that the States have equal rights in this country under the Constitution; and, as I understand it, they must be maintained in that equality. These resolutions only assert that principle; and I say that it is a misfortune to the country, in my opinion, that the principles laid down in these resolutions had not been asserted sooner. They ought to have been asserted by the Democratic party in plain English ten years ago. If they had been, you would have had no trouble in this country to-day; the Democratic party would have been united and strong, and the equality and constitutional rights of the States would have been maintained in the territory, and in all other things; squatter-sovereignty would not have been heard of, and to-day we should be united. It is the fault of the Democratic party in dodging truth, in dodging principle, in dodging the Constitution itself, that has brought the trouble upon the country and the party that is experienced to-day."

I believe, if we had asserted and maintained these great truths ten years ago, and placed ourselves upon them boldly, as it was our duty to have done, we would have no trouble in this country to-day; but instead of declaring the great truths enunciated in these resolutions, we went off upon issues unbecoming the Democratic party. A portion of our leaders wandered and went astray, and asserted that the people of a Territory had the right to prohibit slavery whenever, in their judgment, it ought to be prohibited; a power which Congress even does not possess, and consequently cannot confer upon a Territorial Legislature, unless the creature becomes greater

than the creator. It was this kind of trouble, and this sort of heresy introduced into the Democratic party, that has broken it up, and brought the disasters upon our country which we experience to-day. I say, then, let the blame fall upon the guilty; I am innocent of it; for I have held but one doctrine upon this question from the beginning to the present hour, and I shall hold that doctrine to the end. In the speech from which I have already read, I also used the following language:

"Sir, it appears to me to be very singular indeed, that any man can hold that the territory of this country belongs to a portion of the people, and that the people of one portion of the Union can go there and enjoy their property, when the people of another portion cannot enjoy the right of property in that territory—territory common to the whole country; territory that was earned or acquired by the common blood and common treasure of all; territory that is sustained by the common treasure of all; and to say that all shall not have an equal right there, is to deny a fact so plain, a principle so just, a right so manifest, that I can hardly see how any man who professes to be a Democrat can deny it, or how he can attempt to embarrass the adoption of the correct principles announced in these resolutions. I shall therefore vote against all the amendments, and every thing that is offered to obstruct their passage, upon the ground that they assert justice, that they assert truth, that they assert the equality and constitutional rights of all the States, which principle must be maintained, or this Union cannot be preserved."

That was my doctrine then, it is the doctrine which I have held and advocated for twenty years. It is the doctrine I hold now; and I so notified the Senator from Tennessee, who arraigned me here as voting against protecting property, and who did me willful and gross injustice in it—for I voted for it and he voted against it. That is to say, I voted against the resolution introduced by Mr. CLINGMAN, declaring "that slave property did not need protection in the Territories," while the Senator from Tennessee voted for it; and when the motion was made to reconsider the vote adopting it in lieu of the fourth resolution of the DAVIS series, I voted to reconsider, and the Senator from Tennessee voted against it, showing clearly that he was against affording that protection to slave property which the fourth resolution provided for. Did I not maintain the truth? Was I not prophetic in the announcement that I made in this Senate Chamber then? I said, that unless this great principle of justice, of equality, of the right of every man to

the common territory should be maintained, this Union would be broken up. This great principle has not been maintained, but the Union has been destroyed.

But, sir, to go to the votes. It will be borne in mind, and every Senator on this floor will bear me out in my statement, that while the DAVIS resolutions —the series of which I speak—were up, various propositions were made to amend them, and I voted against all amendments. There are Senators here at this moment who will sustain me when I say that, when in caucus and we had under consideration this series of resolutions, I said, and said it boldly and in plain terms, that if every man from every Southern State of this Union would come here and say, for the sake of peace, if you please, or any other reason, he was willing to abandon his equality, his right in the common territory, then, if alone, I would stand and protest against it; protest that he had no right to surrender a constitutional right; that none but a coward would do it; that every man had a right in the common territory; that it was his privilege, and he should never surrender it with my permission. On the other hand, I said that if every Northern man in the Senate Chamber—nay, but even every Northern citizen—expressed a desire to surrender his right, his equality, his privilege, to go to the common Territories with his property, I should enter my solemn protest against it, and insist that he had a constitutional right to go there, which he should never surrender with my consent. Then, how any man could assert that I ever entertained the opinion that slavery did not need protection from aggression, is to me the strangest, falsest thing in nature. I said, as I have shown you, that I had voted against all amendments, and would continue to vote against all amendments, or any attempt whatsoever calculated to obstruct the passage of the resolutions; for they asserted the right of the people to go to the Territories, asserted the power of the court to protect them in the possession of their property, and that if the court failed to protect them, Congress should afford the necessary authority to do so.

But, sir, allow me to observe, there was a resolution that I never voted for, and that no man can charge me with ever having voted for. Senators will recollect—and whoever has read the proceedings of the Senate will recollect—that an amendment was offered as a substitute to the fourth resolution, in these words:

"That the existing condition of the Territories does not require the intervention of Congress for the protection of property in slaves."

I did not vote for that resolution; but the Senator from Tennessee did. That amendment was adopted in lieu of the fourth resolution of the series that I have read, which insured protection to slave property in the Territories. It was adopted not entirely by Democratic votes; and that there may be no mistake, I will read what the Senator from Massachusetts said when he moved a reconsideration:

"I wish simply to say that I voted for that resolution because I believed the condition of the Territories requires no such law now or ever, and I do not believe in the enactment of any such law; but my friends on this side of the Chamber have put that resolution in the series; and for myself, I do not wish to be responsible for any portion of these resolutions, and I therefore wish the vote to be reconsidered."

This was the language of the Senator from Massachusetts, when he found that the Republicans, united with some Democrats, had stricken out the fourth resolution of the series, and inserted this as a substitute. I said to Mr. WILSON on that occasion:

"I desire merely to tender my thanks to the honorable Senator from Massachusetts. The series of resolutions, as introduced by the honorable Senator from Mississippi, are germane one to the other. They are a declaration of principles by the Democratic party. This amendment, as the Senator has said correctly, has been fastened on the Democratic resolutions by the votes of the Republican Senators. I feel grateful, indeed, to the Senator for making the motion to reconsider. I hope the vote will be reconsidered, and the resolution voted down."

The motion was put, and on the yeas and nays the vote was reconsidered. I voted for the reconsideration, and I voted against the amendment when it was adopted as a substitute for the fourth resolution. Among those who voted in the affirmative for reconsideration were Messrs. BENJAMIN, BROWN, CHESNUT, CLAY, DAVIS, FITZPATRICK, GREEN, GWIN, HAMMOND, HARLAN, HUNTER, IVERSON, JOHNSON of Arkansas, and LANE. Among those who voted against it, I find JOHNSON of Tennessee. I did not vote to continue in the series a resolution that refused protection to all the people in

the common Territories. Portions of the Journal have been paraded to show the vote on Mr. BROWN's amendment to Mr. CLINGMAN's amendment. I said, in several speeches, that I should vote against all amendments, because the series had been considered not only here, but in a caucus composed of the Democratic Senators of this body, and we had agreed to take them as a whole, and to vote them through altogether if we had the strength to do so. I voted against every proposition to amend. I voted against Mr. BROWN's, and I voted against Mr. CLINGMAN's, and I voted against every other amendment that was calculated to weaken or embarrass the passage of the resolutions. Yet I am represented here as having voted against affording protection to slave property in the Territories! I ask again, if any Senator, if any man who can read, can say that the fourth resolution, for which I did vote and for which I struggled and contended, does not declare that slave property shall be protected in the common Territories of our country.

Could any thing be stronger than the fourth resolution? Could any man desire a more direct declaration of principles than that? Upon the yeas and nays I voted for it. I voted against the amendment that was adopted, and afterwards reconsidered. How, then, can a man arraign me before the country as having said upon oath, on the 25th of May last, that slave property should not be protected in the common Territories with other property? I have always held that all property should be protected, slave as well as other property; that it should have the same protection as, and no more protection than any other property. That they do not secure all this, is the objection I have to the amendments to the Constitution proposed by the Peace Conference. They are ambiguous, loose, and deceptive. I do not know that the people can comprehend them. There will be no certainty under them; and they would, if adopted, result in endless trouble and litigation. I trust no amendments will ever be made to the Constitution, unless they are made upon principles of right, justice, and equality, so that there can be no mistake in construing them hereafter. If we amend the Constitution, let us do it with a view to the peace of the country, with a view to the harmony of the country, with a view to the security of every interest, and of every State in the Union. If we could do that, and this day amend the Constitution so as to provide expressly that every State should have equal rights in the Territories and elsewhere within the Union, this

Confederacy would last forever, the States that have left us would come back, and we should have then a great and a lasting Union indeed. Without it, we never can have a permanent Union. We must do something that is clearly right, or the States that have left us will never return. They never ought to return, unless they can have the right of equality secured to them by the Constitution. I claim for my State just that which she is entitled to, and not a particle more. I would concede to the Southern States, that to which they are entitled, and not a particle more. That, they must have, or there can be no peace, no union, no harmony, no security, and no perpetuity of this Confederacy. Such amendments to the Constitution, securing these objects and principles, are indispensable to the maintenance of the Government as it was formed.

Then why not do right? Why not every southern man ask just that which he is entitled to, and no more? He ought to be content with nothing short of what he is entitled to; and if he be, he is untrue to his section and his constituents; untrue to the people whose servant he is; and untrue to the institutions of the country; for the country can exist only upon the triumph of such principles. He who is unwilling to deal fairly by the North and the South, is a man who is guilty of shattering and ruining the Confederacy; destroying the peace and harmony and success of this great experiment of ours.

Mr. President, in the State of Connecticut the Democracy assert the correct principle, and they charge the trouble in the country to the right quarter. I stated, on a former occasion, that the Democracy of old Connecticut would never join the Republican party in any attempt to coerce the Southern States; and I am now authorized by their own declaration to say again, what I said before, that they, like the Democracy of Oregon and of every other Northern State, will never join a party that has refused justice; that has refused equality and right; that has refused to protect property in the Territories, or wherever the jurisdiction of the United States extends, in putting down those who contended for their rights and for the equality to which they were entitled. Sir, the loyal Democracy of this country fully understand the question, and they assert the right.

Now, sir, these great principles were not carried out. The platform on which the Democracy presented their candidates for President and Vice-President

was not heeded, though based upon the Constitution. I will say to the Senator who has boasted of his efforts in Tennessee in behalf of the BRECKINRIDGE ticket, that I shall notice that hereafter; but I have only to say now, that, for the sake of the country, I would to God the ticket had succeeded. We should then have had those principles endorsed upon which the Government is established, and the country would have been at peace. For that alone I wished it to succeed.

I will say only a word, now, as to the amendments proposed to the Constitution. I had the pleasure of listening, yesterday, to the distinguished Senator from Kentucky. I know his patriotism and his devotion to the Union. I know his willingness to take any thing, however small, however trifling, however little it might be, that would, in his opinion, give peace to the country. Sir, I am actuated by no such feeling. We should never compromise principle nor sacrifice the eternal foundations of justice. Whenever the Democratic party compromised principle it laid the foundation of future troubles for itself and for the country. When we do, then, amend the Constitution, it ought to be in the spirit of right and justice to all men and to all sections. I voted for the Senator's propositions, and I will do so again, if we can get a vote, because there is something in them; something that I could stand by; but there is nothing in the amendments proposed by the Peace Conference. He proposed to establish the line of 36° 30′, and to prohibit slavery north of it and protect it south of it, in all the present territory, or of the territory to be hereafter acquired. In that proposition there was something like justice and right; but there is nothing in the amendments proposed by the Peace Conference that any man, North or South, ought to take. They are a cheat; they are a deception; they are a fraud; they hold out a false idea; and I think, with all due respect to the Senator—for I have the highest regard for him personally—that he is too anxious to heal the trouble that exists in the country. He had better place himself upon the right and stand by it. Let him contend, with me, for the inalienable and constitutional rights of every American citizen. Let him beware of "compromising" away the vital rights, privileges, and immunities of one portion of the country to appease the graceless, unrelenting, and hostile fanaticism of another portion. Let him labor with me, to influence every State to mind its own affairs, and to keep the Territories entirely *free* to the enterprise of all, with equal security and protection—without

invidious distinctions—to the property of every citizen. Thus, and only thus, can we have peace, happiness, and eternal Union.

I could not avoid noticing the anxiety of the Senator from Kentucky to accept any thing, and the readiness of the Senator from Oregon to pledge his people—"my people"—to any thing that he chooses. Now, I know there are many free people in the State of Oregon. They generally do as they please. They have no master. No man owns them; and no man can claim to control them. But this I am warranted in asserting—for I know long, well, and intimately, the gallant men of Oregon—that they will not be found ready or inclined, at the Senator's and his masters beck, to imbrue their hands, in a godless cause, in fraternal gore.

Mr. President, the principles asserted in the resolutions adopted by the Senate, last winter, have not been carried out. We see the consequences. We see a dissevered country and a divided Union. A number of the States have gone off, have formed an independent Government; it is in existence, and the States composing it will never come back to you, unless you say in plain English, in your amendments to the Constitution, that every State in the future Union has an equal right to the Territories and all the protection and blessings of this Government—never! I tell you, sir, although some foolish men and some wicked ones may say I am a disunionist, I am for the Union upon the principles of the Constitution, and not a traitor. None but a coward will even think me a traitor; and if anybody thinks I am, let him test me. This Union could exist upon the principles that I have held and that are set forth in the DAVIS resolutions; but upon no other condition can it exist. Then, sir, disunion is inevitable. It is not going to stop with the seven States that are out. No, sir; my word for it, unless you do something more than is proposed in this proposition, old Virginia will go out too—slothful as she has been, and tardy as she seems in appreciating her own interests and her rights, and kind and generous as she has been in inviting a Peace Congress to agree upon measures of safety for the Union. The time will come, however, when old Virginia will stand trifling and chicanery no longer. Neither will North Carolina suffer it. None of the slave States will endure it; for they cannot separate one from the other, and they will not. They will go out of this Union and into one of their own; forming a great, homogeneous, and glorious Southern Confederacy. It is and it has been, Senators, in your power to prevent this; it is and it has been for you to say (you might to-day,

as it is the last day, say so), whether the Union shall be saved or not. I know, that gallant Old Dominion will never put up with less than her rights; and if she would, I should entertain for her contempt. I should feel contempt for her if she were to ask for any thing more than her rights; and so I would if she were to put up with any thing less than her constitutional rights. Then, sir, secession has taken place, and it will go on unless we do right.

Mr. President, in the remarks which I made on the 19th of December last, in reply to the Senator from Tennessee, I took the ground that a State might rightfully secede from the Union when she could no longer remain in it on an equal footing with the other States; in other words, when her continuance as a member of the Confederacy involved the sacrifice of her constitutional rights, safety, and honor. This right I deduced from the theory of equality of the States, upon which rests the whole fabric of our unrivalled system of government—unrivalled, as it came from the hands of its illustrious framers —a model as perfect, perhaps, as human wisdom could devise, securing to all the blessings of civil and religious liberty, when rightly understood and properly administered; but like all other Governments, and even Christianity itself, a most dangerous engine of oppression when, having fallen into the hands of persons strangers to its spirit, and unmindful of the beneficent objects for which it was framed, it is perverted from its high and noble mission to the base uses of a selfish or sectional ambition, or a blind and bigoted fanaticism. I said, on that occasion—referring to this fundamental principle of our Government, the equality of the States—that "as long as this equality be maintained the Union will endure, and no longer." I might here undertake to enforce, by argument and the authority of writers on the nature and purposes of our Government, this, to me, self-evident proposition. But I deem it unnecessary to consume the time of the Senate in discussing that branch of the subject.

I propose, Mr. President, to confine what I have to say in regard to the right of secession to the question, Who must judge whether such right exists, and when it should be exercised? According to the theory of every despotic Government, of ancient or modern times, there is no such right. A province of an empire, how much soever oppressed, is held by the oppressor as an integral part of his dominions. The yoke, once fastened on the neck of the subject, is expected, however galling, to be worn with patience and entire submission to the tyrant's will. This is the theory of despotism. What are its

fruits? We have seen, in modern times, some of the bloodiest struggles recorded in history growing out of the assertion by one party, and the denial by the other, of this very right. Hungary undertook to "secede" from the Austrian empire. Her right to do so was denied. She constituted an integral part of the empire—a great "consolidated" nation, as some consider the United States to be. Being an integral part of the empire, according to the theory of the Austrian Government, she must so remain forever. Austria not having the power to enforce an acquiescence in this doctrine, Russian legions were called to her aid; and Hungary, on whose gallant struggle for independence the liberty-loving people of this country looked with so much admiration and sympathy, soon lay prostrate and bleeding at the tyrant's feet. You may call this attempt of Hungary to regain her independence revolution. That is precisely what Austria called it. I call it an effort on her part to peaceably secede—to peaceably dissolve her connection with a Government which, in her judgment, had become intolerably unjust and oppressive. Her oppressors told her it was not her province but theirs, to judge of her alleged grievances; that to acknowledge the right of secession would strike a fatal blow at the integrity of the empire, which could be maintained only by enforcing the perfect obedience of each and every part.

We have, in the recent struggle of the Italian States, an instructive commentary on the now mooted questions of secession and coercion. Indeed, history, through all past ages, is but a record of the efforts of tyrants to prevent the recognition of the doctrine, that a people deeming themselves oppressed might peaceably absolve themselves from allegiance to their oppressors. When our Government was formed, our fathers fondly thought that they had made a great improvement on the despotic systems of modern Europe. They saw the infinite evil resulting from coercing the unwilling obedience of a subject to a Government which he abhorred and detested. They accordingly declared the great truth, never enunciated until then, that "Governments derive all their just power from the consent of the governed." A Government without such consent they held to be a tyranny.

Now, Mr. President, this brings us to the very point in issue. Who is to determine whether this consent is given or withheld? Must it be determined by the ruler? If so, the proposition just stated is an absurdity. Clearly it was the meaning of those who enunciated this great truth, that the subjects of a Government have the right to declare or withhold their consent; otherwise

no such right exists. They, and they only, must judge whether their rights are protected or violated. If protected, every consideration of interest and safety impels them to consent to live under a Government which secures the blessings they desire. If, on the other hand, in their judgment, their most sacred rights are violated, interest and honor, and the instinct of self-preservation, all conspire to impel them to withhold their consent; which being withheld, the Government, as far as they are concerned, ceases.

Here I would call the attention of the Senate to the first of the Kentucky resolutions of 1798-'99, written by Mr. JEFFERSON, in which he says distinctly, that the parties to a political compact must judge for themselves of the mode and measure of redress, when they consider the compact violated and their rights invaded:

"*Resolved*, That the several States composing the United States of America, are not united on the principle of unlimited submission to their General Government; but that by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and is an integral party; that this Government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its power; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

Here Mr. JEFFERSON asserts that a State aggrieved shall judge not only of the mode, but the measure of redress. Is this treason? If the measure of redress extends to secession, how can the Senator from Tennessee [Mr. JOHNSON] do less than denounce the great apostle of liberty—as Mr. JEFFERSON has been called—a traitor?

No less clear and explicit on this point, is the language of Mr. MADISON. Being chairman of a committee to whom the subject was referred—the

resolutions having been returned by several of the States—he says in his report:

"It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the Constitution, that it rests on this legitimate and solid foundation. The States, then, being the parties to the Constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide, in the last resort, whether the compact made by them be violated, and consequently that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition."

In the remarks which I made on the 19th of December last, I referred to the fact that Virginia, in accepting the Constitution, declared that the powers granted under that instrument "being derived from the people of the United States, may be resumed by them whenever the same shall be perverted to their injury or oppression." I referred, also, to the fact that New York had adopted the Constitution upon the same condition and with the same reservation. I may here quote the language of Mr. WEBSTER, distinctly recognizing the right of the people to change their Government whenever their interest or safety require it. He says:

"We see, therefore, from the commencement of the Government under which we live, down to this late act of the State of New York"—

To which he had just referred—

"one uniform current of law, of precedent, and of practice, all going to establish the point that changes in Government are to be brought about by the will of the people, assembled under such legislative provisions as may be necessary to ascertain that will truly and authentically."

If the people of a State, believing themselves oppressed, undertake to establish a Government, independent of that to which they formerly owed allegiance, and the latter interferes with the movement, and employs force to prevent such a consummation, no one who acknowledges the great truth that the basis of all free government is the "consent of the governed," will deny that such interference is an act of usurpation and tyranny. Those only who borrow their ideas of political justice from the despotic codes of Europe, and are more imbued with the spirit of METTERNICH and BOMBA than of JEFFERSON and MADISON, will attempt to justify, palliate, or excuse such violation of the sacred rights of the people. I have observed that often the noisiest champions of popular rights are the first to trample those rights under foot. The word "freedom" is continually on the tongues of gentlemen on the other side of the Chamber; and I believe the Senator from Tennessee has been suspected of a decided leaning to agrarianism, so zealous has he been in advocating the rights, so entirely devoted is he to the interests of the "dear people." But now, when the *people* of the seceding States have pronounced, in tones of thunder, the fiat which absolves them from allegiance to a Government which they no longer respect or love, these same gentlemen all lift their hands in horror, roll up the whites of their eyes, as did old Lord NORTH many years ago, and exclaim "Treason!" "Treason!" Then, boiling with patriotic rage, they rise up and declare that "this treason must be punished; the laws must be enforced." History tells us that this was the language of King GEORGE and Lord NORTH when the colonies renounced their allegiance to the mother country. The former of these worthies, we are told, spent much of his life in a state of mental darkness—in other words, he was a lunatic. The other received from nature a narrow intellect, and inherited prejudices common to the aristocracy of that period and of all other periods of the world's history. Their errors were the natural offspring of incapacity and the false teaching received in their youth. While, therefore, we cannot admire or approve their conduct, these circumstances incline us more to sorrow than to anger, disarm our resentment, and dispose us to forgive what, under other circumstances, would deserve the severest censure.

But what excuse can we find for the peculiar champions of popular rights in this Chamber; these zealous servants of the people, forever ringing in our ears, "Let the voice of the people be heard; respect the will of the people;

vox populi vox Dei!" Sir, I say too, let the voice of the people be heard and respected. And I think, for the sake of consistency with all my past professions as a Democrat, I am bound to respect the declared will of the sovereign States which, for reasons satisfactory to themselves, have seceded from the Union and established a separate and independent Government. Whatever the causes may have been which impelled them to a separation from the other States, I am bound to respect the expression of their sovereign will; and I heartily reprobate the policy of attempting to thwart that will under the pretence of "punishing treason" and "enforcing the laws." We are told that the design is to attempt nothing more than to collect the revenue in the ports of the seceded States. To say nothing of the justice or injustice of the attempt so to do, I ask Senators from the North, and the Senator from Tennessee, *will it pay*? Will it not be a declaration of war against the seceding States, involving the people of all the States in a long and bloody conflict, ruinous to both sections? Are their ethics not the ethics of the school-boy pugilist, "Knock the chip off my shoulder"?

One of the framers of the Constitution [Mr. MADISON], whose expositions of that instrument all classes, all parties, have heretofore received, and still receive, or pretend to receive, with profound deference and respect, has left on record his views of the injustice, impracticability, and inefficacy of force as a means of coercing States into obedience to Federal authority.

Among the statesmen of the Revolution—those who participated in the formation of our Government—there was no one who had such exalted notions of the power and dignity of the Federal Government, as the great HAMILTON. He was a consolidationist. The advocates of coercion might naturally expect to obtain "aid and comfort" from the recorded declarations of one of his peculiar political faith. But an examination of his writings will show, that instead of favoring coercion, instead of being the advocate of force, he was the advocate of leniency and conciliation towards refractory States, and deprecated a resort to force as madness and folly.

If the great names of MADISON and HAMILTON have not sufficient weight to restrain the madness of those who urge a coercive policy against the seceding States, then, indeed, I see no escape from that most dreadful of all calamities which can befall a nation—civil war. If those in this Chamber who talk so flippantly of war, had seen, as it has been my lot to see, some of

its actual horrors, they might, perhaps, heed the warnings and respect the counsels of the sages and patriots whose language I have quoted. They would at least refrain from ungenerous insinuations against the patriotism of those northern Democrats, who, like myself, reprobate the policy of coercion as destructive of the peace, the prosperity, and happiness of every part of the country, north as well as south.

But to return to the remarks of the Senator from Tennessee. In the pamphlet report of his speech, page 7, JEFFERSON is quoted; but the concluding part of the quotation is repeated in the *Globe* report and not in that of the pamphlet. That part is:

"When two parties make a compact, there results to each a power of compelling the other to execute it."

JEFFERSON is here quoted to show that the Confederation has a power to enforce its articles on delinquent States. But the citation is unfortunate for the Senator from Tennessee. He had just previously asserted that Vermont and other States had, by personal liberty bills, violated the Constitution. Well; can he tell us how Virginia and South Carolina could enforce the Constitution on Vermont in that respect? It cannot be done. What follows? Why, as Mr. WEBSTER said at Capon Springs, "a compact broken by one party is broken as to all." Hence, according to the doctrines of JEFFERSON and WEBSTER as to the actual case which, according to the Senator, has occurred, the compact having been broken, the Southern States have a right to retire—are absolved from further obligations under the constitutional compact.

The Senator complains that I replied at all, as I was a northern Senator, and a Democrat whom he had supported at the last election for a high office. Now, I was, as I stated at the time, surprised at the Senator's speech—because I understood it to be for coercion, as I think it was by almost everybody else, except, as we are now told, by the Senator himself; and I still think it amounted to a coercion speech, notwithstanding the soft and plausible phrases by which he describes it—a speech for the execution of the laws and the protection of the Federal property. Sir, if there is, as I contend, the right of secession, then, whenever a State exercises that right, this Government has no laws in that State to execute, nor has it any property in any such State that can be protected by the power of this Government. In attempting, however, to substitute the smooth phrases of "executing the laws" and "protecting public property" for coercion, for civil war, we have an important concession, *i.e.*, that this Government dare not go before the people with a plain avowal of its real purposes, and of their consequences. No, sir; the policy is to inveigle the people of the North into civil war, by masking the design in smooth and ambiguous terms.

Now, sir, I want it distinctly understood, as I have already shown, that during the last session I stood firmly by the DAVIS resolutions. I voted

against every amendment. I voted against an amendment that he voted for, because I believed it was partial, and did not do justice.

But the Senator from Tennessee proceeded with an air and tone of great triumph to bring forward my vote on the amendments proposed to the DAVIS resolutions. I think I have said all that it is necessary for me to say upon that subject. I have shown that I have voted for them under all circumstances, and against every amendment. Those resolutions assert the right of property in the Territories, and that when the courts fail to afford protection, then it is the duty of Congress to come forward and provide that protection. I wished to put slave property upon the same footing as other property. That is where I then stood, where I now stand, and where I intend to stand. The Senator asks, with a kind of triumphant air, what has happened since that day? Mr. President, I have said that I have done all in my power, by standing firm to the resolutions agreed to by the Democratic party, to afford protection. The Senator misrepresented my vote on those resolutions. I never voted against the DAVIS resolutions, nor did their substitute ever come up as a separate proposition. It was an amendment to one of that series of resolutions I voted against; and I would vote against any thing and every thing that would embarrass their passage, for they contained just what I thought was right.

What has happened since? Why, a thing has happened that never happened before. The denial of any and all protection to slave property in any and in all the territory; the denial of the right to take slave property to any of them has been proclaimed and affirmed at the ballot-box by a majority of the States, and a majority of the electoral votes of this Union. What has happened? Why, the thing has happened that has been three times before attempted, and three times before failed; the first attempt having endangered the formation of the Union, and the second and third its continuance. The first attempt was made in 1784, to exclude slavery from all the Territories. It was abandoned in 1787 by excluding it only from the territory northwest of the Ohio, leaving it to colonize that portion southwest of that river. The same thing was again attempted in 1820, as to the territory acquired from Louisiana; and after a terrible agitation, was abandoned by adopting the Missouri line. The third attempt was made in 1850, as to the territory acquired from Mexico; and then also the Union narrowly escaped destruction; but the compromise measures were adopted. And now it comes again, but in a more formidable way than ever. A President has been elected

on that issue; for the first time the people of the North, after all previous compromises and warnings, have voted on the question, and every Northern State has pronounced for the spoliation.

Mr. President, perhaps the most signal instance of the evils of compulsory union between dissimilar people, is that of Ireland and England. The people of Ireland—the home and heritage of my ancestors—have, as the South has, a representation in the national Legislature; but being also, as the South is, in a minority in that body, have no power to protect themselves from the aggressions of England. The consequence is, that they have been excluded from the common benefits of British legislation, commercially, and even religiously, to say nothing of their exclusion from official station in the empire. And, accordingly, Ireland has been impoverished, degraded, and discontented. She has been trampled upon, outraged, insulted, treated like Cinderella. The people of this country have always sympathized with the wrongs of Ireland, and her struggles for independence. Yet there is now a greater difference between the people of the South and of the North than between those of England and Ireland, and greater antagonism of opinion and feeling. Nevertheless, it is proposed to hold the South in political subjection to the North, and for that purpose to employ naval and military force.

Sir, I might mention many other cases: the subjection of Greece to Turkey; of Poland to Russia; of the Netherlands to Spain; Italy to Austria. In all these cases we have sympathized with, and, in many of them aided, the secession from the common government, by contributions and individual service. Yet those Governments were not founded on consent, and there was no compact conceding the right of secession.

Sir, in conclusion, whether the course the seceding States have seen fit to take be right or not, is a question which we must leave to posterity, and the verdict of impartial history. Our time will probably be more profitably employed in considering how we shall deal with secession than in discussing the causes which have produced it. Secession, right or wrong, justifiable or unjustifiable, is an accomplished fact; and it presents to us no less an alternative than that of peace or war. Sir, I believe that, in the general ruin which would follow coercive measures against the seceding states, all sections, all classes, all the great interests of the country, without

any exception, would be involved. How much better, Mr. President, that, in so fearful a crisis as the present, instead of passing "force bills," and preparing for war, instead of "breathing threatenings and slaughter," and preparing implements of destruction to be used against our brethren of the South, how much better, I say, for ourselves, for posterity, for the cause of civil liberty throughout the world, that our thoughts should be turned on peace? Peace, not war, has brought our country to the high degree of prosperity it now enjoys. The energies of the people up to this time have been directed to the development of our boundless resources, to the mechanic arts, to agriculture, mining, trade, and commerce with foreign nations. Banish peace, turn these mighty energies of the people to the prosecution of the dreadful work of mutual destruction, and soon cities in ruins, fields desolate, the deserted marts of trade, the silent workshops, gaunt famine stalking through the land, the earth cumbered with the bodies of the dying and the dead, will bear awful testimony to the madness and wickedness which, from the very summit of prosperity and happiness, are plunging us headlong into an abyss of woe.

Sir, in God's name, let us have peace! If we cannot have it in the Union, as it existed prior to November last, let us have it by cultivating friendly relations with those States which have dissolved their connection with that Union, and established a separate government. Though we and they may not, and, perhaps, in the nature of things, cannot live harmoniously under the same Government, it is our interest, no less than theirs, that we should at once endeavor to establish between our Government and theirs those amicable relations which should ever exist between two neighboring Republics. War, with its attendant horrors, being thus happily averted, the people of each Republic will be left at liberty to pursue, undisturbed, their several vocations. A mutually advantageous commerce will grow up between the two nations; treaties, such as regulate our intercourse with the Canadas, will be formed; confidence in all branches of business will be restored; a new impetus given to every variety of industry; the march of improvement accelerated, and the cause of humanity, of civilization, and of Christianity, advanced throughout the world. The people of Europe, accustomed to refer the settlement of their slightest differences to the bloody arbitrament of the sword, will behold with silent wonder and amazement the spectacle of a great people unable to agree in reference to

one of their peculiar domestic institutions, peacefully separating, as did the patriarchs of old; resolving themselves into two distinct political communities, not hostile, discordant, belligerent; but each, animated with a spirit of generous rivalry toward the other, pursuing a more successful and prosperous career in its own chosen path, than when, united under the same Federal head, they painfully sought together the same common destiny.

Mr. President, we are living at a day and at a time when a Northern sectional party have obtained possession of the power of this great Government, who have declared in their platform, in their speeches everywhere, and in their press, that slavery shall never go into another foot of territory; that no other slave State shall ever be admitted into this Union; that slavery shall be put in the course of ultimate extinction. We have the announcement of the party that the foot of a slave shall never press the soil of one of the Territories; that no new slave State shall be admitted; and, in addition to that, that no slave State shall go out of the Union. Who ever saw such a party as that? Who ever knew any thing like it in the world before? They will not let slavery go into the Territories; they will not let a slave State come in; and they will not let one go out! They will not let them go out because they could not carry out their programme of placing slavery in the course of ultimate extinction. They want to keep the slave States in for their benefit—to foot the bills, to pay the taxes—that they may govern them as they see fit, and rule them against their will. Well, sir, I wish to say one word to that party, in all kindness; for I shall not trouble them again on this subject. I shall be a private, independent citizen before long. But I will say to that party, they had better change their tactics; they had better change front, and do it speedily. Let them place themselves upon the high ground of right and justice, and adopt such amendments to the Constitution as will not only hold old Kentucky, which has produced the greatest "compromiser" of us all—that good old State where I was raised, and that I am proud of—but the other Southern States also. I am afraid Republicanism will not do this. I know those old Kentucky people from terrace to foundation. They will endure much—very much—peaceably and quietly; but if they are goaded too far; if, by repeated wrongs, they are compelled to fight, then I would say to their enemy "beware!" There are chivalry and patriotism in Kentucky which is neither in the power of accident nor nature to subdue. You had better not press them too far. Do not drive them to the goal of last resort.

Give them justice while you have it in your power to do so. Satisfy them that ultimately they shall have equality in this broken Government, or Union, if you will. But, sir, I leave the patching up of the Constitution to the distinguished Senator from Kentucky and other gentlemen, especially my friend from Pennsylvania [Mr. BIGLER], who has labored harder to patch up the Constitution than any man I ever knew, except my friend from Kentucky, and I wish him God speed in the work. Let it be upon just principles; let it be right; let us have justice; and I shall be content.

Now, Mr. President, I have paid all the attention to the attempt that was made to place me in the wrong that I deem necessary. I can only now repeat, in the conclusion of my speech, that neither the Senator from Tennessee, nor any other Senator, nor can any man, tell the truth and say that I have, by any vote, word, or act of mine, at any time or on any occasion, refused protection to all property alike in the Territories. I have made it a point always. Indeed, the doctrine of the equal right of property, whether slave or any other, in the Territories, and its equal right to protection, is as strong in me as life itself. I have never uttered a word against that principle; but I have said, upon all occasions, that that doctrine must be maintained, or this Union could not stand. I have fought for it; but as I said in the outset, while I deeply deplore the condition of the country, it has been caused by no act of mine. And with this remark, I part with him, who, in imitation of Esau, seeks to sell his birthright. I would, if there was time, give a little advice to all sides, to every Senator on this floor. I would say: Senators come up to the great importance of this question; meet it; adopt, by a two-thirds vote—as we could do if Senators would deal rightly—amendments to the Constitution, placing all the States upon an equality in the Territories, and on every other question; submit them to the people; and by such amendments I believe we could prevent, or stop, a further rupture of this Union.

In a reply to the speech of Senator LANE of Oregon, the following remarks on secession, coercion, the Territorial question, and the Peace Conference propositions, are furnished by

Senator JOHNSON, of Tennessee:—Mr. President, it is painful for me to be compelled, at this late hour of the session, to occupy any of the time of the Senate upon the subject that has just been discussed by the Senator from

Oregon. Had it not been for the extraordinary speech he has made, and the singular course he has taken, I should forbear from saying one word at this late hour of the day and of the session. But, sir, it must be apparent, not only to the Senate but to the whole country, that, either by accident or by design, there has been an arrangement that any one who appeared in this Senate to vindicate the Union of these States should be attacked. Why is it that no one, in the Senate or out of it, who is in favor of the Union of these States, has made an attack upon me? Why has it been left to those who have taken both open and secret ground in violation of the Constitution, for the disruption of the Government? Why has there been a concerted attack upon me from the beginning of this discussion to the present moment, not even confined to the ordinary courtesies of debate and of senatorial decorum? It is a question which lifts itself above personalities. I care not from what direction the Senator comes who indulges in personalities toward me; in that, I feel that I am above him, and that he is my inferior. [Applause in the galleries.] Mr. President, they are not arguments; they are the resort of men whose minds are low and coarse. Cowper has well said:

> "A truly sensible, well-bred man
> Will not insult me; no other can."

Sir, have we reached a point at which we cannot talk about treason? Our forefathers talked about it; they spoke of it in the Constitution of the country; they have defined what treason was; is it an offence, is it a crime, is it an insult to recite the Constitution that was made by WASHINGTON and his compatriots? What does the Constitution say:

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

There it is defined clearly that treason shall consist only in levying war against the United States, and adhering to and giving aid and comfort to their enemies. Who is it that has been engaged in conspiracies? Who is it that has been engaged in making war upon the United States? Who is it that has fired upon our flag? Who is it that has given instructions to take our arsenals, to take our forts, to take our dock-yards, to take the public property? In the language of the Constitution of the United States, have not those who have been engaged in it been guilty of treason? We make a fair

issue. Show me who has been engaged in these conspiracies, who has fired upon our flag, has given instructions to take our forts and our custom-houses, our arsenals and our dock-yards, and I will show you a traitor. [Applause in the galleries.]

Mr. President, if individuals were pointed out to me who were engaged in nightly conspiracies, in secret conclaves, and issuing orders directing the capture of our forts and the taking of our custom-houses, I would show who were the traitors; and that being done, the persons pointed out coming within the purview and scope of the provision of the Constitution which I have read, were I the President of the United States, I would do as THOMAS JEFFERSON did, in 1806, with AARON BURR; I would have them arrested, and, if convicted, within the meaning and scope of the Constitution, by the Eternal GOD I would execute them. Sir, treason must be punished. Its enormity and the extent and depth of the offence must be made known. The time is not distant, if this Government is preserved, its Constitution obeyed, and its laws executed in every department, when something of this kind must be done.

The Senator from Oregon, in his remarks, said that a mind that it required six weeks to stuff could not know much of any thing. He intimated that I had been stuffed. I made my speech on the 19th of December. The gentleman replied. I made another speech, and now he has replied again; and how long has he been "stuffing"? How often has he been "stuffed"? [Laughter.] He has been stuffed twice; and if the stuffing operation was as severe and laborious as the delivery has been, he has had a troublesome time of it, for his travail has been great and the delivery remarkable. [Laughter.]

We know how the Senator stands upon popular or squatter sovereignty. On that subject he spoke at Concord, New Hampshire, where he maintained that the inhabitants of the Territories were the best judges; that they were the very people to settle all these questions; but when he came here, at the last Congress, he could make a speech in which he repeated, I cannot tell how many times, "the equality of the States, the rights of the States in the Union, and their rights out of the Union;" and he thus shifted his course. If the conflict between his speech made in Concord in 1856, and his speech made here on the 25th day of May last, can be reconciled, according to all

rules of construction, it is fair to reconcile the conflict. If the discrepancy is so great between his speech made then and his speech on the 25th of May last, of course the discrepancy is against him; but I am willing to let one speech set off the other, and to make honors easy, so far as speech-making is concerned.

Then, how does the matter stand? There is one speech one way, and there is another speech the other way. Now, we will come to the sticking point. You have seen the equivocation to-day. You have seen the cuttle fish attempt to becloud the water and elude the grasp of his pursuer. I intend to stick to you here to-day, as close and as tight as what I think I have heard called somewhere "Jew David's Adhesive Plaster." How does your vote stand as compared with your speeches? Your speeches being easy, I shall throw in the scale against you the weight of what you swore. How does that matter stand? I intend to refer to the record. By referring to the record, it will be found that Mr. CLINGMAN offered the following as an amendment to the fourth resolution of the series introduced by Mr. DAVIS:

"*Resolved*, That the existing condition of the Territories of the United States does not require the intervention of Congress for the protection of property in slaves."

What was the vote on the amendment proposed to that resolution by Mr. BROWN, to strike out the word "not." I want the Senator's attention, for I am going to stick to him, and if he can get away from me he has got to obliterate the records of his country. How would it read, to strike out the word "not."

"That the existing condition of the Territories of the United States does require the intervention of Congress for the protection of property in slaves."

Among those who voted against striking out the word "not," who declared that protection of slavery in the Territories by legislation of Congress was unnecessary, was the Senator from Oregon. When was that? On the 25th day of May last. The Senator, under the oath of his office, declared that legislation was not necessary. Now where do we find him? Here is a proposition to amend the Constitution, to protect the institution of slavery in the States, and here is the proposition brought forward by the Peace

Conference, and we find the Senator standing against the one, and I believe he recorded his vote against the other.

But, let us travel along. We have only applied one side of this plaster. The Senator voted that it was not necessary to legislate by Congress for the protection of slave property. Mr. BROWN then offered the amendment to the resolution submitted by Mr. DAVIS, to strike out all after the word "resolved," and to insert in lieu thereof:

"That experience having already shown that the Constitution and the common law, unaided by statutory enactment, do not afford adequate and sufficient protection to slave property—some of the Territories having failed, others having refused, to pass such enactments—it has become the duty of Congress to interpose, and pass such laws as will afford to slave property in the Territories that protection which is given to other kinds of property."

We have heard a great deal said here to-day of "other kinds," and every description of property. There is a naked, clear proposition. Mr. BROWN says it is needed; that the court and the common law do not give ample protection; and then the Senator from Oregon is called upon; but what is his vote? We find, in the vote upon this amendment, that but three Senators voted for it; and the Senator from Oregon records his vote, and says "no," it shall not be established; and every Southern man, save three, voted against it also. When was that? On the 25th day of May last. Here is an amendment, now, to protect and secure the States against any encroachment upon the institution within the States; and there the Senator from Oregon swore that no further legislation was necessary to protect it in the Territories. Well, his speeches in honors being easy, and he having sworn to it in the last Congress, I am inclined to take his oath in preference to his speeches, and one is a fair set-off against the other. Then, all the amendments being voted down, the Senate came to the vote upon this resolution:

"That if experience should at any time prove that the judicial and executive authority do not possess means to insure adequate protection to constitutional rights in a Territory, and if the territorial government should fail or refuse to provide the necessary remedies for that purpose, it will be

the duty of Congress to supply such deficiency, within the limits of its constitutional powers."

Does not the resolution proceed upon the idea that it was not necessary then; but if, hereafter, the Territories should refuse, and the courts and the common law could not give ample protection, then it would be the duty of Congress to do this thing? What has transpired since the 25th day of May last? Is not the decision of the court with us? Is there not the Constitution carrying it there? Why was not this resolution, declaring protection necessary, passed during the last Congress? The Presidential election was on hand.

I have been held up and indirectly censured, because I have stood by the people; because I have advocated those measures that are sometimes called demagogical. I would to GOD that we had a few more men here who were for the people in fact, and who would legislate in conformity with their will and wishes. If we had, the difficulties and dangers that surround us now, would be postponed and set aside; they would not be upon us. But in May last, we could not vote that it was necessary to pass a slave code for the Territories. Oh, no; the Presidential election was on hand. We were very willing then to try to get northern votes; to secure their influence in the passage of resolutions; and to crowd some men down, and let others up. It was all very well then; but since the people have determined that somebody else should be President of the United States, all at once the grape has got to be very sour, and gentlemen do not have as good an opinion of the people as they had before; we have changed our views about it. They have not thought quite as well of us as we desired they should; and if I could not get to be President or Vice-President of all these United States, rather than miss it altogether, I would be perfectly willing to be President of a part; and therefore we will divide—yes, we will divide. I am in favor of secession; of breaking up the Union; of having the rights of the States out of the Union; and as I signally failed in being President of all, as the people have decided against me, we have reached that precise point of time at which the Government ought to be broken up. It looks a little that way.

I have no disposition now, in concluding what little I am going to say, to mutilate the dead, or add one single additional pang to the tortures of the already politically damned. I am a humane man; I will not add one pang to

the intolerable sufferings of the distinguished Senator from Oregon. [Laughter.] I sought no controversy with him; I have made no issue with him; it has been forced upon me. How many have attacked me; and is there a single man, North or South, who is in favor of this glorious Union, who has dared to make an assault on me? Is there one? No; not one. But it is all from secession; it is all from that usurpation where a reign of terror has been going on.

I repeat, again, the Senator has made a set-to on me. I am satisfied if he is. I am willing that his speech and mine shall go to the country, and let an intelligent people read and understand, and see who is right and who is wrong on this great issue.

But, sir, I alluded to the fact that secession has been brought about by usurpation. During the last forty days, six States of this Confederacy have been taken out of the Union; how? By the voice of the people? No; it is demagogism to talk of the people. By the voice of the freemen of the country? No. By whom has it been done? Have the people of South Carolina passed upon the ordinance adopted by their Convention? No; but a system of usurpation was instituted, and a reign of terror inaugurated. How was it in Georgia? Have the people there passed upon the ordinance of secession? No. We know that there was a powerful party there, of passive, conservative men, who have been overslaughed, borne down; and tyranny and usurpation have triumphed. A convention passed an ordinance to take the State out of the Confederacy; and the very same convention appointed delegates to go to a congress to make a constitution, without consulting the people. So with Louisiana; so with Mississippi; so with all the six States which have undertaken to form a new Confederacy. Have the people been consulted? Not in a single instance. We are in the habit of saying that man is capable of self-government; that he has the right, the unquestioned right, to govern himself; but here, a government has been assumed over him; it has been taken out of his hands, and at Montgomery a set of usurpers are enthroned, legislating, and making constitutions and adopting them, without consulting the freemen of the country. Do we not know it to be so? Have the people of Alabama, of Georgia, of any of those States, passed upon it? No; but a Constitution is adopted by those men, with a provision that it may be changed by a vote of two-thirds. Four votes in a convention of six, can change the whole organic law of a people constituting six States. Is not this

a *coup d'état* equal to any of Napoleon? Is it not a usurpation of the people's rights? In some of those States, even our Stars and our Stripes have been changed. One State has a palmetto, another has a pelican, and the last that I can enumerate on this occasion, is one State that has the rattlesnake run up as an emblem. On a former occasion I spoke of the origin of secession; and I traced its early history to the garden of Eden, when the serpent's wile and the serpent's wickedness beguiled and betrayed our first mother. After that occurred, and they knew light and knowledge, when their Lord and Master turned to them, they seceded, and hid themselves from his presence. The serpent's wile, and the serpent's wickedness, first started secession; and now, secession brings about a return of the serpent. Yes, sir; the wily serpent, the rattlesnake, has been substituted as the emblem on the flag of one of the seceding States; and that old flag, the Stars and the Stripes, under which our fathers fought and bled and conquered, and achieved our rights and our liberties, is pulled down and trailed in the dust, and the rattlesnake substituted. Will the American people tolerate it? They will be indulgent; time, I think, is wanted, but they will not submit to it.

A word more in conclusion. Give the Border States that security which they desire, and the time will come when the other States will come back; when they will be brought back—how? Not by the coercion of the Border States, but by the coercion of the people; and those leaders who have taken them out will fall beneath the indignation and the accumulating force of that public opinion which will ultimately crush them. The gentlemen who have taken those States out are not the men to bring them back.

I have already suggested that the idea may have entered into some minds, "if we cannot get to be President and Vice-President of the whole United States, we may divide the Government, set up a new establishment, have new offices, and monopolize them ourselves when we take our States out." Here we see a President made, a Vice-President made, cabinet officers appointed, and yet the great mass of the people not consulted, nor their assent obtained in any manner whatever. The people of the country ought to be aroused to this condition of things; they ought to buckle on their armor; and, as Tennessee has done (GOD bless her!), by the exercise of the elective franchise, by going to the ballot-box under a new set of leaders, they will repudiate and put down those men who have carried these States out and usurped a Government over their heads. I trust in GOD that the old flag of

the Union will never be struck. I hope it may long wave, and that we may long hear the national air sung:

> "The star-spangled banner, long may it wave,
> O'er the land of the free and the home of the brave!"

Long may we hear old Hail Columbia, that good old national air, played on all our martial instruments! long may we hear, and never repudiate, the old tune of Yankee Doodle! Long may wave that gallant old flag which went through the Revolution, and which was borne by Tennessee and Kentucky at the battle of New Orleans, upon that soil the right to navigate the Mississippi near which they are now denied. Upon that bloody field the Stars and Stripes waved in triumph; and, in the language of another, the Goddess of Liberty hovered around when "the rocket's red glare" went forth, indicating that the battle was raging, and watched the issue; and the conflict grew fierce, and the issue was doubtful; but when, at length, victory perched upon your Stars and your Stripes, it was then, on the plains of New Orleans, that the Goddess of Liberty made her loftiest flight, and proclaimed victory in strains of exultation. Will Tennessee ever desert the grave of him who bore it in triumph, or desert the flag that he waved with success? No; we were in the Union before some of these States were spoken into existence; and we intend to remain in, and insist upon—as we have the confident belief we shall get—all our constitutional rights and protection in the Union, and under the Constitution of the country. [Applause in the galleries.]

The PRESIDING OFFICER (Mr. FITCH in the chair):—It will become the unpleasant but imperative duty of the Chair to clear the galleries.

Mr. JOHNSON, of Tennessee:—I have done.

[The applause was renewed, and was louder and more general than before. Hisses were succeeded by applause, and cheers were given and reiterated, with "three cheers more for JOHNSON."]

The PRESIDING OFFICER:—The Sergeant-at-Arms will immediately clear the galleries, and the order will not be rescinded.

The order having been executed by clearing the galleries and locking the doors leading to them, the Presiding Officer announced that the business of the Senate would be proceeded with.

The Senate, having disposed of several bills, was about to take action on a proposed amendment to the House resolutions, when the Peace Conference amendments were adverted to as follows:

Mr. MASON:—Now, I desire to say a word. There was a commission from twenty or twenty-one States summoned here by the State of Virginia to take into consideration the state of the country, and they have proposed an elaborate amendment to the Constitution, which they ask this body, in connection with the other House, to refer to the States. That has been under consideration for two days; no vote has been taken upon it; and the Senator from Illinois now proposes to postpone that in order to give precedence to a resolution from the House of Representatives proposing to amend the Constitution by prohibiting Congress from interfering with slavery in the States. His motion is, at this stage of the session, to put aside any further consideration of this amendment to the Constitution proposed by that Peace Conference, presented in the impressive manner in which it was done by the honorable Senator from Kentucky, in order to give precedence to this joint resolution of the House on this the last day of the session. Sir, I shall vote against giving it that precedence. I think it is due not only to those honorable gentlemen who came here and have submitted to us the result of their labors that we should give it that precedence, but I feel that it is due to the State of Virginia, who invited the Conference, that no precedence should be given over it. For that reason, I shall vote against it.

Mr. DOUGLAS:—I am glad to find that the Senator from Virginia has become such a warm advocate of the report of the Peace Conference. How many hours is it since we heard him denounce it as unworthy the consideration of Southern men or of this country? How long is it since these denunciations were ringing in our ears? We do not hear the praises of the Peace Conference sounded until we are about to get a vote on another proposition to pacify the country; and for fear we may have a vote that will quiet the apprehensions of the Southern States in respect to the designs of the North to change the Constitution, so as to interfere with slavery in the States, we find now that the Peace Conference is to be pushed forward, to

defeat this. Sir, if he is a friend of the proposition of the Peace Conference, let him act with me and sit as long as I will in urging it upon the Senate. I am for both; but this one is within our reach. We can close this much in five minutes. We should have had it passed before this time, if the Senator from Virginia had not interposed objections. If the amendment to the Constitution which furnishes guarantees to the border slave States fail, it will be the result of the efforts of the Senator from Virginia. My object is to take that up; we can dispose of it in a very few minutes; and then, when we have secured thus much, we will proceed immediately to take up the report of the Peace Conference; and I tell the Senator from Virginia he will find me standing here adhering to it as long as he will; and when the vote comes, I think I shall show that I am as friendly to it as he; and that I have as much respect for and appreciation of the services of the great men who reported it.

Mr. MASON:—The Senator from Illinois and I construe our duties in a very different way. I have no parliamentary ends to obtain here by dexterous motions to give preference. The Senator has never heard me express the slightest approbation of these resolutions from the Peace Conference. On the contrary, he has heard me point out, with whatever ability I might, the objections that would compel me to vote against them. I intend to vote against them; but I deem it due to the character of these resolutions, and the way in which they were brought before the Senate, that their precedence should not be taken from them, and that we should have the first vote upon them. The Senator from Illinois will not find me taking back one word that I have said of objection to the resolutions that came from the Peace Conference; but I protest against their precedence being taken from them—a matter which has engaged the attention of the Senate for the last two hours to effect it. Now that it is done, I shall vote against the motion to give precedence. The resolutions of the Peace Conference should not be thrust aside by this resolution of the House; but that is the motion now before us, to thrust aside these resolutions in order to give place to the resolution of the House, and I shall vote against it.

Mr. CRITTENDEN:—I shall pursue, on this occasion, the course I have pursued throughout. My object is to attain a great end, and, if possible, to give entire satisfaction to the country, and restore it to peace and quiet, or to go as far in that direction as it is in my power to go. I shall vote to take up

the resolution of the House, because we can act upon it immediately. I am an advocate of the resolutions from the Peace Conference. I have shown it; I have expressed it, and my determination to vote for them, and so I will; but I confess that I feel somewhat as the gentleman from Illinois does—surprised at the great zeal with which gentlemen want to keep up these propositions merely to strike a blow at others, claiming a precedence for a thing they mean to trample and spit upon.

Mr. MASON:—It has precedence, if the Senator will allow me, and he took it from it.

Mr. CRITTENDEN:—And he wants to continue that precedence. Sir, the way to manifest respect for their proposition is to vote for it. I do not understand this sort of proceeding on the part of gentlemen who desire to afford any means of pacification to the country. I am for this resolution of the House of Representatives; and I hope the Senate will vote to take it up. We can act upon it, and we can vote upon it, and we know well that we cannot pass these propositions of the Peace Conference. There are but two hours more of session in the other House—from ten to twelve o'clock on Monday morning. I cannot indulge in a hope, sanguine as I have been throughout, of the passage of those resolutions; and, indeed, the opposition here, and the opposition on this [the Democratic] side of the Chamber to those resolutions, are confirmation strong as Holy Writ that they cannot pass. Do gentlemen want to press them forward in order to prevent a vote on this resolution of the House? I hope not. I hope the motion of the gentleman from Illinois will prevail, and that we shall take up the House resolution.

Mr. BAYARD:—Mr. President, I have forborne to take any part in this discussion about the merits of any of these propositions before the Senate, nor do I intend to do so now. I shall reserve what I may have to say to another occasion. I shall not occupy the time of the Senate now. I shall vote against this motion, because, while I feel I do no injustice to others, I must necessarily exercise my own opinions. I consider the resolution passed by the House of Representatives as not worth the paper on which it is written, for the purpose of adjusting the difficulties in this country. I shall not detain the Senate by any attempt to give the reasons. Sufficient for me to state the ground of my objection, why I shall not vote to give preference to a

resolution which, as it stands, I think will lead to no attainable result as regards peace or quiet in the country. As regards the other propositions, for which it is sought to be substituted, I express no opinion now, except to say, they are not exactly those that I should have preferred; but that I would gladly and willingly vote to adopt the distinct resolutions offered originally by the Senator from Kentucky. As to attaining a vote and disposing of this House resolution at once, of course, as I do not attach any importance to the measure, if passed, for the purpose for which it is to be passed, that would be a sufficient answer; but further, it will not stop debate, and it cannot prevent amendments. Amendments may be made; one substitute after another may be offered, and you can be led into debate quite as much as on the other. I would rather see the other proposition discussed; and on the whole, not thinking the particular resolution of the House entitled to preference as being of any great importance, I am not disposed to give it precedence.

Mr. SEBASTIAN, in speaking on the House resolutions, said: "It is now past four o'clock in the morning of the 4th of March, and it is evident, from obvious causes, that it is utterly impossible that any expression of preference for any other resolution than this can now have any effect, or receive even the notice of the House of Representatives."

At different stages of the proceedings of the Senate, in proposing and voting in relation to various amendments, the following among other things said and done, occurred with reference to the Report of the Peace Conference:

Mr. JOHNSON, of Arkansas:—I beg leave to offer as an amendment, and I presume it will be the last, the propositions submitted by the Peace Conference. I offer them not with a belief that they will be accepted or sustained at all. I should be glad to see even that step taken by the party who are to have, and who, in point of fact, do have possession of this Government. I offer them for the purpose of obtaining a vote upon them. I offer them, stating frankly that I shall not vote for them. I offer them with the conviction that there is between the Representatives on the other side of the Chamber, and those on the southern side, an irreconcilable difference; and it ought to be proclaimed, and it ought to be made frank and unmistakable. I offer it because it evolves truth. There is nothing left here to this Senate, on this the last night of the session, but this: to declare to the

American people what is true, in order that they may know it, and may prepare themselves to meet it; that they may prepare, if they can, to reconcile it with peace, or to reconcile it to themselves; to stand by all the sorrowful consequences that shall otherwise come. This is the reason why I present this amendment. I believed when I voted for them that the propositions of the Senator from Kentucky were fair, were just to the people of the South, and to my own State among that number; and it is but honest that I should say now in presenting this amendment, that I consider these propositions a thousand fathoms beneath the propositions of the Senator from Kentucky.

It is in that condition that I offer this amendment. I hope Senators will have the courage and the nerve, if they have faith in and regard for their constituents, to whom they have taught their doctrines heretofore, to adhere to them and to stick to them now; and while they will vote against this amendment, I will stand by them also and vote against it, as one person who for fourteen years has represented his State in one or the other branch of this Congress. In saying this, I say it as the last act of my political life, and it is one upon which I put my faith, and on which I would put the last hope I have on earth. I know from the bottom of my soul that I am not averse to the continuation and the preservation of the present Union of States, which I have always considered sanctifies the continent of North America to peace and to prosperity forever. I feel from the bottom of my heart that whenever it shall be divided, it will be given up, from petty causes, and from petty irritations and misapprehensions, to the contingencies of war and the contingencies of blood and disaster, which have followed the divisions and separations of every other continent in the whole wide world.

Then, Mr. President, I offer this amendment from the conviction that common honesty of purpose, and the common frankness of men of nerve and of honor, will give us one vote to show that there is among us an irreconcilable difference, or that will give hope to those who, like the Senator from Kentucky, it seems to me, can hope against hope, that there is something to be done. I cannot believe that any thing is gained by this resolution. I cannot conceive that the proposition of the House gives security to my people. I will not stop to comment upon it, and to show why it is that I cannot vote for it. I sincerely hope that we may have a vote of the

Senate upon the amendment I now offer; and I call for the yeas and nays upon it.

The yeas and nays were ordered.

Mr. JOHNSON, of Tennessee:—I wish merely to repeat again, before the yeas and nays are called on this amendment, that I shall vote against this, as I have voted against all preceding amendments, with the distinct understanding that I am not committed for or against any proposition contained in those amendments. I hope we shall vote them all down.

Mr. DOUGLAS:—I will merely state that when we have disposed of this resolution, I hope we shall take up the Peace Conference propositions immediately, and get through with them.

The Secretary proceeded to call the roll.

Mr. CRITTENDEN (when his name was called):—I desire to say that, although preferring this amendment, I shall vote against it, as I have against all others, in order to pass it as it came to us from the House.

Mr. JOHNSON, of Arkansas:—I should like to have made a further explanation; but I will not do it. I vote "nay."

The result was then announced—yeas 3, nays 34; as follows:

YEAS.—Messrs. Foot, Nicholson, and Pugh—3.

NAYS.—Messrs. Anthony, Baker, Bigler, Bingham, Bright, Chandler, Clark, Crittenden, Dixon, Doolittle, Douglas, Durkee, Fessenden, Foster, Grimes, Harlan, Hunter, Johnson of Arkansas, Johnson of Tennessee, Kennedy, King, Latham, Mason, Morrill, Polk, Rice, Sebastian, Sumner, Ten Eyck, Trumbull, Wade, Wigfall, Wilkinson, and Wilson—34.

So the amendment was rejected.

Other amendments—of which some were approved and some rejected—were offered to the joint resolutions, and, finally, the proposals of amendments to the Constitution from the Conference Convention were again brought forward in this manner:

Mr. CRITTENDEN:—I intend to be perfectly consistent in my course on this subject. I look upon the result of the deliberations of the Peace Congress, as they call it here, as affording the best opportunity for a general concurrence among the States and among the people. I determined to take it in preference to my own proposition, and so stated to many of the members of that Convention. I now propose the propositions agreed to by them as a substitute for my own.

I came here this morning, without the least expectation of any vote being taken on this proposition of mine. It has never been in a condition before where I was prepared to offer amendments to it. I had amendments which I intended to propose, not intending to make material changes, as I supposed, in substance and effect, but changing the phraseology, particularly of the first article, in which I propose to substitute an amendment, to declare merely that the *status* of persons held to servitude or labor under the laws of any State shall continue with the laws thus unchanged, as long as the Territory remains under a territorial government; and when it forms a constitution, to come into the Union as a State, to be received with or without slavery. All my papers and the amendments which I prepared are at my room, not here. That is the condition of the thing.

Mr. HUNTER:—The resolution stands now as several States have instructed for it, and I hope we shall have a vote on it.

Mr. CRITTENDEN:—I now move to substitute the resolutions of the Peace Convention. I have declared that I would do this; that I would abandon my own resolutions, and take that proposed by the Peace Conference.

Mr. HUNTER:—Then I call for the yeas and nays on the amendment of the Senator from Kentucky.

The PRESIDING OFFICER:—Does the Chair understand the Senator from Kentucky to offer as an amendment to the resolution now before the Senate, the resolution of the Peace Conference?

Mr. CRITTENDEN:—Yes, sir.

Mr. HUNTER:—That is an amendment, and on that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CRITTENDEN:—I wish to say a word in explanation; of course I shall make no speech at this hour. I have examined the propositions offered by that Convention; they contain, in my judgment, every material provision that is contained in the resolution called the CRITTENDEN resolution. The resolution that I offered contained nothing substantial that has not been adopted by the Convention, except in one particular, and that particular is this: they reject so much of the resolution offered by me as embraced future acquired territory. They said it was enough to settle in regard to the territory we now hold; and they have substituted a provision which, I think, ought to be perfectly satisfactory, as to acquisition of future territory. They say none shall be acquired, unless it be by a two-thirds vote of the Senate, which two-thirds vote shall include a majority of the Senators from the slaveholding States, as well as a majority of the Senators from the North. That gives ample security to the South; it gives ample security to the North. No territory can be acquired without the approbation of both sections of the Union, and having this in their power, they can then make any previous arrangement in regard to slavery that they please, before the acquisition of territory. That is the way they dispose of future acquisitions. I prefer it to the disposition made in the resolutions which I submitted to the Senate. I therefore offer them, and for other reasons: out of deference to that great body of men selected on the resolution of Virginia, and invited by Virginia

herself. The body having met, and being composed of such men, and a majority of that Convention concurring in these resolutions, I think they come to us with a sanction entitling them to consideration; therefore I have moved them.

Mr. GWIN:—I hope the substitute will not be adopted. The very reason the Senator has given in favor of it, with reference to the acquisition of future territory, I think should be the cause of its being voted down. I am sure Senators from Northern States should not vote for such an amendment as this; because the first acquisition, if we get any at all, will be the very kind of acquisition that the Northern States want. It is well known that if we had had the same counsels in 1854 that we had in 1803, we should have acquired the whole Russian Pacific territory to Behring Straits. If THOMAS JEFFERSON had been President, we should have got the whole of the Pacific possessions of Russia, as we got Louisiana from France, on the same principle; and I believe the first acquisition of territory we shall get will be the Russian possessions to Behring Straits. I hope this amendment of the Constitution will not be voted for by those who are in favor of acquiring territory, especially which will give us such important advantages on the Pacific Ocean. I am utterly opposed to restricting all acquisition hereafter; especially on the Pacific coast of the United States, both north and south. I hope this amendment will be voted down.

Mr. DOUGLAS:—I was exceedingly anxious to get a separate and distinct vote, first on the Peace Conference propositions, and then on the CRITTENDEN proposition, as perfected by the Senator from Kentucky. I have announced several times to-night, that that was my purpose; but after what the Senator from Kentucky has said about his obligations to the Peace Conference, to give priority to their proposition, I must follow him, although I should be delighted if we could make arrangements for separate votes. I prefer his perfected amendment to the Peace Conference proposition; but still, I cannot separate from him on this question, when he thinks he is bound to bring it forward.

The Secretary proceeded to call the roll on the amendment.

Mr. NICHOLSON (when his name was called):—I greatly prefer the resolution of the Senator from Kentucky, because it is unequivocal,

unambiguous in its language, and embraces future as well as present territory; but I am willing, if that cannot be got, to vote for the other; and I do not concur in the criticisms that have been made on it to the full extent, though there are features in it to which I very much object. I shall, therefore, vote "nay" on this proposition.

Mr. POWELL:—As I have before announced, I have paired with the Senator from Pennsylvania [Mr. CAMERON]. If I were not paired, I should vote "nay."

Mr. GWIN:—He would vote with you, if he were here.

Mr. POWELL:—I cannot tell; he is not here.

The result was announced—yeas 7, nays 28, as follows:

YEAS.—Messrs. Crittenden, Douglas, Harlan, Johnson of Tennessee, Kennedy, Morrill, and Thomson—7.

NAYS.—Messrs. Bayard, Bigler, Bingham, Bright, Chandler, Clark, Dixon, Fessenden, Foot, Foster, Grimes, Gwin, Hunter, Lane, Latham, Mason, Nicholson, Polk, Pugh, Rice, Sebastian, Sumner, Ten Eyck, Trumbull, Wade, Wigfall, Wilkinson, and Wilson—28.

So the amendment was rejected.

No. IV.

[The action of both houses of Congress in relation to the Peace Conference, and the propositions of amendments therein adopted, would seem to form a portion of its history. I shall endeavor to furnish their action so far as it can be separated from other matters connected with the propositions presented. Immediately after the adoption of the resolutions of Virginia, under which the Conference was called, and on the 28th of January, 1861, the following proceedings took place in the House of Representatives of the United States.]

HOUSE OF REPRESENTATIVES,
WASHINGTON, MONDAY, *January 28th, 1861.*

The SPEAKER, Hon. WM. PENNINGTON, laid before the House a message from the President of the United States, which was read by the Clerk, as follows:

To the Senate and House of Representatives of the United States:

I deem it my duty to submit to Congress a series of resolutions adopted by the Legislature of Virginia, on the 19th inst., having in view a peaceful settlement of the exciting questions which now threaten the Union. They were delivered to me on Thursday the 24th inst., by ex-President TYLER, who has left his dignified and honored retirement, in the hope that he may render service to his country in this its hour of peril. These resolutions, it will be perceived, extend an invitation "to all such States, whether slaveholding or non-slaveholding, as are willing to unite with Virginia in an earnest effort to adjust the present unhappy controversies in the spirit in which the Constitution was originally formed, and consistently with its principles, so as to afford to the people of the slaveholding States adequate guarantees for the security of their rights, to appoint Commissioners to meet, on the 4th day of February next, in the City of Washington, similar Commissioners appointed by Virginia, to consider, and, if practicable, agree upon some suitable adjustment."

I confess I hail this movement, on the part of Virginia, with great satisfaction. From the past history of this ancient and renowned Commonwealth, we have the fullest assurance that what she has undertaken she will accomplish, if it can be done by able, enlightened, and persevering efforts. It is highly gratifying to know that other patriotic States have appointed, and are appointing Commissioners to meet those of Virginia in council. When assembled, they will constitute a body entitled, in an eminent degree, to the confidence of the country.

The General Assembly of Virginia have also resolved "that ex-President JOHN TYLER is hereby appointed by the concurrent vote of each branch of the General Assembly, a Commissioner to the President of the United States; and Judge JOHN ROBERTSON is hereby appointed, by a like vote, a Commissioner to the State of South Carolina, and the other States that have seceded or shall secede, with instructions respectfully to request the President of the United States and the authorities of such States to agree to abstain, pending the proceedings contemplated by the action of this General Assembly, from any and all acts calculated to produce a collision of arms between the States and the Government of the United States."

However strong may be my desire to enter into such an agreement, I am convinced that I do not possess the power. Congress, and Congress alone, under the war-making power, can exercise the discretion of agreeing to abstain "from any and all acts calculated to produce a collision of arms" between this and any other Government. It would, therefore, be a usurpation for the Executive to attempt to restrain their hands by an agreement in regard to matters over which he has no constitutional control. If he were thus to act, they might pass laws which he should be bound to obey, though in conflict with his agreement.

Under existing circumstances, my present actual power is confined within narrow limits. It is my duty at all times to defend and protect the public property within the seceding States so far as this may be practicable, and especially to employ all constitutional means to protect the property of the United States, and to preserve the public peace at this the seat of the Federal Government. If the seceding States abstain "from any and all acts calculated to produce a collision of arms," then the danger so much to be deprecated will no longer exist. Defence, and not aggression, has been the policy of the administration from the beginning.

But while I can enter into no engagement such as that proposed, I cordially commend to Congress, with much confidence that it will meet their approbation, to abstain from passing any law calculated to produce a collision of arms pending the proceedings contemplated by the action of the General Assembly of Virginia. I am one of those who will never despair of the Republic. I yet cherish the belief that the American people will perpetuate the Union of the States on some terms just and honorable for all

sections of the country. I trust that the mediation of Virginia may be the destined means, under Providence, of accomplishing this inestimable benefit. Glorious as are the memories of her past history, such an achievement, both in relation to her own fame and the welfare of the whole country, would surpass them all.

JAMES BUCHANAN.

The "series of resolutions" referred to, and transmitted in President BUCHANAN's message to Congress, are in the body of this book on pages 9 and 10.

The following communication by the Governor of Virginia to the General Assembly thereof, was also submitted with the President's Message:

The Commonwealth of Virginia,
to all to whom these presents shall come, greeting:

Know you, that the General Assembly of the Commonwealth of Virginia, having, by joint resolution, adopted on the 19th instant, and hereto attached, appointed ex-President JOHN TYLER a Commissioner to the President of the United States to carry out the instructions conveyed in said resolution: therefore, I, JOHN LETCHER, Governor, do hereby announce the said appointment, and authenticate the same.

In testimony whereof, I have hereunto set my hand, and caused the
[L.S.] great seal of the State to be affixed, in the City of Richmond, this
20th day of January, Anno Domini 1861.

JOHN LETCHER.

By the Governor:
GEORGE W. MUNFORD,
Secretary of the Commonwealth.

Mr. STANTON:—I move that that message be printed, and referred to the Standing Committee on Military Affairs.

Mr. JOHN COCHRANE:—I move as an amendment to that motion, that it be referred to the special committee of five.

Mr. HOWARD, of Michigan:—I would suggest that whatever committee the message is referred to, ought to have power to report it back at any time; otherwise it will be locked up where the House cannot control it.

Mr. BURCH:—The gentleman from Virginia only yielded the floor for the reading of the message, and is now entitled to the floor.

The SPEAKER:—It is proper that the message should be disposed of in some way.

Mr. STANTON:—If the House will allow me, I will move that the message be referred to the Standing Committee on Military Affairs, with power to report on it at any time.

The SPEAKER:—That motion is not in order. A motion has been made to refer the message to the Committee on Military Affairs, and the gentleman from New York moves, as an amendment, that it be referred to the special committee of five.

Mr. BOCOCK:—If there is to be any debate on this motion, it should be allowed to go over until my colleague (Mr. PRYOR) makes his speech.

Mr. STANTON:—I move the previous question.

Mr. CURTIS:—The question should first be taken on the motion to refer to the Committee on Military Affairs.

The SPEAKER:—That statement is correct. The question is on referring the message to the Military Committee.

Mr. BOCOCK:—I am bound to interpose on behalf of my colleague, who says he only yielded to have the message read.

Mr. STANTON:—The previous question is demanded, and that will put an end to the matter at once.

Mr. MILLSON:—I think the question deserves some little consideration. I therefore move to postpone the further consideration of the President's message till to-morrow.

Mr. STANTON:—Very well; let that course be taken.

The motion was agreed to.

After the report of the Peace Conference had been transmitted to the House of Representatives, and while the joint resolutions were under consideration, several ineffectual attempts were made to get the labors of the Conference before the House. Here is one of the first:

Mr. MAYNARD:—It is known, I suppose, to most members of the House, informally and unofficially, that what is known as the Peace Conference, to which the country has been looking for several days, has concluded its labors and dissolved. [Cries of "Order!"] I desire to make a proposition.

Mr. BINGHAM, and others objected.

Mr. MAYNARD:—I have a right to make a proposition.

Mr. CRAIGE, of North Carolina:—I call the gentleman to order, and insist upon the enforcement of the rules.

Mr. MAYNARD [amid loud cries of "Order!"] moved to postpone the vote upon the pending propositions until to-morrow after the morning hour.

The motion was not agreed to.

And again, the same day, February 27th, the following effort was made:

Mr. McCLERNAND:—I wish to state that I understand there is on the Speaker's table a communication from the president of the Peace Conference. I ask the unanimous consent of the House that it be taken up and read.

Mr. LOVEJOY:—I object.

So action was further delayed.

March 1st, 1861.—When a communication from the Navy Department came up for consideration in the House, the motion to postpone the special

order brought out the following action on the communication of the Peace Conference:

The SPEAKER:—There is a communication, which has been for some time lying upon the Speaker's table, from the president of the Peace Conference. The Chair thinks it is right that it should be taken up.

Mr. LOVEJOY:—I object.

Mr. GROW:—I call for the regular order of business.

The SPEAKER:—The Chair has not thought proper to present it until the propositions of the Committee of Thirty-three had been disposed of; but he thinks it right that they should now be presented.

Mr. STEVENS, of Pennsylvania:—I object, on behalf of John Tyler, who does not want them in. [Laughter.]

Mr. McCLERNAND:—I move to suspend the rules.

Mr. GROW:—I call for the regular order of business.

The SPEAKER:—The Chair thinks he ought to have the privilege of presenting these papers.

Mr. GROW:—I rise to a question of order. The territorial business is the special order. I am entitled to the floor; and I submit that it cannot be taken from me by any motion to suspend the rules.

The SPEAKER:—The Chair thinks the motion to suspend the rules is in order.

Mr. GROW:—The Chair can hardly understand my question of order. It is that the territorial business is the special order, made so by a suspension of the rules. While that is pending, therefore, by the uniform decision of the House, no motion can be entertained to suspend the rules.

The SPEAKER:—The territorial business was made the special order for the two succeeding days after the propositions reported by the Committee of Thirty-three had been disposed of.

Mr. BOTELER:—I want to know if there is any business, or can be any business, that should take precedence of these propositions of the Peace Conference?

Mr. LOVEJOY:—Yes, sir; there are ten thousand things that should take precedence.

The SPEAKER:—The Chair decides that the gentleman from Illinois [Mr. McClernand] has the floor, and is entitled to make the motion to suspend the rules.

Mr. GROW:—Do I understand the Chair to decide that the business of the Territories does not come up to-day?

The SPEAKER:—The Chair is of opinion that, under a strict construction of the rule, it would properly come up to-morrow.

Mr. GROW:—I appeal from the decision of the Chair.

Mr. HATTON: I move to lay that appeal on the table.

Mr. HICKMAN:—Upon that motion, I call for tellers.

Mr. WASHBURNE, of Illinois:—Before the House divides upon the appeal, I desire the Chair to state precisely what the point of order is that we are to vote upon.

The SPEAKER:—The Chair decided that the gentleman from Illinois [Mr. McClernand] had the floor, and was in order in moving to suspend the rules for the purpose of receiving the communication the Chair desired to lay before the House. From that decision an appeal was taken, and a motion made to lay the appeal on the table. The question is now upon the latter motion.

Mr. GROW:—I rise to a question of order again. The Chair has not stated my question of order correctly. My point of order was, that the business of the Territories was set down as a special order immediately after the disposal of the business of the Committee of Thirty-three.

Mr. HATTON:—I call the gentleman from Pennsylvania to order.

Mr. GROW:—I have the right to state my point of order.

The SPEAKER:—The gentleman from Pennsylvania will state his point of order.

Mr. GROW:—It is, that the Territorial business having been made the special order, comes up now as the regular order of business.

The SPEAKER:—The Chair decides that the gentleman from Illinois obtained the floor, and had the right to submit the motion to suspend the rules.

Mr. GROW:—He had no right to take the floor from me for any such purpose.

The SPEAKER:—The Chair overrules the question of order.

Mr. GROW:—And from that decision I take an appeal.

The SPEAKER:—The appeal is already pending; and a motion has been made to lay the appeal on the table.

Mr. GROW:—I call for tellers on the motion.

Tellers were ordered, and Messrs. ADRAIN and GROW were appointed.

The House divided; and the tellers reported—forty-seven in the affirmative.

Mr. HOWARD, of Michigan:—I move that the House adjourn.

Before the vote had been taken on the motion, the hour of five arrived; and

The SPEAKER declared the House had taken a recess until seven o'clock.

EVENING SESSION.

The House reassembled at seven o'clock P.M.

COMMUNICATION OF THE PEACE CONFERENCE.

Mr. GROW:—What is the regular order of business?

The SPEAKER:—The Chair had decided that the gentleman from Illinois [Mr. McClernand] was entitled to the floor, to move that the rules be suspended to receive a communication from the Peace Conference. From that decision the gentleman from Pennsylvania [Mr. Grow] appealed; and a motion was made to lay the appeal on the table.

Mr. McCLERNAND:—I think we can perhaps agree to an arrangement that will be satisfactory to gentlemen upon both sides, by which any difficulty upon the question of order can be avoided. If gentlemen upon that side of the House will allow the propositions to be presented, we are willing that they shall be referred, and the House then proceed to the consideration of the territorial business.

Mr. KELLOGG, of Illinois:—I hope that will be done.

Mr. LOVEJOY:—I object to the reception of the proposition.

Mr. HICKMAN:—There are but few members present. I move that there be a call of the House.

The motion was disagreed to.

Mr. HICKMAN:—I ask the Chair for his judgment whether there is a quorum present or not.

The SPEAKER:—In the opinion of the Chair, a quorum is not present.

Mr. McCLERNAND:—I inquire whether there is any objection to the propositions of the Peace Conference being taken up and referred?

Mr. LOVEJOY:—I certainly object in *toto cælo* to any such proposition.

Mr. BOTELER:—I desire to ask this question: can any member object to the reception of a communication from the Peace Congress?

Mr. LOVEJOY:—It is not a Peace Congress at all. There is no such body known to this House.

Mr. BOTELER:—I merely ask the question for information, for I do not profess to be familiar with the rules; I desire to know whether the objection

of a single member can defeat the reception of such a proposition, especially when that single member is known not to be a conservative man, but a man opposed to all compromises?

The SPEAKER:—The Chair will suggest that a great deal of time will be saved by having a call of the House, as there is evidently no quorum present.

A call of the House was taken. A quorum having appeared, the House proceeded to dispose of several special orders, when, on a motion of postponement, it returned in this wise to the Peace Conference:

Mr. LOGAN:—I demand the yeas and nays on the motion to postpone.

The yeas and nays were not ordered.

The special order was then postponed.

Mr. McCLERNAND:—I now move to suspend the rules of the House, for the purpose of receiving the memorial of the Peace Congress, which assembled lately in this city.

Mr. GROW:—To be received? What for?

Mr. McCLERNAND:—For reference I suppose.

Mr. BURNETT:—No; but to get it in, and put it upon its passage.

The SPEAKER:—The Chair understood the proposition to be, that the rules should be suspended, in order that the paper should be received for reference.

Mr. McCLERNAND:—I withdraw that part of the proposition.

Mr. SICKLES:—If it be received, it is then in the power of the House to do with it what it pleases.

Mr. GROW:—The understanding was that the motion should be made for the suspension of the rules only to receive the proposition.

Mr. SICKLES:—That is all right. When the paper gets in, the House can do with it what it may deem fit.

Mr. LOVEJOY:—I demand the yeas and nays.

The yeas and nays were ordered.

Mr. SHERMAN:—Is it proposed to act on the memorial of the Peace Congress?

Mr. SICKLES:—If it comes before the House, it will be for us to say what disposition shall be made of it. [Cries of "Call the roll!"]

Mr. CRAIGE, of North Carolina:—This motion is merely for the suspension of the rules to receive the proposition, and this, therefore, may be considered a test vote. [Cries of "Call the roll!"]

The question was taken; and it was decided in the negative—yeas 93, nays 67; as follows:

YEAS.—Messrs. Charles F. Adams, Green Adams, Adrain, Aldrich, William C. Anderson, Avery, Barr, Barret, Bocock, Boteler, Brabson, Branch, Briggs, Bristow, Brown, Burch, Burnett, Campbell, Horace F. Clark, John B. Clark, John Cochrane, Corwin, James Craig, John G. Davis, De Jarnette, Dunn, Etheridge, Florence, Foster, Fouke, Garnett, Gilmer, Hale, Hall, Hamilton, J. Morrison Harris, John T. Harris, Haskin, Hatton, Hoard, Holman, William Howard, Hughes, Jenkins, Junkin, William Kellogg, Killinger, Kunkel, Larrabee, James M. Leach, Leake, Logan, Maclay, Mallory, Charles D. Martin, Maynard, McClernand, McKenty, McKnight, McPherson, Millson, Millward, Laban T. Moore, Moorehead, Edward Joy Morris, Nelson, Niblack, Nixon, Olin, Pendleton, Peyton, Phelps, Porter, Pryor, Quarles, John H. Reynolds, Rice, Riggs, James C. Robinson, Sickles, Simms, William N.H. Smith, Spaulding, Stevenson, William Stewart, Stokes, Thomas, Vance, Webster, Whiteley, Winslow, Woodson, and Wright —93.

NAYS.—Messrs. Alley, Ashley, Bingham, Blair, Brayton, Buffinton, Burlingame, Burnham, Carey, Case, Coburn, Colfax, Conway, Burton Craige, Dawes, Delano, Duell, Edgerton, Eliot, Ely, Fenton, Ferry, Frank, Gooch, Graham, Grow, Gurley, Helmick, Hickman, Hindman, William A. Howard, Hutchins, Irvine, Francis W. Kellogg, Kenyon, Loomis, Lovejoy, McKean, Morrill, Morse, Palmer, Perry, Potter, Pottle, Christopher Robinson, Royce, Ruffin, Sedgwick, Sherman, Somes, Spinner, Stanton,

Stevens, Tappan, Tompkins, Train, Vandever, Van Wyck, Wade, Waldron, Walton, Cadwalader C. Washburn, Elihu B. Washburne, Wells, Wilson, Windom, and Woodruff—67.

So (two thirds not voting in favor thereof) the rules were not suspended.

During the vote,

Mr. WOODSON said:—I rise for information. What are we voting on? [Cries of "Order!"] I cannot for my life imagine how this can be regarded as a test vote. I will vote to receive the proposition of the Peace Conference; but on its passage I will vote against it.

The SPEAKER:—The motion is, to suspend the rules for the reception of the memorial.

Mr. CRAIGE, of North Carolina:—I understood the gentleman from Illinois to state that this was a test vote.

The SPEAKER:—The Chair cannot undertake to decide whether it is a test vote or not.

Mr. JOHN COCHRANE stated that his colleagues, Mr. CLARK B. COCHRANE and Mr. LEE, were paired.

Mr. CRAIGE, of North Carolina:—I would have no objection, Mr. Speaker, to permit this resolution to come before the House, but I understood the gentleman from Illinois to proclaim that this was a test vote. Utterly opposed to any such wishy-washy settlement of our national difficulties, I vote "no."

Mr. CURTIS stated that he was paired with Mr. ANDERSON, of Missouri.

Mr. FOSTER:—While I am willing to vote for the reception of the memorial of the Peace Congress, of which I was a member, still I am unwilling to be considered as favoring their proposition. Is this vote a test vote on that proposition?

The SPEAKER:—The Chair does not think that it is; but each gentleman will decide for himself.

Mr. HALE:—I am willing to receive this memorial in courtesy to the Peace Conference; and not regarding this as a test vote, I vote "ay."

Mr. LEACH, of Michigan, stated that he had paired with Mr. ENGLISH, or he would have voted in the negative.

Mr. LEAKE (when his name was called) said that he regarded this *thing* as a miserable abortion, forcibly reminding one of the old fable of the mountain and the mouse; nevertheless, he was willing to let the mouse in, in order to have the pleasure of killing it.

Mr. RUFFIN:—As it is announced that this is a test vote, I am compelled to vote "no." Otherwise, I would have been willing to let the matter be brought before the House for its consideration.

Mr. JENKINS:—Who can make this a test vote? Certainly no man in this House. This is a vote to receive the memorial, and nothing more.

Mr. WILSON stated that Mr. VALLANDIGHAM was paired with Mr. BEALE.

Mr. JUNKIN stated that his colleague, Mr. MONTGOMERY, was detained at home by illness.

Mr. NIXON stated that his colleague, Mr. STRATTON, was detained at his room by illness, and that if he were present, he would vote to receive the memorial of the Peace Conference.

Mr. ELY stated that his colleague, Mr. LEE, was detained at his room by indisposition.

Mr. PENDLETON stated that his colleague was detained at his room by indisposition.

Mr. CAMPBELL stated that his colleague, Mr. SCRANTON, was absent from the Hall because of illness.

Mr. POTTER:—As this is a test vote, I vote "no."

Mr. BRAYTON:—I understand this to be a test vote, and therefore vote "no."

Mr. HOARD:—These papers are not before us. They are not printed, and we cannot be supposed to know any thing of them; and I would ask, therefore, how they can be regarded as a test vote? I vote "ay."

Mr. BOCOCK:—Mr. Speaker, out of deference to the Peace Conference, called as it was by my State, I vote to receive this report. But unless the report, as it appears in the papers, can be amended, it cannot receive my approval.

Mr. SHERMAN:—I vote against this, simply because we have no time to consider it.

Mr. HINDMAN:—I vote against suspending the rules, because I desire to defeat the proposition of the Peace Conference, believing it to be unworthy of the vote of any Southern man.

Mr. Cox (not being within the bar when his name was called) asked leave to vote.

Mr. WASHBURNE, of Illinois, objected.

Mr. GARNETT:—Mr. Speaker, intending and desiring to express my abhorrence of these insidious propositions, conceived in fraud and born of cowardice, by giving a direct vote against them, yet from respect for the conference which reported them, I am willing to receive them, and therefore now vote "ay."

Mr. HARRIS, of Virginia:—I vote "ay," because I am in favor of the resolutions as a peace measure.

Mr. MAYNARD:—Believing these propositions eminently wise and just, I will let my vote stand in the affirmative.

Mr. BURNETT:—I hope the Chair will enforce the rules.

The SPEAKER:—I am trying to, all I can; and I hope gentlemen will keep their seats and preserve order.

Mr. DE JARNETTE:—I vote "ay," with the hope of having an opportunity to vote against the propositions of the Peace Conference.

Mr. BOTELER:—I vote "ay," to introduce these propositions, because I believe it to be my duty to do every thing, consistent with honor, to preserve the peace and save the Union of my country.

Mr. COX:—I desire to ask a question of the Chair.

The SPEAKER:—The Chair will hear you.

Mr. COX:—I desire to know whether or not it will be in order to move to suspend the rules to enable me to have my vote recorded?

Mr. SPEAKER:—No, sir.

Mr. COX:—I would like very much to have it recorded in favor of these peace propositions. I vote "ay," if there is no objection.

Mr. HINDMAN:—Consent is not given to the gentleman from Ohio to have his vote recorded.

The SPEAKER:—It is not received.

Mr. ROBINSON, of Rhode Island:—Believing that this is a test vote, I change my vote, and vote "no."

Mr. JOHN COCHRANE:—I wish to know whether the vote of my colleague, CLARK B. COCHRANE, is recorded.

The SPEAKER:—It is not.

Mr. JOHN COCHRANE:—I think he has retired from the House on account of sickness in his family; and I believe he is laboring for the Union in other quarters.

Mr. MILLSON:—I desire to vote.

Objection was made.

Mr. MILLSON:—I am entitled to vote, having been absent upon a committee of conference. I vote "ay."

Mr. HINDMAN:—Is the gentleman entitled to vote under the rules of the House?

Mr. BARR:—Objection comes too late.

The SPEAKER:—It has been usual to allow gentlemen to vote under such circumstances.

Mr. HICKMAN:—Do the rules allow him to vote?

The SPEAKER:—The Chair supposes that is the rule of the House.

Mr. HINDMAN:—I ask to have the rule read.

Mr. MILLSON:—No rule of the House could take away the right of a member to vote when he is absent by order of the House. If the rules deprived a member of the right to vote under such circumstances, it would be void.

The result was announced as above recorded.

Mr. McCLERNAND:—This vote divides the Republican party, and sounds its death knell.

No. V.

REPORTS OF DELEGATES TO STATES.

Report of the Peace Commissioners to the Legislature of Virginia.

To His Excellency JOHN LETCHER, *Governor of Virginia:*

The undersigned Commissioners, in pursuance of the wishes of the General Assembly, expressed in the resolutions of the 19th day of January last, repaired in due season to the City of Washington. They there found, on the 4th day of February, the day suggested in the overture of Virginia for a Conference with the other States, Commissioners to meet them from the following States, viz.: Rhode Island, New Jersey, Delaware, Maryland, New Hampshire, Vermont, Connecticut, Pennsylvania, North Carolina, Ohio, Indiana, Illinois, and Kentucky. Subsequently, during the continuance of the

Conference, at different periods, appeared likewise Commissioners from Tennessee, Massachusetts, Missouri, New York, Maine, Iowa, and Kansas. So that before the close twenty-one States were represented by Commissioners, appointed either by the Legislatures or Governors of the respective States.

The undersigned communicated the resolutions of the General Assembly to this Conference, and, both before its committee appointed to recommend a plan of adjustment, and the Conference itself, urged the propositions known as the CRITTENDEN resolutions, with the modification suggested by the General Assembly of Virginia, as the basis of an acceptable adjustment.

They were not adopted by the Conference, but in lieu thereof, after much discussion, and the consideration of many proposed amendments, the article with seven sections, intended as an amendment to the Constitution, was adopted by sections (not under the rules, being voted on as a whole), and by a vote of the Conference (not taken by States), was directed to be submitted to Congress, with the request that it should be recommended to the States for ratification, which was accordingly done by the President of the Conference.

The undersigned regret that the Journal showing the proceedings and votes in the Conference has not yet been published or furnished them, and that consequently they are not able to present it with this report. As soon as received it will be communicated to your Excellency.

In the absence of that record it is deemed appropriate to state that on the final adoption of the first section, two of the States, Indiana and Missouri, did not vote, and New York was divided, and that the votes by States was, ayes 9, nays 8—Virginia, by a majority of her Commissioners, voting in the negative.

The other sections were adopted by ranging majorities (not precisely recollected), and on the fifth and seventh sections the vote of Virginia was in the negative. The plan, when submitted to Congress, failed to receive its recommendation, and as that body, having adjourned, can take no further cognizance of it, the undersigned feel the contingency has arrived on which they are required to report, as they herein do, the result of their action.

Respectfully,

JOHN TYLER,
G.W. SUMMERS,
W.C. RIVES,
JAS. A. SEDDON.

The above report having been read and ordered to be printed, Mr. SUMMERS stated that the reason it was not signed by Judge BROCKENBROUGH, the other Virginia Commissioner, was because that gentleman was not in Richmond. Mr. SUMMERS presented a communication in which Judge BROCKENBROUGH stated his views at length on the propositions adopted by the Convention, and it was printed, by vote of the Legislature, in connection with the report.

After reviewing the different sections of the propositions adopted by the Peace Conference, Judge BROCKENBROUGH, in his letter, states that the said propositions, *as an entirety*, would have received his vote, and therefore the vote of Virginia, in the Peace Conference, if it had been submitted to a vote in that form.

Reports of the New York Commissioners to the Legislature of that State.

MAJORITY REPORT OF THE COMMISSIONERS TO THE PEACE CONVENTION.

March 23d, 1861.

To the Honorable the Legislature of the State of New York:

The Report of the Commissioners appointed by the Legislature of the State of New York to meet Commissioners from other States in the City of Washington on the fourth day of February, 1861, upon the call of the State of Virginia, by resolutions passed by the General Assembly of that State on the nineteenth day of January, 1861.

A copy of the Journal of the Convention is submitted herewith, from which it will be seen that prior to the presence of the Commissioners from New York, that body had been completely organized, rules of order adopted which excluded all persons other than members from witnessing its deliberations, forbidding any publication or other communication of its proceedings, and the taking of any entry from its Journal without leave; in short, requiring all its debates and acts to be kept secret. A committee had also been organized of one from each State to be appointed by the Commissioners from such State, to which the Virginia resolutions were referred, "with all other propositions for the adjustment of existing differences between the States, with authority to report what they might deem right, proper, and necessary to restore harmony and preserve the Union;" and this committee had been in session two days before your Commissioners were enabled to appoint any one of their number upon it. This was done on the eighth of February by the appointment of Mr. Field.

William E. Dodge, one of your Commissioners, took his seat in the Convention on the seventh day of February, 1861, and Messrs. Field, Noyes, Wadsworth, Corning, King, and Wool, on the eighth of February, Mr. Smith on the eleventh, and Judges James and Bronson on the twelfth day of February, and Mr. Granger, who was appointed in the place of Judge Gardiner, who declined, on the eighteenth day of February, 1861.

It was deemed advisable by your Commissioners that the proceedings of the Convention should be open to the public and the press, and hence they advised and concurred in resolutions introduced for that purpose, which were laid on the table on the motion of a Commissioner from the State of New Jersey. On a subsequent day they also concurred in a resolution authorizing the employment of a stenographer, to "preserve accurate notes of the debates and other proceedings of 'the Convention,' which notes should not be communicated to any person, nor shall copies thereof be taken, nor shall the same be made public until after the final adjournment of this Convention, except in pursuance of a vote authorizing their publication;" but this was refused, and the resolution laid on the table on motion of a Commissioner from the State of Pennsylvania, by a vote of eleven to eight, all the Slave States represented voting against it, with the addition of the States of Connecticut, Rhode Island, New Jersey, and Pennsylvania. Before the Convention closed its session, the following

states, twenty-one in all, were represented in the Convention: Delaware, Maryland, Virginia, Kentucky, Tennessee, North Carolina, Missouri, Connecticut, Rhode Island, New Hampshire, Maine, Massachusetts, New York, Vermont, Illinois, Ohio, Indiana, Iowa, Pennsylvania, and Kansas. With the concurrence of a majority of your Commissioners, Mr. Field offered in the committee of one from each State, on the fourteenth of February, the following proposition:

"Each State has the sole and exclusive right, according to its own judgment, to order and direct its domestic institutions, and to determine for itself what shall be the relation to each other of all persons residing or being within its limits;"

but it was rejected by a majority of the committee, and formed no part of its report.

That committee made its report on the fourteenth of February, unaccompanied by any written observations, in the shape of an amendment to the Constitution of the United States, in the following words:

ARTICLE 1. In all the territory of the United States not embraced within the limits of the Cherokee Treaty Grant, north of a line from east to west on the parallel of 36° 30′ north latitude, involuntary servitude, except in punishment of crime, is prohibited whilst it shall be under a Territorial Government; and in all the territory south of said line, the status of persons owing service or labor, as it now exists, shall not be changed by law while such territory shall be under a Territorial Government; and neither Congress nor the Territorial Government shall have power to hinder or prevent the taking to said territory of persons held to labor or involuntary service, within the United States, according to the laws or usages of the State from which such persons may be taken, nor to impair the rights arising out of said relations, which shall be subject to judicial cognizance in the Federal Courts according to the common law; and when any Territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population required for a member of Congress, according to the then Federal ratio of representation, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary service or labor, as the constitution of such new State may provide.

ART. 2. Territory shall not be acquired by the United States, unless by treaty, nor except for naval and commercial stations and depots, unless such treaty shall be ratified by four-fifths of all the members of the Senate.

ART. 3. Neither the Constitution nor any amendment thereof shall be construed to give Congress power to regulate, abolish, or control, within

any State or Territory of the United States, the relation established or recognized by the laws thereof touching persons bound to labor or involuntary service therein, nor to interfere with or abolish involuntary service in the District of Columbia without the consent of Maryland, and without the consent of the owners, or making the owners who do not consent just compensation; nor the power to interfere with or prohibit representatives and others from bringing with them to the City of Washington, retaining, and taking away persons so bound to labor; nor the power to interfere with, or abolish involuntary service in places under the exclusive jurisdiction of the United States, within those States and Territories where the same is established or recognized; nor the power to prohibit the removal or transportation by land, sea, or river, of persons held to labor or involuntary service in any State or Territory of the United States to any other State or Territory thereof where it is established or recognized by law or usage; and the right during transportation of touching at ports, shores, and landings, and of landing in case of distress, shall exist, nor shall Congress have power to authorize any higher rate of taxation on persons bound to labor than on land.

ART. 4. The third paragraph of the second section of the fourth article of the Constitution, shall not be construed to prevent any of the States, by appropriate legislation, and through the action of their judicial and ministerial officers, from enforcing the delivery of fugitives from labor to the person to whom such service or labor is due.

ART. 5. The foreign slave-trade and the importation of slaves into the United States and their Territories from places beyond the present limits thereof, are forever prohibited.

ART. 6. The first, third, and fifth articles, together with this article of these amendments, and the third paragraph of the second section of the first article of the Constitution, and the third paragraph of the second section of the fourth article thereof, shall not be amended or abolished without the consent of all the States.

ART. 7. Congress shall provide by law that the United States shall pay to the owner the full value of his fugitive from labor, in all cases where the marshal or other officers, whose duty it was to arrest such fugitive, was

prevented from so doing by violence or intimidation from mobs and riotous assemblies, or when after such arrest such fugitive was rescued by force, and the owner thereby prevented and obstructed in the pursuit of his remedy for the recovery of such fugitive.

Mr. Field, the member of the committee from New York, dissented from this report, as also did Mr. Baldwin, of Connecticut, and Mr. Crowninshield, of Massachusetts, and Mr. Seddon, of Virginia.

This report was under discussion, and various amendments were proposed to it until the twenty-seventh day of February, a majority of your Commissioners steadily opposing all its provisions except that prohibiting the foreign slave-trade, and most of such majority being opposed to the submission, by the Convention, of any amendment of the Constitution of the United States at the present time, and in the present excited state of the public mind. During the consideration of the report various independent propositions were made by the consent, and with the concurrence of your Commissioners; among which was one by Mr. Baldwin, of Connecticut, presented on the fifteenth of February, in the form of a minority report from the committee upon the plan of adjustment, which concluded with a resolution, "That the Convention recommend to the several States to unite with Kentucky in her application to Congress to call a Convention for proposing amendments to the Constitution of the United States, to be submitted to the Legislatures of the several States or to Conventions therein, for ratification, as the one or other mode of ratification may be proposed by Congress;" and this proposition, after being discussed at length, was lost on the twenty-sixth of February, by a vote of thirteen States against to nine in its favor, a majority of your Commissioners casting the vote of New York in favor of it.

A proposition somewhat similar, embracing an address to the people of the United States, and containing a resolution for calling the Convention, was also submitted to the Convention, with the like concurrence of a majority of your Commissioners, by Mr. Tuck of New Hampshire, on the eighteenth of February, and on the twenty-sixth was also defeated by a vote of eleven States against nine.

It will be seen, therefore, that your Commissioners, with those from several other States, offered to unite in a call for a Convention, to be convened in pursuance of the Constitution of the United States; and that the slave States uniting with several of the free States, uniformly opposed, and at last defeated it.

On the twenty-third of February Mr. Vandever, of Iowa, offered the following resolution:

"*Resolved*, That whatever may be the ultimate determination upon the amendment to the Federal Constitution, or other propositions for the adjustment approved by this Convention, we, the members, recommend our respective States and constituencies to faithfully abide in the Union."

A motion to lay it upon the table prevailed by a vote of eleven to nine, a majority of your Commissioners voting in the negative.

On the twentieth of February, Mr. Field, one of your Commissioners, at the instance of a majority of them, offered, as an amendment to the Constitution to be adopted by the Convention, and proposed with any other amendments, that it should recommend the following:

"The Union of the States, under this Constitution, is indissoluble; and no State can secede from the Union, or nullify an act of Congress, or absolve its citizens from their paramount obligation of obedience to the Constitution and laws of the United States."

On the twenty-sixth of February, after several ineffectual attempts to get rid of the proposition, on points of order, it was negatived by a vote of eleven States against ten, a majority of your Commissioners casting the vote of New York in its favor.

Mr. Wilmot, of Pennsylvania, moved the following as an amendment to the seventh article, on the twenty-first of February.

"And Congress shall further provide by law, that the United States shall make full compensation to a citizen of any State, who, in any other State, shall suffer by reason of violence or intimidation from mobs or riotous assemblies in his person or property, or in the deprivation by violence of his rights secured by this Constitution."

A motion was made to insert the word "white" before "citizen," but it failed by a vote of eleven to ten; and on the twenty-fifth of February the entire amendment was defeated by a vote of eleven to eight; your Commissioners, by a majority, casting the vote of New York in its favor.

Several other propositions upon other subjects were also submitted to the Convention, as will appear by the Journal; but it is not deemed necessary to refer to them more particularly, except, that on the eighteenth of February, Mr. Reid, of North Carolina, proposed to amend the first section of the committee's report by inserting after the word "line" in the seventh line thereof, the words "involuntary servitude is recognized; and property in those of the African race held to service or labor, in any of the States of the Union, when removed to such territory, shall be protected," and which was lost by a vote of seventeen States against to three for it. On the twenty-sixth of February, he also moved to insert in the same section, after the words "common law," the words, "and such rights shall be protected by all departments of the Territorial Government during its continuance," which the President ruled out of order, as the section had been previously gone through in detail, and was only before the Convention on its final passage.

The Report of the Committee on a plan of adjustment, already mentioned, came up for consideration on its final passage, after many amendments had been made to it, as will appear by the Journal, on the twenty-sixth of February, in the following form, and was ultimately thus adopted, by the votes stated at the end of each section:

ARTICLE XIII.

SECTION I. In all the present territory of the United States north of the parallel of 36° 30′ of north latitude, involuntary servitude, except in punishment of crime, is prohibited. In all the present territory south of that line, the *status* of persons held to involuntary service or labor, as it now exists, shall not be changed; nor shall any law be passed by Congress or the Territorial Legislature to hinder or prevent the taking of such persons from any of the States of this Union to said Territory, nor to impair the rights arising from said relation; but the same shall be subject to judicial cognizance in the Federal Courts according to the course of the common law.

When any Territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population equal to that required for a member of Congress, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary servitude, as the constitution of such State may provide.

YEAS.—Delaware, Illinois, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania, Rhode Island, and Tennessee—9.

NAYS.—Connecticut, Iowa, Maine, Massachusetts, North Carolina, New Hampshire, Vermont, and Virginia—8.

DIVIDED.—New York and Kansas—2.

NOT VOTING.—Indiana.

SEC. II. No territory shall be acquired by the United States except by discovery, and for naval and commercial stations, depots, and transit routes, without the concurrence of a majority of all the Senators from States which allow involuntary servitude, and a majority of all the Senators from States which prohibit that relation; nor shall territory be acquired by treaty, unless the votes of a majority of the Senators from each class of States hereinbefore mentioned be cast as a part of the two-thirds majority necessary for the ratification of such treaty.

YEAS.—Delaware, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia—11.

NAYS.—Connecticut, Illinois, Iowa, Maine, Massachusetts, North Carolina, New Hampshire, and Vermont—8.

DIVIDED.—New York and Kansas—2.

SEC. III. Neither the Constitution nor any amendment thereof shall be construed to give Congress power to regulate, abolish, or control, within any State, the relation established or recognized by the laws thereof touching persons held to labor or involuntary service therein, nor to interfere with or abolish involuntary service in the District of Columbia without the consent of Maryland, nor without the consent of the owners, or making the owners who do not consent just compensation; nor the power to interfere with or prohibit representatives and others from bringing with them to the District of Columbia, retaining, and taking away, persons so held to labor or service; nor the power to interfere with, or abolish involuntary service in places under the exclusive jurisdiction of the United States, within those States and Territories where the same is established or recognized; nor the power to prohibit the removal or transportation of persons held to labor or involuntary service in any State or Territory of the United States to any other State or Territory thereof where it is established or recognized by law or usage, and the right during transportation, by sea or river, of touching at ports, shores, and landings, and of landing in case of distress, shall exist; but not the right of transit in, or through any State or Territory, or of sale or traffic against the laws thereof; nor shall Congress have power to authorize any higher rate of taxation on persons held to labor or service than on land. The bringing into the District of Columbia of persons held to labor or service for sale, or placing them in depots to be afterwards transferred to other places as merchandise, is prohibited.

> YEAS.—Delaware, Illinois, Kentucky, Maryland, Missouri, New Jersey, North Caroline, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia—12.
>
> NAYS.—Connecticut, Indiana, Iowa, Maine, Massachusetts, New Hampshire, and Vermont—7.
>
> DIVIDED.—New York and Kansas—2.

SEC. IV. The third paragraph of the second section of the fourth article of the Constitution shall not be construed to prevent any of the States, by appropriate legislation, and through the action of their judicial and

ministerial officers, from enforcing the delivery of fugitives from labor to the person to whom such labor or service is due.

> YEAS.—Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, and Virginia—15.
>
> NAYS.—Iowa, Maine, Massachusetts, and New Hampshire—4.
>
> DIVIDED.—New York and Kansas—2.

SEC. V. The foreign slave-trade is hereby forever prohibited; and it shall be the duty of Congress to pass laws to prevent the importation of slaves, coolies, or persons held to service or labor, into the United States and the Territories, from places beyond the limits thereof.

> YEAS.—Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, New York, New Hampshire, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, and Kansas—16.
>
> NAYS.—Iowa, Maine, Massachusetts, North Carolina, and Virginia—5.

SEC. VI. The first, third, and fifth sections, together with this section of these amendments, and the third paragraph of the second section of the first article of the Constitution, and the third paragraph of the second section of the fourth article thereof, shall not be amended or abolished without the consent of all the States.

> YEAS.—Delaware, Illinois, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, Rhode Island, and Tennessee —11.

NAYS.—Connecticut, Indiana, Iowa, Maine, Massachusetts, North Carolina, New Hampshire, Vermont, and Virginia—9.

DIVIDED.—New York.

SEC. VII. Congress shall provide by law, that the United States shall pay to the owner the full value of his fugitive from labor in all cases where the marshal, or other officer, whose duty it was to arrest such fugitive, was prevented from so doing by violence or intimidation from mobs or riotous assemblies, or when after arrest such fugitive was rescued by like violence or intimidation, and the owner thereby deprived of the same; and the acceptance of such payment shall preclude the owner from further claim to such fugitive. Congress shall provide by law for securing to citizens of each State the privileges and immunities of citizens in the several States.

YEAS.—Delaware, Illinois, Indiana, Kentucky, Maryland, New Jersey, New Hampshire, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia—12.

NAYS.—Connecticut, Iowa, Maine, North Carolina, Missouri, and Vermont—7.

DIVIDED.—New York.

NOT VOTING.—Massachusetts.

When the question was first taken on the first section, it was lost by a vote of eleven States against it to eight in its favor, a majority of your Commissioners casting the vote of New York against it. A motion was immediately made to reconsider, which was advocated by Mr. Granger, one of the Commissioners from New York, and was carried by a vote of fourteen States for, to five against it—a majority of the Commissioners from New York again casting its vote in the negative, and the Convention adjourned. On the next day it again came up on its final passage, and was then carried by a vote of nine States for, to eight against it—the vote of New York not being given. Why it was not given is left by the Commissioners to be stated by Mr. Field, on his own responsibility. (*See note*, p. 596.)

The vote of New York was not given upon any of the sections except the fifth, for the reason already stated; but upon that section we all voted Aye, as all her Commissioners then present were in its favor.

After the several votes had been taken, it was objected that the whole article should be put to a vote upon the question of its final adoption before it could be regarded as properly passed, but the President of the Convention decided that this was not necessary, and no such vote was taken. At the close of the discussion on this subject your Commissioners were prepared to cast the vote against the entire article, if any question had been taken upon it as a whole, as a majority of your Commissioners think it should have been.

Soon after the adoption of these proposed amendments to the Constitution, and after voting down and laying on the table various propositions made by a minority in the interest of freedom and the free States, the Convention adjourned—having adopted an address to Congress requesting that body to submit the amendment, to Conventions of the several States, for ratification, according to the Constitution of the United States; and they were accordingly communicated to Congress on the same day. In the Senate, they were referred to a committee, and were recommended for adoption by a majority of that committee; but Messrs. Seward and Trumbull, a minority of the committee, reported against the amendments, and in favor of a National Convention; thus following out and approving the proposition which had been made in the Convention by your Commissioners, and the entire minority of that party, nearly three weeks before, and for which the majority which controlled it, if it had chosen to do so, could at any time have obtained an unanimous vote. The amendment of the Convention, however, failed to secure the approval of either branch of Congress.

The labors of your Commissioners having thus terminated, it is due to those whom they represented, and to themselves, that the majority should state briefly the reasons why the proposed amendments to the Constitution did not meet their approbation.

First.—In their judgment, no amendment of that sacred instrument in the interest, and for the purpose of the extension and perpetuation of the slave power—an interest which has wielded the whole political power of the

United States during almost the entire existence of the Government—was either expedient or necessary. They preferred it should remain and continue just as it came from the hands of our revolutionary fathers; a Constitution establishing freedom and not slavery.

Second.—The Convention would scarcely listen to, much less adopt, any amendment in the interest of freedom or of free labor, or of the rights of citizens of the free States; the only one of that character—that in relation to securing to the citizens of each State the privileges and immunities of citizens of the several States—having been voted down as a direct proposition when offered by Mr. Wilmot, and only adopted in an indirect way at the end of the section requiring payment to be made by Congress for rescued slaves. In like manner the absolute right of secession in every State as inherent under the Constitution of the United States was claimed to exist by members of the Convention from the slave States, accompanied by a denial of any right in the General Government to coerce obedience to it, or to enforce the laws for the collection of revenue. And although all the delegates from the slave States did not take this ground, yet in several instances a majority of the delegates from several of them did so, and the States themselves generally voted against all propositions to the contrary. The article proposed by your Commissioners denying the right of nullification and secession was defeated in accordance with these views; so that in effect slave States, and such of the free States as voted with them, would not consent so to amend the Constitution as to deny the right of nullification and secession, even if all the guarantees demanded by the slave interest were accorded to it. In addition, many of the delegates from the slave States declared that it was the fixed determination of those States to stand by the States that had seceded from the Union, and to aid them in resisting it, even if such guarantees were given; and that they would resist any attempts to coerce them, or to enforce the revenue, or any other laws within their limits, without their consent. In other words, they claimed a right to remain in the Union under the Constitution, with its new guarantees of slavery, and yet to obstruct the operations of the Government, to prevent the execution of the laws, and to aid those who were in open rebellion against, and had made war upon it. Under these circumstances your Commissioners did not deem it consistent with justice, or the respect due to their own State, to give their assent to any of the proposed amendments,

except that prohibiting the slave-trade—and even that, in their opinion, was unnecessary, as no enlightened legislative body would dare to propose to reëstablish that infamous traffic.

Third.—By the first section of the proposed amendments, slavery is *constitutionally* established in all of the territory south of the line of 36° 30 ′, and all control over it by Congress or the territorial legislatures is absolutely taken away during its territorial condition. In effect, there is to be no law for slavery, its permanency and existence being provided for, except the will of the master and the present odious slave code of New Mexico. These are fastened upon every inch of the soil of that immense region, beyond even the power of the people to remove them, however much they may desire to do so, prior to the formation of a State government. Slavery must therefore be the normal condition of the territory, while the State is in the process of formation and organization; and the inevitable result must be, that free labor and free institutions will be excluded, and no free State formed within its limits. As the territory was free from the blight of slavery when acquired, your Commissioners could not assent to its being changed into slave soil by an amendment to the Constitution of the United States.

Fourth.—The second section of the proposed amendments gives to the slave States an absolute negative upon the acquisition of free territory in every possible mode by which it can be acquired; and in giving reciprocally the same right to free States as to acquiring slave territory, also fetters the operations of the General Government both in peace and war, depriving it to some extent of the exercise of perfect sovereignty, and at the same time sanctioning, and perpetuating in the organic law, an odious discrimination in favor of an institution peculiar to the slave States, and at variance with the humane principles of the age. The free States do not need any such veto power in their favor, and the slave States would not demand it except to maintain and preserve for slavery a balance of power hitherto claimed, and to some extent exercised by them, for which they secure by this amendment a constitutional perpetuation. No well-founded objection seems to exist in regard to the acquisition of free territory, unless it be that it is obtained in order to convert it into slave soil; and your Commissioners could not consent to give to a single interest, that of slavery, a negative upon such acquisitions. They have always regarded slavery as a local institution, depending solely upon the laws of the States in which it was permitted for

its existence; and they did not deem it expedient or just to recognize it as, or elevate it to, the rank of a positive governmental power, by clothing it with the right to interrupt one of the ordinary and most essential functions of the Government. Slavery, except as a limited basis of representation, has now no political power or authority under the Constitution; the wise and good men who framed that instrument cautiously withheld it in all other respects; and your Commissioners find in the history of the aggressions of the slave interest, only additional reasons for confining it within its original limits.

Fifth.—To so much of the third article as declares that the Constitution nor any amendment of it, shall be so construed as to give Congress the power to regulate, abolish, or control slavery within any State, there was no objection, as it has never been seriously claimed that any such power was given; but this provision is connected with so many objectionable, not to say odious ones, that your Commissioners felt themselves bound to vote against it. These surrender all the power of Congress over the District of Columbia, and over other places within its exclusive jurisdiction, in respect of slavery and its ultimate extinction, however much the people of the United States in the progress of civilization and humanity may desire it; and by the sixth section this provision is made unalterable without the consent of all the States. The influences produced by the existence of slavery at the National Capital, upon public men and public measures, are well known; and while they may be tolerated, as they have been, without any desire to exercise the power of eradicating the cause of the evil, still a sound policy requires that the power should not be abandoned. Connected with this surrender of a well-defined and necessary power, are other provisions in regard to the transit of slaves through the free States; in effect, permitting the carrying on of the internal slave-trade through these States, unless they pass laws forbidding it. This trade through the free States is not made dependent upon the consent of the States, but is made lawful without dissent; and the result is, that if this amendment shall be adopted, every free State will find it necessary to legislate for its exclusion, or to permit and regulate the transit by its own laws. These laws would be deemed odious by the slave States, and would produce dissatisfaction and irritation. Besides, in most of the free States, the normal legal condition of every person is that of freedom; this constitutional provision would at once change the local law of the State, and operate as a positive recognition of slavery in the absence

of any new enactment. Thus, every free State would find itself compelled to adopt a slave code, more or less extensive in its character, regulating or excluding the inter-state slave-trade. Taking this in connection with the fourth section, authorizing the States to legislate upon the subject of fugitive slaves, and by their judicial and ministerial officers to enforce their delivery, contrary to the decision of the Supreme Court of the United States, which declares all such interference on the part of the States unconstitutional, it is apparent that the legislatures of all the free States would be beset by hordes of persons in the interest of the slave power for the passage of laws protecting slavery within their limits. No means, however impure, would be omitted to obtain them; and it is easy to see that a slave code upon the subject of transit of fugitives, more or less stringent in its character, would soon find its way into every statute book. When the States now free abolished slavery within their own limits, they intended to get rid of the evil entirely, not only in practice but as a necessity of legislation; these provisions compel a return to it, and involve the adoption of new laws for its regulation or exclusion.

Seventh.—The sixth section makes most of the amendments which give a constitutional protection to slavery, unalterable without the consent of all the States. It also includes the second section of the fourth article, which provides that "representatives and direct taxes shall be apportioned among the several States according to their respective members," including three-fifths of all slaves, &c.; and that portion of the fourth article which requires the delivering up of fugitive slaves. Thus, a preference is given to the slave interest over every other; these may all be affected by a constitutional amendment, ratified or adopted by three-fourths of the States; but the slave clauses are to remain, except by universal consent, fixed and immovable. No such protection is given to freedom; none to the property of free men, unless it be what is called property in slaves; none to the freedom of the press; none to the religion of the citizen, or to the rights of conscience. These rights, more sacred than any other, are deemed of less importance, and are secured by less guarantees than the right to hold a fellow man in bondage and to traffic in his flesh. Moreover, the three-fifth representation of slaves, and only the same rate of direct taxation, are perpetual by the same rigid provision. This not only gives to the slave States a representation of three-fifths of their slave property, but it secures to them an exemption

from taxation on the same property to the extent of two-fifths. But no property whatever, in the free States constitutes a basis of representation, and all of it is liable to, and may be taxed. Unequal and unjust as was this discrimination in favor of the slave States, still as it formed a part of the original Constitution, it should be maintained; but when it is sought to extend it to new States, and to make it unchangeable without the consent of all the States, the attempt should be resisted by every freeman. There are other property interests more important than that of slavery, but none of them have been so arrogant as to claim such exclusive privileges and perpetuation.

Finally.—Other objections of a grave character might be stated, but it is not deemed necessary. The great purpose of the Convention was to amend the Constitution of the United States, so as to recognize and protect slaves as property. As a direct proposition this was negatived, but the same end was sought to be attained by indirect means, and its friends exulted in having accomplished it. Such is the obvious effect of these amendments. If adopted, slaves must everywhere in the Union be regarded as property, and entitled to the same legal protection as other property. The necessary result will be, that all State laws forbidding the bringing of slaves within their limits, will be void, the sovereignty of the States in that respect will be destroyed, and the National Constitution will recognize and protect property in man.

We do not believe that the people of the State of New York will, under any pressure of circumstances, however grave, recognize a claim so repugnant to humanity, so hostile to freedom.

We commend to your honorable body the careful consideration of these proposed constitutional amendments. We believe that they will, if adopted, engraft upon our Constitution the odious doctrine of property in man; that they will extend slavery over a vast domain once free; that they will change the whole spirit and character of our organic law, making that to protect and foster slavery which was intended to establish freedom; making that irrevocable and perpetual which the framers of the instrument intended should be temporary.

DAVID DUDLEY FIELD,
WM. CURTIS NOYES,
JOHN A. KING,
JAMES S. WADSWORTH,
A.B. JAMES,
JAMES C. SMITH.

NOTE OF MR. FIELD.

THE following statement shows why the vote of New York was not given upon the first question taken in the Peace Convention, on the twenty-seventh of February. The Journal represents the vote as divided. *It was not divided.* The vote was ordered to be cast, *and should have been cast* in the negative.

On Tuesday, the day preceding, a message came to me from the clerk of the Supreme Court of the United States, that the Court was waiting for me in a case which had stood upon the docket since December, 1859, and was now for the first time reached in its order. The case was of great importance, for upon its result depended the closing or reopening of a litigation which I had conducted for nineteen years, which had embraced in its different forms more than eighty suits, and in the course of which the Courts of the State and of the United States had come into direct conflict. All the tribunals of the State of New York, where the question had been raised, had decided against my clients. The Supreme Court of the United States, by a majority of two, had once decided in their favor.

The present case was to determine whether the Court would adhere to its former decision. The stake of my clients was therefore immense, and I was their only counsel.

The case being called after my arrival in Court, the Chief Justice observed that, as it was too late to begin that day, the argument would proceed first the next morning, at eleven o'clock, unless the Attorney-General should claim precedence in another case. Then, thinking that the Convention would

close its business during the day, I hastened back, and the question being soon taken, I cast the vote of the State against the proposition before the Convention, and it was rejected by 11 to 8.

A reconsideration was moved and carried, and an adjournment taken to half-past seven in the evening. At that hour I returned to the Convention, but to my disappointment, and in spite of my efforts, it adjourned to the next morning at ten o'clock, a majority of my associates voting for the adjournment.

The next morning I endeavored to procure a meeting of the delegation before ten o'clock, that I might obtain a formal instruction to the Chairman in my absence to cast a vote of the State against the proposed amendments. Not being able, however, to obtain the earlier attendance of all the members, I waited till they appeared in the hall of the Convention, and there, shortly before eleven o'clock, I called them together, and, all being present, a resolution, in contemplation of my absence, was moved and carried, that "the Chairman declare that New York voted No on each section." Thereupon requesting Mr. King to act as temporary Chairman in my absence, and when New York was called to cast the vote in the negative, pursuant to the resolution, I left the hall and drove to the Capitol as rapidly as possible, that I might be present at the opening of the Court.

Was it reasonable, nay, was it possible, that I should do otherwise? It is known to be a rule of the Supreme Court not to postpone an argument for other engagements of counsel. If neither counsel is present, the case goes to the foot of the docket, to be reached again only after two or three years; if one of the counsel only appears, he makes an oral argument, and a printed brief is submitted on the other side. In my view, it would have been trifling with the rights of my clients either to submit their case on a printed brief or to postpone it for two years. I had no one to send to the Court in my place. To despatch a letter with an excuse was a liberty I did not feel justified in taking, and if taken, it might fail of its object, as the Court, when informed of the circumstances, must have believed that no member of the delegation would take advantage of my absence if he could, and that he could not if he would, since the vote had been already determined in a meeting of the delegation, and that determination could not be reconsidered or changed without the desertion to the minority of one of the majority.

But whatever might be the opinion of others, my duty appeared to myself extremely plain. There was nothing to be done in the Convention but the merely ministerial duty of declaring what had already been determined, which duty could certainly be performed by another as well as myself, while, on the other hand, no one but myself could act in Court for my clients. It is true that some of my associates expressed to me their apprehension that the minority might appeal to the Convention, and that the Convention might arbitrarily overrule the delegation; but I answered them as I repeat now, that neither the minority of the delegation nor the Convention itself had any right to interpose. We were not asking a favor, but exercising a right. Whether a person not present could vote was not the question. Persons did not vote except on unimportant questions and by general consent. States voted; the vote of each State was delivered by its Chairman, who collected the voices of his delegation and announced the result. There was nothing in the reason of the thing, nothing in any rule or usage of the Convention, which required the voices of the delegation to be collected at the instant of announcing the result. They might be collected one minute beforehand, or, as in the present instance, ten minutes, or twice ten minutes. All that could be required was, that each member should give his own judgment upon the particular proposition, and the sum of these judgments it was the sole province of the Chairman to make known. There could be no occasion for their standing by his side while he performed this duty unless he needed their support or they feared his weakness.

I have said that there was no rule of the Convention which ordered the matter otherwise; on the contrary, the rule as to the mode of voting—the 18th—was as follows:

"18. MODE OF VOTING: All votes shall be taken by States, and each State to give one vote. The yeas and nays of the members shall not be taken, or published—only the decision by States."

On the twenty-first of February, Mr. Dent, of Maryland, moved the adoption of the following rule:

"When the vote on any question is taken by States, any Commissioner dissenting from the vote of his State may have his dissent entered on the journal."

Mr. Chase, of Ohio, offered the following as a substitute for Mr. Dent's rule.

"The yeas and nays of the Commissioners of each State, upon any question, shall be entered upon the Journal, when it is desired by any Commissioner; and the vote of each State shall be determined by the majority of Commissioners present from each State."

Mr. Chase's substitute was rejected, and Mr. Dent's rule adopted.

The usage of the Convention may be understood by a single example. The Maine delegation consisted of her two Senators and six members of the House of Representatives. One member only attended for the greater part of the Convention, and cast the vote of the State. Indeed it was a frequent practice for members to absent themselves and leave their associates to act for them.

The State of New York had, moreover, decided for herself in what manner her Commissioners should speak for her, by declaring in the joint resolution of the Senate and Assembly that they should cast their "votes to be determined by a majority of their number," not the majority of those who should happen to be present at a particular instant on the floor of the Convention, but a majority of the whole number. Suppose, upon a question being put, the delegation had met for consultation, and by a formal resolution determined that the vote of the State be No; then, instructing their Chairman to cast the vote accordingly, had separated, and all but the Chairman retired from the hall, could he thereupon have changed the vote to Aye, because he disagreed with the majority and alone remained on the floor? Or could the Convention have refused this vote of the State? And if not, how is that question different from the one here?

It was, therefore, I must think with good reason, assumed by me when I left the hall, that if the question should be put in my absence, which by the way I considered uncertain, as the debate then going on might last for hours, and I hoped still to find some means of deferring my argument to the next day, I might certainly depend on the vote of New York being declared again as it had been declared before, never doubting for a moment the ability and the will of my associates to defend against all opposition the rights of the State, their own rights, and mine.

On my arrival at the Court I did not succeed in my desire to defer my argument to the next day; but had I done so, it would have made no difference, as the vote in the Convention must have been called before I reached the Capitol.

What occurred in my absence I can only know from report. Five different statements are given: one by Mr. King in a published letter, another by the secretary of the delegation in the minutes kept by him, the third by the chairman of the Massachusetts delegation, who had the best opportunity to observe what was passing, the fourth by the secretary in a correspondence with me, and the fifth in the published Journal of the Convention.

Mr. King's statement of what occurred in my absence is as follows:

"The vote on the amendment soon followed, and before New York was called I asked my colleagues what vote should be given, and the reply was that in the absence of Mr. Field the vote was divided. Nevertheless, I stated the case to the Convention, and asked permission to cast the vote as before. This was objected to by one of the Commissioners of the minority, and permission having been refused by the Convention, by direction of my colleagues when the State was called I answered that the vote was divided."

The other statements are subjoined, and numbered, 1, 2, 3, 4, and 5.

From a comparison of these statements it appears.

First: That the direction given to Mr. King, when the whole delegation were together, regularly convened, in contemplation of my absence, was to "declare that New York voted No."

Second: That instead of confining himself to that duty, he began immediately upon my departure, and before the vote was demanded, to ask anew, "what vote should be given?" and when the vote was demanded, instead of voting No, "stated the case to the Convention, and asked permission to cast the vote as before."

Third: That Mr. King's colleagues, though they had just resolved, in expectation of my absence, that he should "declare that New York voted No," yet "before New York was called," and of course before any intimation from the Convention or its President, in answer to his question, "What vote

shall be given?" replied, "that in Mr. Field's absence, the vote was divided," and directed him so to declare.

Fourth: That the Convention never "decided that no person could vote who was not present." Whatever was done, was done between the delegation and Mr. Tyler. No order was taken by the Convention, but, on the contrary, the objection on the part of the minority of the delegation was that "the Convention had no control or authority in the matter."

What caused this departure from the course of proceedings prescribed by the resolution does not clearly appear. The delegation did not rescind the resolution; the Convention did not reverse it. I do not understand that my associates consider it a nullity—certainly they could not have so considered it when it was passed. I have not sufficient evidence that they changed their minds within ten minutes, or that they have changed them yet. That the resolution was not a nullity, but an authoritative act, binding upon every member of the delegation, until duly reconsidered, I believed then, and believe still.

I submit, therefore, that my reason for attending court, at its opening, was not only sufficient but imperative; and if I had not yielded to it, I should have incurred the reproach of my clients, and the censure of all right-thinking men; that before I left the Convention, I did not only all that could have been done, but all that was necessary, to make the vote of New York certain against the proposed amendments of the Constitution; and that the omission to record the vote of New York as it was ordered, was owing not to any act or omission of mine, but to the efforts of the minority of the delegation, or some of them, to prevent an expression of the opinion of the majority, and to the failure of my associates of the majority to execute in my absence what had been resolved when I was present.

It is certainly with regret that I write this note. My preference was for a statement in which we all could join, but my associates refused to enter into any joint relation of the facts.

I hope, also, it will not be inferred from any thing I have written, that I do not regret the omission to record New York as voting against what appeared to me an unwise and pernicious proposition. Though the importance of the vote has been greatly magnified, and the result in my opinion would not

have been different if the vote of New York had been counted, as I believe some of the States not voting would, if necessary, have voted in the affirmative; and even if it had been otherwise, I think the action of the Convention was of no importance whatever; yet, I should wish this State, of which we are so proud, to appear always, even in a matter of ceremony, on the side of Freedom; ever loyal to the Constitution as it is, but against placing there a guaranty to slavery beyond the guarantees of our fathers.

DAVID DUDLEY FIELD.

NEW YORK, *March 20th, 1861.*

I.—*Extract from the Minutes of the New York Delegation, kept by their Secretary.*

"WEDNESDAY, *February 27th, 1861.*

"New York delegation met in the room, and Mr. Wadsworth moved that the New York delegation vote No on each of the sections of the committee's report. Messrs. Corning, Bronson, Granger, Wool, and Dodge opposed, urging that the vote of New York be given on each section as it was called. The majority overruled, and decided to have the Chairman declare that New York voted No on each section.

"The question on the first section being called, Mr. King stated that one of the members of the delegation being called away to the United States Court, the delegation had taken a vote before he left, and he appealed to the justice of the Convention to have it so cast, stating that the vote of the delegation had been so cast on the previous day.

"The Convention decided that no person could vote who was not present.

"The delegation was divided."

II.—*Letter from the Chairman of the Massachusetts Delegation.*

"WASHINGTON, *March 8th, 1861.*

"MY DEAR SIR:—Your favor of the 6th instant is before me. After alluding to the fact that 'my seat in the Peace Convention was at the table directly under the President's chair, between him and the New York delegation,' you desire me to inform you what took place, on the occasion of the vote of New York being called on the morning of the 27th February. What I observed was this:

"When the vote of New York was called for, Governor King rose and stated in substance that you had a short time before left the Convention to argue a case in the Supreme Court, which had been assigned for that morning, and asked the permission of the Convention to give the vote of the State in your absence, the same as though you were present. To this one of the Commissioners, Mr. Corning I think it was, objected, saying that the vote of New York was to be given as her Commissioners who were present should decide, and that the Convention had no control or authority in the matter. Some conversation was then had between the Commissioners who favored and those who opposed the pending proposition, which I did not hear with sufficient distinctness to understand, and in a minute or two Governor King announced that the vote of New York was divided.

"This is the substance of what occurred, so far as I observed it.

"With great respect, your friend,

"J.Z. GOODRICH.

"To David Dudley Field, Esq., New York."

III.—*Letter to the Secretary of the Convention.*

"NEW YORK, *March 4th, 1861.*

"DEAR SIR:—Was any resolution passed by the Convention on Wednesday, the 27th of February, respecting the right of New York to vote, or affecting the vote of that State in the absence of any of her Commissioners? On one side I am told that there was such a resolution passed, or vote taken, in my absence; on the other side, I am told that there was not. If one was passed, will you do me the favor to give me a copy of it, and oblige

"Yours truly,

"DAVID DUDLEY FIELD.

"CRAFTS J. WRIGHT, Esq., &c., &c."

IV.—*The Secretary's Answer.*

No. 135, WILLARD'S, WASHINGTON, *March 5th, 1861.*

"DEAR SIR:—I have your letter. When New York was called, the inquiry was made whether an absent member could vote, stating that one member of that delegation was absent. The President stated that an absent member could not vote. New York was stated divided, and did not vote.

"Respectfully, &c.,

"CRAFTS J. WRIGHT."

V.—*Extract from the Journal of the Convention.*

"*February 27th, 1861.*

"The question on the adoption of said section resulted in the following vote:

"YEAS.—Delaware, Illinois, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania, Rhode Island, and Tennessee—9.

"NAYS.—Connecticut, Iowa, Maine, Massachusetts, North Carolina, New Hampshire, Vermont, and Virginia—8.

"So the section was adopted.

"On calling New York, the members stated that one of their number was absent, and the delegation were divided. Inquiry was made of the President whether an absent member could vote. The President decided he could not, without general leave.

"New York, Indiana, and Kansas were divided."

To the Legislature of the State of New York:

The undersigned beg leave to submit a reply to the statement of Mr. D.D. Field, to the report of the majority of the Commissioners to the Conference Convention at Washington, respecting his absence on the final vote in that body, on the proposed amendments to the Constitution of the United States. The fact of his absence is admitted by Mr. Field, and attempted to be defended at great length, but Mr. Field has omitted to state that, by the 14th Rule of the Convention, "no member should be absent from the Convention, so as to interrupt the representation of the State, without leave." Mr. Field neither asked nor obtained leave of absence, and hence, under the rule, he failed to discharge his duty, both to the Convention and his colleagues. Mr. Field does not state that he made any application to the court for a temporary postponement of his case, in view of the important vote then about to be taken in Convention. But, on the contrary, argues to show that his duty to his client was paramount to his duty as Commissioner of the State of New York, in a question involving constitutional principles. After Mr. Field had stated, in the presence of his colleagues in the Convention, that he was obliged to go immediately to the Supreme Court of the United States, he was urged by those who agreed with him in opinion, to remain, and give the vote of the State against the proposed amendments, and was repeatedly told that his absence would divide the vote; this was so stated to him, by the minority of the Commissioners, and that it would be so claimed by them before the Convention. He refused to remain, and with the

full knowledge of the effect of his absence on the question about to be taken, he left the Convention, and thus defeated the vote of his State. We who remained in our places, felt deeply the embarrassment, and the remarks which were made in consequence of Mr. Field's withdrawal. We had steadily, up to that time, sustained with him, our own, and what we believed to be the sentiment of the State, in favor of freedom, and were, therefore, entirely unprepared for such a determination on his part. Nor is our surprise lessened by the manner and the certificates by which he has at great length attempted to defend his course on this occasion. The vote of New York was not declared until after the vote which had been previously taken in its delegation had been stated, nor until an appeal had been made to the Convention, and refused by its President, to enable his colleagues to protect its vote in the absence of the Chairman of the delegation. By his absence the vote of New York stood 5 to 5, and it was under the decision of the Convention alone, that the vote was declared to be divided. Mr. Field has stated that the omission to record the vote of New York against the amendments was not owing to any act or omission of his, but to the efforts of the minority of the delegation, or some of them, to prevent the expression of the opinion of the majority. The objection was made after notice to him that it would be made, and the Convention sustained it, hence the vote was lost by his absence. Nor is the opinion of Mr. Field entitled to consideration when he imputes to the majority a want of fidelity to him, in not claiming and adhering to the vote which had been taken when all were present, and which was afterwards rendered null, by his absence. They did adhere to it, and endeavored to cast the vote accordingly. It was his duty to have been present, and to have thus given effect to that which had been previously agreed to. Mr. Field states, and truly, that his colleagues refused to unite in a joint relation of the facts of the case. They refused, because they were not satisfied with his course, and would not be responsible for it in any way. Up to the moment of his leaving the Convention, Mr. Field had manifested great zeal and ability in sustaining and defending the principles which a majority of the delegation desired to advocate, and his failure at the last, and decisive vote, was as unexpected as it was indefensible.

JOHN A. KING,
WM. CURTIS NOYES,
A.B. JAMES,

JAS. S. WADSWORTH,
JAS. C. SMITH.

NEW YORK, *March 28th, 1861.*

To the Legislature of the State of New York:

Informed by the newspapers of this morning that five of my associates in the Peace Convention, after waiting nearly three weeks, made yesterday to the Legislature a communication purporting to be an answer to the note which I thought it my duty to append to the report, explaining why the vote of New York was not given at a particular time, I beg leave to submit the following in reply:

I do not perceive that my associates impugn a single statement of fact contained in my note. My engagement in Court, the importance of the engagement, the necessity for my keeping it, the meeting of the delegation in contemplation of it, their resolution directing how the vote should be cast in my absence, the neglect so to cast it, are all, by silence, admitted. Nor do I perceive any denial of the proposition that the delegation had a right to pass the resolution, which thus became binding on all its members until reconsidered and reversed.

Perhaps I ought to make one exception to this use of admissions. My associates apparently wish to have it believed, yet hesitate to assert, that the Convention made a decision respecting the right to vote. In one place they say, "that an appeal had been made to the Convention, and refused by its President;" in another, that "it was under the decision of the Convention alone that the vote was declared to be divided;" and in a third, that the objection of the minority was made after notice to me that it would be made, and the "Convention sustained it, hence the vote was lost," by my absence. They should have reflected that there could have been no "decision of the Convention" if the appeal to it was "refused by its President." The truth beyond question is, that although my associates imagined that the Convention decided something, it did in fact decide nothing.

My associates say further, that I argue to show that my duty to my client was paramount to my "duty as Commissioner of the State of New York, in a question involving constitutional principles." This is an idle calumny. My note can be read as well as theirs; and in general will be read by the same persons, and there is not a word in it to justify or excuse their assertion. I never thus argued. I claimed that I had two duties to perform, and that I performed both. I did not claim that my duty to my State was subordinate to any other duty whatever.

When my associates assert that their Chairman left the Convention "with full knowledge of the effect of his absence on the vote about to be taken," if they mean that I knew or supposed that they intended to reverse their own action, or that Mr. King would not announce the vote as it had been resolved, or would declare the vote divided, or that they would support him in it, or that the Convention would overrule the delegation, then they assert what they could not know to be true, and what is not true in fact. My note sets forth what I was told, and what I replied.

My associates argue that I failed to discharge my duty, because I did not obtain leave of the Convention before going into the Supreme Court. Though I do not remember to have heard before of leave granted by a deliberative body to a member to go out for half an hour, or for one or two hours, I will observe, by this Convention absence was expressly allowed, if it did not "interrupt the representation of the State." My associates do indeed claim that, when I left the hall, the State ceased to be represented, ten Commissioners only remaining behind. The argument of this strange position appears to be, that a State is not represented when its vote can be divided, and that the vote of New York was divided. Here is a double fallacy. To say that the vote was divided, begs the question. It was not divided so long as the resolution passed by the delegation remained valid, and its validity is not denied. The other part of the proposition is equally fallacious. A State is represented when there are in the body delegates authorized to represent it, whatever be their number. The arguments of my associates seem to be, that a State could only be represented in the Peace Convention by odd numbers, and that if it sent eight or ten representatives, it would have no representatives at all.

But what shall I say to the following sentences:—"Nor is the opinion of Mr. Field entitled to consideration, when he imputes to the majority a want of fidelity to him, in not claiming and adhering to the vote which had been taken when all were present, and which was afterwards rendered null by his absence. They did adhere to it, and endeavored to cast the vote accordingly. It was his duty to have been present, and to have thus given effect to that which had been previously agreed to." Would any one imagine that the authors were speaking of a vote, given in expectation of my absence, and to determine what should be done when I was away? The vote was taken because I was to be absent, and directed the Chairman how to act in that event, but it is nevertheless pretended that the moment I became absent, the vote became null. They might better have said that the vote would have become null, or rather that there would have been no occasion for it in case of my continued presence. Then they say that they adhered to it. How did they adhere? The resolution directed the Chairman to cast the vote in the negative. He did not obey the resolution. His associates and mine did not insist that he should. Nobody prevented his answering "no," when the vote was called. No reason has ever been given for his not so answering. That he should instead have entered voluntarily into a discussion with Mr. Tyler on the subject, and that his associates should have looked quietly on, can only be accounted for by supposing them indifferent or bewildered.

It is not an agreeable task to write thus of old friends; but I must defend myself when attacked, and defence cannot always be made pleasant to an assailant.

My late friends profess to think me responsible for the loss of the vote of New York on a certain occasion. I think them responsible for it. Which side is right the Legislature and the people of the State will judge.

DAVID DUDLEY FIELD.

New York, *April 11th, 1861.*

Report of a Minority of the Commissioners of New York.

IN SENATE, *March 25th, 1861.*

The undersigned, constituting a minority of the Commissioners, appointed by the Legislature of the State of New York, under resolutions responsive to those of the State of Virginia, referred to in the report of the majority of the Commissioners of said State of New York, admitting the correctness of the record of the proceedings presented by said majority, but differing from them in much of the reasoning which they present, respectfully report:

That they entered upon the duties assigned to them, earnestly desiring to carry out the patriotic spirit of said resolutions as therein expressed, which said original resolutions are herein embodied as a part of this report:

NEW YORK.

CONCURRENT RESOLUTIONS *appointing Commissioners from this State to meet Commissioners from other States at Washington, on invitation of Virginia.*

WHEREAS, the State of Virginia, by resolutions of her General Assembly, passed the nineteenth instant, has invited such of the slaveholding and non-slaveholding States as are willing to unite with her, to meet at Washington, on the fourth of February next, to consider, and if practicable, agree on some suitable adjustment of our national difficulties; and whereas, the people of New York, while they hold the opinion that the Constitution of the United States, as it is, contains all needful guarantees for the rights of the States, are nevertheless ready, at all times, to confer with their brethren upon all alleged grievances; and to do all that can justly be required of them to allay discontent; therefore,

Resolved, That David Dudley Field, William Curtis Noyes, James S. Wadsworth, James C. Smith, Amaziah B. James, Erastus Corning, Addison Gardner, Greene C. Bronson, Wm. E. Dodge, Ex-Governor John A. King, and Major-General John E. Wool, be and are hereby appointed Commissioners on the part of this State, to meet Commissioners from other States, in the City of Washington, on the fourth day of February next, or so soon thereafter as Commissioners shall be appointed by a majority of the States of the Union, to confer with them upon the complaints of any part of the country, and to suggest such remedies therefor as to them shall seem fit

and proper; but the said Commissioners shall at all times be subject to the control of this Legislature, and shall cast five votes to be determined by a majority of their number.

Resolved, That in thus acceding to the request of Virginia, it is not to be understood that this Legislature approve of the propositions submitted by the General Assembly of that State, or concede the propriety of their adoption by the proposed Convention. But while adhering to the position she has heretofore occupied, New York will not reject an invitation to a conference, which, by bringing together the men of both sections, holds out the possibility of an honorable settlement of our national difficulties, and the restoration of peace and harmony to the country.

Resolved, That the Governor be requested to transmit a copy of the foregoing resolutions to the Executives of the several States, and also to the President of the United States, and to inform the Commissioners without delay of their appointment.

Resolved, That the foregoing resolutions be transmitted to the honorable the Senate, with a request that they concur therein.

The foregoing resolutions were passed in the House of Assembly by a vote of seventy-three ayes to thirty-nine noes, and in the Senate by a vote of nineteen to twelve, those in the negative, in both Houses, being all members of the dominant party, and those in the affirmative composed of the members of the opposition, and of those Republicans who were supposed to be prepared to meet the State of Virginia and other sister States, in the spirit of the resolutions adopted by the States of Virginia and New York.

A single point in the record, to which reference has been made, requires some consideration before proceeding to the reasoning of a majority of the Commissioners upon the propositions finally adopted by the Convention. The majority of the Commissioners state that most of said majority were opposed to the submission by the Convention of any amendments of the Constitution of the United States at the present time, and in the present excited state of the public mind.

Not only was that ground assumed by a majority of the New York Commissioners, but some of their number argued with great ability against

the danger of touching that sacred instrument, consecrated by memories so dear to every patriot heart.

The propositions, presented as amendments, were clear and distinct—their adoption would in no manner disturb the general harmony of the Constitution; yet, strangely enough, to an ordinary mind, the majority of the Commissioners who found such danger in adopting the specific amendments proposed, voted with a united action for a General Convention to remodel the entire Constitution—exposed to all the hazards that must attend such a Convention—by whose action a form of government might be presented, in which could not be found a single trace of that Constitution for which they professed such high veneration.

The undersigned will now consider the reasons presented by a majority of the Commissioners against the proposition: The majority declare that the Convention would not listen to, much less adopt any amendments in the interests of freedom, or of free labor, or of the rights of citizens of the free States, the only one of that character, that in relation to the securing to the citizens of each State the privileges and immunities of the citizens of the several States, &c., &c. As the undersigned have no recollection of the propositions to which reference would seem to be made, other than that embraced in the last clause, which they have quoted, they would call the attention of the people of the State of New York to this subject, as one deeply interesting in its character, and upon which it is supposed that there is very little difference of opinion. As this statement is thrown out by a majority of the Commissioners, in a manner to carry a belief that the harsh and cruel enactments which deprive colored citizens of the North of the privileges they claim in Southern States under the Constitution, it may be well for our people to consider that such enactments are not confined to the States fostering the institution of slavery, but exist and are enforced in some States making peculiar claim to love for freedom and the rights of man. The State of Illinois has a code of laws against free colored persons, citizens of other States, as severe as those of South Carolina or Louisiana. These laws have been recently enforced, and yet the North does not hear one word of the wrongs inflicted upon colored citizens of other States found within the borders of Illinois.

It will be recollected that the Constitution first presented by the State of Oregon, contained a clause prohibiting free colored persons from residing within that State. That Constitution received the votes of both the Senators from New York—each expressing his views of that instrument, yet the public censure has not fallen upon either of those gentlemen, by reason of such action. Nor is it necessary to go beyond the election polls of this State, claiming its fifty thousand majority for the cause of freedom and of equal rights—and yet counting from the ballot box an hundred thousand majority against securing the privilege of suffrage to colored persons, upon the same conditions that it is secured to whites. These facts are presented with the hope that they may create a spirit of charity in the public mind toward those States whose peculiar position renders such harsh legislation certainly not more censurable than it is in free States.

The undersigned differ entirely from the majority of the Commissioners, as to the action of the Convention upon subjects interesting to the North. It is known to all that Virginia, Kentucky, and it is believed all the Southern Border States instructed their delegates to insist on the Crittenden propositions, a material feature of which was, that in all future acquired territory, south of 36° 30′, slavery should be permitted; and yet when this material clause was found repugnant to the Northern sentiment, a distinguished Commissioner from Maryland moved to limit it to *present* territory, which proposition was adopted. Surely this was an important surrender to Northern sentiment that should not have been forgotten.

The majority say, that by the first of the proposed amendments, slavery is constitutionally established in all the territory south of the line of 36° 30′, as if such recognition of slavery there was now for the first time to be established by the proposed amendment. The majority of these Commissioners are counsellors of eminent ability, and yet, for some reason not easily comprehended, they have seen fit to ignore a decision of the Supreme Court of the United States, which declares that slavery can be carried into all the Territories of the United States, whether south or north of the line of 36° 30′. The famous Dred Scott decision, to which reference is here made, was often referred to in the debates of the Convention, and was insisted upon by many gentlemen, holding views and opinions similar to those of a majority of the New York Commissioners, as affording all the protection that the South could require, and claiming that the proposed amendment was unnecessary, by reason of such protection.

The Territory of New Mexico was declared open to slavery by the compromise act of 1850. The public mind of the North was deeply agitated upon that subject. A distinguished statesman, who was removed from earth before his eyes were forced "to rest upon a dismembered Confederacy," was violently assailed for declaring that slavery could work no practical evil in New Mexico; and yet the recent census has vindicated that assertion, showing that in the ten years that have passed since that compromise, only twenty-four slaves were to be found in what the majority of the committee are pleased to call the "immense region" of New Mexico; more than half of whom were servants of army officers, to be removed when they should be ordered to other stations.

The Territorial Legislature of New Mexico has declared the existence and passed laws for the protection of slavery throughout that entire Territory, while the proposed amendment of the Constitution would exclude it from all that portion of said Territory north of 36° 30′.

The undersigned are not only ready to vindicate their votes for that proposed amendment, but claim that such an amendment to the Constitution would be a great gain to the cause of freedom; taking from the action of the Dred Scott decision, and of the Territorial Legislation, all territory north of 36° 30′; and they challenge a comparison of their votes, with the course of those who preferred to leave this question subject to the action of that decision, and to the legislation to which reference is made.

The *second* section of the proposed amendments, touching the future acquisition of territory, met the approval of the undersigned, as certainly not less important to the North than to the South. The history of our country shows how hastily the assumed powers of Congress have been exercised upon this question, and at this moment presents a startling example, of a State of vast territory, acquired by a joint resolution of Congress, sustained at an enormous expense, and now withdrawing from the Confederacy, seizing upon and applying to its own use all the Government property found within its borders. Every reflecting citizen can determine for himself where there is the most danger to the cause of humanity, and whether territory is more probably to be acquired from the North, and consecrated to freedom, or from the Southwest, upon which these exciting contests might be revived.

This proposed amendment is presented with entire confidence for the decision of our people.

As the majority of the Commissioners do not dissent from the general principles of the *third* article, but object to some of its provisions, the undersigned would remark that the principal difference between them and the majority would seem to be whether Congress shall be denied the power of abolishing Slavery in the District of Columbia, without the consent of Maryland and without the consent of the owners, or making the owners who do not consent just compensation. Ever since the formation of the Government, this has been a subject upon which the friends of freedom

have been divided. In the opinion of the undersigned, this question should be permanently settled.

The power of removing slaves from one section of the country to another, is secured by this section, but cannot be exercised against the wishes of the State through which slaves would otherwise be taken. The power to touch at ports, shores, and landings, with vessels having on board persons held in bondage, and of landing, in case of distress, is embraced in this proposed amendment, the latter clause of which will, certainly, receive the approval of every friend of humanity. The undersigned do not join in the fears expressed by the majority, that a resort to "impure means" could ever secure from the Legislature of New York any laws upon these subjects, not entirely consistent with the honor and dignity of the State.

The *Fourth* proposition was adopted by a vote so large as to make comment here unnecessary.

As the *Fifth* proposition received the unanimous vote of your Commissioners, it requires no comment.

The *Sixth* proposition is upon a subject that has been discussed ever since the formation of the Government, and need not be dwelt upon.

The *Seventh* proposition presented itself with such force to the Convention as to receive a strong vote, but seven States declaring against it. It will be seen that this section requires Congress to provide by law for securing to citizens of each State the privileges and immunities of citizens in the several States.

Many other propositions were presented to the Convention, some of which received the full concurrence of the undersigned; to others they were opposed, and those who shared in the deliberations of the Convention do not doubt, and will not deny, that propositions were presented whose only object and effect could be to embarrass its proceedings.

The action of the Convention failed to secure at the hands of Congress the legislation necessary to present it to the people of the different States, in the manner prescribed by the Constitution. Still it is in the power, and the undersigned trust will be in the disposition of the representatives of the

people of New York, in both Halls of its Legislation, to present them for the acceptance or rejection of her people.

Whatever differences of political opinion may exist, there can be but one mind as to the present critical condition of our country, or that it is the duty of every citizen to give all the aid in his power, to sustain an administration that has entered upon its complicated duties under circumstances of more embarrassment than have ever before existed in our country's history.

The undersigned not only as deeply regret, but as severely condemn, the action of those States who have attempted to withdraw from the Union, as do the majority of the Commissioners who opposed the adoption of the measures of conciliation presented by the Peace Convention.

Those who are conversant with the political action of the seceding States, will have observed how strong is their desire to draw the Southern Border States into this new Confederacy. With each of those Border States are large bodies of active politicians, constantly influencing the public mind, and misrepresenting, to a great extent, the opinions and designs of those who have wrought out this revolution in the national administration. The public mind is fearfully agitated upon these issues, and the refusal of the Legislature of New York to present the propositions of the Peace Convention, for the suffrages of her people, will greatly diminish the power of the Union men of the Border States to sustain themselves in their present trying position.

It is believed that Virginia is about to submit these propositions to her people; let New York, who so nobly responded to the call of Virginia, show that she, too, will be governed by the wishes of *her* people, and that if those ties which have so long held these powerful States in the bonds of brotherhood, must be severed, it shall be done only by the verdict of their people as recorded in the ballot box.

FRANCIS GRANGER,
ERASTUS CORNING,
GREENE C. BRONSON,
WM. E. DODGE.

Report of the Rhode Island Peace Commissioners.

To the Honorable General Assembly of the State of Rhode Island:

The undersigned Commissioners on the part of this State, appointed upon the request of the State of Virginia, to meet Commissioners from the other States to confer upon the best mode of adjusting the unhappy differences which now disturb the peace of the country, respectfully beg leave to report:

That on the 4th day of February last, at Washington, the day and place named for the opening of the Conference, they met Commissioners from other States, and remained with them in conference until the 27th day of February, at which time twenty-one States were represented, when having agreed by a majority of States to submit to Congress, to be by Congress submitted to conventions in the several States, the annexed article in amendment to the Constitution of the United States, the Convention finally adjourned.

This article, it will be seen, applies the old line of 36° 30′ of North latitude to all the present Territory of the United States, prohibiting slavery north of that line, whilst it recognizes and secures its existence south of that line during the territorial government, and provides for the formation of new States out of such territory with or without slavery as their constitutions may direct.

As this partition of territory was not disadvantageous, at least to the free States, as it disposed of the agitation consequent upon a recent decision of the Supreme Court of the United States upon a celebrated case, and followed a precedent which had given peace to the country upon this most dangerous subject of controversy for upwards of thirty years, your Commissioners gave their assent to it as the best practical solution of all difficulties growing out of the territorial question.

New territory is no further dealt with by this article than to require, except in certain specified cases, a majority of all the Senators from each side of said line, to concur in its acquisition, whether made by act of Congress or by treaty, thus giving to each class of States a check upon the cupidity of the others.

The other sections of the article were designed in general so to define and limit the rights, powers, and duties of both Congress and the States, with regard to the subject of slavery, as to prevent further controversy, and to enable and induce those most opposed in opinion and interest, by the practice of mutual forbearance, to live in peace and amity under the same Federal Government. It is believed that in no essential particular will this article change the present actual state of things; its value consisting in the security therein which it gives to all, and in the settlement made by it of present and probable subjects of controversy.

In a great practical matter of this sort, your Commissioners deem these results of far more importance than strict adhesion to any theory, however plausible in the abstract, and especially than to any party declaration of principles of a sectional cast, however vehemently argued, or numerously adopted on either side. To deal well and wisely with the actual and real, and whilst consulting the past and looking to the probable future for guidance, to base his action on what *is*, comprises the whole duty of a statesman; leaving to political philosophers to dream of what might have been, or in the abstract of what ought to be. Reform, it is true, in this way comes slowly, but it comes without the disturbance of material interests, without agitation of human passions, and without the violent outbreaks which these occasion—hindering and obstructing its progress in that grand and orderly procession of moral causes and effects which expresses and marks the providence and government of GOD.

It was apparent to all that, whatever may have been the motive and origin of the present alarming movement in the extreme Southern States, the instrument successfully used to promote it was the agitation of their people upon the safety of the institution of negro slavery in the States and Territories; and various conflicting opinions with regard to the best course to be pursued to allay this agitation were elicited in the course of this long conference. Extremists were not wanting on the one hand, who seemed inclined to construe the anomaly of slavery of the negro race, found in the Constitution of a free people, into a general rule; and who proposed or voted for propositions which they knew could not be accepted, that their assertion might aid in the remaining States the cause of secession. Extremists were not wanting, on the other hand, who were opposed to doing any thing upon the subject of slavery, especially at present, lest such action

should compromise the incoming administration, and the Republican party, and even the character of the Government itself. Without suspecting the purity of the motives of either of these extremists, who beyond doubt represented the views of large and respectable bodies of men in their different sections, your Commissioners found themselves equally unable to agree with either.

They could not ignore the fact that seven States had separated themselves from the others and set up a federal government of their own; and that these were ceaselessly agitating the people of the remaining Southern States by inflammatory speeches, and writings skilfully addressed to their interests and sympathies, to induce them to join in this new movement. They could not doubt the assurances given to them by able and patriotic men from the States of Maryland, Virginia, North Carolina, Kentucky, Tennessee, and Missouri, that these attempts upon the loyalty of the people of their States had met at least with partial success; nor, indeed, blind themselves to the evidences of this found in the speeches and votes of individual Commissioners from these very States. Above all, they could not be insensible to the touching appeals of men, venerable in years, distinguished in public service, and whose reputation for ability and patriotism was national, to give them something in the shape of a constitutional security with which to allay the startled fears of their constituents, beat back the attacks of *their* enemies and *ours*, and even bring again to their duty thousands of men in the States of the extreme South, who had been led astray by the popular fears and impulses of the hour, and who, with the loyal but overborne, might well look to them for support, since no other had been afforded them in the reign of terror under which they were suffering. In the circumstances in which the country was placed, it seemed to your Commissioners that true policy ran in the course of generous impulse; that in this matter we were dealing not with treason, but with the most devoted loyalty which invoked our aid against it; that the concessions we made, if concessions indeed they were, were made to our friends that they might be strong enough to triumph over *their* enemies and *ours*, because the enemies of the country.

If, as is true, in this view of their duty your Commissioners stood in the main alone amongst the Commissioners from the Northern States, and ranged themselves by the side of the Central States of the Union, upon

whom the weight of the civil strife must come if come it must, they need not assure you that no dastardly fears, no feelings of base compliance, dictated the position thus taken by them. Such motives to action neither became them nor those whom they represented. It was because of generous faith and earnest sympathy, of ties which no distance of time or space, and no difference of institutions can weaken; which in our fathers' days and our own led our heroes to *hazard all for all*, and at Guilford Court House, and Eutaw, and at Erie, with desperate valor to snatch victory for our common country out of the very lap of defeat; it was because our little State, with a warm heart and a ready hand, has never failed in counsel or deed to stand with the whole country in all dangers and in extremest disasters, that your Commissioners conceived that they best represented her by averting danger from those with whom they knew she would hasten to share it. If it be true that the time has arrived when our sympathy for an alien and a subject race has extinguished all sympathy for our own, and has hidden from us the ties of a common origin, common interests, and of a common glory, then, indeed, are we separated from our brethren, and the curse of slavery has fallen upon us as well as upon them. Your Commissioners found nothing in themselves to justify them in attributing such sentiments to the people of the State; and unitedly recommend the adoption by you of the amendment to the Constitution proposed by the Conference of Commissioners, as best fitted to give security and ensure peace to the country.

Among the measures strenuously enforced by some of the Commissioners, in lieu of that adopted by a majority, was the calling of a General Convention. To this measure your Commissioners opposed their most earnest and determined resistance. As a measure of peace, if for no other reason, because of the long delay which it implied, it would be utterly fruitless. But the possible danger of exposing a Constitution, framed and adopted in the earlier and more conservative days of the Republic, to be torn in pieces in these times of lawless irreverence and change, is too great for any wise man willingly to encounter. The very equality of the States in the Senate, which was won by the revolutionary sacrifices and valor of the smaller States, now almost forgotten, would, in the judgment of your Commissioners, be thereby greatly endangered; and your Commissioners earnestly represent to your Honorable body that under no circumstances should this State consent to a measure which might lead to her own

extinction. The Constitution of a great country, adopted, as this was, on account of diversity of interests and views, with great difficulty, should be sacred. It may and should from time to time be amended to suit a change of circumstances, but never exposed to the danger of being uptorn. It is the symbol of our strength, because the ligament of our Union. It has collected about it the reverence of three generations of our people. It is the only rallying point now for the loyalty of the remaining States; the only hope of the restoration of the States which have left us; and, in its main features, it should be, as it was designed to be, perpetual. At no time should a General Convention be invited to invade it; and, of all times, this, in the judgment of your Commissioners, would be the most dangerous.

Finally, it will be found upon an inspection of the Journal of the late Conference of Commissioners, that the undersigned voted against many propositions in themselves just and expressive of *their* sentiments and *yours*, because inopportune and useless; and against others, because introduced for the very purpose of sowing dissension among the Commissioners and to prevent an agreement by majority upon any thing. In this they must ask your candid construction of their conduct, looking to the crisis, the occasion, the purpose and effect of the matter upon which they were called to act; and their unwillingness to hazard an agreement upon that deemed by them necessary, by tacking to it that which, however true, was at least useless, and might in the result be dangerous.

All which is respectfully submitted by

SAMUEL AMES, for self, and
ALEXANDER DUNCAN,
G.H. BROWNE,
WILLIAM W. HOPPIN,
SAMUEL G. ARNOLD,
Commissioners.

PROVIDENCE, *March 4th, 1861.*

COMMONWEALTH OF MASSACHUSETTS.

EXECUTIVE DEPARTMENT, COUNCIL CHAMBER,
BOSTON, March 25, 1861.

To the Honorable the Senate:

I have the honor to transmit to the General Court, for its use and information, a Report just received by me from John Z. Goodrich, Charles Allen, George S. Boutwell, Theophilus P. Chandler, Francis B. Crowninshield, John M. Forbes, and Richard P. Waters, Esquires, who were appointed Commissioners on the part of Massachusetts, under a Resolve passed the fifth day of February last, to attend a Convention of delegates from the several States of the Union, recently held at Washington.

And I embrace this opportunity to congratulate the people of the Commonwealth upon the fidelity, judgment, and ability with which the Commissioners, by whom they were represented, conducted their share of the duties of that deliberation.

And I trust that a similar intelligent, manful, and, at the same time, charitable and patriotic adherence to principles, fundamental both in morals and politics, will characterize the people of Massachusetts, and all their representatives, by whatever experiences of danger or difficulty their devotion to truth and duty may hereafter be tried.

I ask leave to call the attention of the General Court, also, to the fact that, as yet, no provision has been adopted for the payment of the expenses incident to the service with which the Commissioners were charged, and to recommend that a suitable appropriation for that purpose be made at the present session of the Legislature.

JOHN A. ANDREW.

To His Excellency JOHN A. ANDREW, *Governor, &c., &c.*:

The undersigned, Commissioners appointed by your excellency, in pursuance of certain resolutions passed by the Legislature at its present session, to attend a Convention to be held in the City of Washington, with authority to confer with the General Government, or with the separate States, or with any associations of delegates from such States, having, agreeably to your excellency's instructions, repaired to Washington and conferred with the delegates of twenty other States of the American Union, now respectfully submit the following report of the proceedings of the said Convention, and of the action of the Commissioners from Massachusetts.

The Convention commenced its sessions on the 4th of February, and closed its deliberations on the 27th of the same month. The Massachusetts Commissioners repaired to Washington as early as practicable after their appointment, and presented their credentials on the 8th of February.

The sessions of the Convention were secret; although repeated efforts were made, with the concurrence of the undersigned, first, to remove the injunction of secrecy, then to admit the public to witness the deliberations, and then to procure a complete and accurate report of the debates and doings. These efforts failed, and the undersigned are therefore able only to transmit a copy of the Journal of the Convention.[10]

On the 6th of February a resolution was adopted, upon the motion of Mr. Guthrie, of Kentucky, that a "committee of one from each State be appointed by the Commissioners thereof, to whom should be referred the resolutions of the State of Virginia, and the other States represented, and all propositions for the adjustment of existing difficulties between the States." Mr. Crowninshield represented Massachusetts upon this committee. At the earliest practicable moment he called for a specific statement of the grievances complained of by the discontented States of the Union. This call elicited much discussion, but no definite response to the demand was ever made either in the committee or in Convention.

On the 15th of February, Mr. Guthrie, from the committee of one from each State, made a report recommending certain amendments to the Constitution of the United States. This report was adopted in committee by a majority of five States, the delegates from Kansas not having then taken their seats in the Convention.

A copy of this report may be found upon the twenty-second and twenty-third pages of the Journal. After much discussion and many amendments, the several sections of the proposed article of amendment to the Constitution were finally adopted on the last day of the session. It is to be observed, however, that the report as a whole never received the sanction of the Convention, although the several sections of the article of amendment were separately approved by a majority of the States voting; and it may well be doubted whether the entire article would have been adopted by the Convention.

The first section was adopted by a vote of nine States to eight; four States—New York, Indiana, Missouri, and Kansas—not voting.

The other sections were approved by larger majorities.

The undersigned declined to vote upon the last section, but the vote of Massachusetts, with the unanimous consent of its Commissioners, was given in the negative upon all the others. This course seemed to be demanded, whether regard was had to the constitution of the Convention, the circumstances under which it assembled, the nature of the propositions submitted, the solution of the difficulties in which the Government and people are involved, or to the character and peace of the country in the future. The two Pacific States, whose loyalty to the Constitution and the Union is unquestioned, could not have been represented in the Convention. Other States failed to appoint Commissioners. The resolutions of the State of Virginia were passed on the 19th of January; and it was expected that within sixteen days thereafter the representatives of this vast country would assemble for the purpose of devising, maturing, and recommending alterations in the Constitution of the republic. As a necessary consequence, the people were not consulted in any of the States. In several, the Commissioners were appointed by the executive of each without even an opportunity to confer with the Legislature; in others, the consent of the representative body was secured, but in no instance were the people themselves consulted. The measures proposed were comparatively new; the important ones were innovations upon the established principles of the Government, and none of them had ever been submitted to public scrutiny. They related to the institution of slavery; and the experience of the country justifies the assertion that any proposition for additional securities to

slavery under the flag of the nation, must be fully discussed and well understood before its adoption, or it will yield a fearful harvest of woe in dissensions and controversies among the people. Nor could the undersigned have justified the act to themselves, if they had concurred in asking Congress to propose amendments to the Constitution unless they were prepared also to advocate the adoption of the amendments by the people.

It is due to truth to say that the Convention did not possess all the desirable characteristics of a deliberative assembly. It was in some degree disqualified for the performance of the important task assigned to it, by the circumstances of its constitution, to which reference has already been made. Moreover, there were members who claimed that certain concessions must be granted that the progress of the secession movement might be arrested; and on the other hand there were men who either doubted or denied the wisdom of such concessions.

The circumstances were extraordinary. Within the preceding ninety days the integrity of the Union had been assailed by the attempt of six States to overthrow its authority; seven other States were disaffected, and some of them had assumed a menacing and even hostile attitude. The political disturbances had been associated with or followed by financial distress.

The Convention was then a body of men without a recognized and ascertained constituency, called together in an exigency and without preparation, and invited to initiate measures for the amendment of the Constitution in most important particulars, and all at a moment when the public mind was swayed by fears and alarms such as have never before been experienced by the American people.

In these circumstances the undersigned thought it inexpedient to propose amendments to the Constitution, believing that so important an act should not be initiated and accomplished without the greatest deliberation and care. Nor could the undersigned satisfy themselves that any or all of the proposed amendments would even tend, in any considerable degree, to the preservation of the Union. Although inquiries were repeatedly made, no assurance was given that any propositions of amendment would secure the return of the seceded States; and it was admitted that several of the Border States would ultimately unite with the Gulf States, either within or without

the limits of the Union, as might be dictated by events yet in the future. Indeed, no proposition was in any degree acceptable to the majority of delegates from the border slave States that did not provide for the extension of slavery to the Territories, and its protection and security therein.

And further, as appears from the Journal, the Convention was not prepared to deny the right of a State to secede from the Union. Mr. Field, of New York, introduced the following proposition, which, on motion of Mr. Ewing, of Ohio, was laid upon the table:

"The Union of the States under the Constitution is indissoluble; and no State can secede from the Union, or nullify an act of Congress, or absolve its citizens from their paramount obligation of obedience to the Constitution and laws of the United States."

After much debate and repeated attempts to avoid a direct vote, the following proposition was rejected:

"It is declared to be the true intent and meaning of the present Constitution that the union of the States under it is indissoluble."

AYES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, New York, New Hampshire, Vermont, and Kansas—10.

NOES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, and Virginia—11.

On the last day of the session, Mr. Franklin, of Pennsylvania, moved the adoption of the following resolution:

"*Resolved*, as the sense of this Convention, that the highest political duty of every citizen of the United States is his allegiance to the Federal Government, created by the Constitution of the United States, and that no State of this Union has any constitutional right to secede therefrom, or to absolve the citizens of such State from their allegiance to the Government of the United States."

Mr. Ruffin, of North Carolina, moved to postpone the consideration of the same indefinitely, and the resolution was thereupon postponed by the following vote:

AYES.—Delaware, Kentucky, Maryland, Missouri, New Jersey, North Carolina, Ohio, Rhode Island, Tennessee, and Virginia—10.

NOES.—Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, and Pennsylvania—7.

For these reasons and others the Commissioners from Massachusetts supported the proposition originally made by Kentucky, and introduced by Mr. Baldwin, of Connecticut, recommending a national convention for the purpose of revising the Constitution, and of providing for the exigencies likely to arise from the changed and perilous condition of the country. This measure offered an opportunity for consideration by the people, and for careful deliberation by the convention that might be constituted for the purpose. It is highly probable that, after the lapse of three-fourths of a century, a convention of delegates from all the States would by general consent propose amendments to the Constitution; and it is also probable that such a convention would at once tend to strengthen the feeling of brotherhood among the people of various sections, while the discussion of the principles of the Government would render its preservation of paramount concern to all. This measure of peace and union was rejected.

The undersigned are constrained by the force of many facts and circumstances to believe that an exciting cause of the present difficulties, and a serious obstacle to their removal, is the possible acquisition of Mexico and Central America.

The proceedings of the Convention furnish evidence upon this point.

The proposition to restore the Missouri Compromise, which guaranteed freedom north of the parallel 36° 30′ north latitude, but furnished no protection to slavery south of that line, was rejected by the aid of the unanimous support of the slaveholding States.

The proposition to settle the territorial question by the admission of New Mexico as a State, was summarily discouraged by the South in the committee.

The suggestion of one of the Commissioners from Massachusetts, that if the Convention would leave the territorial question out of view, the difficulties concerning the rights and relations of the existing States might be adjusted,

did not meet with a favorable response from the slaveholding section of the country.

It is to be observed further, that the various propositions and amendments which were in any degree acceptable to the slave States guaranteed slavery south of said line.

It did not seem to the undersigned of signal importance, whether this guarantee was limited to our present territories, or made in words to apply to all future acquisitions. Whenever the line of slave States from the Gulf of Mexico to the Pacific Ocean shall be formed, an effectual barrier will have been raised against the migration of freemen southward. Nor can it be assumed, that either with or without constitutional prohibition, the limits of the republic are not to be further extended; and if the proposed line be established by the Constitution, the fairest portions of North America will be given up irrevocably to African slavery. Nor is the limitation of the right of a sovereign State to fix its own boundaries, which involves the right to acquire territory, consistent with its honor in peace, or compatible with its dignity and necessities in time of war. The American people are fully forewarned that it is unwise to rely upon constitutional prohibitions against the acquisition of territory; nor can such prohibitions always withstand the assaults of a determined and desperate majority when acting in harmony with the tendencies of public opinion, and the real or supposed necessities of the country.

With these views, and with this experience in mind, the undersigned did not regard with favor the provisions contained in the second section of the proposed article of amendment. It is also to be observed that by this section territory may be acquired for *naval and commercial stations, depots, and transit routes*, without a resort to the treaty-making power. These provisions seem to be broad enough to permit the summary annexation of Cuba, and portions of Central America and Mexico, by a simple law or joint resolution of Congress.

Thus, these two sections considered together, furnished no additional securities against territorial acquisitions, while they effectually established and protected slavery in all territory, present and future, south of the parallel 36° 30′ north latitude. By the first section, the common law was to be so

changed, that a condition of slavery would be assumed in regard to all the African race within the Territories, and the laws of the several slave States would be enforced against all persons of that race who might be carried from the existing slave States into the Territories. The language is ambiguous, but this interpretation seems to be warranted; and, in the opinion of the undersigned, the courts would render an interpretation adequate to the result just indicated. It is thus seen that the only method of establishing and protecting slavery in the Territories, is to provide for the execution, within their limits, of the laws of the several slave States.

This section also incorporates into the Constitution of the United States the existing laws and usages of New Mexico relating to slavery, and renders them irrepealable during the territorial condition.

By the second section, the Senators are divided into two classes, those who represent the slaveholding, and those who represent the non-slaveholding States of the Union, and a majority of each class is required as a part of the two-thirds majority necessary for the acquisition of territory by treaty. A full exposition of this proposition would show that it is a complete and dangerous departure from the principles of the Government, and sure to effect its complete dissolution. When the Senate becomes two separate and distinct bodies, and when the existence of the institution of slavery determines where the line of division shall be, then the Government, for all practical purposes, is at an end. This proposition was introduced by Mr. Summers, of Virginia; and Virginia, by its delegates, also introduced and supported a kindred proposition, by which "all appointments to office in the Territories lying north of the line 36° 30′, as well before as after the establishment of Territorial Governments in and over the same, or any part thereof, shall be made upon the recommendation of a majority of the Senators representing at the time the non-slaveholding States; and in like manner, all appointments to office in the Territories which may lie south of said line of 36° 30′, shall be made upon the recommendation of a majority of the Senators representing at the time the slaveholding States."

We cannot hesitate to declare the opinion, carefully formed, that this policy of dividing the Senate into two classes, is fraught with dangers to the country more to be dreaded than the bold and defiant measures of those men and States that are arrayed in open hostility to the Union. This measure

is a part of the policy of Mr. Calhoun, by which the Government was to be changed, and the executive department so divided that nothing could be done without the concurrence of two Presidents, one representing the slaveholding and one representing the non-slaveholding States.

The third section contains several provisions for strengthening and securing slavery in the District of Columbia and in the several States and Territories. It gives to representatives and others the right to bring their slaves into the District of Columbia, retain, and take them away, even after slavery may have ceased to exist in that District by the constitutional action of Congress. It secures the slave-trade between States and Territories in which slavery is established or recognized by law or usage, with the right of transit through free States, by sea or river, and of touching at ports, shores, and landings, and of landing in case of distress; reserving, however, to the States and Territories the power to prohibit the transit of slaves and the sale or traffic therein. Thus the transportation of slaves would be a right as broad as the limits of the republic, unless it should be restrained by the laws of individual States, which acts might readily be regarded as a breach of comity.

The fourth section of the article gives to the States the power of concurrent legislation with the United States for the rendition of fugitive slaves, thus introducing a new topic of agitation into every State, without in any degree relieving Congress of its duty in this particular.

The fifth section prohibits the foreign slave-trade, and makes it the duty of Congress to pass laws to prevent the importation of slaves, coolies, or persons held to service or labor. As Congress has already, by the Constitution, full power to regulate the migration or importation of persons from other countries, there is no reason for such constitutional provisions upon the subject. It alone remains to enact proper laws and secure their faithful and prompt execution.

The sixth section declares that certain sections of the proposed article of amendment, and certain provisions of the Constitution relating to slavery, shall not be amended or abolished without the consent of all the States.

The undersigned, being of opinion that no such stipulation ought to be made, and that if made, it would not be binding upon the country, did not

hesitate to give the vote of the State against the proposition.

The seventh and last section of the proposed article of amendment is in the following words:

"Congress shall provide by law that the United States shall pay to the owner the full value of his fugitive from labor, in all cases where the marshal, or other officer, whose duty it was to arrest such fugitive, was prevented from so doing by violence or intimidation from mobs or riotous assemblies, or when, after arrest, such fugitive was rescued by like violence or intimidation, and the owner thereby deprived of the same; and the acceptance of such payment shall preclude the owner from further claim of such fugitive. Congress shall provide by law for securing to the citizens of each State the privileges and immunities of citizens of the several States."

In a Convention duly called and assembled for the revision of the Constitution, the undersigned would have assented to this section; and in declining to vote thereon they intended to so declare to their associates from the slaveholding States.

The undersigned thus set forth the doings of the Convention, and some of the reasons by which their conduct was controlled. It was not their fortune to concur with the action of the Convention. The concessions demanded by the discontented States, seemed to be inconsistent with honor, justice, and freedom, and calculated to render permanent the existing causes of disturbance. A Union restored by unmanly concessions, would be productive of bitter criminations and lasting hostilities, and would contain within itself the seeds of a violent death.

But the undersigned are bound to say that the differences in the Convention were, in the main, differences of opinion, and not of purpose. Loyalty to the Constitution and the Union was general; and the undersigned do not doubt that the act of Virginia, in inviting a conference with her sister States, will be productive of beneficial results to the country.

The Commissioners from Massachusetts were much impressed by the fact, which their personal intercourse with gentlemen from all the slaveholding States brought to their knowledge, that the present difficulties of the country were not caused by the pressure of grievances supposed to be actually

existing; but rather by the fear of future interference with Southern rights, caused by entire misapprehension of the purposes of the people of the free States. Misrepresentation of those purposes, proceeding from among ourselves, whether prompted by ignorance of Northern sentiment, or by sinister motives, are greatly to be deprecated.

The undersigned entertain no doubt that the intercourse between the different sections of the country, through their representatives in Convention, had a most salutary influence in correcting false views of Northern sentiment, and in assuring our brethren of the South that there is no purpose among the people of those States, who, upon principle, oppose the extension of slavery, to disturb or touch with an unfriendly hand the domestic relations of any other States of the Union.

In the present exigency of public affairs, each State should be careful to perform its whole duty freely and faithfully to its sister States and to the country; and then may it well and fearlessly demand, whether the Union contain many States or few, that the Government shall be administered according to the principles of equality and justice which characterize the Constitution formed by our fathers, and which will prove a sufficient security in all the trials and perils of our national existence.

JOHN Z. GOODRICH,
CHARLES ALLEN,
GEO. S. BOUTWELL,
T.P. CHANDLER,
F.B. CROWNINSHIELD,
J.M. FORBES,
RICHARD P. WATERS.

BOSTON, *March 22d, 1861.*

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FOOTNOTES

[1] Mr. RUFFIN stated the substance of the amendments he proposed in a voice so low, as not to be audible to the greater part of the Conference. They are not to be found in the Journal, nor in the documents printed by order of the Conference, nor were they heard by me.

[2] The speech of Mr. DAVIS is, I believe, the only one delivered in the Conference which I did not hear, and of which I did not preserve minutes more or less full. The reason for the omission was this: The morning session was protracted until a late hour, and the labor of reporting the remarks of the members had been very severe. The evening session commenced with some observations of my own; and after reporting the remarks of Mr. LOGAN, which followed mine, I found myself in such a condition of physical exhaustion that I was obliged to retire to my room. It was during this temporary absence that the remarks of Mr. DAVIS were made. I was informed that his speech was very animated and in excellent temper—that he took the position that North Carolina was loyal to the Union, but that he fully concurred with the Southern States in the necessity of demanding constitutional guarantees; and that if these were not given, her relations were such with South Carolina and the Gulf States that, however much she might regret the necessity, she could not do otherwise than to leave the Union and unite her future with those of the seceded States.

I have been unable to communicate by letter with any of the members representing the States now in insurrection. As Mr. DAVIS was the only representative from North Carolina who entered into a general discussion of the reports of the majority and minority of the Committee of One from each State, I was the more desirous of securing some report of his remarks. But in all the material which has been furnished me, by the many members with whom I have corresponded, I find that none of them preserved notes of his speech.

[3] This was a verbal amendment. I was not able to note it at the time, nor have I since been able to procure it.

[4] I suppose these amendments offered by Mr. BROCKENBROUGH were never printed; certainly no printed copy of them was ever distributed to the members of the Conference, and they were never inserted in the Journal. In preserving my notes, I naturally assumed that I could rely upon the printed copies distributed to the members, for the various amendments offered. At the period of writing out these notes communication with Mr. BROCKENBROUGH is impossible, and I am obliged to omit farther notice of his amendments. I am not even able to state the subjects to which they referred.

[5] The published Journal states that Mr. ALEXANDER dissented from the vote of New Jersey. My notes do not show that he dissented, and I think the Journal may be erroneous in this particular.

[6] I relied upon the Journal for the individual list of the votes. In this respect the Journal is defective, and does not give the names of the States voting. My minutes show that the vote was taken by States with the foregoing result.

[7] The closing remarks of Mr. BALDWIN were committed to writing. I am able through the kindness of a member of his family to avail myself of a copy.

[8] I have not heretofore expressed my own opinions upon the action of the Conference or of delegations; but as much has been said about the vote given by New York, or rather the division of the delegation, under which no vote was given, it is due to the parties concerned that I should state my own understanding of the practice of the Conference in this respect. After the rejection of the motion of Mr. CHASE (found on page 209), and the adoption of the proposition of Mr. DENT, so far as my own knowledge goes it was never deemed necessary that the entire delegation from a State should be present in order to cast its vote. I was present all the time, and frequently cast the vote of my own State upon previous consultation with my colleagues, when a majority of the delegation was absent. This was frequently done, to my personal knowledge, by other States: by none more frequently than Virginia. During several of the sessions the President himself was absent, and the chair was filled for the greater part of the time by Mr. ALEXANDER, or Mr. MOREHEAD, of Kentucky. I can recall to mind several occasions when the vote of Virginia was cast by Mr. SEDDON alone, no other member of his delegation being present. When the question arose upon the vote of New York, I was surprised that this point was not insisted upon; but deeming it a matter exclusively for the delegation from that State to settle, I did not think the case one in which others should interfere. L.E.C.

[9] See page 64, Proceedings of the Conference.

[10] An authentic copy of the Journal was not received until the 21st instant and the Commissioners did not feel prepared to make a report without an opportunity for consulting it.

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