Table Annexed to Article: Mr. Madison Speaks Out: Re-Creation Text Sourced From The Farrand Survey and Detached Memoranda

Peter J. Aschenbrenner, Purdue University
Item 320 // CCCXX. James Madison to John Quincy Adams.
Montpelier Decr. 23. 1817

The best answer I can give to your communication on the subject of his wish for a copy of the Journal of the
Convention, is to state the circumstance, that at the close of the Convention, the question having arisen what
was to be done with the Journal & other papers, and it being suggested that they ought to be either destroyed or
deposited in the Custody of the Presidt. it was determined that they should remain in his hands subject only to
the orders of the
National Legislature. — Whether a publication of them ought to be promoted, as having a useful tendency, you
will probably be better able to decide, on a perusal of the document than one who can not take the same abstract
view of the subject.

Item 321 // CCCXXI. James Madison to James Monroe.
Montpellier, Dec. 27, 1817.

These considerations remind me of the attempts in the Convention to vest in the Judiciary Dept. a qualified
negative on Legislative bills. Such a Controll, restricted to Constitutional points, besides giving greater stability
& system to the rules of expounding the Instrument, would have precluded the question of a Judiciary
annulment of Legislative Acts.

Item 324 // CCCXXIV. James Madison to John Quincy Adams.
Montpellier, Novr. 2, 1818.

I have received your letter of the 22 ult: and enclose such extracts from my notes relating to the two last days of
the Convention, as may fill the chasm in the Journals, according to the mode in which the proceedings are
recorded.
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.
I do not find the plan of Mr. Charles Pinkney among my papers.

Item 329 // CCCXXIX. James Madison to John Quincy Adams.
Montpellier June 7, 1819.

I have duly received your letter of the 1st: instant. On recurring to my papers for the information it requests, I
find that the speech of Col: Hamilton in the Convention of 1787, in the course of which he read a sketch of a
plan of Government for the U. States, was delivered on the 18th of June; the subject of debate being a resolu-
tion proposed by Mr. Dickinson “that the Articles of Confederation ought to be revised and amended so as to render the Government of the U. States adequate to the exigencies, the preservation, and the prosperity of the Union.”

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Item 330 // CCCXXX. James Madison to John Quincy Adams.
Montpellier June 27, 1819

I return the list of yeas and nays in the Convention with the blanks filled according to your request, as far as I could do it, by tracing the order of the yeas and nays and their coincidences with those belonging to successive questions in my papers. In some instances, the yeas and nays in the list, corresponding with those on more questions than one did not designate the particular question on which they were taken; and of course did not enable me to fill the blanks. In other instances, as you will find by the paper formerly sent you, there are questions noted by me, for which the list does not contain yeas and nays. I have taken the liberty as you will see of correcting one or two slips in the original list or in the copy: and I have distinguished the days on which the several votes passed.

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Item 331 // CCCXXXI. James Madison to Judge Roane.
September 2, 1819.

It could not but happen, and was foreseen at the birth of the Constitution, that difficulties and differences of opinion might occasionally arise in expounding terms and phrases necessarily used in such a charter; more especially those which divide legislation between the general and local governments; and that it might require a regular course of practice to liquidate and settle the meaning of some of them. But it was anticipated, I believe, by few, if any, of the friends of the Constitution, that a rule of construction would be introduced as broad and pliant as what has occurred. And those who recollect, and, still more, those who shared in what passed in the State conventions, through which the people ratified the Constitution, with respect to the extent of the powers vested in Congress, cannot easily be persuaded that the avowal of such a rule would not have prevented its ratification.

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Item 332 // CCCXXXII. James Madison to Robert Walsh.
Montpellier Novr. 27—1819

Your letter of the 11th was duly recd, and I should have given it a less tardy answer, but for a succession of particular demands on my attention, and a wish to assist my recollections, by consulting both manuscript & printed sources of information on the subjects of your enquiry. Of these, however, I have not been able to avail myself, but very partially.

As to the intention of the framers of the Constitution in the clause relating to “the migration and importation of persons &c” the best key may perhaps be found in the case which produced it. The African trade in slaves had long been odious to most of the States, and the importation of slaves into them had been prohibited. Particular States however continued the importation, and were extremely averse to any restriction on their power to do so. In the Convention the former States were anxious, in framing a new constitution, to insert a provision for an immediate and absolute stop to the trade. The latter were not only averse to any interference on the subject; but solemnly declared that their constituents would never accede to a constitution containing such an article. Out of this conflict grew the middle measure providing that Congress should not interfere until the year 1808; with an implication, that after that date, they might prohibit the importation of slaves into the States then existing, & previous thereto, into the States not then existing. Such was the tone of opposition in the States of S. Carolina & Georgia, & such the desire to gain their acquiescence in a prohibitory power, that on a question between the
epochs of 1800 & 1808, the States of N. Hampshire, Massatts. & Connecticut, (all the eastern States in the
corvictent); joined in the vote for the latter, influenced however by the collateral motive of reconciling those
particular States to the power over commerce & navigation; against which they felt, as did some other States, a
very strong repugnance. The earnestness of S. Carolina & Georgia was further manifested by their insisting on
the security in the V. article, against any amendment to the Constitution affecting the right reserved to them, &
their uniting with the small states who insisted on a like security for their equality in the Senate.
But some of the States were not only anxious for a constitutional provision against the introduction of Slaves.
They had scruples against admitting the term “Slaves” into the Instrument. Hence the descriptive phrase
“migration or importation of persons”;
the term migration allowing those who were scrupulous of acknowledging expressly a property in human beings, to view imported persons as a species of emigrants, whilst others might apply the term to foreign malefactors sent or coming into the country. It is possible tho’ not recollected, that some might have had an eye to the case of freed blacks, as well as malefactors. But whatever may have been intended by the term “migration” or the term “persons”, it is most certain, that they referred, exclusively, to a migration or importation from other countries into the U. States; and not to a removal, voluntary or involuntary, of Slaves or freemen, from one to another part of the U. States. Nothing appears or is recollected that warrants this latter intention. Nothing in the proceedings of the State conventions indicates such a construction there.* Had such been the construction it is easy to imagine the figure it would have made in many of the states, among the objections to the Constitution, and among the numerous amendments to it proposed by the state conventions,† not one of which amendments refers to the clause in question.....

* The debates of the Pennsylvania convention contain a speech of Mr. Wilson (Dec. 3—1787) who had been a
member of the general convention, in which, alluding to the clause tolerating for a time, the further importation of
Slaves, he consoles himself “with the hope that in a few years it would be prohibited altogether; observing
that in the mean time, the new “States which were to be formed would be under the controul of Congress in this
particular, and slaves would never be introduced among them.” In another speech on the day following and
alluding to the same clause, his words are “yet the lapse of a few years & Congress will have power to exterminate
slavery within our borders.” How far the language of Mr. W. may have been accurately reported is
not known. The expressions used, are more vague & less consistent than would be readily ascribed to him. But
as they stand, the fairest construction would be, that he considered the power given to Congress, to arrest the
importation of Slaves as “laying a foundation for banishing slavery out of the country; & tho at a period more
distant than might be wished, producing the same kind of gradual change which was pursued in Pennsylvania”
(see his Speech page 90 of the Debates). By this “change” after the example of Pennsylvania, he must have
meant a change by the other States influenced by that example, & yielding to the general way of thinking &
feeling, produced by the policy of putting an end to the importation of slaves. He could not mean by “banishing
slavery,” more than by a power “to exterminate it,” that Congress were authorized to do what is literally
expressed.

† In the Convention of Virga. the opposition to the Constitution comprized a number of the ablest men in the
State. Among them were Mr Henry & Col Mason, both of them distinguished by their acuteness, and anxious to
display unpopular constructions. One of them Col Mason had been a member of the general convention, and
entered freely into accounts of what passed within it. Yet neither of them, nor indeed any of the other
opponents, among the multitude of their objections, and far fetched interpretations, ever hinted, in the debates
on the 9th Sect of Ar. 1. at a power given by it, to prohibit an interior migration of any sort. The meaning of the
Secn. as levelled against migrations or importations from abroad was not contested.

It falls within the scope of your enquiry, to state the fact, that there was a proposition in the convention, to
discriminate between the old and new States, by an article in the Constitution declaring that the aggregate
number of representatives from the states thereafter to be admitted, should never exceed that of the states
originally adopting the Constitution. The proposition happily was rejected. The effect of such a descrimination,
is sufficiently evident.
Item 333 // CCCXXXIII. James Madison to Robert Walsh.

It is far from my purpose to resume a subject on which I have perhaps already exceeded the proper limits. But having spoken with so confident a recollection of the meaning attached by the Convention to the term “migration” which seems to be an important hinge in the argument, I may be permitted merely to remark that Mr. Wilson, with the proceedings of that assembly fresh on his mind, distinctly applies the term to persons coming to the U. S. from abroad, (see his printed speech p. 59): and that a consistency of the passage cited from the Federalist with my recollections, is preserved by the discriminating term “beneficial” added to “voluntary emigrations from Europe to America”

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Item 335 // CCCXXXV. James Madison to President Monroe.
Monpr. Feby. 10. 1820.

I have been truly astonished at some of the doctrines and declarations to which the Missouri question has led; and particularly so at the interpretation put on the terms “migration or importation &c”. Judging from my own impressions I shd. deem it impossible that the memory of any one who was a member of the Genl. Convention, could favor an opinion that the terms did not exclusively refer to migration & importation, into the U. S. Had they been understood in that Body in the sense now put on them, it is easy to conceive the alienation they would have there created in certain States: and no one can decide better than yourself the effect they would had in the State conventions, if such a meaning had been avowed by the advocates of the Constitution. If a suspicion had existed of such a construction, it wd. at least have made a conspicuous figure among the amendments proposed to the Instrument.

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Item 337 // CCCXXXVII. James Madison to John Quincy Adams.
Montpr. June 13 1820

I have recd. & return my thanks for your polite favor accompanying the Copy of the printed Journal of the Federal Convention transmitted in pursuance of a late Resolution of Congress.

In turning over a few pages of the Journal, which is all I have done a casual glance caught a passage which erroneously prefixes my name, to ye proposition made on the 7th. day of Sepr. for making a Council of six members a part of the Executive branch of the Govt. The proposition was made by Col: George Mason one of the Virga. delegates, & seconded by Dr. Franklin. I cannot be mistaken in the fact: For besides my recollection which is sufficiently distinct on the subject, my notes contain the observations of each in support of the proposition.

As the original journal according to my extract from it, does not name the mover of ye propn the error, I presume must have had its source in some of the extrinsic communications to you; unless indeed it was found in some of the separate papers of the Secretary of the Convention: or is to be ascribed to a copying pen. The degree of symphony in the two names Madison & Mason may possibly have contributed to the substitution of the one for the other.

This explanation having a reference to others as well as myself, I have thought it wd. be neither improper nor unacceptable.

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I thank you for your friendly letter of the 20th. inclosing an extract from notes by Judge Yates, of debates in the Convention of 1787, as published in a N. Y. paper.* The letter did not come to hand till yesterday. If the extract be a fair sample, the work about to be published will not have the value claimed for it. Who can believe that so palpable a mistatement was made on the floor of the Convention, as that the several States were political Societies, varying from the lowest Corporation to the highest Sovereign; or that the States had vested all the essential rights of sovereignty in the Old Congress? This intrinsic evidence alone ought to satisfy every candid reader of the extreme incorrectness of the passage in question. As to the remark that the States ought to be under the controul of the Genl. Govt. at least as much as they formerly were under the King & B. parliament, it amounts as it stands when taken in its presumable meaning, to nothing more than what actually makes a part of the Constitution; the powers of Congs. being much greater, especially on the great points of taxation & trade than the B. Legislature were ever permitted to exercise.

*Commercial Advertizer, Aug: 19, 1821.

Whatever may have been the personal worth of the 2 delegates from whom the materials in this case were derived, it cannot be unknown that they represented the strong prejudices in N. Y. agst. the object of the Convention which was among other things to take from that State the important power over its commerce and that they manifested, untill they withdrew from the Convention, the strongest feelings of dissatisfaction agst. the contemplated change in the federal system and as may be supposed, agst. those most active in promoting it. Besides misapprehensions of the ear therefore, the attention of the note taker wd naturally be warped, as far at least as, an upright mind could be warped, to an unfavorable understanding of what was said in opposition to the prejudices felt.

Item 340 // CCCXL. James Madison to Thomas Ritchie.
Montpelr. Sepr. 15 1821.
(Confidential)

I have recd. yours of the 8th. instant on the subject of the proceedings of the convention of 1787. It is true as the public has been led to understand, that I possess materials for a pretty ample view of what passed in that Assembly. It is true also that it has not been my intention that they should for ever remain under the veil of secrecy. Of the time when it might be not improper for them to see the light, I had formed no particular determination. In general it had appeared to me that it might be best to let the work be a posthumous one; or at least that its publication should be delayed till the Constitution should be well settled by practice, & till a knowledge of the controversial part of the proceedings of its framers could be turned to no improper account. Delicacy also seemed to require some respect to the rule by which the Convention “prohibited a promulgation without leave of what was spoken in it;” so long as the policy of that rule could be regarded as in any degree unexpired. As a guide in expounding and applying the provisions of the Constitution, the debates and incidental decisions of the Convention can have no authoritative character. However desirable it be that they should be preserved as a gratification to the laudable curiosity felt by every people to trace the origin and progress of their political Institutions, & as a source perhaps of some lights on the Science of Govt. the legitimate meaning of the Instrument must be derived from the text itself; or if a key is to be sought elsewhere, it must be not in the opinions or intentions of the Body which planned & proposed the Constitution, but in the sense attached to it by the people in their respective State Conventions where it recd. all the authority which it possesses.

Such being the course of my reflections I have suffered a concurrence & continuance of particular inconveniences for the time past, to prevent me from giving to my notes that fair & full preparation due to the subject of them. Of late, being aware of the growing hazards of postponement, I have taken the incipient steps for executing the task; and the expediency of not risking an ultimate failure is suggested by the Albany
publication from the notes of a N. York member of the Convention. I have not seen more of the volume than has been extracted into the newspapers, but it may be inferred from these samples, that it not only a very mutilated [Crossed out “deficient”.] but a very erroneous edition of the matter to which it relates. There must be an entire omission also of the proceedings of the latter period of the Session from which Mr. Yates & Mr. Lansing withdrew in the temper manifested by their report to their Constituents: the period during which the variant & variable opinions, converged & centered in the modifications seen in the final act of the Body. It is my purpose now to devote a portion of my time to an exact digest of the voluminous materials in my hands. How long a time it will require, under the interruptions & avocations which are probable I can not easily conjecture. Not a little will be necessary for the mere labour of making fair transcripts. By the time I get the whole into a due form for preservation, I shall be better able to decide on the question of publication.

Item 341 // CCCXLI. James Madison to J. G. Jackson.
Montpr. Decr. 27-1821.

With respect to that portion of the mass, which contains the voluminous proceedings of the Convention, it has always been my intention that they should some day or other see the light. But I have always felt at the same time the delicacy attending such a use of them; especially at an early season. In general I have leaned to the expediency of letting the publication be a posthumous one. The result of my latest reflections on the subject, I cannot more conveniently explain, than by the inclosed extract from a letter confidentially written since the appearance of the proceedings of the Convention as taken from the Notes of Chf: Juste Yates. Of this work I have not yet seen a copy. From the scraps thrown into the Newspapers I cannot doubt that the prejudices of the author guided his pen, and that he has committed egregious errors at least, in relation to others as well as to myself. That most of us carried into the Convention a profound impression produced by the experienced inadequacy of the old Confederation, and by the monitory examples of all similar ones ancient & modern, as to the necessity of binding the States together by a strong Constitution, is certain. The necessity of such a Constitution was enforced by the gross and disreputable inequalities which had been prominent in the internal administrations of most of the States. Nor was The recent & alarming insurrection headed by Shays, in Massachusetts without a very sensible effect on the pub: mind. Such indeed was the aspect of things, that in the eyes of all the best friends of liberty a crisis had arrived which was to decide whether the Amn. Experiment was to be a blessing to the world, or to blast for ever the hopes which the republican cause had enspired; and what is not to be overlooked the disposition to give to a new System all the vigour consistent with Republican principles, was not a little stimulated by a backwardness in some quarters towards a Convention for the purpose, which was ascribed to a secret dislike to popular Govt. and a hope that delay would bring it more into disgrace, and pave the way for a form of Govt. more congenial with Monarchical or aristocratical predilections. This view of the crisis made it natural for many in the Convention to lean more than was perhaps in strictness warranted by a proper distinction between causes temporary as some of them doubtless were, and causes permanently inherent in popular frames of Govt. It is true also, as has been sometimes suggested that in the course of discussions in the Convention, where so much depended on compromise, the patrons of different opinions often set out on negociating grounds more remote from each other, than, the real opinions of either were from the point at which they finally met. For myself, having from the first moment of maturing a political opinion, down to the present one, never ceased to be a votary of the principle of self-Govt: I was among those most anxious to rescue it from the danger which seemed to threaten it; and with that view was willing to give to a Govt. resting on that foundation, as much energy as would ensure the requisite stability and efficacy. It is possible that in some instances this consideration may have been allowed a weight greater than subsequent reflection within the Convention, or the actual operation of the Govt. would sanction. It may be remarked also that it sometimes happened that opinions as to a particular modification or a particular power of the Govt. had a conditional reference to others which combined therewith would vary the character of the whole.
But whatever might have been the opinions entertained in forming the **Constitution**, it was the duty of all to support it in its true meaning as understood *by the Nation* at the time of its ratification. No one felt this obligation more than I have done; and there are few perhaps whose ultimate & deliberate opinions on the merits of the **Constitution**, accord in a greater degree with that obligation.

Item 342 // CCCXLII. James Madison: Note to his Speech on the Right of Suffrage.

Note to the Speech of J. M. on the day of
These observations (in the speech of J. M. See debates in the Convention of 1787. on the day of ) 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 can not 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 justice 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 mean time 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 other both from that source, & from the relations between wealthy capitalists & 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 members employed by them. Nor will accumulations of Capital for a certain time be precluded by our laws of descent & of distribution; such being the enterprize 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 the 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 high ways & 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 & 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 lawmakers 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 wd. 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 the 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 mean time of a participation in the public Councils. If the holders of property would thus have a twofold share of representation, they wd. have at the same time a twofold stake in it, the rights of property as well as of persons the twofold object of political Institutions. And if no exact & safe equilibrium can be introduced, it is more reasonable that a preponderating weight shd.

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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 Govt., such as prevails generally in the U. S., a resource favorable to the rights of 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 solicitations 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 Govt., 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. and 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

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& universal right of suffrage for each branch of the Govt. and a confinment 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 Govt.; than, that those having the lesser interest, that of personal rights only, should be deprived of the whole.


For case of suffrage see Deb.: Aug. 7.

1. Its Members of the most select kind & possessing particularly the confidence of yr. Constituents
2. do- generally of mature age & much political experience.
3. Disinterestedness & candor demonstrated by mutual concessions, & frequent changes of opinion
4. Few who did not change in the progress of discussions the opinions on important points which they carried into the Convention
5. Few who, at the close of the Convention, were not ready to admit this change as the enlightening effect of the discussions —
6. And how few, whose opinions at the close of the Convention, have not undergone changes on some points, under the more enlightening influence of experience.

7. Yet how much fewer still who, if now living, with the recollection of the difficulties in the Convention, of overcoming or reconciling honest differences of opinion, political biases, and local interests; and with due attention to the varieties & discords of opinion, the vicissitudes of parties, and the collisions real or imagined of local interests, witnessed on the face of the Nation, would not felicitate their Country on the happy result of the original Convention, and deprecate the experiment of another with general power to revise its work.

8. The restraining influence of the Constitution on the aberrations of the States of great importance tho’ invisible. It stifles wishes & inclinations which wd otherwise ripen into overt & pernicious acts. The States themselves are unconscious of the effect. Were these Constiut. and insuperable obstacles out of the way — how many political ills might not have sprung up where not suspected. The propensities in some cases, as Mas: Kenty. &c have not been altogether controul’d, and but for foreseen difficulties might have been follow’d. by greater

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Item 345 // CCCXLV. James Madison to George Hay.
Montpellier Aug 23. 1823.

I have recd. your letter of the 11th with the Newspapers containing your remarks on the present mode of electing a President, and your proposed remedy for its defects. I am glad to find you have not abandoned your attention to great Constitutional topics.

The difficulty of finding an unexceptionable process for appointing the Executive Organ of a Government such as that of the U. S., was deeply felt by the Convention; and as the final arrangement of it took place in the latter stage of the Session, it was not exempt from a degree of the hurrying influence produced by fatigue and impatience in all such Bodies: tho’ the degree was much less than usually prevails in them.

The part of the arrangement which casts the eventual appointment on the House of Reps. voting by States, was, as you presume, an accommodation to the anxiety of the smaller States for their sovereign equality, and to the jealousy of the larger towards the cumulative functions of the Senate. The Agency of the H. of Reps. was thought safer also than that of the Senate, on account of the greater number of its members. It might indeed happen that the event would turn on one or two States having one or two Reps. only; but even in that case, the Representations of most of the States being numerous, the House would present greater obstacles to corruption than the Senate with its paucity of Members. It may be observed

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also, that altho’ for a certain period the evil of State votes given by one or two individuals, would be extended by the introduction of new States, it would be rapidly diminished by growing populations within extensive territories. At the present period, the evil is at its maximum. . . .

I agree entirely with you in thinking that the election of Presidential Electors by districts, is an amendment very proper to be brought forward at the same time with that relating to the eventual choice of President by the H. of Reps. The district mode was mostly, if not exclusively, in view when the Constitution was framed and adopted; & was exchanged for the general ticket & the legislative election, as the only expedient for baffling the policy of the particular States which had set the example.

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Item 347 // CCCXLVII. James Madison to Thomas Jefferson.
Montpellier, Jany 14, 1824.
An appeal from an abortive ballot in the first meeting of the Electors to a reassembling of them, a part of the several plans, has something plausible, and, in comparison with the existing arrangement, might not be inadmissible. But it is not free from material objections. It relinquishes, particularly, the policy of the
Constitution in allowing as little time as possible for the Electors to be known and tampered with. And beside the opportunities for intrigue furnished by the interval between the first and second meeting, the danger of having one electoral body played off against another, by artful misrepresentations rapidly transmitted, a danger not to be avoided, would be at least doubled.

I have read your observations with a due perception of the ability which pervades and the eloquence which adorns them; and I must add, not without the pleasure of noticing that you have pruned from the doctrine of some of your fellow labourers, its most luxuriant branches — I cannot but think at the same time, that you have left the root in too much vigour. This appears particularly in the question of Canals. My impression with respect to the authority to make them may be the stronger perhaps, (as I had occasion to remark as to the Bank on its original discussion,) from my recollection that the authority had been repeatedly proposed in the Convention, and negatived, either as improper to be vested in Congress, or as a power not likely to be yielded by the States. My impression is also very decided, that if the construction which brings Canals within the scope of commercial regulations, had been advanced or admitted by the advocates of the Constitution in the State Conventions, it would have been impossible to overcome the opposition to it. It is remarkable that Mr. Hamilton himself, the strenuous patron of an expansive meaning in the text of the Constitution, with the views of the Convention fresh in his memory, and in a Report contending for the most liberal rules of interpretation, was obliged by his candour to admit that they could not embrace the case of canals.

It cannot be denied without forgetting what belongs to human nature, that in consulting the contemporary writings, which vindicated and recommended the Constitution, it is fair to keep in mind that the authors might be sometimes influenced by the zeal of advocates: But in expounding it now, — is the danger of bias less, from the influence of local interests, of popular currents, and even from an estimate of national utility.

What a metamorphosis would be produced in the code of law if all its ancient phraseology were to be taken in its modern sense! And that the language of our Constitution is already undergoing interpretations unknown to its founders will, I believe, appear to all unbiased inquirers into the history of its origin and adoption. Not to look farther for an example, take the word “consolidate,” in the Address of the convention prefixed to the Constitution. It there and then meant to give strength and solidity to the union of the States. In its current and controversial application, it means a destruction of the States by transfusing their powers into the government of the Union.

In our complex system of polity, the public will, as a source of authority, may be the will of the people as composing one nation; or the will of the States in their distinct and independent capacities; or the federal will, as viewed, for example, through the Presidential electors, representing, in a certain proportion, both the nation and
the States. If, in the eventual choice of a President, the same proportional rule had been preferred, a joint ballot by the two houses of Congress would have been substituted for the mode which gives an equal vote to every State, however unequal in size. As the Constitution stands, and is regarded as the result of a compromise between the larger and smaller States, giving to the latter the advantage in selecting a President from the candidates, in consideration of the advantage possessed by the former in selecting the candidates from the people, it cannot be denied, whatever may be thought of the constitutional provision, that there is, in making the eventual choice, no other control on the votes to be given, whether by the representatives of the smaller or larger States, but their attention to the views of their respective constituents and their regard for the public good.

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Item 356 // CCCLVI. James Madison to Andrew Stevenson.
Montpellier Mar. 25. 26
Will you pardon me for pointing out an error of fact into which you have fallen, as others have done, by supposing that the term, national applied to the contemplated Government, in the early stage of the Convention, particularly in the propositions of Mr. Randolph, was equivalent to unlimited or consolidated. This was not the case. The term was used, not in contradistinction to a limited, but to a federal Government. As the latter operated within the extent of its authority thro’ requisitions on the confederated States, and rested on the sanction of State Legislatures, the Government to take its place, was to operate within the extent of its powers directly & coercively on individuals, and to receive the higher sanction of the people of the States. And there being no technical or appropriate denomination applicable to the new and unique System, the term national was used, with a confidence that it would not be taken in a wrong sense, especially as a right one could be readily suggested if not sufficiently implied by some of the propositions themselves. Certain it is that not more than two or three members of the Body and they rather theoretically than practically, were in favor of an unlimited Govt. founded on a consolidation of the States; and that neither Mr. Randolph, nor any one of his colleagues was of the number. His propositions were the result of a meeting of the whole Deputation, and concurred or acquiesced in unanimously, merely as a general introduction of the business; such as might be expected from the part Virginia had in bringing about the Convention, and as might be detailed, and defined in the progress of the work. The Journal shews that this was done.

I cannot but highly approve the industry with which you have searched for a key to the sense of the Constitution, where alone the true one can be found; in the proceedings of the Convention, the cotemporary expositions, and above all in the ratifying Conventions of the States. If the instrument be interpreted by criticisms which lose sight of the intention of the parties to it, in the fascinating pursuit of objects of public advantage or conveniency, the purest motives can be no security against innovations materially changing the features of the Government.

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Item 357 // CCCLVII. James Madison to Thomas Cooper.
Montpellier Decr. 26. 1826—

The mail has furnished me with a copy of your Lectures on Civil Government, & on the constitution of the U. S. I find in them much in which I concur; parts on which I might say — non liquet — & others from which I should dissent; but none, of which interesting views are not presented. What alone I mean to notice is a passage in which you have been misled by the authorities before you, & by a misunderstanding of the term “National” used in the early proceedings of the Convention of 1787. Both Mr. Yates & Mr. Martin brought to the Convention predispositions agt. its object, the one from Maryland representing the party of Mr. Chase opposed to federal restraints on the State Legislation; the other from New York, the party unwilling to lose the power over trade through which the State levied a tribute on the consumption of its neighbours. Both of them left the Convention long before it compleated its work; & appear to have reported in angry terms, what they had observed with jaundiced eyes. Mr. Martin is said to have recanted at a later day; & Mr. Yates to have changed
his politics & joined the party adverse to that which sent him to the Convention. — With respect to the term “National” as contradistinguished from the term “federal,” it was not meant to express the extent of power, but the mode of its operation, which was to be not like the power of the old Confederation operating on States; but like that of ordinary Governments operating on individuals; & the substitution of “United States” for “National” noted in the journal, was not designed to change the meaning of the latter, but to guard against a mistake or misrepresentation of what was intended. The term “National” was used in the original propositions offered on the part of the Virginia Deputies, not one of whom attached to it any other meaning than that here explained. Mr. Randolph himself the organ of the Deputation, on the occasion, was a strenuous advocate for the federal quality of limited & specified powers; & finally refused to sign the constitution because its powers were not sufficiently limited & defined.

Item 358 // CCCLVIII. James Madison to S. H. Smith.
Montpr. Febt. 2. 1827.

I have great respect for your suggestion with respect to the season for making public what I have preserved of the proceedings of the Revolutionary Congress, and of the General Convention of 1787. But I have not yet ceased to think, that publications of them, posthumous as to others as well as myself, may be most delicate and most useful also, if to be so at all. As no personal or party views can then be imputed, they will be read with less of personal or party feelings, and consequently, with whatever profit, may be promised by them. It is true also that after a certain date, the older such things grow, the more they are relished as new; the distance of time like that of space from which they are received, giving them that attractive character It cannot be very long however before the living obstacles to the forthcomings in question, will be removed. Of the members of Congress during the period embraced, the lamps of all are extinct, with the exception of 2. Rd. Peters, & myself; and of the signers of the Constitution, of all but 3. R. King, Wm. Few and myself; and of the lamps still burning, none can now be far from the Socket.

Item 359 // CCCLIX. James Madison to Edward Everett.
Montpellier June 3d. 1827 —

I offer for your brother and yourself the thanks I owe for the copy of his work on “America” . . . One error into which the author has been led, will I am sure be gladly corrected. In page 109.

it is said of Washington that he “appears to have wavered for a moment in making up his mind upon the constitution”. I can testify from my personal knowledge, that no member of the Convention appeared to sign the Instrument with more cordiality than he did, nor to be more anxious for its ratification. I have indeed the most thorough conviction from the best evidence, that he never wavered in the part he took in giving it his sanction and support. The error may perhaps have arisen from his backwardness in accepting his appointment to the Convention, occasioned by peculiar considerations which may be seen in the 5th. volume of his Biographer (Marshall).

Item 361 // CCCLXI. James Madison to George Mason.
Montpellier, Decr 29, 1827.

The public situation in which I had the best opportunity of being acquainted with the genius, the opinions, and the public labours of Col. Mason, was that of our co-service in the Convention of 1787, which formed the Constitution of the United States. The objections which led him to withhold his name from it have been explained by himself. But none who differed from him on some points will deny that he sustained throughout
the proceedings of the body the high character of a powerful reasoner, a profound statesmen, and a devoted Republican.

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Item 363 // CCCLXIII. James Madison to Martin Van Buren.  
May 13 1828.

You will not I am sure, take it amiss if I here point to an error of fact, in your “observations on Mr. Foot’s amendment.” It struck me when first reading them, but escaped my attention—when thanking you for the copy with which you favored me.—The threatening contest, in the Convention of 1787 did not, as you supposed, turn on the degree of power to be granted to the Federal Govt: but on the rule by which the States should be represented and vote in the Govt: the smaller States insisting on the rule of equality in all respects; the larger on the rule of proportion to inhabitants: and the Compromise which ensued was that which established an equality in the Senate, and an inequality in the House of Representatives.  
The contests & compromises, turning on the grants of power, tho’ very important in some instances, were Knots of a less “Gordian” character.

Item 364 // CCCLXIV. James Madison to J. C. Cabell.  
Montpr. Sepr. 18 1828.

8 That the encouragement of Manufactures, was an object of the power to regulate trade, is proved by the use made of the power for that object, in the first session of the first Congress under the Constitution; when among the members present were so many who had been members of the federal Convention which framed the Constitution, and of the State Conventions which ratified it; each of these classes consisting also of members who had opposed & who had espoused, the Constitution in its actual form. It does not appear from the printed proceedings of Congress on that occasion that the power was denied by any of them. And it may be remarked that members from Virga. in particular, as well of the antifederal as the federal party, the names then distinguishing those who had opposed and those who had approved the Constitution, did not hesitate to propose duties, & to suggest even prohibition in favor of several articles of her production;

Item 365 // CCCLXV. James Madison to J. C. Cabell.  
Montpellier Febry. 2. 1829—

What the extract is to be from Yates account of the Convention, which convicts me of inconsistency, I cannot divine — If

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explained & authenticated by myself. The Report of Luther Martin is as little to be relied on for accuracy & 
fairness.

Item 366 // CCCLXVI. James Madison to J. C. Cabell.
Montpellierr, February 13, 1829.

For a like reason, I made no reference to the “power to regulate commerce among the several States.” I always 
foresaw that difficulties might be started in relation to that power which could not be fully explained without 
recurring to views of it, which, however, just, might give birth to specious though unsound objections. Being in 
the same terms with the power over foreign commerce, the same extent, if taken literally, would belong to it. 
Yet it is very certain that it grew out of the abuse of the power by the importing States in taxing the non-
importing, and was intended as a negative and preventive provision against injustice among the States 
themselves, rather than as a power to be used for the positive purposes of the General Government, in which 
one, however, the remedial power could be lodged.

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Item 370 // CCCLXX. James Madison to M. L. Hurlbert.
Montpellierr, May, 1830.

And if I am to answer your appeal to me as a witness, I must say 
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that the real measure of the powers meant to be granted to Congress by the Convention, as I understood and 
believe, is to be sought in the specifications, to be expounded, indeed, not with the strictness applied to an 
ordinary statute by a court of law, nor, on the other hand, with a latitude that, under the name of means for 
carrying into execution a limited Government, would transform it into a Government without limits.

Item 371 // CCCLXXI. James Madison to James Hillhouse.
Montpellierr, May —, 1830.

The difficulty of reconciling the larger States to the equality in the Senate, is known to have been the most 
threatening that was encountered in framing the Constitution. It is known, also, that the powers committed to 
that body, comprehending, as they do, Legislative, Executive, and Judicial functions, was among the most 
serious objections, with many, to the adoption of the Constitution.

Item 372 // CCCLXXII. James Madison to Andrew Stevenson.
Montp. Novr. 17. 1830

I have recd. your very friendly favor of the 20th instant, referring to a conversation when I had lately the 
pleasure of a visit from you, in which you mentioned your belief that the terms “common defence & general 
wellfare” in the 8th. Section of the first Article of the Constitution of the U. S. were still regarded by some as 
conveying to Congress a substantive & indefinite power; and in which I communicated my views of the 
introduction and occasion of the terms, as precluding that comment on them; and you express a wish that I 
would repeat those views in the answer to your letter. 
However disinclined to the discussion of such topics at a time when it is so difficult to separate in the minds of 
many, questions purely Constitutional from the party polemics of the day, I yield to the precedents which you 
think I have imposed on myself, & to the consideration that without relying on my personal recollections, which 
your partiality overvalues, I shall derive my construction of the passage in question, from sources of
information & evidence known or accessible to all who feel the importance of the subject, and are disposed to give it a patient examination.

In tracing the history & determining the import of the terms “Common defence & general welfare” as found in the text of the

Constitution the following lights are furnished by the printed Journal of the Convention which formed it. The terms appear in the general propositions offered May 29 as a basis for the incipient deliberations, the first of which “Resolved that the Articles of the 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”. On the day following, the proposition was exchanged for Resolved “that an Union of the States merely federal will not accomplish the objects proposed by the Articles of Confederation; namely, common defence, security of liberty and general welfare”.

The inference from the use here made of the terms, & from the proceedings on the subsequent propositions is, that altho’ Common defence & general welfare were objects of the Confederation, they were limited objects, which ought to be enlarged by an enlargement of the particular powers to which they were limited — and to be accomplished by a change in the structure of the Union from a form merely federal to one partly national, and as these general terms are prefixed in the like relation to the several Legislative powers in the new Charter, as they were in the Old, they must be understood to be under like limitations in the new as in the Old.

In the course of the proceedings between the 30th. of May & the 6th. of Augt. the terms Common defence & General welfare as well as other equivalent terms must have been dropped: for they do not appear in the Draft of a Constitution, reported on that day, by a Committee appointed to prepare one in detail; the clause in which those terms were afterwards inserted, being, simply in the Draft “The Legislature of the U. S. shall have power to lay & collect taxes duties, imposts & excises”.

The manner in which the terms became transplanted from the Old into the new System of Government, is explained by a course somewhat adventitiously given to the proceedings of the Convention.

On the 18th. of Augst. among other propositions referred to the Committee which had reported the draft was one “to secure the payment of the Public debt.”, and, On the same day, was appointed a Committee of Eleven members, (one from each State) “to consider the necessity & expediency of the debts of the several States, being assumed by the U. States” On the 21st. of Augst. this last Committee reported a clause in the words following “The Legislature of the U. States shall have power to fulfill the engagements, which have been entered into by Congress, and to discharge as well the debts of the U. States, as the debts incurred by the several States, during the late war, for the common defence and general welfare”; conforming herein to the 8th. of the Articles of Confederation, the language of which is, that “all charges of war and all other expences that shall be incurred for the common defence and general welfare, and allowed by the U. S in Congress assembled, shall be defrayed out of a common treasury” &c.

On the 22d. of Augst. the Committee of five reported among other additions to the clause giving power “to lay and collect taxes imposts & excises,” a clause in the words following “for payment of the debts and necessary expences”, with a proviso qualifying the duration of Revenue laws.

This Report being taken up, it was moved, as an amendment, that the clause should read “the Legislature shall fulfill the engagements and discharge the debts of the U. States” It was then moved to strike out “discharge the debts”, and insert “liquidate the claims”; which being rejected, the amendment was agreed to as proposed viz “the Legislature shall fulfill the engagements & discharge the debts of the U. States”.

On the 23d. of Augst. the clause was made to read “the Legislature shall fulfill the engagements and discharge the debts of the U. States, and shall have the power to lay & collect taxes duties imposts & excises” the two powers relating to taxes & debts being merely transposed.

On the 25th. of August, the clause was again altered so as to read “all debts contracted and engagements entered into by or under the authority of Congress (the Revolutionary Congress) shall be as valid under this Constitution as under the Confederation”
This amendment was followed by a proposition (referring to the powers to lay & collect taxes &c — and to discharge the debts (old debts) to add “for payment of said debts, and for defraying the expences that shall be incurred for the common defence & general welfare”. The proposition was disagreed to, one State only voting for it.

Sepr. 4. The Committee of eleven reported the following modification — “The Legislature shall have power to lay & collect taxes duties imposts and excises, to pay the debts and provide for the common defence & general welfare”; thus retaining the terms of the Articles of Confederation, & covering by the general term “debts”, those of the Old Congress.

A special provision in this mode could not have been necessary for the debts of the New Congress: For a power to provide money, and a power to perform certain acts of which money is the ordinary & appropriate means, must of course carry with them a power to pay the expence of performing the acts. Nor was any special provision for debts proposed, till the case of the Revolutionary debts was brought into view, and it is a fair presumption from the course of the varied propositions which have been noticed, that but for the old debts, and their association with the terms “common defence & general welfare”, the clause would have remained as reported in the first Draft of a Constitution, expressing generally a “power in Congress to lay and collect taxes duties imposts & excises”; without any addition of the phrase “to provide for the common defence & general welfare”. With this addition indeed the language of the clause being, in conformity with that of the clause in the Articles of Confederation, it would be qualified, as in those Articles, by the specification of powers subjoined to it. But there is sufficient reason to suppose that the terms in question would not have been introduced but for the introduction of the old debts, with which they happened to stand in a familiar tho’ inoperative relation. Thus introduced however, they passed undisturbed thro’ the subsequent stages of the Constitution.

If it be asked why the terms “common defence & general welfare”, if not meant to convey the comprehensive power, which taken literally they express, were not qualified & explained by some reference to the particular powers subjoined, the answer is at hand, that altho’ it might easily have been done, and experience shews it might be well if it had been done, yet the omission is accounted for by an inattention to the phraseology, occasioned, doubtless, by its identity with the harmless character attached to it in the Instrument from which it was borrowed.

But may it not be asked with infinitely more propriety, and without the possibility of a satisfactory answer, why, if the terms were meant to embrace not only all the powers particularly expressed, but the indefinite power which has been claimed under them, the intention was not so declared; why on that supposition, so much critical labor was employed in enumerating the particular powers; and in defining and limiting their extent?

The variations & vicissitudes in the modification of the clause in which the terms, “common defence & general welfare” appear, are remarkable; and to be no otherwise explained, than by differences of opinion concerning the necessity or the form, of a constitutional provision for the debts of the Revolution; some of the members, apprehending improper claims for losses, by depreciated emissions of bills of credit; others an evasion of proper claims if not positively brought within the authorized functions of the new Govt; and others again considering the past debts of the U. States as sufficiently secured by the principle that no change in the Govt. could change the obligations of the nation. Besides the indications in the Journal, the history of the period sanctions this explanation.

But it is to be emphatically remarked, that in the multitude of motions, propositions, and amendments, there is not a single one having reference to the terms “common defence & general welfare”, unless we were so to understand the proposition containing them, made on Aug. 25. which was disagreed to by all the States except one. [Crossed out: “The disagreement however was probably the result of some other consideration.”]

The obvious conclusion to which we are brought is, that these terms copied from the Articles of Confederation, were regarded in the new as in the old Instrument merely as general terms, explained & limited by the subjoined specifications; and therefore requiring no critical attention or studied precaution.

If the practice of the Revolutionary Congress be pleaded in opposition to this view of the case, the plea is met by the notoriety that on several accounts the practice of that Body is not the expositor of the “Articles of Confederation”. These Articles were not in force till they were finally ratified by Maryland in 1781. Prior to that
event the power of Congress was measured by the exigencies of the war, and derived its sanction from the acquiescence of the States. After that event, habit and a continued expediency, amounting often to a real or apparent necessity, prolonged the exercise of an undefined authority; which was the more readily overlooked; as the members of the Body held their seats during pleasure, as its Acts, particularly after the failure of the Bills of Credit, depended for their efficacy on the will of the States; and as its general impotency became manifest. Examples of departure from the prescribed rule, are too well known to require proof. The case of the old Bank of N. America might be cited as a memorable one. The incorporating Ordinance grew out of the inferred necessity of such an Institution to carry on the war, by aiding the finances which were starving under the neglect or inability of the States to furnish their assessed quotas. Congress was at the time so much aware of the deficient authority, that they recommended it to the State Legislatures to pass laws giving due effect to the Ordinance: which was done by Pennsylvania and several other States. In a little time, however, so much dissatisfaction arose in Pennsylvania where the Bank was located, that it was proposed to repeal the law of the State in support of it. This brought on attempts to vindicate the adequacy of the power of Congress, to incorporate such an Institution. Mr. Wilson, justly distinguished for his intellectual powers, being deeply impressed with the importance of a Bank at such a Crisis, published a small pamphlet, entitled “Considerations on the Bank of N. America”, in which he endeavored to derive the power from the nature of the Union, in which the Colonies were declared & became Independent States; and also from the tenor of the “Articles of Confederation” themselves. But what is particularly worthy of notice is, that with all his anxious search in those Articles for such a power, he never glanced at the terms “Common Defence & general Welfare” as a source of it. He rather chose to rest the claim on a recital in the text, “that for the more convenient management of the general interests of the United States, Delegates shall be annually appointed to meet in Congress, which he said implied that the United States had general rights, general powers, and general obligations; not derived from any particular State, nor from all the particular States, taken separately; but “resulting from the Union of the whole” these general powers, not being controuled by the Article declaring that each State retained all powers not granted by the Articles, because “the individual States never possessed & could not retain a general power over the others” The authority & argument here resorted to, if proving the ingenuity & patriotic anxiety of the author on one hand, shew sufficiently on the other, that the terms “common defence & general welfare cd. not according to the known acceptation of them avail his object.

That the terms in question were not suspected, in the Convention which formed the Constitution of any such meaning as has been constructively applied to them, may be pronounced with entire confidence. For it exceeds the possibility of belief, that the known advocates in the Convention for a jealous grant & cautious definition of federal powers, should have silently permitted the introduction of words or phrases in a sense rendering fruitless the restrictions & definitions elaborated by them. Consider for a moment the immeasurable difference between the Constitution limited in its powers to the enumerated objects; and expanded as it would be by the import claimed for the phraseology in question. The difference is equivalent to two Constitutions, of characters essentially contrasted with each other; the one possessing powers confined to certain specified cases; the other extended to all cases whatsoever: For what is the case that would not be embraced by a general power to raise money, a power to provide for the general welfare, and a power to pass all laws necessary & proper to carry these powers into execution; all such provisions and laws superseding, at the same times, all local laws & constitutions at variance with them. Can less be said with the evidence before us furnished by the Journal of the Convention itself, than that it is impossible that such a Constitution as the latter would have been recommended to the States by all the members of that Body whose names were subscribed to the Instrument. Passing from this view of the sense in which the terms common defence & general welfare were used by the Framers of the Constitution, let us look for that in which they must have been understood by the Conventions, or rather by the people who thro’ their Conventions, accepted & ratified it. And here the evidence is if possible still more irresistible, that the terms could not have been regarded as giving a scope to federal Legislation,
infinitely more objectionable, than any of the specified powers which produced such strenuous opposition, and
calls for amendments which might be safeguards against the dangers apprehended from them.
Without recurring to the published debates of those Conventions, which as far as they can be relied on for
accuracy, would it is believed not impair the evidence furnished by their recorded proceedings, it will suffice to
consult the lists of amendments proposed by such of the Conventions as considered the powers granted to the
new Government too extensive or not safely defined.
Besides the restrictive & explanatory amendments to the text of the constitution it may be observed, that a long
list was premised under the name & in the nature of “Declarations of Rights”; all of them indicating a jealousy
of the federal powers, and an anxiety to multiply securities against a constructive enlargement of them. But the
appeal is more particularly made to the number & nature of the amendments proposed to be made specific &
integral parts of the Constitutional text.
No less than seven States, it appears, concurred in adding to their ratifications, a series of amendments, wch
they deemed requisite. Of these amendments nine were proposed by the Convention of Massachusetts; five by
that of S. Carolina; twelve by that of N. Hampshire; twenty by that of Virginia; thirty three by that of N. York;
twenty six by that of N. Carolina; twenty one by that of R. Island.
Here are a majority of the States, proposing amendments, in one instance thirty three by a single State; all of
them intended to circumscribe the powers granted to the General Government by explanations restrictions or
prohibitions, without including a single proposition from a single State, referring to the terms, common defence
& general welfare; which if understood to convey the asserted power, could not have failed to be the power
most strenuously aimed at because evidently more alarming in its range, than all the powers objected to put
together. And that the terms should
have passed altogether unnoticed by the many eyes wch saw danger in terms & phrases employed in some of
the most minute & limited of the enumerated powers, must be regarded as a demonstration, that it was taken for
granted that the terms were harmless, because explained & limited, as in the “Articles of Confederation”, by the
enumerated powers which followed them.
A like demonstration, that these terms were not understood in any sense that could invest Congress with powers
not otherwise bestowed by the Constitutional Charter may be found in what passed in the first Session of the
first Congress, when the subject of Amendments was taken up, with the conciliatory view of freeing the
Constitution from objections which had been made to the extent of its powers, or to the unguarded terms
employed in describing them. Not only were the terms “common defence and general welfare”, unnoticed in the
long list of amendments brought forward in the outset; but the Journals of Congs. shew that in the progress of
the discussions, not a single proposition was made in either branch of the Legislature which referred to the
phrase as admitting a constructive enlargement of the granted powers, and requiring an amendment guarding
against it. Such a forbearance & silence on such an occasion, and among so many members who belonged to the
part of the nation, which called for explanatory & restrictive amendments, and who had been elected as known
advocates for them, can not be accounted for without supposing that the terms “common defence & general
welfare”, were not at that time deemed susceptible of any such construction as has since been applied to them.
It may be thought perhaps, due to the subject, to advert to a letter of Octr. 5. 1787 to Samuel Adams and another
of Ocr. 16 of the same year to the Governor of Virginia, from R. H. Lee, in both which, it is seen that the terms
had attracted his notice, and were apprehended by him “to submit to Congress every object of human
Legislation”. But it is particularly worthy of Remark, that altho’ a member of the Senate of the U. States, when
Amendments to the Constitution were before that House, and sundry additions & alterations were there made
to the list sent from the other, no notice was taken of those terms as pregnant with danger. It must be inferred
that the opinion formed by the distinguished member at the first view of the Constitution, & before it had been
fully discussed, & elucidated, had been changed into a conviction that the terms did not fairly admit the
construction he had originally put on them: and therefore needed no explanatory precaution agst. it. .

Memorandum not used in Letter to Mr. Stevenson.
These observations will be concluded with a notice of the argument in favor of the grant of a full power to provide for common defence and general welfare, drawn from the punctuation in some editions of the Constitution.

According to one mode of presenting the text, it reads as follows: “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.” To another mode, the same with commas vice semicolons.

According to the other mode, the text stands thus: “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.”

And from this view of the text, it is inferred that the latter sentence conveys a distinct substantive power to provide for the common defence and general welfare.

Without inquiring how far the text in this form would convey the power in question; or admitting that any mode of presenting or distributing the terms could invalidate the evidence which has been exhibited, that it was not the intention of the general or of the State Conventions to express, by the use of the terms common defence and general welfare, a substantive and indefinite power; or to imply that the general terms were not to be explained and limited by the specified powers succeeding them, in like manner as they were explained and limited in the former Articles of Confederation from which the terms were taken; it happens that the authenticity of the punctuation which preserves the unity of the clause can be as satisfactorily shown, as the true intention of the parties to the Constitution has been shown in the language used by them.

The only instance of a division of the clause afforded by the journal of the Convention is in the draught of a Constitution reported by a committee of five members, and entered on the 12th of September.

But that this must have been an erratum of the pen or of the press, may be inferred from the circumstance, that, in a copy of that report, printed at the time for the use of the members, and now in my possession, the text is so printed as to unite the parts in one substantive clause; an inference favoured also by a previous report of September 4, by a committee of eleven, in which the parts of the clause are united, not separated.

And that the true reading of the Constitution, as it passed, is that which unites the parts, is abundantly attested by the following facts:

1. Such is the form of the text in the Constitution printed at the close of the Convention, after being signed by the members, of which a copy is also now in my possession.

2. The case is the same in the Constitution from the Convention to the old Congress, as printed on their journal of September 28, 1787, and transmitted by that body to the Legislatures of the several States.

3. The case is the same in the copies of the transmitted Constitution, as printed by the ratifying States, several of which have been examined; and it is a presumption that there is no variation in the others.

The text is in the same form in an edition of the Constitution published in 1814, by order of the Senate; as also in the Constitution as prefixed to the edition of the United States; in fact, the proviso for uniformity is itself a proof of identity of them.

It might, indeed, be added, that in the journal of September 14, the clause to which the proviso was annexed, now a part of the Constitution, viz: “but all duties, imposts, and excises, shall be uniform throughout the United States,” is called the “first,” of course a “single” clause. And it is obvious that the uniformity required by the proviso implies that what it referred to was a part of the same clause with the proviso, not an antecedent clause altogether separated from it.

Should it be not contested that the original Constitution, in its engrossed and enrolled state, with the names of the subscribing members affixed thereto, presents the text in the same form, that alone must extinguish the argument in question.

If, contrary to every ground of confidence, the text, in its original enrolled document, should not coincide with these multiplied examples, the first question would be of comparative probability of error, even in the enrolled document, and in the number and variety of the concurring examples in opposition to it.
And a second question, whether the construction put on the text, in any of its forms or punctuations, ought to have the weight of a feather against the solid and diversified proofs which have been pointed out, of the meaning of the parties to the Constitution.

**Supplement to the letter of November 27, 1830, to A. Stevenson, on the phrase “common defence and general welfare.” — On the power of indefinite appropriation of money by Congress.**

It is not to be forgotten, that a distinction has been introduced between a power merely to appropriate money to the common defence and general welfare, and a power to employ all the means of giving full effect to objects embraced by the terms.

1. The first observation to be here made is, that an express power to appropriate money authorized to be raised, to objects authorized to be provided for, could not, as seems to have been supposed, be at all necessary; and that the insertion of the power “to pay the debts,” &c., is not to be referred to that cause. It has been seen, that the particular expression of the power originated in a cautious regard to debts of the United States antecedent to the radical change in the Federal Government; and that, but for that consideration, no particular expression of an appropriating power would probably have been thought of. An express power to raise money, and an express power (for example) to raise an army, would surely imply a power to use the money for that purpose. And if a doubt could possibly arise as to the implication, it would be completely removed by the express power to pass all laws necessary and proper in such cases. . . .

The peculiar structure of the Government, which combines an equal representation of unequal numbers in one branch of the Legislature, with an equal representation of equal numbers in the other, and the peculiarity which invests the Government with selected powers only, not intrusting it even with every power withdrawn from the local governments, prove not only an apprehension of abuse from ambition or corruption in those administering the Government, but of oppression or injustice from the separate interests or views of the constituent bodies themselves, taking effect through the administration of the Government. These peculiarities were thought to be safeguards due to minorities having peculiar interests or institutions at stake, against majorities who might be tempted by interest or other motives to invade them. . . .

The result of this investigation is, that the terms “common defence and general welfare” owed their induction into the text of the Constitution to their connexion in the “Articles of Confederation,” from which they were copied, with the debts contracted by the old Congress, and to be provided for by the new Congress; and are used in the one instrument as in the other, as general terms, limited and explained by the particular clauses subjoined to the clause containing them; that in this light they were viewed throughout the recorded proceedings of the Convention which framed the Constitution; that the same was the light in which they were viewed by the State Conventions which ratified the Constitution, as is shown by the records of their proceedings; and that such was the case also in the first Congress under the Constitution, according to the evidence of their journals, when digesting the amendments afterward made to the Constitution.

Item 373 // CCCLXXIII. James Madison to J. K. Teft.
December 3d, 1830.

In the year 1828 I received from J. V. Bevan sundry numbers of the “Savannah Georgian,” containing continuations of the notes of Major Pierce in the Federal Convention of 1787. They were probably sent on account of a marginal suggestion of inconsistency between language held by me in the Convention with regard to the Executive veto, and the use made of the power by myself, when in the Executive Administration. The inconsistency is done away by the distinction, not adverted to, between an absolute veto, to which the language was applied, and the qualified veto which was exercised.
Item 374 // CCCLXXIV. James Madison to Reynolds Chapman.
January 6, 1831.

Perhaps I ought not to omit the remark, that although I concur in the defect of powers in Congress on the subject
of internal improvements, my abstract opinion has been, that, in the case of canals particularly, the power would
have been properly vested in Con-

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gress. It was more than once proposed in the Convention of 1787, and rejected from an apprehension, chiefly,
that it might prove an obstacle to the adoption of the Constitution. Such an addition to the Federal powers was
thought to be strongly recommended by several considerations: 1. As Congress would possess, exclusively, the
sources of revenue most productive and least unpopular, that body ought to provide and apply the means for the
greatest and most costly works. 2. There would be cases where canals would be highly important in a national
view, and not so in a local view. 3. Cases where, though highly important in a national view, they might violate
the interest, real or supposed, of the State through which they would pass, of which an example might now be
cited in the Chesapeake and Delaware canal, known to have been viewed in an unfavourable light by the State
of Delaware. 4. There might be cases where canals, or a chain of canals, would pass through sundry States, and
create a channel and outlet for their foreign commerce, forming at the same time a ligament for the Union, and
extending the profitable intercourse of its members, and yet be of hopeless attainment if left to the limited
faculties and joint exertions of the States possessing the authority.

Item 375 // CCCLXXV. James Madison to C. J. Ingersoll.
Montpellier, February 2, 1831.

The evil which produced the prohibitory clause in the Constitution of the United States was the practice of the
States in making bills of credit, and in some instances appraised property, “a legal tender.” If the notes of the
State Banks, therefore, whether chartered or unchartered, be made a legal tender, they are prohibited; if not
made a legal tender, they do not fall within the prohibitory clause. The No. of the “Federalist” referred to (44)
was written with that view of the subject; and this, with probably other contemporary expositions, and the
uninterrupted practice of the States in creating and permitting banks without making their notes a legal tender,
would seem to be a bar to the question, if it were not inexpedient now to agitate it.

A virtual and incidental enforcement of the depreciated notes of the State Banks, by their crowding out a sound
medium, though a great evil, was not foreseen; and if it had been apprehended, it is questionable whether the
Constitution of the United States, which had many obstacles to encounter, would have ventured to guard
against it by an additional obstacle.

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Item 376 // CCCLXXVI. James Madison to Theodore Sedgewick, Jr.
Montpr. Feb. 12, 1831

You ask whether Mr Livingston (formerly Governor of N. Jersey) took an active part in the debates (of the Fedl
Convention of 1787) and whether he was considered as having a leaning towards the federal Party and
principles; adding that you will be obliged by any further information it may be in my power to give you.

Mr Livingston did not take his seat in the Convention till some progress had been made in the task committed to
it, and he did not take an active part in its debates; but he was placed on important Committees, where it may be
presumed he had an agency and a due influence. He was personally unknown to many, perhaps most of the
members, but there was a predisposition in all to manifest the respect due to the celebrity of his name.

I am at a loss for a precise answer to the question whether he had a leaning to the federal party and principles.

Presuming that by the party alluded to, is meant those in the Convention who favored a more enlarged, in
contradistinction to those who favored a more restricted grant of powers to the Fedl Govt, I can only refer to the
recorded votes which are now before the public; and these being by States not by heads, the individual opinions are not disclosed by them. The votes of N. Jersey corresponded generally with the Plan offered by Mr. Patterson; but the main object of that being to secure to the smaller States an equality with the larger in the structure of the Govt, in opposition to the outline previously introduced, which had reversed the object, it is difficult to say what was the degree of power to which there might be an abstract leaning. The two subjects, the structure of the Govt and the question of power entrusted to it were more or less inseparable in the minds of all, as depending on a good deal, the one on the other, after the compromise wch gave the small States an equality in one branch of the Legislature, and the large States an inequality in the other branch, the abstract leaning of opinions would better appear. With those however who did not enter with debate, and whose votes could not be distinguished from those of their State colleagues, their opinions could only be known among themselves, or to their particular friends.

I know not Sir that I can give you any of the further information you wish, that is not attainable with more authenticity and particularity from other sources. My acquaintance with Gov Livingston was limited to an exchange of the common civilities, and these to the period of the Convention.

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Item 377 // CCCLXXVII. James Madison to James Robertson.
March 27, 1831.

The journals of the State Legislatures, with the journal and debates of the State Conventions, and the journal and other printed accounts of the proceedings of the Federal Convention of 1787, are, of course, the primary sources of information. Some sketches of what passed in that Convention have found their way to the public, particularly those of Judge Yates and of Mr. Luther Martin. But the Judge, though a highly respectable man, was a zealous partizan, and has committed gross errors in his desultory notes. He left the Convention also before it had reached the stages of its deliberations in which the character of the body and the views of individuals were sufficiently developed. Mr. Martin, who was also present but a part of the time, betrays, in his communication to the Legislature of Maryland, feelings which had a discolouring effect on his statements. As it has become known that I was at much pains to preserve an account of what passed in the Convention, I ought perhaps to observe, that I have thought it becoming, in several views, that a publication of it should be at least of a posthumous date.

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Item 379 // CCCLXXIX. James Madison to Jared Sparks.
Montpellier, April 8, 1831.

I have duly received your letter of March 30th. In answer to your inquiries, “respecting the part acted by Gouverneur Morris in the Federal Convention of 1787, and the political doctrines maintained by him,” it may be justly said, that he was an able, an elo-

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quent, and an active member, and shared largely in the discussions succeeding the 1st of July, previous to which, with the exception of a few of the early days, he was absent.

Whether he accorded precisely with the “political doctrines of Hamilton,” I cannot say. He certainly did not “incline to the democratic side,” and was very frank in avowing his opinions, when most at variance with those prevailing in the Convention. He did not propose any outline of a constitution, as was done by Hamilton; but he contended for certain articles, (a Senate for life particularly) which he held essential to the stability and energy of a government, capable of protecting the rights of property against the spirit of democracy. He wished to make the weight of wealth balance that of numbers, which he pronounced to be the only effectual security to each, against the encroachments of the other.
The finish given to the style and arrangement of the Constitution fairly belongs to the pen of Mr Morris; the task having, probably, been handed over to him by the chairman of the Committee, himself a highly respectable member, and with the ready concurrence of the others. A better choice could not have been made, as the performance of the task proved. It is true, that the state of the materials, consisting of a reported draft in detail, and subsequent resolutions accurately penned, and falling easily into their proper places, was a good preparation for the symmetry and phraseology of the instrument, but there was sufficient room for the talents and taste stamped by the author on the face of it. The alterations made by the Committee are not recollected. They were not such, as to impair the merit of the composition. Those, verbal and others made in the Convention, may be gathered from the Journal, and will be found also to leave that merit altogether unimpaired. The anecdote you mention may not be without a foundation, but not in the extent supposed. It is certain, that the return of Mr Morris to the Convention was at a critical stage of its proceedings. The knot, felt as the Gordian one, was the question between the larger and the smaller States, on the rule of voting in the senatorial branch of the legislature; the latter claiming, the former opposing, the rule of equality. Great zeal and pertinacity had been shown on both sides, and an equal division of votes on the question had been reiterated and prolonged, till it had become not only distressing, but seriously alarming. It was during that period of gloom, that Dr. Franklin made the proposition for a religious service in the Convention, an account of which was so erroneously given, with every semblance of authenticity, through the National Intelligencer,

several years ago. The crisis was not over, when Mr Morris is said to have had an interview and conversation with General Washington and Mr Robert Morris, such as may well have occurred. But it appears that, on the day of his re-entering the Convention, a proposition had been made from another quarter to refer the knotty question to a Committee, with a view to some compromise, the indications being manifest, that sundry members from the larger States were relaxing in their opposition, and that some ground of compromise was contemplated, such as finally took place, and as may be seen in the printed Journal. Mr Morris was in the deputation from the large State of Pennsylvania, and combated the compromise throughout. The tradition is, however, correct, that, on the day of his resuming his seat, he entered with anxious feelings into the debate, and, in one of his speeches painted the consequences of an abortive result to the Convention, in all the deep colors suited to the occasion. But it is not believed, that any material influence on the turn, which things took, could be ascribed to his efforts. For, besides the mingling with them some of his most disrelished ideas, the topics of his eloquent appeals to the members had been exhausted during his absence, and their minds were too much made up, to be susceptible of new impressions.

It is but due to Mr Morris to remark, that, to the brilliancy of his genius, he added, what is too rare, a candid surrender of his opinions, when the lights of discussion satisfied him, that they had been too hastily formed, and a readiness to aid in making the best of measures in which he had been overruled.

Item 380 // CCCLXXX. James Madison to J. K. Paulding.
Montpellier, Apl —, 1831.

Of Franklin I had no personal knowledge till we served together in the Federal Convention of 1787, and the part he took there has found its way to the public, with the exception of a few anecdotes which belong to the unveiled part of the proceedings of that Assembly.

. . . As a proof of the fallability to which the memory of Mr. Hamilton was occasionally subject, a case may be referred to so decisive as to dispense with every other. In the year — Mr. Hamilton, in a letter answering an inquiry of Col. Pickering concerning the plan of Government which he had espoused in the Convention of 1787, states, that at the close of the Convention he put into my hands a draught of a Constitution; and in that draught he had proposed a “President for three years.” Now, the fact is, that in that plan, the original of which I ascertained several years ago to be among his papers, the tenure of office for the President is not three years, but during good behavior.
Item 381 // CCCLXXXI. James Madison to J. K. Paulding.
Apl. 1831.

Much curiosity & some comment have been excited by the marvellous identities in a “Plan of Govt. proposed by Chs. Pinckney in the Convn. of 1787, as published in the Journals with the text of the Constitution as finally agreed to. I find among my pamphlets a copy of a small one “entitled “Observations on the Plan of Govt submitted to the Fedl Convention in Phila on the 28th. of May by Mr. C. P. a Delegate from S. C. delivered at different times in the Convention”

My Copy is so defaced & mutilated that it is impossible to make out eno’ of the Plan as referred to in the Observation, for a due comparison of it, with that printed in the Journal. The pamphlet was printed in N. Y. by Francis Childs. The year is effaced: It must have been not very long after the close of the Convention; and with the sanction at least of Mr. P. himself. It has occurred that a copy may be attainable at the Printing office if still kept up, or examined in some of the Libraries, or Historical Collections in the City. When you can snatch a moment in yr walks with other views; for a call at such places, you will promote an object of some little interest as well as delicacy, by ascertaining whether the article in question can be met with. I have among my manuscript papers, lights on the subject, The pamphlet of Mr. P. could not fail to add to them

Item 382 // CCCLXXXII. James Madison to J. K. Paulding.
June 6. 1831.

Since my letter answering yours of Apl. 6, in which I requested you to make an enquiry concerning a small pamphlet of Charles Pinckney printed at the close of the Fedl Convention of 1787, it has occurred to me that the pamphlet might not have been put in circulation, but only presented to his friends &c. In that way I may have become possessed of the copy to which I referred as in damaged state. On this supposition the only chance of success must be among the Books &c. of individuals on the list of Mr. P-’s political associates & personal friends. Of those who belonged to N. Y. I recollect no one so likely to have recd. a Copy as Rufus King. If that was the case, it may remain with his Representative- and I would suggest an informal resort to that quarter, with a hope that you will pardon this further tax on your kindness.

Item 383 // CCCLXXXIII. James Madison to Jared Sparks.
June 27, 1831.

I have received your letter of the 16th. inst., inclosing a copy of the letter of Mr. Charles Pinckney to Mr. Adams, accompanying the draft of a Constitution for the United States, and describing it as essentially the draft proposed by him to the Federal Convention of 1787.2 The letter to Mr. Adams was new to me. Abundant evidence I find exists of material variance between the two drafts, and I am sorry that the letter of Mr. Pinckney is far from explaining them. It does not appear, as you inferred, that the draft sent to Mr. Adams was compiled from his notes and papers; but that it was one of the several drafts found amongst them, and the very one, he believed, that he had presented to the Convention, all the drafts, however, being substantially the same. Some of the variances may be deduced from the printed journal of the Convention. You will notice, for example, that on the 6th or 7th of June, very shortly after his draft was presented, he proposed to take from the people the election of the Federal House of Representatives, and assign it to the legislatures of the States, a violent presumption that the latter, not the former, was the mode contained in his draft.
It is true, as Mr. Pinckney observes and as the journal shows, that the Executive was the last department of the government that received its full and final discussion; but I am not sure that he is free from error in the view his letter gives of what passed on the occasion, or that the error, with several others, may not be traced by a review of the journal.
I am at a loss for the ground of his contrast between the latter period of the Convention and the cool and patient deliberation for more than four and a half months preceding. The whole term of the Convention, from its appointed commencement, was short of that period; and its actual session, from the date of a quorum, but four months, three days. And the occasion on which the most serious and threatening excitement prevailed (the struggle between the larger and smaller States in relation to the representation in the Senate) occurred, as the journal will show, during the period noted as the cool and patient one. After the compromise which allowed an equality of votes in the Senate, that consideration, with the smaller number and longer tenure of its members, will account for the abridgment of its powers by associating the Executive in the exercise of them. Among the instances in which the memory of Mr. Pinckney failed him is the remark in his letter that, very soon after the Convention met, he had avowed a change of opinion in giving Congress a power to revise the state laws, thinking it safer to refuse the power altogether. It appears from the journal that as late as the 23rd. of August the proposition was renewed, with a change only, requiring two thirds instead of a majority of each house. The journal does not name the mover, but satisfactory information exists that it was Mr. Pinckney. Mr. Adams was probably restrained from printing the letter of Mr. Pinckney by the vague charges in it against the Convention, and a scruple of publishing a part only.

I have been suffering for some time a severe attack of rheumatism, and I offer this brief compliance with your request of my view of Mr. Pinckney’s letter under an unabated continuance of it. This alone would be a reason for desiring that nothing in the communication should be referred to as resting upon my authority. But there are others, drawn from my relation to the subject and the relation which subsisted between Mr. Pinckney and myself, which must always require that I should not be a party to an exposure of the strange incongruities into which he has fallen, without a fuller view of the proofs, and the obligation not to withhold them, than the present occasion would permit.

Item 384 // CCCCLXXXIV. James Madison to J. K. Paulding.
June 27, 1831.

With your favor of the 20th instant I received the volume of pamphlets containing that of Mr. Charles Pinckney, for which I am indebted to your obliging researches. The volume shall be duly returned, and in the meantime duly taken care of. I have not sufficiently examined the pamphlet in question, but have no doubt that it throws light on the object to which it has relation.

Item 385 // CCCCLXXXV. James Madison on the Pinckney Plan.

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 [Interlined “inserted in the debates”.] was taken from the paper furnished to the Secretary of State, and contained in the Journal of the Convention published in 1819 which it being taken for granted was a true copy was not then examined. The coincidence in several instances between that and the Constitution as adopted, having attracted the notice of others was at length suggested to mine. On comparing the paper with the Constitution in its final form, or in some of its Stages; and with the propositions, and speeches of Mr. Pinckney in the Convention, it would seem [Interlined “it was apparent”.] that considerable error must have [Interlined “had”.] crept into the paper; occasioned possibly by the loss of the Document laid before the Convention, (neither that nor the Resolutions offered by Mr 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 in part at least 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 in the Convention that can not be ascribed to accident or anticipation. [Interlined “could not have been anticipated”.]
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 Mr. 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 error 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, according to previous notice too, 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

As an Editorial note to the paper in the hand writing of Mr. M. beginning “The length &c.-”

Striking discrepancies will be found on a comparison of his plan, as furnished to Mr. Adams, and the view given of that which was laid before the Convention, in a pamphlet published by Francis Childs at New York shortly after the close of the Convention. The title of the pamphlet is “Observations on the plan of Government submitted to the Federal Convention on the 28th. of May 1787 by Charles Pinckney &ca.”
But what conclusively proves that the choice of the H. of Reps. by the people could not have been the choice in the lost paper is a letter from Mr. Pinkney to J. M. of March 28. 1789, now on his files, in which he emphatically [shows] adherence to a choice by the State Legres. The following is an extract — “Are you not, to use a full expression, abundantly convinced that the theoretical nonsense of an election of the members of Congress by the people in the first instance, is clearly and practically wrong. — that it will in the end be the means of bringing our Councils into contempt and that the Legislatures (of the States) are the only proper judges of who ought to be elected.” —

Observations on Mr. Pinckney’s plan &c. &c

In the plan of Mr. Pinkney as presented to Mr. Adams & published in the Journal of the Convention.
The House of Representatives to be chosen.
[Crossed out: “by the people; with details similar to the 2d. section I. article of the Constitution of the U. S.”]
No council of Revision.
The plan according to his comments in the pamphlet printed by Francis Childs in New York.
No provision for electing the House of Representatives.
A Council of Revision consisting of the Executive and principal officers of government.
“This, I consider as an improvement in
The President to be elected for years — not in the plan.

“and, except as to Ambassadors, other Ministers, and Judges of the Supreme Court, he shall nominate, and with the consent of the Senate, appoint all other officers of the U. S.”

The 7th Article gives the Senate the exclusive power to regulate the manner of deciding all disputes and controversies now subsisting, or which may arise, between the States, respecting jurisdiction or territory:

Article 6th. “all laws regulating commerce shall require the assent of two thirds of the members present in each House.”

The 14th article gives the Legislature power to admit new States into the Union on the same terms with the original States by ⅔ of both Houses. — nothing further.

* The two paragraphs following were crossed out:

A number of important articles are referred to in the pamphlet & not found in the plan — for example “the provision respecting the attendance of the members of both Houses; the penalties under which their attendance is required, are such as to insure it, as we are to suppose no man would willingly expose himself to the ignominy of a disqualification (pa 25) providing for the writ of Habeas Corpus & trial by Jury in Civil cases (page 26) — “to secure to authors the exclusive right to their performances and discoveries” page 26. So also In the plan presented the powers of the Senate are given in Article 7th. tho’ (The mode of appointment on the rotative principles each mode of appointment class for 4 years,) the mode of appointment of that body it is silent The latter is given in the pamphlet but its powers are not enumerated. The restriction on members of both Houses from holding any office under the union is not adverted to in the pamphlet — nor the power of the Legislature to appoint a Treasurer, to establish post and military roads &c.

Plan. no such provision. Pamphlet. page 25. “a provision respecting the attendance of the members of both Houses; the penalties under which their attendance is required, are
such as to insure it, as we are to suppose no man
would willingly expose himself to the ignominy
of a disqualification”.
Trial by Jury is provided for “in all cases,
criminal as well as Civil”.
“to secure to authors the exclusive right to their
performances and discoveries”.

Powers of the Senate enumerated Article 7th.
vizt. “to declare war, make treaties, &
appoint ambassadors and Judges of the
Supreme Court.*

* In the left hand column under “Plan”, were crossed out four paragraphs on: (1) ineligibility of
members of legislature to hold office; (2) “Legislature to appoint a Treasurer”; (3) Legislature “to establish post
& military roads”; and (4) members of both houses to be paid by their states. Opposite each paragraph in the
right hand column, “silent” was crossed out.

“Every bill, which shall have passed the
Legislature, shall be presented to the
President 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 &a. &a. —
The Legislature shall have power
To subdue a rebellion in any State, on
application of its Legislature;
To provide such dockyards & arsenals, and
erect such fortifications as may be necessary
for the U. S. and to exercise exclusive
jurisdiction therein;
To establish post & military roads;
To declare the law & punishment of
counterfeiting coin.

The Executive “is not a branch of the
Legislature, farther than as a part of the Council
of Revision”.

To declare the punishment of treason, which
shall consist only in levying war against the
U. S., or any of them, or in adhering to their
enemies. No person shall be convicted of
treason but by the testimony of two
witnesses.

These and other important powers and
are unnoticed in his remarks.

There is no numerical correspondence between the articles contained in the plan & those treated of in the
pamphlet & the latter alludes to several more than are included in the former.
In Mr. Pinkney’s letter to Mr. Adams, accompanying his plan, he states that “very soon after the Convention
met, I changed and avowed candidly the change of my opinion on giving the power to Congress to revise the
State laws in certain cases, and in giving the exclusive power to the Senate to declare war, thinking it safer to
refuse the first altogether, and to vest the latter in Congress.”
In his pamphlet he concludes the 5th. page of his argument in favor of the first power with these remarks — “In short, from their example, (other republics) and from our own experience, there can be no truth more evident than this, that, unless our Government is consolidated, as far as is practicable, by retrenching the State authorities, and centering as much force & vigor in the Union, as are adequate to its exigencies, we shall soon be a divided, and consequently an unhappy people. I shall ever consider the revision and negative of the State laws, as one great and leading step to this reform, and have therefore conceived it proper to bring it into view.”

On the 23. August He moved a proposition to vest this power in the Legislature, provided ⅔ of each House assented.

He does not designate the depository of the power to declare war & consequently avows no change of opinion on that subject in the pamphlet, altho’ it was printed after the adjournment of the Convention and is stated to embrace the “observations he delivered at different times in the course of their discussions”

J. M. has a copy of the pamphlet much mutilated by dampness; but one in complete preservation is bound up with “Select Tracts Vol. 2.” belonging to the New York Historical Society, numbered 2687.

Title
Observations on the plan of Government submitted to the Federal Convention, in Philadelphia, on the 28th. of May 1787, By Mr. Charles Pinkney, Delegate from the State of South Carolina — delivered at different times in the course of their discussions —

New York: — Printed by Francis Childs.

In the plan of Mr. Pinkney as presented to Mr. Adams and published in Journal
Article 1. Style — Plan as commented on in Pamphlet
Article 2. Division of Legislative power in two Houses. Not adverted to
Article 3. Members of H. of D. to be chosen by the people. &a. recommended as essential page 8.
Article 4. Senate to be elected by the H. of Del. &c... silent.

Article 5 — relates to the mode of electing the H. of Del. by the people & rules &a.
Every bill to be presented to the President for his revision.

Article 6. powers of the Legislature enumerated & all constitutional acts thereof, and treaties declared to be the supreme law & the judges bound thereby.

Article 7. Senate alone to declare war- make treaties & appoint ministers & Judges of Sup. Court — To regulate the manner of deciding negative on the State laws. The States to retain only local legislation limited to concerns affecting each only. vide Art. 11th.

Article 8. like same in Confed. & gives power to exact postage for expense of office & for revenue. The 7th. article invests the U. S. with
Article 8. The Executive power — h. e. President U. S. for — years & re-eligible- To give information to the Legislature of the state of the Union & recommend measures to their consideration — To take care that the laws be executed — To commission all officers of the U. S. and except ministers & Judges of Sup. Court, nominate & with consent of Senate appoint all other officers — to receive ministers & may correspond with Ex. of different States. To grant pardon except in impeachments. To be commander in chief — to receive a fixed compensation — to take an oath — removable on impeachment by H. of D. and conviction in Supreme Court of bribery or corruption. The President of Senate to act as Prest. in case of death &a and the Speaker of H. of D. in case of death of Pres. of Senate — Article 9. gives the legislature power to establish Courts of law, equity & admiralty & relates to the appointment tenure & compensation of judges — one to be the Supreme Court — its jurisdiction over all cases under the laws of U. S. or affecting Ambassadors &c, to the trial of impeachment of officers of U. S.; cases of admiralty & maritime jurisdiction — cases where original & where appellate — Article 10. after first census the H. of D- shall apportion the Senate by electing one Senator for every for every — members each State shall have in H. of D- each State to have at least one member.

Page 9. The Executive should be appointed septennially, but his eligibility should not be limited — Not a branch of the Legislature further than as part of the Council of revision - His duties to attend to the execution of the acts of Congress, by the several States; to correspond with them on the subject; to prepare and digest, in concert with the great departments, business that will come before the Legislature. To acquire a perfect knowledge of the situation of the Union, and to be charged with the business of the Home Deptmt. — To inspect the Departments. To consider their Heads as a Cabinet Council & to require their advice. To be Commander in Chief — to convene the legislature on special occasions & to appoint all officers but Judges & Foreign ministers — removable by impeachment — salary to be fixed permanently by the Legislature.

The 9th article respecting the appointment of Federal Courts, for deciding controversies between different States, is the same with the Confederation; but this may with propriety be left to the Supreme Judicial (Article 7th. of the plan gives the power to the Senate of regulating the manner of decision)

The 10th article gives Congress a right to institute such offices as are necessary; of erecting a Federal Judicial Court; and of appointing Courts of Admiralty.

Page 19. The exclusive right of coining money &ca is essential to assuring the federal funds — &a.

Page 20. In all important questions where the Confederation made the assent of 9 States necessary I have made ⅔ of both Houses — and have added to them the regulation of trade and acts for levying Impost & raising revenue — page 20. The exclusive right of making regulations for the government of the Militia ought to be vested in the Federal Councils &a page 22. The article empowering the U. S. to admit new States indispensable — vide Article
To establish uniform rules of naturalization in Article 6.

Article 16. provides the same by \( \frac{3}{5} \) — —

Nothing of it — — —

It is provided in Art. 9. that “All criminal offenses (except in cases of impeachment) shall be tried in the State where committed. The trials shall be open & public, and be by Jury.” nothing as to the rest —

Article 6. provides for a seat of Govt. & a National University thereat — but no protection for authors is provided —

Not in the plan — — —

I have received your favor of the 14th instant. The simple question is, whether the draught sent by Mr. Pinckney to Mr. Adams, and printed in the Journal of the Convention, could be the same with that presented by him to the Convention on the 29th day of May, 1787; and I regret to say that the evidence that that was not the case is irresistible. Take, as a sufficient example, the important article constituting the House of Representatives, which, in the draught sent to Mr. Adams, besides being too minute in its details to be a possible anticipation of the result of the discussion, &c., of the Convention on that subject, makes the House of Representatives the choice of the people. Now, the known opinion of Mr. Pinckney was, that that branch of Congress ought to be chosen by the State Legislatures, and not immediately by the people. Accordingly, on the 6th day of June, not many days after presenting his draught, Mr. Pinckney, agreeably to previous notice, moved that, as an amendment to the Resolution of Mr. Randolph, the term “people” should be struck out and the word “Legislatures” inserted; so as to read, “Resolved, That the members of the first branch of the National Legislature ought to be elected by the Legislatures of the several States.” But what decides the point is the following extract from him to me, dated March 28, 1789:

“Are you not, to use a full expression, abundantly convinced that the theoretic nonsense of an election of the members of Congress by the people, in the first instance, is clearly and practically wrong; that it will, in the end, be the means of bringing our Councils into contempt, and that the Legislatures are the only proper judges of who ought to be elected?”
Other proofs against the identity of the two draughts may be found in Article VIII of the Draught, which, whilst it specifies the functions of the President, contains no provision 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 Draught corresponds with the Constitution, it is at variance with the ideas of Mr. Pinckney, as decidedly expressed in his votes on the Journal of the Convention. Thus, in Article VIII of the Draught, 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 Article III, it is required that all money-bills shall originate in the first branch of the Legislature; and yet he voted, on the 8th August, for striking out that provision in the Draught reported by the Committee on the 6th. In Article V, members of each House are made ineligible, as well as incapable, of holding any office under the Union, &c., as was the case at one stage of the Constitution; a disqualification disapproved and opposed by him August 14th. Further discrepancies might be found in the observations of Mr. Pinckney, printed in a pamphlet by Francis Childs, in New York, shortly after the close of the Convention. I have a copy, too mutilated for use, but it may probably be preserved in some of your historical repositories.

It is probable that in some instances, where the Committee which reported the Draught of Augt 6th might be supposed to have borrowed from Mr. Pinckney’s Draught, they followed details previously settled by the Convention, and ascertainable, perhaps, by the Journal. Still there may have been room for a passing respect for Mr. Pinckney’s plan by adopting, in some cases, his arrangement; in others, his language. A certain analogy of outlines may be well accounted for. All who regard the object of the Convention to be a real and regular Government, as contradistinguished from the old Federal system, looked to a division of it into Legislative, Executive, and Judiciary branches, and of course would accommodate their plans to their organization. This was the view of the subject generally taken and familiar in conversation, when Mr. Pinckney was preparing his plan. I lodged in the same house with him, and he was fond of conversing on the subject. As you will have less occasion than you expected to speak of the Convention of 1787, may it not be best to say nothing of this delicate topic relating to Mr. Pinckney, on which you cannot use all the lights that exist and that may be added?

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I return with my thanks the printed speech of Col. Hayne on the 4th. of July last. It is blotted with many strange errors, some of a kind not to have been looked for from a mind like that of the author. . . . But I find that by a sweeping charge, my inconsistency is extended to “my opinions on almost every important question which has divided the public into parties”. In supporting this charge, an appeal is made to “Yates’ secret Debates in the Federal Convention of 1787”, as proving that I originally entertained opinions adverse to the Rights of the States; and to the writings of Col. Taylor of Caroline, as proving that I was in that convention, “an advocate for a consolidated national Government.

Of the Debates, it is certain that they abound in errors, some of them very material in relation to myself. Of the passages quoted, it may be remarked that they do not warrant the inference drawn from them. They import “that I was disposed to give Congress a power to repeal State laws”, and “that the States ought to be placed under the controul of the Genl. Government, at least as much as they were formerly when under the British King & Parliament”.

The obvious necessity of a controul on the laws of the States, so far as they might violate the Constn. & laws of the U. S. left no option but as to the mode. The modes presenting themselves, were 1. a Veto on the passage of the State laws. 2. a Congressional repeal of them, 3 a Judicial annulment of them. The first tho extensively favor’d, at the outset, was found on discussion, liable to insuperable objections, arising from the extent of Country, and the multiplicity of State laws. The second was not free from such as gave a preference to the third as now provided by the Constitution. The opinion that the States ought to be placed not less under the Govt. of
the U. S. than they were under that of G. B., can provoke no censure from those who approve the Constitution as it stands with powers exceeding those ever allowed by the Colonies to G. B., particularly the vital power of taxation, which is so indefinitely vested in Congs. and to the claim of which by G. B. a bloody war, and final separation was preferred.

The author of the “Secret Debates”, tho highly respectable in his general character, was the representative of the portion of the State of New York, which was strenuously opposed to the object of the Convention, and was himself a zealous partizan. His notes carry on their face proofs that they were taken in a very desultory manner, by which parts of sentences explaining or qualifying other parts, might often escape the ear. He left the Convention also on the 5th. of July before it had reached the midway of its Session, and before the opinions of the members were fully developed into their matured & practical shapes. Nor did he conceal the feelings of discontent & disgust, which he carried away with him. These considerations may account for errors; some of which are self-condemned. Who can believe that so crude and untenable a statement could have been intentionally made on the floor of the Convention as “that the several States were political Societies, varying from the lowest Corporations, to the highest sovereigns” or “that the States had vested all the essential rights of Government in the old Congress.”

On recurring to the writings of Col. Taylor, it will be seen that he founds his imputation against myself and Govr. Randolph, of favoring a Consolidated National Govrnt on the Resolutions introduced into the Convention by the latter, in behalf of the Virga. Delegates, from a consultation among whom they were the result. The Resolutions import that a Govt. consisting of a National Legislature. Executive & Judiciary, ought to be substituted for the Existing Congs. Assuming for the term National a meaning coextensive with a Single Consolidated Govt. he filled a number of pages, in deriving from that source, a support of his imputation. The whole course of proceedings on those Resolutions ought to have satisfied him that the term National as contradistinguished from Federal, was not meant to express more than that the powers to be vested in the new Govt. were to operate as in a Natl. Govt. directly on the people, & not as in the Old Confedercy. on the States only. The extent of the powers to be vested, also tho’ expressed in loose terms, evidently had reference to limitations & definitions, to be made in the progress of the work, distinguishing it from a plenary & Consolidated Govt.

It ought to have occurred that the Govt. of the U. S being a novelty & a compound, had no technical terms or phrases appropriate to it; and that old terms were to be used in new senses, explained by the context or by the facts of the case.

Some exulting inferences have been drawn from the change noted in the Journal of the Convention, of the word National into “United States.” The change may be accounted for by a desire to avoid a misconception of the former, the latter being preferred as a familiar caption. That the change could have no effect on the real character of the Govt. was & is obvious; this being necessarily deduced from the actual structure of the Govt. and the quantum of its powers.

Another error has been in ascribing to the intention of the Convention which formed the Constitution, an undue ascendency in expounding it. Apart from the difficulty of verifying that intention it is clear, that if the meaning of the Constitution is to be sought out of itself, it is not in the proceedings of the Body that proposed it, but in those of the State Conventions which gave it all the validity & authority it possesses.

Item 389 // CCCLXXXIX. James Madison to James T. Austin.
Montpellier Feby 6 1832.

I have recd your letter of 19th ulto requesting “a communication of any facts connected with the services of the late V. President Gerry in the Convention of 1787” The letter was retarded by its address to Charlottesville instead of Orange City. It would give me pleasure to make any useful contribution to a biography of Mr. Gerry for whom I had a very high esteem and a very warm regard. But I know not that I could furnish any particular facts of that character separable from his general course in the Convention, especially without some indicating reference to them. I may say in general, that Mr. G. was an active an able, and interesting member of that
assembly, and that the part he bore in its discussions and proceedings was important and continued to the close of them. The grounds on which he dissented from some of the results are well known.

Item 390 // CCCXC. James Madison to Professor Davis. Montpellier, 1832.

It deserves particular attention, that the Congress which first met contained sixteen members, eight of them in the House of Representatives,* fresh from the Convention which framed the Constitution, and a considerable number who had been members of the State Conventions which had adopted it, taken as well from the party which opposed as from those who had espoused its adoption. Yet it appears from the debates in the House of Representatives, (those in the Senate not having been taken,) that not a doubt was started of the power of Congress to impose duties on imports for the encouragement of domestic manufactures. . . .

* Nicholas Gilman, Elbridge Gerry, Roger Sherman, George Clymer, Thomas Fitzsimmons, Daniel Carroll, James Madison, Jr., Abraham Baldwin.

The incapacity of the States separately to regulate their foreign commerce was fully illustrated by an experience which was well known to the Federal Convention when forming the Constitution. It was well known that the incapacity gave a primary and powerful impulse to the transfer of the power to a common authority capable of exercising it with effect. . . .

New York, Pennsylvania, Rhode Island, and Virginia, previous to the establishment of the present Constitution, had opportunities of taxing the consumption of their neighbours, and the exasperating effect on them formed a conspicuous chapter in the history of the period. The grievance would now be extended to the inland States, which necessarily receive their foreign supplies through the maritime States, and would be heard in a voice to which a deaf ear could not be turned.

The condition of the inland States is of itself a sufficient proof that it could not be the intention of those who framed the Constitution to substitute for a power in Congress to impose a protective tariff, a power merely to permit the States individually to do it. Although the present inland States were not then in existence, it could not escape foresight that it would soon, and from time to time, be the case. Kentucky was then known to be making ready to be an independent State, and to become a member of the Confederacy. What is now Tennessee was marked by decided circumstances for the same distinction. On the north side of the Ohio new States were in embryo under the arrangements and auspices of the Revolutionary Congress, and it was manifest, that within the Federal domain others would be added to the Federal family.

As the anticipated States would be without ports for foreign commerce, it would be a mockery to provide for them a permit to impose duties on imports or exports in favor of manufactures, and the mockery would be the greater as the obstructions and difficulties in the way of their bulky exports might the sooner require domestic substitutes for imports; and a protection for the substitutes, by commercial regulations, which could not avail if not general in their operation and enforced by a general authority. . . .

But those who regard the permission grantable in section ten, article one, to the States to impose duties on foreign commerce, as an intended substitute for a general power in Congress, do not reflect that the object of the permission, qualified as it is, might be less inconsistently explained by supposing it a concurrent or supplemental power, than by supposing it a substituted power.

Finally, it cannot be alleged that the encouragement of manufactures permissible to the States by duties on foreign commerce,

is to be regarded as an incident to duties imposed for revenue. Such a view of the section is barred by the fact that revenue cannot be the object of the State, the duties accruing, not to the State, but to the United States. The duties also would even diminish, not increase, the gain of the federal treasury, by diminishing the consumption of imports within the States imposing the duties, and, of course, the aggregate revenue of the United States. The revenue, whatever it might be, could only be regarded as an incident to the manufacturing object, not this to the revenue. . . .
Attempts have been made to show, from the journal of the Convention of 1787, that it was intended to withhold from Congress a power to protect manufactures by commercial regulations. The intention is inferred from the rejection or not adopting of particular propositions which embraced a power to encourage them. But, without knowing the reasons for the votes in those cases, no such inference can be sustained. The propositions might be disapproved because they were in a bad form or not in order; because they blended other powers with the particular power in question; or because the object had been, or would be, elsewhere provided for. No one acquainted with the proceedings of deliberative bodies can have failed to notice the frequent uncertainty of inferences from a record of naked votes. It has been with some surprise, that a failure or final omission of a proposition “to establish public institutions, rewards, and immunities for the promotion of agriculture, commerce, and manufactures,” should have led to the conclusion that the Convention meant to exclude from the federal power over commerce regulations encouraging domestic manufactures. (See Mr. Crawford’s letter to Mr. Dickerson, in the National Intelligencer of —.) Surely no disregard of a proposition embracing public institutions, rewards, and immunities for the promotion of agriculture, commerce, and manufactures, could be an evidence of a refusal to encourage the particular object of manufactures, by the particular mode of duties or restrictions on rival imports. In expounding the Constitution and deducing the intention of its framers, it should never be forgotten, that the great object of the Convention was to provide, by a new Constitution, a remedy for the defects of the existing one; that among these defects was that of a power to regulate foreign commerce; that in all nations this regulating power embraced the protection of domestic manufactures by duties and restrictions on imports; that the States had tried in vain to make use of the power, while it remained with them; and that, if taken from them and transferred to the Federal Government, with an exception of the power to encourage domestic manufactures, the American people, let it be repeated, present the solitary and strange spectacle of a nation disarming itself of a power exercised by every nation as a shield against the effect of the power as used by other nations. Who will say that such considerations as these are not among the best keys that can be applied to the text of the Constitution? and infinitely better keys than unexplained votes cited from the records of the Convention.

Item 391 // CCCXCI. James Madison to W. C. Rives.1
Montpr. Ocr. 21 — 33.

As the charges of M—s. are founded in the main, on “Yates debates in the federal Convention of 1787”, it may be remarked without impeaching the integrity of the Reporter, that he was the representative in that Body of the party in N. York which was warmly opposed to the Convention, and to any change in the principles of the “articles of confederation”; that he was doubtless himself at the time, under all the political bias which an honest mind could feel; that he left the Convention, as the Journals shew, before the middle of the Session, and before the opinions or views of the members might have been developed into their precise & practical application; that the notes he took, are on the face of them, remarkably crude & desultory, having often the appearance of scraps & expressions as the ear hastily caught them, with a liability to omit the sequel of an observation or an argument which might qualify or explain it.

With respect to inferences from votes in the Journal of the Convention, it may be remarked, that being unaccompanied by the reasons for them, they may often have a meaning quite uncertain, and sometimes contrary to the apparent one. A proposition may be voted for, with a view to an expected qualification of it; or voted agst. as wrong in time or place, or as blended with other matter of objectionable import. Although such was the imperfection of Mr Yates Notes of what passed in the Convention, it is on that authority alone that J. M. is charged with having said “that the States never possessed the essential rights of sovereignty; that these were always vested in Congress”

It must not be overlooked that this language is applied to the Condition of the States, and to that of Congress, under “the Articles of Confederation”. Now can it be believed that Mr. Yates did not misunderstand J. M in making him say, that the States had then
never possessed the essential rights of sovereignty” and that “these had always been vested in the Congress then existing. The charge is incredible, when it is recollected that the second of the Articles of Confederation emphatically declares “that each State retains its sovereignty freedom & independence and every power &c, which is not expressly delegated to the U. S. in Congs. assembled”

It is quite possible that J. M. might have remarked that certain powers attributes of sovereignty had been vested in Congs; for that was true as to the powers of war, peace, treaties &c” But that he should have held the language ascribed to him in the notes of Mr. Yates, is so far from being credible, that it suggests a distrust of their correctness in other cases where a strong presumptive evidence is opposed to it.

Again, J M. is made to say “that the States were only great political corporations having the power of making by-laws, and these are effectual only if they were not contradictory to the general confederation”

Without admitting the correctness of this statement in the sense it seems meant to convey, it may be observed that according to the theory of the old confederation, the laws of the States contradictory thereto would be ineffectual. That they were not so in practice is certain, and this practical inefficacy is well known to have been the primary inducement to the exchange of the old for the new system of Govt. for the U. S.

Another charge agst. J. M. is an “opinion that the States ought to be placed under the controul of the General Govt. at least as much as they formerly were under the King & Parliament of G. B.”

The British power over the Colonies, as admitted by them, consisted mainly of 1. the Royal prerogatives of war & peace, treaties coinage &c. with a veto on the Colonial laws as a guard agst. laws interfering with the General law, and with each other: 2 the parliamentary power of regulating commerce, as necessary to be lodged somewhere, and more conveniently there than elsewhere. These powers are actually vested in the Federal Govt. with the difference, that for the veto power is substituted the general provision that the Constitution & laws of the U. S. shall be paramount to the Constitutions & laws of the States; and the further difference that no tax whatever should be levied by the British Parliament, even as a regulation of commerce; whereas an indefinite power of taxation is allowed to Congress, with the exception of a tax on exports, a tax the least likely to be resorted to. When it is considered that the power of taxation is the most commanding of powers, the one for which G. Britain contended for, and the Colonies resisted by a war of seven

years, and when it is considered that the British Govt. was, in every branch, irresponsible to the American people, whilst every branch of the Federal Government is responsible to the States and the people as their Constituents, it might well occur on a general view of the subject, that in an effectual reform of the Federal system, as much power might be safely intrusted to the new Govt. as was allowed to G. B. in the old one.

An early idea taken up by J. M. with a view to the security of a Govt. for the Union, and the harmony of the State Governments, without allowing to the former an unlimited and consolidated power, appears to have been a negative on the State laws, to be vested in the Senatorial branch of the Govt; but under what modifications does not appear. This again is made a special charge against him. That he became sensible of the obstacles to such an arrangement, presented in the extent of the Country, the number of the States and the multiplicity of their laws, can not be questioned. But is it wonderful that among the early thoughts on a subject so complicated and full of difficulty, one should have been turned to a provision in the compound and on this point analogous system of which this Country had made a part; substituting for the distant, the independent & irresponsible authority of a King which had rendered the provision justly odius, an elective and responsible authority within ourselves.

It must be kept in mind that the radical defect of the old confederation lay in the power of the States to comply with to disregard or to counteract the authorised requisitions & regulations of Congress that a radical cure for this fatal defect, was the essential object for which the reform was instituted; that all the friends of the reform looked for such a cure; that there could therefore be no question but as to the mode of effecting it. The deputies of Virga. to the Convention, consisting of G. W. Govr. R. &c appear to have proposed a power in Congs. to repeal the unconstitutional and interfering laws of the States. The proposed negative on them, as the Journals shew, produced an equal division of the Votes. In every proceeding of the Convention where the question of paramountship in the laws of the Union could be involved, the necessity of it appears to have been taken for granted. The mode of controlling the legislation of the States which was finally preferred has been already noticed. Whether it be the best mode, experience is to decide. But the necessity of some adequate mode of preventing the States in their individual characters, from defeating the Constitutional authority of the States in
their united character, and from collisions among themselves, had been decided by a past experience. (It may be thought 
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not unworthy of notice that Col. Taylor regarded the controul of the Fedl. Judiciary over the State laws as more objectionable than a Legislative negative on them. See New Views &c. p. 18. contra see Mr. Jefferson-vol. 2. p. 163)

M — s asks “If the States possessed no sovereignty, how could J. M. “demonstrate that the States retained a residuary sovereignty”, and calls for a solution of the problem. He will himself solve it, by answering the question, which is most to be believed, that J M. should have been guilty of such an absurdity, or that Mr. Yates should have erred in ascribing it to him.

Mr. Y. himself says “that J. M. expressed as much attachment to the rights of the States as to the trial by Jury.”

By associating J. M. with Mr. Hamilton who entertained peculiar opinions, M—s would fain infer that J. M. concurred with those opinions. The inference would have been as good, if he had made Mr. H. concur in all the opinions of J. M. That they agreed to a certain extent, as the body of the Convention manifestly did, in the expediency of an energetic Govt. adequate to the exigencies of the Union, is true. But when M — s adds “that Mr. H. & Mr. M. advocated a system, not only independent of the States, but which would have reduced them to the meanest municipalities”, he failed to consult the recorded differences of opinion between the two individuals

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Item 392 // CCCXCII. James Madison to John Tyler.

This letter it appears was not sent to Mr. Tyler — tho’ it seems a fair vindication of the parties assailed.

In your speech of February 6th. 1833 you say “He (Edmund Randolph) proposed (in the Federal Convention of 1787) a Supreme National Government, with a Supreme Executive, a Supreme Legislature, and a Supreme Judiciary, and a power in Congress to veto State laws. Mr. Madison I believe, Sir, was also an advocate of this plan of govt. If I run into error on this point, I can easily be put right. The design of this plan, it is obvious, was to render the States nothing more than the provinces of a great government to rear upon the ruins of the old Confederacy a consolidated Government, one and indivisible.”

I readily do you the justice to believe that it was far from your intention to do injustice to the Virginia Deputies to the Convention of 1787. But it is not the less certain that it has been done to all of them, and particularly to Mr Edmond Randolph.

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The Resolutions proposed by him, were the result of a Consultation among the Deputies, the whole number, seven being present. The part which Virga. had borne in bringg. abt. the Convention, suggested the Idea that some such initiative step might be expected from her Deputation; and Mr. Randolph was designated for the task. It was perfectly understood, that the Propositions committed no one to their precise tenor or form; and that the members of the Deputation wd. be as free in discussing and shaping them as the other members of the Convention. Mr. R. was made the organ on the occasion, being then the Governor of the State, of distinguished talents, and in the habit of public speaking. Genl. Washington, tho’ at the head of the list was, for obvious reasons disinclined to take the lead. It was also foreseen that he would be immediately called to the presiding station

Now what was the plan sketched in the Propositions?

They proposed that “the Articles of Confederation shd. be so corrected and enlarged as to accomplish the objects of their Institution — namely common defence, security of liberty, and general welfare,”: (the words of the Confederation)

That a national Legislature, a national Executive and a national Judiciary should be established: (this organization of Departments the same as in the adopted Constitution)

That the right of suffrage in the Legislature shd be (not equal among ye States as in the Confederation but) proportioned to quotas of contribution or numbers of free inhabitants, as might seem best in different cases”; (the same principle corresponding with the mixed rule adopted)
“That it should consist of two branches: the first elected by the people of the several States, the second by the first of a number nominated by the State Legislatures”, (a mode of forming a Senate regarded as more just to the large States, than the equality which was yielded to the small States by the compromise with them but not material in any other view. In reference to the practicable equilibrium between the General & the State authorities, the comparative influence of the two modes will depend on the question whether the small States, will incline most, to the former or to the latter scale.)

That a national Executive, with a Council of Revision consisting of a number of the Judiciary, (wch. Mr Jefferson wd. have approved) and a qualified negative on the laws, be instituted, to be chosen by the Legislature for the term of NA years, to be ineligible a second time, and with a compensation to be neither increased nor diminished so as to affect the existing magistracy. (there is nothing in this Ex. modification, materially different in its Constitutional bearing from that finally adopted in the Constitution of the U. S.)

That a national Judiciary be established, consisting of a Supreme appellate and inferior, Tribunals, to hold their offices during good behavior, and with compensations, not to be increased or diminished, so as to affect persons in office (there can be nothing here subjecting it to unfavorable comparison with the article in the Constitution existing)

“That provision ought to be made for the admission of new States lawfully arising within the limits of the U. S. wth. the consent of a number of votes in the natl. Legislature less than the whole”. (This is not at variance wth. the existing provision)

“That a Republican Govt. ought to be guaranteed by the U. S. to each State. (this is among the existing provisions)

“That provision ought to be made for amending the articles of Union, without requiring the assent of the National Legislature (this is done in the Constn.)

“That the Legisl: Ex. & Judiciary powers of the several States ought to be bound by oath to support the Articles of Union (this was provided with the emphatic addition of — “any thing in the Constn. or laws of the States notwithstanding)

“That the Act of the Convention, after the approbation of the (then) Congs. be submitted to an assembly or assemblies of Representatives recommended by the several Legislatures, to be expressly chosen by the people to decide thereon (This was the course pursued)

So much for the structure of the Govt. as proposed by Mr. Randolph, & for a few miscellaneous provisions. When compared with the Constn: as it stands what is there of a consolidating aspect that can be offensive to those who applaud approve or are satisfied with the Constn:

Let it next be seen what were the powers proposed to be lodged in the Govt. as distributed among its several Departments.

The Legislature, each branch possessing a right to originate acts, was to enjoy 1. the Legislative rights vested in the Congs. of the Confederation, (This must be free from objection, especially as the powers of that description were left to the selection of the Convention.

2. cases to which the separate States, would be incompetent or in which the harmony of the U. S. might be intercepted by individual Legislation. (It can not be supposed that these descriptive phrases were to be left in their indefinite extent to Legislative discretion. A selection & definition of the cases embraced by them was to be the task of the Convention. If there could be any doubt that this was intended, & so understood by the Convention, it would be removed by the course of proceeding on them as recorded, in its Journal. many of the propositions made in the Convention, fall within this remark: being, as is not unusual general in their phrase, but if adopted to be reduced to their proper shape & specification.

3. to negative all laws passed by the several States contravening, in the opinion of the national Legislature, the Articles of Union or any Treaty subsisting under their Authority. (The necessity of some constitutional and effective provision guarding the Constn. & laws of the Union, agst. violations of them by the laws of the States, was felt and taken for granted by all from the commencement, to the conclusion of the work performed by the Convention. Every vote in the Journal involving the opinion, proves a unanimity among the Deputations, on this point. A voluntary & unvaried concurrence of so many, (then 13 with a prospect of continued increase), distinct
independent authorities, in expounding & acting on a rule of Conduct, which must be the same for all, or in force in none, was a calculation, forbidden by a knowledge of human nature, and especially so by the experience of the Confederacy, the defects of which were to be supplied by the Convention.)

With this view of the subject, the only question was the mode of controul on the Individual Legislatures. This might be either preventive or corrective; The former by a negative on the State laws; the latter by a Legislative repeal by a Judicial supersedeas, or by an administrative arrest of them. The preventive mode as the best if equally practicable with the corrective, was brought by Mr. R. to the consideration of the Convention. It was, tho’ not a little favored as appears by the votes in the Journal finally abandoned, as not reducible to practice. Had the negative been assigned to the Senatorial branch of the Govt. representedg the State Legislatures, thus giving to the whole a controul of these over each, the expedient would probably have been still more favorably recd; tho’ even in that form, subject to insuperable objections, in the distance of many of the State Legislatures, and the multiplicity of the laws of each.

Of the corrective modes, a repeal by the National Legislature was pregnant with inconveniences rendering it inadmissible.

The only remaining safeguard to the Constitution and laws of the Union, agst. the encroachment of its members and anarchy among themselves, is that which was adopted, in the Declaration that the Constitution laws & Treaties of the U. S should be the supreme law of the Land, and as such be obligatory on the Authorities of the States as well as those of the U. S.

The last of the proposed Legislative powers was “to call forth the force of the Union agst. any member failing to fulfil its duty under the Articles of Union”

The evident object of this provision was not to enlarge the powers of the proposed Govt. but to secure their efficiency. It was doubtless suggested by the inefficiency of the Confederate system, from the want of such a sanction; none such being expressed in its Articles; and if as Mr. Jefferson argued, necessarily implied, having never been actually employed. The proposition as offered by Mr. R. was in general terms. It might have been taken into Consideration, as a substitute for, or as a supplement to the ordinary mode of enforcing the laws by Civil process; or it might have been referred to cases of territorial or other controversies between States and a refusal of the defeated party to abide by the decision; leaving the alternative of a Coercive interposition by the Govt. of the Union, or a war between its members, and within its bowels. Neither of these readings nor any other, which the language wd. bear, could countenance a just charge on the Deputation or on Mr. Randolph, of contemplating a consolidated Govt. with unlimited powers.

The Executive powers do not cover more ground, than those inserted by the Convention to whose discretion, the task of enumerating them was submitted. The proposed association with the Executive of a Council of Revision, could not give a consolidating feature to the plan.

The Judicial power in the plan, is more limited than the Jurisdiction described in the Constn; with the exception of cases of “impeachment of any national officer”, and questions which involve the national peace & harmony.”

The trial of Impeachts. is known to be one of the most difficult of Constl. arrangemts. The reference of it to the Judicial Dept. may be presumed to have been suggested by the example in the Constitution of Virga. The option seemed to lie between that & the other Depts. of the Govt., no example of an organization excluding all the Departs. presenting itself. Whether the Judl mode proposed, was preferable to that inserted in the Const: or not, the difference cannot affect the question of a Consolidating aspect or tendency.

By questions involving “the Natl. peace and harmony”, no one can suppose more was meant than might be specified, by the Convention as proper to be referred to the Judiciary either, by the Constn: or the Constl authority of the Legislature. They could be no rule, in that latitude, to a Court, nor even to a Legislature with limited powers.

That the Convention understood the entire Resolutions of Mr. R to be a mere sketch in which omitted details were to be supplied and the general terms and phrases to be reduced to their proper details, is demonstrated by the use made of them in the Convention. They were taken up & referred to a Come. of the whole in that sense; discussed one by one; referred occasionally to special Coms., to Comes. of detail on special points, at length to a Come. to digest & report the draft of a Constn: and finally to a Come. of arrangement and diction.
On this review of the whole subject, candour discovers no ground for the charge, that the Resolns. contemplated a Govt. materially different from or more national than that in which they terminated, and certainly no ground for the charge of consolidating views in those from whom the Resolns. proceeded.

What then is the ground on which the charge rests? It cd. not be on a plea that the plan of Mr. R. gave unlimited powers to the proposed Governt: for the plan expressly aimed at a specification, & of course a limitation of the powers.

It cd. not be on the supremacy of the general authority over the separate authorities, for that supremacy, as already noticed, is more fully & emphatically established by the text of the Constitution?

It cd. not be on the proposed ratification, by the people instead of the States for that is the ratification on wch. the Constn. is founded.

The Charge must rest on the term “National” prefixed to the organized Depts. in the propositions of Mr. R. yet how easy is it to acct. for the use of the term witht taking it in a consolidating sense?

In the 1st. place. It contradistinguished the proposed Govt from the Confederacy which it was to supersede.

2. As the System was to be a new & compound one a nondescript without a technical appellation for it, the term “National” was very naturally suggested by its national features. 1. in being estabd. not by the authority of State Legs but by the original authy. of the people 2. in its organization into Legisl. Ex. & Judy. Departs.: and 3. in its action on the people of the States immediately, and not on the Govts. of the States, as in a Confederacy.

But what alone would justify & acct. for the application of the term National to the proposed Govt. is that it wd. possess, exclusively all the attributes of a natl. Govt. in its relations with other nations including the most essential one, of regulating foreign Commerce; with an effective means of fulfilling the obligs. & responsiby of the U. S. to other nations. [Crossed out: “Even under the Confedy the States in their U. Character were considered and called a nation; altho their Treaties & transactions with foreign nations depended for their execution on the will of the several States, & altho the regulation of foreign commerce even remained with the States.”] Hence it was that the term natl. was at once [530]

so readily applied to the new Govt. and that it has become so universal & familiar. It may safely be affirmed that the same wd. have been the case, whatever name might have been given to it by the props. of Mr. R. or by the Convention. A Govt: which alone is known & acknowledged by all foreign nations, and alone charged with the international relations, could not fail to be deemed & called at home, a Natl. Govt.

After all, in discussing & expounding the character & import of a Constn., let candor decide whether it be not more reasonable & just, to interpret the name or title by facts on the face of it, than to make the title torture the facts by a bed of Procrustes into a fitness to the title.

I must leave it to yourself to judge whether this exposition of the Resolns. in question be not sufficiently reasonable to protect them from the imputation of a consolidating tendency, and still more the Virga Deputies from having that for their object.

With respect to Mr. R. particularly, is not some respect due to his public letter to the Speaker of ye. H. of D. in which he gives for his refusal to sign the Constn: reasons irreconcileable with the supposition that he cd. have proposed the Resolns. in a meaning charged on them? Of Col. Mason who also refused, it may be inferred from his avowed reasons that he cd. not have acquiesced in the propositions, if understood or intended to effect a Consol. Gov.

So much use has been made of Judge Yates’ minutes of debates in the Convention, that I must be allowed to remark that they abound in inaccuracies, and are not free from gross errors some of which do much injustice to the arguments & opinions of particular members. All this may be explained without a charge of wilful misrepresentation by the very desultory manner in which his notes appear to have been taken his ear catching particular expressions & losing qualifications of them; and by prejudices giving to his mind, all the bias which an honest one could feel. He & his colleague were the Representatives of the dominant party in N. York, which was opposed to the Convention & the object of it, which was averse to any essential change in the Articles of Confederation, which had inflexibly refused to grant even a duty of 5 per Ct. on imports for the urgent debt of the Revolution, which was availing itself, of the peculiar situation of New York, for taxing the consumption of her neighbours, and which foresaw that a primary aim of the Convention wd. be to transfer from the States to the Common authority, the entire regulation of foreign Commerce. Such were the feelings of the two Deputies, that on finding the Convention bent on radical reform of
the Federal system, they left it in the midst of its discussions and before the opinions & views of many of the members were drawn out to their final shape & practical application.

Without impeaching the integrity of Luther Martin, it may be observed of him also, that his report of the proceedings of the Convention during his stay in it, shews by its colouring that his feelings were but too much mingled with his statements and inferences. There is good ground for believing that Mr. M. himself, became sensible and made no secret of his regret, that in his address to the Legislature of his State, he had been betrayed by the irritated state of his mind, into a picture that might do injustice both to the Body and to particular members.

Item 393 // CCCXCIII. James Madison to Thomas S. Grimke.
Montpr. Jany, 6. 1834.

You wish to be informed of the errors in your pamphlet alluded to in my last. The first related to the proposition of Doctor Franklin in favor of a religious service in the Federal Convention. The proposition was received & treated with the respect due to it; but the lapse of time which had preceded, with considerations growing out of it, had the effect of limiting what was done, to a reference of the proposition to a highly respectable Committee. This issue of it may be traced in the printed Journal. The Quaker usage, never discontinued in the State & the place where the Convention held its sittings, might not have been without an influence as might also, the discord of religious opinions within the Convention, as well as among the Clergy of the Spot. The error into which you had fallen may have been confirmed by a communication in the National Intelligencer some years ago, said to have been received through a respectable channel from a member of the Convention. That the communication was erroneous is certain; whether from misapprehension or misrecollection, uncertain.

The other error lies in the view which your note for the 18th. page, gives of Mr. Pinckney’s draft of a Constitution for the U. S, and its conformity to that adopted by the Convention. It appears that the Draft laid by Mr. P. before the Convention, was like some other important Documents, not among its preserved proceedings. And you are not aware that insuperable evidence exists, that the Draft in the published Journal, could not, in a number of instances, material as well as minute, be the same with that laid before the Convention. Take for an example of the former, the Article relating to the House of Representatives, more than any, the cornerstone of the Fabric. That the election of it by the people, as proposed by the printed draft in the Journal, could not be the mode of Election proposed in the lost Draft, must be inferred from the face of the Journal itself: For on the 6th. of June, but a few days after the lost Draft was presented to the Convention, Mr. P. moved to strike the word “people” out of Mr. Randolphs proposition; and to “Resolve that the members of the first branch of the national Legislature ought to be elected by the Legislatures of the several States.” But there is other and most conclusive proof, that an election of the House of Representatives, by the people, could not have been the mode proposed by him. There are a number of other points in the published Draft some conforming most literally, to the adopted Constitution, which it is ascertainable, could not have been the same in the Draft laid before the Convention. The Conformity & even identity of the Draft in the Journal, with the adopted Constitution, on points & details the result of conflicts & compromises of opinion apparent in the Journal, have excited an embarrassing curiosity often expressed to myself, or in my presence. The subject is in several respects a delicate one, and it is my wish that what is now said of it may be understood as yielded to your earnest request, and as entirely confined to yourself. I knew Mr. P. well, and was always on a footing of friendship with him. But this consideration ought not to weigh against justice to others, as well as against truth on a subject like that of the Constitution of the U. S. The propositions of Mr. Randolph were the result of a consultation among the seven Virginia Deputies, of which he, being at the time Governor of the State, was the organ. The propositions were prepared on the supposition that, considering the prominent agency of Virga. in bringg. about the Convention some initiative step might be expected from that quarter. It was meant that they should sketch a real and adequate Govt. for the Union, but without committing the parties agst. a freedom in discussing & deciding on any of them. The Journal shews that they were in fact the basis of the deliberations & proceedings of the Convention. And I am persuaded
that altho’ not in a developed & organized form, they sufficiently contemplated it; and moreover that they embraced a fuller outline of an adequate System, than the plan laid before the Convention, variant as that, ascertainably, must have been from the Draft now in print.

Memor. No provision in the Draft of Mr. P. printed in the Journal for the mode of Electing the President of U. S.

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Item 394 // CCCXCIV. James Madison to William Cogswell.
Montpr Mar 10, 1834

You give me a credit to which I have no claim, in calling me “The writer of the Constitution of the U. S.” This was not like the fabled Goddess of Wisdom, the offspring of a single brain. It ought to be regarded as the work of many heads and many hands.

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Item 396 // CCCXCVI. James Madison to Edward Coles.
October 15, 1834.

It is well known that the large States, in both the Federal and State Conventions, regarded the aggregate powers of the Senate as the most objectionable feature of the Constitution.

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Item 397 // CCCXCVII. James Madison to W. A. Duer.
Montpellier, June 5th, 1835.

I have received your letter of April 25th, and with the aid of a friend and amanuensis, have made out the following answer:

On the subject of Mr. Pinckney’s proposed plan of a Constitution, it is to be observed that the plan printed in the Journal was not the document actually presented by him to the Convention. That document was no otherwise noticed in the proceedings of the Convention than by a reference of it, with Mr. Randolph’s plan, to a committee of the whole, and afterwards to a committee of detail, with others; and not being found among the papers left with President Washington, and finally deposited in the Department of State, Mr. Adams, charged with the publication of them, obtained from Mr. Pinckney the document in the printed Journals as a copy supplying the place of the missing one. In this there must be error, there being sufficient evidence, even on the face of the Journals, that the copy sent to Mr. Adams could not be the same with the document laid before the Convention. Take, for example, the article constituting the House of Representatives the corner-stone of the fabric, the identity, even verbal, of which, with the adopted Constitution, has attracted so much notice. In the first place, the details and phraseology of the Constitution appear to have been anticipated. In the next place, it appears that within a few days after Mr. Pinckney presented his plan to the Convention, he moved to strike out from the resolution of Mr. Randolph the provision for the election of the House of Representatives by the people, and to refer the choice of that House to the Legislatures of the States, and to this preference it appears he adhered in the subsequent proceedings of the Convention. Other discrepancies will be found in a source also within your reach, in a pamphlet* published by Mr. Pinckney soon after the close of the Convention, in which he refers to parts of his plan which are at variance with the document in the printed Journal. A friend who had examined and compared the two documents has pointed out the discrepancies noted below.† Further

Discrepancies noted between the plan of Mr. C. Pinckney as furnished by him to Mr. Adams, and the plan presented to the Convention as described in his pamphlet.

The pamphlet refers to the following provisions which are not found in the plan furnished to Mr. Adams as forming a part of the plan presented to the Convention: 1. The Executive term of service 7 years. 2. A council of revision. 3. A power to convene and prorogue the Legislature. 4. For the junction or division of States. 5. For enforcing the attendance of members of the Legislature. 6. For securing exclusive right of authors and discoverers.

The plan, according to the pamphlet, provided for the appointment of all officers, except judges and ministers, by the Executive, omitting the consent of the Senate required in the plan sent to Mr. Adams. Article numbered 9, according to the pamphlet, refers the decision of disputes between the States to the mode prescribed under the Confederation. Article numbered 7, in the plan sent to Mr. Adams, gives to the senate the regulating of the mode. There is no numerical correspondence between the articles as placed in the plan sent to Mr. Adams, and as noted in the pamphlet, and the latter refers numerically to more than are contained in the former.

It is remarkable, that although the plan furnished to Mr. Adams enumerates, with such close resemblance to the language of the Constitution as adopted, the following provisions, and among them the fundamental article relating to the constitution of the House of Representatives, they are unnoticed in his observations on the plan of Government submitted by him to the Convention, while minor provisions, as that enforcing the attendance of members of the Legislature are commented on. I cite the following, though others might be added: 3. To subdue a rebellion in any State on application of its Legislature. 2. To provide such dock-yards and arsenals, and erect such fortifications, as may be necessary for the U. States, and to exercise exclusive jurisdiction therein. 4. To establish post and military roads. 5. 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. 6. No tax shall be laid on articles exported from the States.

1. Election by the people of the House of Representatives. 2. The Executive veto on the laws. See the succeeding numbers as above.

Not improbably unnoticed, because the plan presented by him to the Convention contained his favourite mode of electing the House of Representatives by the State Legislatures, so essentially different from that of an election by the people, as in the Constitution recommended for adoption.

One conjecture explaining the phenomenon has been, that Mr. Pinckney interwove with the draught sent to Mr. Adams passages as agreed to in the Convention in the progress of the work, and which, after a lapse of more than thirty years, were not separated by his recollection.

The resolutions of Mr. Randolph, the basis on which the deliberations of the Convention proceeded, were the result of a consultation among the Virginia Deputies, who thought it possible that, as Virginia had taken so leading a part in reference to the Federal Convention, some initiative propositions might be expected from them. They were understood not to commit any of the members absolutely or definitively on the tenor of them. The resolutions will be seen to present the characteristic provisions and features of a Government as complete (in some respects, perhaps, more so) as the plan of Mr. Pinckney, though without being thrown into a formal shape. The

* Alluding particularly to the debates in the Convention and the letter of Mr. Pinckney of March 28th, 1789, to Mr. Madison. (This note not included in the letter sent to Mr. Duer.)
† Virginia proposed, in 1786, the Convention at Annapolis, which recommended the Convention at Philadelphia, of 1787, and was the first of the States that acted on, and complied with, the recommendation from Annapolis. (This note not included in the letter sent to Mr. Duer.)

moment, indeed, a real Constitution was looked for as a substitute for the Confederacy, the distribution of the Government into the usual departments became a matter of course with all who speculated on the prospective change, and the form of general resolutions was adopted as the most convenient for discussion. It may be
observed, that in reference to the powers to be given to the General Government the resolutions comprehended as well the powers contained in the articles of Confederation, without enumerating them, as others not overlooked in the resolutions, but left to be developed and defined by the Convention.

With regard to the plan proposed by Mr. Hamilton, I may say to you, that a Constitution such as you describe was never proposed in the Convention, but was communicated to me by him at the close of it. It corresponds with the outline published in the Journal. The original draught being in possession of his family and their property, I have considered any publicity of it as lying with them.

Mr. Yates’s notes, as you observe, are very inaccurate; they are, also, in some respects, grossly erroneous. The desultory manner in which he took them, catching sometimes but half the language, may, in part, account for it. Though said to be a respectable and honorable man, he brought with him to the Convention the strongest prejudices against the existence and object of the body, in which he was strengthened by the course taken in its deliberations. He left the Convention, also, long before the opinions and views of many members were finally developed into their practical application. The passion and prejudice of Mr. L. Martin betrayed in his published letter could not fail to discolor his representations. He also left the Convention before the completion of their work. I have heard, but will not vouch for the fact, that he became sensible of, and admitted his error. Certain it is, that he joined the party who favored the Constitution in its most liberal construction.

Item 398 // CCCXCVIII. James Madison on Nullification.
1835-'6.

A political system which does not contain an effective provision for a peaceable decision of all controversies arising within itself, would be a government in name only. Such a provision is obviously essential; and it is equally obvious that it cannot be either peaceable or effective by making every part an authoritative empire. The final appeal in such cases must be to the authority of the whole, not to that of the parts separately and independently. This was

the view taken of the subject while the Constitution was under the consideration of the people. It was this view of it which dictated the clause declaring that the Constitution and laws of the United States should be the supreme law of the land, anything in the constitution or laws of any of the States to the contrary notwithstanding.* It was the same view which specially prohibited certain powers and acts to the States, among them any laws violating the obligation of contracts, and which dictated the appellate provision in the judicial act passed by the first Congress under the Constitution.†

* See Article vi.
† See Article i.

Item 399 // CCCXCIX. James Madison to Joseph Wood.
Feb'y 27, 1836.

I have received, sir, your letter of the 16th instant, requesting such information as I might be able to give pertaining to a biography of your father-in-law, the late Chief Justice Ellsworth.

. . . In the Convention which framed the Constitution of the U. States he bore an interesting part, and signed the instrument in its final shape, with the cordiality verified by the support he gave to its ratification.

Item 400 // CCCC. James Madison to — —
March, 1836.

It is well known that the equality of the States in the Federal Senate was a compromise between the larger and the smaller States, the former claiming a proportional representation in both branches of the Legislature, as due
to their superior population; the latter an equality in both, as a safeguard to the reserved sovereignty of the States, an object which obtained the concurrence of members from the larger States. But it is equally true, though but little reverted to as an instance of miscalculating speculation, that, as soon as the smaller States had secured more than a proportional share in the proposed Government, they became favourable to augmentations of its powers, and that, under the administration of the Government, they have generally, in contests between it and the State governments, leaned to the former. . .
Nothing is more certain than that the tenure of the Senate was meant as an obstacle to the instability, which not only history, but the experience of our country, had shown to be the besetting infirmity of popular governments. . .

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Item 401 // CCCCII. James Madison: Preface to Debates in the Convention of 1787.

A sketch never finished nor applied.
As the weakness and wants of man naturally lead to an association of individuals, under a common authority, whereby each may have the protection of the whole against danger from without, and enjoy in safety within, the advantages of social intercourse, and an exchange of the necessaries & comforts of life: in like manner feeble communities, independent of each other, have resorted to a Union, less intimate, but with common Councils, for the common safety agst. powerful neighbors, and for the preservation of justice and peace among themselves. Ancient history furnishes examples of these confederacies, tho' with a very imperfect account, of their structure, and of the attributes and functions of the presiding Authority. There are examples of modern date also, some of them still existing, the modifications and transactions of which are sufficiently known.
It remained for the British Colonies, now United States, of North America, to add to those examples, one of a more interesting character than any of them: which led to a system without a precedent ancient or modern, a system founded on popular rights, and so combing the federal form with the forms of indivial Republics, as may enable each to supply the defects of the other and obtain the advantages of both —
Whilst the Colonies enjoyed the protection of the parent country as it was called, against foreign danger; and were secured by its superintending controul, against conflicts among themselves, they continued independente of each other, under a common, tho’ limited dependence, on the parental Authority. When the growth of the offspring in strength and in wealth, awakened the jealousy and tempted the avidity of the parent, into schemes of usurpation & exaction, the obligation was felt by the former of uniting their counsels, and efforts to avert the impending calamity.
As early as the year 1754, indications having been given of a design in the British Government to levy contributions on the Col-

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onies, without their consent; a meeting of Colonial deputies took place at Albany, which attempted to introduce a compromising substitute that might at once satisfy the British requisitions and save their own rights from violation. The attempt had no other effect, than by bringing these rights into a more conspicuous view, to invigorate the attachment to them on one side; and to nourish the haughty encroaching spirit on the other. [FN: Crossed out: “see the masterly letter of Dr. Franklin to Governour Shirly in 1754, in which at that early day the argumentative vindication of America against the claim of the British parliament is afterwards expanded into volumes, is brought seen within the compass of a nut shell few pages short letter which is fated with the greatest possible is triumphantly repelled, by reasoning, repelled with greatest possible force, within the smallest possible compass. The letter short as it is comprises the germ, of which all the succeeding arguments, are but arguments of succeeding patriots are but a development.”]
In 1774. The progress made by G. B. in the open assertion of her pretensions, and in the apprended purpose of otherwise maintaining them by Legislative enactments and declarations had been such that the Colonies did not hesitate to assemble, by their deputies, in a formal Congress, authorized to oppose to the British innovations whatever measures might be found best adapted to the occasion; without however losing sight of an eventual reconciliation.
The dissuasive measures of that Congress, being without effect, another Congress was held in 1775, whose pacific efforts to bring about a change in the views of the other party, being equally unavailing, and the commencement of actual hostilities having at length put an end to all hope of reconciliation; The Congress finding moreover that the popular voice began to call for an entire & perpetual dissolution of the political ties which had connected them with G. B., proceeded on the memorable 4th of July, 1776, to declare the 13 Colonies, independent States.

During the discussions of this solemn Act, a Committee consisting of a Member from each colony had been appointed to prepare & digest a form of Confederation, for the future management of the common interests, which had hitherto been left to the discretion of Congress, guided by the exigences of the contest, and by the known intentions or occasional instructions of the Colonial Legislatures.

It appears that as early as the 21st of July 1775, A plan entitled “Articles of Confederation & perpetual Union of the Colonies” had been sketched by Docr Franklin, The plan being on that day submitted by him to Congress; and tho’ not copied into their Journals remaining on their files in his handwriting. But notwithstanding the term “perpetual” observed in the title, the articles provided expressly for the event of a return of the Colonies to a connection with G. Britain.

This sketch became a basis for the plan reported by the Come. on the 12 of July, now also remaining on the files of Congress, in the handwriting of Mr. Dickinson. The plan, tho’ dated after the Declaration of Independence, was probably drawn up before that event; since the name of Colonies, and not States is used throughout the draught. The plan reported, was debated and amended from time to time till the 17th of November 1777, when it was agreed to by Congress, and proposed to the Legislatures of the States, with an explanatory and recommendatory letter. The ratifications of these by their Delegates in Congs. duly authorized took place at successive dates; but were not compleated till March 1, 1781. when Maryland who had made it a prerequisite that the vacant lands acquired from the British Crown should be a Common fund, yielded to the persuasion that a final & formal establishment of the federal Union & Govt. would make a favorable impression not only on other foreign nations, but on G. B. herself.

The great difficulty experienced in so framing the fedl. system as to obtain the unanimity required for its due sanction, may be inferred from the long interval, and recurring discussions, between the commencement and completion of the work; from the changes made during its progress; from the language of Congs. when proposing it to the States, wch. dwelt on the impracticability of devising a system acceptable to all of them; from the reluctant assent given by some; and the various alterations proposed by others; and by a tardiness in others again which produced a special address to them from Congs. enforcing the duty of sacrificing local considerations and favorite opinions to the public safety, and the necessary harmony; nor was the assent of some of the States finally yielded without strong protests against particular articles, and a reliance on future amendments removing their objections.

It is to be recollected, no doubt, that these delays might be occasioned in some degree, by an occupation of the public Councils both general & local, with the deliberations and measures, essential to a Revolutionary struggle; But there must have been a balance for these causes, in the obvious motives to hasten the establishment of a regular and efficient Govt.; and in the tendency of the crisis to repress opinions and pretensions, which might be inflexible in another state of things.

The principal difficulties which embarrassed the progress, and retarded the completion of the plan of Confederation, may be traced to 1. the natural reluctance of the parties to a relinquishment of power: 2 a natural jealousy of its abuse in other hands than their own: 3 the rule of suffrage among parties unequal in size, but equal in sovereignty. 4. The ratio of contributions in money and in troops, among parties, whose inequality in size did not correspond with that of their wealth, or of their military or free population. 5. The selection and definition of the powers, at once necessary to the federal head, and safe to the several members.

To these sources of difficulty, incident to the formation of all such confederacies, were added two others one of a temporary, the other of a permanent nature. The first was the Case of the Crown lands, so called because they had been held by the British Crown, and being ungranted to individuals when, its authority ceased, were considered by the States within whose charters or asserted limits they lay, as devolving on them; whilst it was
contended by the others, that being wrested from the dethroned authority by the equal exertion of all, they resulted of right and in equity to the benefit of all. The lands being of vast extent and of growing value, were the occasion of much discussion & heart-burning; & proved the most obstinate of the impediments to an earlier consummation of the plan of federal Govt. The State of Maryland the last that acceded to it held out as already noticed till March 1. 1781. and then yielded only to the hope that by giving a Stable & authoritative character to the Confederation, a successful termination of the contest might be accelerated. The dispute was happily compromised by successive surrenders of portions of the territory by the States having exclusive claims to it, and acceptances of them by Congress.

The other source of dissatisfaction was the peculiar situation of some of the States, which having no convenient ports for foreign commerce, were subject to be taxed by their neighbors, thro whose ports, their commerce was carryed on. New Jersey, placed between Phila. & N. York, was likened to a Cask tapped at both ends: and N. Carolina between Virga. & S. Carolina to a patient bleeding at both Arms. The Articles of Confederation provided no remedy for the complaint: which produced a strong protest on the part of N. Jersey; and never ceased to be a source of dissatisfaction & discord, until the new Constitution, superseded the old.

But the radical infirmity of “the arts. of Confederation.” was the dependance of Congs, on the voluntary and simultaneous compliance with its Requisitions, by so many independant communities, each consulting more or less its particular interests & convenience {543} and distrusting the compliance of the others. Whilst the paper emissions of Congs. continued to circulate they were employed as a sinew of war, like gold & silver. When that ceased to be the case, the fatal defect of the political System was felt in its alarming force. The war was merely kept alive and brought to a successful conclusion by such foreign aids and temporary expedients as could be applied; a hope prevailing with many, and a wish with all, that a state of peace, and the sources of prosperity opened by it, would give to the Confederacy in practice, the efficiency which had been inferred from its theory.

The close of the war however brought no-cure for the public embarrasments. The States relieved from the pressure of foreign danger, and flushed with the enjoyment of independent and sovereign power; (instead of a diminished disposition to part with it,) persevered in omissions and in measures incompatible with their relations to the Federal Govt. and with those among themselves; [FN: Crossed out: “(notwithstanding, the urgency of the national engagements, and the increasing anarchy and collisions which threatened the Union itself).”]

Having served as a member of Congs. through the period between Mar. 1780 & the arrival of peace in 1783, I had become intimately acquainted with the public distresses and the causes of them. I had observed the successful — opposition to every attempt to procure a remedy by new grants of power to Congs. I had found moreover that despair of success hung over the compromising provision for the public necessities of April 1783 which had been so elaborately planned and so impressively recommended to the States.* Sympathizing, under this aspect of affairs, in the alarm of the friends of free Govt, at the threatened danger of an abortive result to the great & perhaps last experiment in its favour, I could not be insensible to the obligation to co-operate as far as I could in averting the calamity. With this view I acceded to the desire of my fellow Citizens of the County that I should be one of its representatives in the Legislature, hoping that I might there best contribute to inculcate the critical posture to which the Revolutionary cause was reduced, and the merit of a leading agency of the State in bringing about a rescue of the Union and the blessings of liberty staked on it, from an impending catastrophe.

It required but little time after taking my seat in the House of Delegates in May 1784. to discover that however favorable the general disposition of the State might be towards the Confederacy the Legislature retained the aversion of its predecessors to transfers

* See address of Congress.

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of power from the State to the Govt. of the Union; notwithstanding the urgent demands of the Federal Treasury; the glaring inadequacy of the authorized mode of supplying it, the rapid growth of anarchy in the Fedl. System, and the animosity kindled among its members by their conflicting regulations.

The temper of the Legislature & the wayward course of its proceedings may be gathered from the Journals of its Sessions in the years 1784 & 1785.
The failure however of the varied propositions in the Legislature for enlarging the powers of Congress, the continued failure of the efforts of Congs. to obtain from them the means of providing for the debts of the Revolution; and of countervailing the commercial laws of G. B, a source of much irritation & agst. which the separate efforts of the States were found worse than abortive; these Considerations with the lights thrown on the whole subject, by the free & full discussion it had undergone led to a general acquiescence in the Resoln. passed. on the 21. of Jany. 1786. which proposed & invited a meeting of Deputies from all the States to insert the Resol (See Journal.) 1.

The resolution had been brought forward some weeks before on the failure of a proposed grant of power to Congress to collect a revenue from commerce, which had been abandoned by its friends in consequence of material alterations made in the grant by a Committee of the whole. The Resolution tho introduced by Mr. Tyler an influential member, who having never served in Congress, had more the ear of the House than those whose services there exposed them to an imputable bias, was so little acceptable that it was not then persisted in. Being now revived by him, on the last day of the Session, and being the alternative of adjourning without any effort for the crisis in the affairs of the Union, it obtained a general vote; less however with some of its friends from a confidence in the success of the experiment than from a hope that it might prove a step to a more comprehensive & adequate provision for the wants of the Confederacy.

It happened also that Commissioners who had been appointed by Virga. & Maryd. to settle the jurisdiction on waters dividing the two States had, apart from their official reports, recomended a uniformity in the regulations of the 2 States on several subjects & particularly on those having relation to foreign trade. It appeared at the same time that Maryd. had deemed a concurrence of her neighbors Pena — & Delaware indispensable in such a case, who for like reasons would require that of their neighbors. So apt and forceable an illustration of the necessity of a uniformity throughout all the States, could not but favour the passage of a Resolution which proposed a Convention having that for its object.

The comissioners appointed by the Legisl: & who attended the Convention were E. Randolph the Attorney of the State, St. Geo: Tucker & J. M. The designation of the time & place for its meeting to be proposed and communicated to the States having been left to the Comrs: they named for the time early September and for the place the City of Annapolis avoiding the residence of Congs. and large Commercial Cities as liable to suspicions of an extraneous influence.

Altho the invited Meeting appeared to be generally favored, five States only assembled; some failing to make appointments, and some of the individuals appointed not hastening their attendance, the result in both cases being ascribed mainly, to a belief that the time had not arrived for such a political reform, as might be expected from a further experience of its necessity.

But in the interval between the proposal of the Convention and the time of its meeting such had been the advance of public opinion in the desired direction, stimulated as it had been by the effect of the contemplated object of the meeting, in turning the general attention to the Critical State of things, and in calling forth the sentiments and exertions of the most enlightened & influencial patriots, that the Convention thin as it was did not scruple to decline the limited task assigned to it, and to recommend to the States a Convention with powers adequate to the occasion; nor was it unnoticed that the commission of the N. Jersey Deputation, had extended its object to a general provision for the exigencies of the Union. A recommendation for this enlarged purpose was accordingly reported by a Come. to whom the subject had been referred. It was drafted by Col: H. and finally agreed to unanimously in the following form. Insert it.

The recommendation was well recd. by the Legislature of Virga. which happened to be the first that acted on it, and [Crossed out: “as the preparation of the bill fell on me, it was my study to make”.] the example of her compliance was made as conciliatory and impressive as possible. The Legislatures were unanimous or very nearly so on the occasion, and as a proof of the magnitude & solemnity attached to it, they placed Genl. W. at the head of the Deputation from the State; and as a proof of the deep interest he felt in the case he overstepped the obstacles to his acceptance of the appointment.

The act complying with the recommendation from Annapolis was in the terms following.

A resort to a General Convention to remodel the Confederacy

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was not a new idea. It had entered at an early date into the conversations and speculations of the most reflecting & foreseeing observers of the inadequacy of the powers allowed to Congress. In a pamphlet published in May-81 at the Seat of Congs Peletiah Webster an able tho’ not conspicuous Citizen, after discussing the fiscal system of the U. States, and suggesting among other remedial provisions [one] including a national Bank remarks that “The Authority of Congs. at present is very inadequate to the performance of their duties; and this indicates the necessity of their calling a Continental Convention for the express purpose of ascertaining, defining, enlarging, and limiting the duties & powers of their Constitution.”

On the 1. day of Apl. 1783, Col. Hamilton, in a debate in Congs. observed that: — [FN: “He wished . . . to see a general Convention take place” (Gilpin, 707).]

He alluded probably to (see Life of Schuyler in Longacre) [FN: “Resolutions . . . by Schuyler in the Senate . . . of New York, . . . to recommend to the States to call a general Convention.” (Gilpin, 707.)]

It does not appear however that his expectation had been fulfilled

In a letter to J. M. from R. H. Lee then President of Congs. dated Novr. 26 1784 He says: — [That a general convention is suggested by members of Congress. (Gilpin 708).]

The answer of J. M. remarks: — [Question is only as to the mode. (Gilpin, 708).]

In 1785, Noah Webster whose pol. & other valuable writings had made him known to the public, in one of his publications of American policy brought into view the same resort for supplying the defects of the Fedl. System. (see his life in Longacre)

The proposed & expected Convention at Annapolis, the first of a general character that appears to have been realized, & the state of the public mind awakened by it, had attracted the particular attention of Congs. and favored the idea there of a Convention with fuller powers for amending the Confederacy.

It does not appear that in any of these cases, the reformed system was to be otherwise sanctioned than by the Legislative authy of the States; nor whether or how far a change was to be made in the structure of the Depository of Federal powers.

The act of Virga. providing for the Convention at Philada, was succeeded by appointments from other States as their Legislatures were assembled, the appointments being selections from the most experienced & highest standing Citizens. Rh. I. was the only exception to a compliance with the recommendation from Annapolis, [547]

well known to have been swayed by an obdurate adherence to an advantage which her position gave her of taxing her neighbors thro’ their consumption of imported supplies, an advantage which it was foreseen would be taken from her by a revival of the Articles of Confederation.

As the pub. mind had been ripened for a salutary Reform of the pol. System, in the interval between the proposal & the meeting, of Comrs. at Annapolis, the interval between the last event, and the meeting of Deps. at Phila. had continued to develop more & more the necessity & the extent of a Systematic provision for the preservation and Govt. of the Union; among the ripening incidents was the Insurrection of Shays in Massts. against her Govt; which was with difficulty suppressed, notwithstanding the influence on the insurgents of an apprehended interposition of the Fedl. troops.

At the date of the Convention, the aspect & retrospect of the pol: condition of the U. S. could not but fill the pub. mind with a gloom which was relieved only by a hope that so select a Body would devise an adequate remedy for the existing and prospective evils so impressively demanding it

It was seen that the public debt rendered so sacred by the cause in which it had been incurred remained without any provision for its payment. The reiterated and elaborate efforts of Cong. to procure from the States a more adequate power to raise the means of payment had failed. The effect of the ordinary requisitions of Congress had only displayed the inefficiency of the authy. making them; none of the States having duly complied with them, some having failed altogether or nearly so; and in one instance, that of N. Jersey, a compliance was expressly refused; nor was more yielded to the expostulations of members of Congs. deputed to her Legislature than a mere repeal of the law, without a compliance. (see letter of Grayson to J. M.)

The want of authy. in Congs. to regulate Commerce had produced in Foreign nations particularly G. B. a monopolizing policy injurious to the trade of the U. S. and destructive to their navigation; the imbecility and anticipated dissolution of the Confederacy extinguishing all apprehensions of a Countervailing policy on the part of the U. States.
The want of a general power over Commerce led to an exercise of this power separately, by the States, which not only proved abortive, but engendered rival, conflicting and angry regulations. Besides the vain attempts to supply their respective treasuries by imposts, which turned their commerce into the neighbouring ports, and to coerce a relaxation of the British monopoly of the W. Indn.

navigation, which was attempted by Virga. (see the Journal of ) the States having ports for foreign commerce, taxed & irritated the adjoining States, trading thro' them, as N. Y. Pena. Virga. & S- Carolina. Some of the States, as Connecticut, taxed imports as from Masss higher than imports even from G. B. of wch Masss. complained to Virga. and doubtless to other States (see letter of J. M.) In sundry instances of as N. Y. N. J. Pa. & Maryd. (see ) the navigation laws treated the Citizens of other States as aliens.

In certain cases the authy. of the Confederacy was disregarded, as in violations not only of the Treaty of peace; but of Treaties with France & Holland, which were complained of to Congs.

In other cases the Fedl authy was violated by Treaties & wars with Indians, as by Geo: by troops, raised & kept up. with. the consent of Congs. as by Masss by compacts with. the consent of Congs. as between Pena. and N. Jersey. and between Virga. & Maryd. From the Legisl: Journals of Virga. it appears, that a vote to apply for a sanction of Congs. was followed by a vote agst. a communication of the Compact to Congs.

In the internal administration of the States a violations of Contracts had become familiar in the form of depreciated paper made a legal tender, of property substituted for money, of Instalment laws, and of the occlusions of the Courts of Justice; although evident that all such interferences affected the rights of other States, relatively Creditor, as well as Citizens Creditors within the State

Among the defects which had been severely felt was that of a uniformity in cases requiring it, as laws of naturalization, bankruptcy, a Coercive authority operating on individuals and a guaranty of the internal tranquility of the States;

As a natural consequence of this distracted and disheartening condition of the Union, the Fedl. authy had ceased to be respected abroad, and dispositions shewn there, particularly in G. B. to take advantage of its imbecility, and to speculate on its approaching downfall; at home it had lost all confidence & credit. The unstable and unjust career of the States had also forfeited the respect & confidence essential to order and good Govt., involving a general decay of confidence & credit between man & man. It was found moreover, that those least partial to popular Govt. or most distrustful of its efficacy were yielding to anticipations that from an increase of the confusion a Govt. might result more congenial with their taste or their opinions; whilst those most devoted to the principles and forms of Republics, were alarmed for the cause of liberty itself, at stake in the American Experiment, and anxious for a System that

wd avoid the inefficacy of a mere Confederacy without passing into the opposite extreme of a Consolidated govt. It was known that there were individuals who had betrayed a bias towards Monarchy (see Knox to G. W. & him to Jay), and there had always been some not unfavorable to a partition of the Union into several Confederacies (Marshall’s life); either from a better chanc of figuring on a Sectional Theatre, or that the Sections would require stronger Govts. or by their hostile conflicts lead to a monarchical consolidation. The idea of a dismemberment had recently made its appearance in the Newspapers.

Such were the defects, the deformities, the diseases and the ominous prospects, for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding & appreciating the Constitutional Charter the remedy that was provided.

As a sketch the earliest perhaps on paper, of a Constitutional Govt. for the Union (organized into the regular Departments with physical means operating on individuals) to be sanctioned by the people of the States, acting in their original & sovereign character, was contained in a letter of Apl. 8. 1787 from J. M. to Govr. Randolph, a copy of the letter is here inserted.

The feature in the letter which vested in the general Authy a negative on the laws of the States, was suggested by the negative in the head of the British Empire, which prevented collisions between the parts & the whole, and between the parts themselves. It was supposed that the substitution, of an elective and responsible authority for an hereditary and irresponsible one, would avoid the appearance even of a departure from the principle of Republicanism. But altho’ the subject was so viewed in the Convention, and the votes on it more than once equally divided, it was finally & justly abandoned, as, apart from other objections, it was not practicable among
so many States, increasing in number, and enacting, each of them, so many laws. Instead of the proposed negative, the objects of it were left as finally provided for in the Constitution.

On the arrival of the Virginia Deputies at Philada, it occurred to them that from the early and prominent part taken by that State in bringing about the Convention some initiative step might be expected from them. The Resolutions introduced by Governor Randolph were the result of a Consolidation on the subject; with an understanding that they left all the Deputies entirely open to the lights of discussion, and free to concur in any alterations or modifications which their reflections and judgements might approve. The Resolutions as the Journals shew became the basis on which the proceedings of the Convention commenced, and to the developments,

variations and modifications of which the plan of Govt. proposed by the Convention may be traced.

The curiosity I had felt during my researches into the History of the most distinguished Confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it more especially in what related to the process, the principles — the reasons, & the anticipations, which prevailed in the formation of them, determined me to preserve as far as I could an exact account of what might pass in the Convention whilst executing its trust, with the magnitude of which I was duly impressed, as I was with the gratification promised to future curiosity by an authentic exhibition of the objects, the opinions & the reasonings from which the new System of Govt. was to receive its peculiar structure & organization. Nor was I unaware of the value of such a contribution to the fund of materials for the History of a Constitution on which would be staked the happiness of a young people great even in its infancy, and possibly the cause of Liberty through the world.

In pursuance of the task I had assumed I chose a seat in front of the presiding member with the other members, on my right & left hand. In this favorable position for hearing all that passed, I noted in terms legible & in abbreviations & marks intelligible to myself what was read from the Chair or spoken by the members; and losing not a moment unnecessarily between the adjournment & reassembling of the Convention I was enabled to write out my daily notes during the session or within a few finishing days after its close in the extent and form preserved in my own hand on my files. [FN: “Mr. Madison told Governor Edward Coles that the labor of writing out the debates, added to the confinement to which his attendance in Convention subjected him, almost killed him; but that having undertaken the task, he was determined to accomplish it.” H. B. Grisby, History of the Virginia Federal Convention of 1788, I, 95 note.]

In the labor and correctness of this I was not a little aided by practice, and by a familiarity with the style and the train of observation and reasoning which characterized the principal speakers. It happened, also, that I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single speech, unless a very short one.

It may be proper to remark, that, with a very few exceptions, the speeches were neither furnished, nor revised, nor sanctioned, by the speakers, but written out from my notes, aided by the freshness of my recollections. A further remark may be proper, that views of the subject might occasionally be presented, in the speeches and proceedings, with a latent reference to a compromise on some middle ground, by mutual concessions. The exceptions alluded to were, — first, the sketch furnished by Mr. Randolph of his speech on the introduction of his propositions, on the twenty-ninth day of May; secondly, the speech of Mr. Hamilton, who happened to call on me when putting the last hand to it, and who acknowledged its fidelity, without suggesting more than a very few verbal alterations which were made; thirdly, the speech of Gouverneur Morris on the second day of May [July], which was communicated to him on a like occasion, and who acquiesced in it without even a verbal change. The correctness of his language and the distinctness of his enunciation were particularly favorable to a reporter. The speeches of Doctor Franklin, excepting a few brief ones, were copied from the written ones read to the Convention by his colleague, Mr. Wilson, it being inconvenient to the Doctor to remain long on his feet.

Of the ability and intelligence of those who composed the Convention the debates and proceedings may be a test; as the character of the work which was the offspring of their deliberations must be tested by the experience of the future, added to that of nearly half a century which has passed.

But whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn
conviction, derived from my intimate opportunity of observing and appreciating the views of the Convention, collectively and individually, that there never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives, or more exclusively or anxiously devoted to the object committed to them, than were the members of the Federal Convention of 1787, to the object of devising and proposing a constitutional system which should best supply the defects of that which it was to replace, and best secure the permanent liberty and happiness of their country.

TABLE 323B
RE-CREATION TEXT OF THE DETACHED MEMORANDA
(1946)

The constitutionality of the National Bank, was a question on which his mind was greatly perplexed. His belief in the utility of the establishment & his disposition to favor a liberal construction of the national powers, formed a bias on one side. On the other hand, he had witnessed what passed in the Convention which framed the Constitution, and he knew the tenor of the reasonings & explanations under which it had been ratified by the State Conventions. His perplexity was increased by the opposite arguments and opinions of his official advisers Mr. Jefferson and Mr. Hamilton. He held several free conversations with me on the Subject, in which he listened favorably as I thought to my views of it, but certainly without committing himself in any manner whatever. Not long before the expiration of the ten days allowed for his decision, he desired me to reduce into form, the objections to the Bill, that he might be prepared I, in case he should return it without his signature. This I did in a paper of which the following is a copy. (which see & here insert)

From this circumstance, with the manner in which the paper had been requested & received, I had inferred that he would not sign the Bill: but it was an inference nowise implying that he had precluded himself from consistently signing it.

As it was, he delayed to the last moment, the message communicating his signature. The delay had begotten strong suspicions in the zealous friends of the Bill, that it would be rejected. One of its ablest Champions, under this impression, told me he had been making an exact computation of the time elapsed, and that the Bill would be a law, in spite of its return with objections, in consequence of the failure to make the return within the limited term of ten days. I did not double that if such had been the case advantage would have been taken of it, and that the disappointed party would have commenced an opposition to the President; so great was their confidence in wealth and strength that possessed, and such the devotion of the successful speculators in the funds, and of the anti-republican partisans, to the plans & principals of the Secretary of the Treasury. The conversation had scarcely ended, when the message arrived with notice that the Bill had been approved and signed.

In explaining the grounds on which he refused to comply with the call of the House of Reps for the papers relating to Mr. Jay’s negotiations and Treaty with G. B. in 1795, he was led into a reference to vote in the Grand Convention negativing a proposition to allow the H. of Reps. a participation in concluding Treaties as an argument against their right to the papers called for. The reference and interference were misjudged. 1. The question on which the vote in the Convention was taken , was not the same with that on which the call for papers turned; since the House tho’ not a party to a Treaty might, as in the case of the British Parl have a legislative right to deliberate on the provisions depending on them for its execution. 2. The vote in the Convention, as nakedly stated, did not necessarily imply a negative on the powers of the House, as it might have proceeded from collateral motives distinct from the merits of the question, such as its being out of time or place, or a belief that without an affirmative vote, an agency of the House of Reps in the case of Treaties, sufficiently resulted from the text of Constitutional plan then before the Convention. 3. If the meaning of the Constitution was to be looked for elsewhere than in the instrument, it was not in the General Convention, but the State Conventions. The former proposed it only; it was from the latter that it derived its validity and authority. The former were the Committee that prepared the Bill, the latter the authoritative Bodies which made it a law, or rather through which the Nation made its own Act. It is the sense of the nation therefore [which ratified,] not the sense of the General Convention, that is to be consulted; and that sense, if not taken from the act itself, is to be taken from the proceedings of the State Conventions & other public indications as the true keys to the sense of
the Nation. 4. But what rendered the argument from the case cited particularly unfortunate was the circumstance, that the Bank- Bill had been signed, notwithstanding the vote in the General Convention negativing expressly a proposition to give Congress a power to establish a Bank. On the other hand the call of the H. of Reps for papers which might be of a confidential nature, was in terms too peremptory and unqualified; [See unsuccessful motion of J. M. qualifying the call for papers as the practice since been.] and the President might therefore justifiably decline, on his responsibility to the Nation, to comply with it. Having myself at the time, take this view of the subject I proposed that he call should be so varied, as to limit it to such papers as the judgment of the President might with propriety be communicated. The proposition was very disagreeable to the warmest advocates for whom I was most intimate. The proposition being rejected, I voted for the call, in its unqualified terms, taking for granted that the President would exercise his responsible discretion on the subject. The practice of the House has since expressly limited the calls for paper Executive Communications to such as in the judgment of the President the public interest might not forbid.